

THE REAL ESTATE COUNCIL OF BRITISH COLUMBIA

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended

AND

IN THE MATTER OF

VLR MANAGEMENT LTD. DBA VANCOUVER LUXURY REALTY
(X029465)

CONSENT ORDER

RESPONDENT: VLR Management Ltd. dba Vancouver
Luxury Realty, Brokerage

DATE OF REVIEW MEETING: December 6, 2017

DATE OF CONSENT ORDER: December 6, 2017

CONSENT ORDER REVIEW COMMITTEE: T. O'Grady, Chair
J. Daly
L. Hrycan
S. Heath
L. Sterritt

ALSO PRESENT: G. Thiele, Director, Legal Services
Jessica Gossen, Legal Counsel for the
Real Estate Council

PROCEEDINGS:

On December 6, 2017, the Consent Order Review Committee ("Committee") resolved to accept the Agreed Statement of Facts and Proposed Acceptance of Findings and Waiver ("ASF") submitted by VLR Management Ltd. dba Vancouver Luxury Realty.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by VLR Management Ltd. dba Vancouver Luxury Realty.

NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that VLR Management Ltd. dba Vancouver Luxury Realty committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

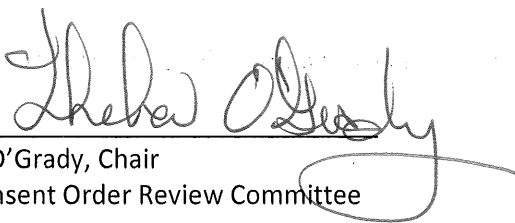
1. VLR Management Ltd. dba Vancouver Luxury Realty be reprimanded;

2. VLR Management Ltd. dba Vancouver Luxury Realty pay a discipline penalty to the Council in the amount of \$2,000.00 within ninety (90) days of the date of this Order; and
3. VLR Management Ltd. dba Vancouver Luxury Realty pay enforcement expenses of this Consent Order to the Council in the amount \$1,250.00 within sixty (60) days from the date of this Order.

If VLR Management Ltd. dba Vancouver Luxury Realty fails to comply with any term of this Order, the Council may suspend or cancel its licence without further notice to it, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 6th day of December, 2017, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



T. O'Grady, Chair
Consent Order Review Committee

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IN THE MATTER OF THE REAL ESTATE SERVICES ACT
S.B.C. 2004, c. 42

IN THE MATTER OF

VLR MANAGEMENT LTD. DBA
VANCOUVER LUXURY REALTY
(X029465)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Shahram Rafati as the current managing broker on behalf of VLR Management Ltd. dba Vancouver Luxury Realty ("VLR") and the Real Estate Council of British Columbia (the "Council").

- A. Mr. Rafati on behalf of VLR hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that it be reprimanded, and that it pay a discipline penalty to the Council in the amount of \$2,000.00 within ninety (90) days from the date of the Order herein. Further, Mr. Rafati on behalf of VLR agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within sixty (60) days from the date of the Order herein. Mr. Rafati on behalf of VLR further consents to an Order that if it fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel its licence without further notice to it pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.
- B. As a basis for this Order, Mr. Rafati on behalf of VLR acknowledges and agrees that the facts set forth herein are correct:
 - 1. VLR was at all relevant times licensed as a brokerage to provide trading and rental property management services.
 - 2. VLR's licensing history is as follows:

<u>Start Date</u>	<u>End Date</u>	<u>Licensing History</u>	<u>Licence Level</u>	<u>Licence Category</u>
2012/09/12	Present	Vancouver Luxury Realty (X029465)	Brokerage	Trading Rental
2012/05/30	2012/09/12	Vancouver Luxury Realty (X029465)	Brokerage	Trading Rental Strata

2010/05/07	2012/05/30	Vancouver Luxury Realty (X029465)	Brokerage	Trading Rental
2010/02/19	2012/05/07	Vancouver Luxury Realty (X029465)	Brokerage	Trading, Rental Strata
2009/11/19	2010/02/19	Vancouver Luxury Rentals (X029465)	Brokerage	Trading, Rental

3. As of May 2015 ownership and management of the brokerage changed. M.S., the managing broker at that time, sold the brokerage and ceased to be an owner, director or licensee with VLR on May 26, 2015. Mr. Rafati was not managing broker or employed with the brokerage during the time relevant to this matter. VLR has undergone a successful audit since the ownership and management changed.
4. On or about February 28, 2013 M.A., the managing broker of VLR, contacted the Council to advise that [REDACTED] had issued a garnishee order in relation to two brokerage trust accounts at [REDACTED] and funds had been withdrawn by the bank to satisfy the order.
5. Based on this information an Office and Records Inspection was carried out by the Council on March 5 and March 13, 2013 and again as a follow up in April, 2013.
6. In the Office and Records Inspection Report ("ORIR") it was confirmed that further to the garnishee order, the bank had withdrawn a total of \$ 48,483.59 as outstanding GST.
7. M.A. was advised by the Council to take steps to immediately replenish the brokerage trust accounts. In addition to smaller deposits made on March 1, and March 4; on March 15, 2013 the sum of \$20,000 was transferred from the brokerage general account. On March 18, the sum of \$5,000 was deposited into the brokerage trust account.
8. On April 1, 2013 the outstanding balance of \$16,948.53 was deposited to the brokerage trust accounts. Although M.A. resigned as managing broker as of April 19, 2013, the successor managing broker, J.F. confirmed that a separate GST account had been set up where all GST collected was deposited in anticipation of remitting payments to CRA.
9. M.A. provided further information relating to the ongoing and repeated attempts he had made as a managing broker to educate staff and licensees, as to their professional responsibilities and to ensure that the affairs of the brokerage were in compliance with RESA and the Council Rules.
10. VLR entered into a Consent Order with the Council on May 15, 2014 in which it committed professional misconduct within the meaning of section 35(1)(a) of RESA in that:
 - (i) contravening section 25 of the *Real Estate Services Act* in that it failed to maintain proper books, accounts and other records in accordance with sections 8-1, 8-2, 8-3, 8-4 and 8-5 of the Council Rules;

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

- (ii) contravening section 5-1(5) of the Council Rules in that its rental property management written services agreements did not contain a description of the records to be kept by the brokerage on behalf of the owner;
- (iii) contravening section 5-10 of the Council Rules in that it failed to make proper agency disclosure to the parties before providing rental property management services;
- (iv) contravening section 7-5(2) and 7-5(3)(b) of the Council Rules in that it did not take immediate steps to eliminate negative balances in its pooled rental trust account and notify the Council no later than 10 days after the day on which the negative balances arose; and
- (v) contravened section 7-7(1) of the Council Rules in that it failed to file an Accountant's Report with the Council for the year ended October 31, 2011 on or before February 29, 2012.

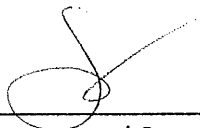
VLR was reprimanded, ordered to pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days from the date of the Order. Further, VLR was ordered to pay enforcement expenses of the Consent Order to the Council in the amount \$1,250.00 within sixty (60) days from the date of the Order.

C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Mr. Rafati on behalf of VLR is prepared to accept the following findings if made against it by the Council's Consent Order Review Committee:
 - (a) VLR committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it:
 - (i) it failed to take immediate steps to eliminate a negative trust balance when trust funds were withdrawn from the Brokerage trust account on the demand of [REDACTED] and the Brokerage did not take immediate steps to replenish the trust account, contrary to section 7-5(2) of the Council Rules; and
 - (iv) it failed to keep proper books, records, accounts and other records contrary to section 25 of RESA and sections 8-1, 8-2 and 8-3 of the Council Rules.
2. Mr. Rafati on behalf of VLR hereby waives its right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Mr. Rafati on behalf of VLR acknowledges that it has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

4. Mr. Rafati on behalf of VLR acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on the Council's website, and on CanLII, a website for legal research.
5. Mr. Rafati on behalf of VLR acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services Act*, to appeal any decision of the Council, including this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.
6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any other civil proceedings.

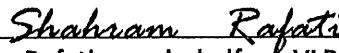


Jessica S. Gossen, Legal Counsel
Real Estate Council of British Columbia

As to Part B only (Agreed Statement of Facts)

Dated 21 day of November, 2017

DocuSigned by:



Mr. Rafati on behalf of VLR Management Ltd.
dba Vancouver Luxury Realty

As to Parts A, B and C (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

Dated 25 day of October, 2017