

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

MUSTAFA ABBASI
(168481)

AND

ZOLO REALTY (BC) INC. DBA ZOLO REALTY
(X030875)

CONSENT ORDER

RESPONDENT:	Mustafa Abbasi, Managing Broker, Zolo Realty (BC) Inc. dba Zolo Realty Zolo Realty (BC) Inc. dba Zolo Realty, Brokerage
DATE OF REVIEW MEETING:	September 13, 2017
DATE OF CONSENT ORDER:	November 24, 2017
CONSENT ORDER REVIEW COMMITTEE:	R. Holmes, Q.C., Chair G. Martin S. Sidhu
ALSO PRESENT:	E. Seeley, Executive Officer G. Thiele, Director, Legal Services Esther Jeon, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On September 13, 2017, a Consent Order Proposal ("COP") submitted by Mustafa Abbasi, on his own behalf and on behalf of Zolo Realty (BC) Inc. dba Zolo Realty was considered by the Consent Order Review Committee (the "Committee") but not accepted. On November 22, 2017, a revised COP acceptable to the Committee was submitted by Mustafa Abbasi, on his own behalf and on behalf of Zolo Realty (BC) Inc. dba Zolo Realty.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Mustafa Abbasi, on his own behalf and on behalf of Zolo Realty (BC) Inc. dba Zolo Realty.

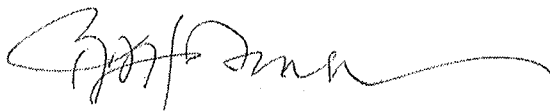
NOW THEREFORE, the Committee having made the findings proposed in the attached COP, and in particular having found that Mustafa Abbasi, and Zolo Realty (BC) Inc. dba Zolo Realty committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (RESA), orders that:

1. Zolo Realty (BC) Inc. be reprimanded;
2. Zolo Realty (BC) Inc. must within ninety (90) days from the date of this Order find a secondary managing broker;
3. Upon the appointment of a secondary managing broker at Zolo Realty (BC) Inc., Mustafa Abbasi's licence immediately be suspended for thirty (30) days;
4. Mustafa Abbasi be prohibited from acting as an unlicensed assistant during the licence suspension period;
5. Mustafa Abbasi, at his own expense, register for and successfully complete the Broker's Licensing Course and Examination as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period directed by the Council; and
6. Mustafa Abbasi and Zolo Realty be jointly and severally liable to pay enforcement expenses in the amount of \$1,500.00 within sixty (60) days from the date of this Order.

If Mustafa Abbasi, or Zolo Realty (BC) Inc. dba Zolo Realty fails to comply with any term of this Order, the Council may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 24 day of November, 2017, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



R. Holmes, Q.C., Chair
Consent Order Review Committee

Attch.

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

IN THE MATTER OF

MUSTAFA ABBASI
(168481)

AND

ZOLO REALTY (BC) INC. DBA ZOLO REALTY
(X030875)

CONSENT ORDER PROPOSAL BY MUSTAFA ABBASI AND
ZOLO REALTY (BC) INC. DBA ZOLO REALTY

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Mustafa Abbasi ("Mr. Abbasi") and Zolo Realty (BC) Inc. dba Zolo Realty ("Zolo Realty") to the Consent Order Review Committee ("CORC") of the Real Estate Council of British Columbia ("Council") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, Mr. Abbasi, Zolo Realty, and the Council have agreed upon the following facts:

Licensing Histories

1. Mr. Abbasi (168481) has been licensed as a managing broker since 2014 and was at all relevant times licensed as a managing broker with Zolo Realty.
2. Zolo Realty (X030875) has been licensed as a brokerage since 2013.

The Collapsed Deal: The First Contract

3. This matter relates to a transaction that collapsed with respect to a property located at 2XX – 9XXX Saturna Drive, Burnaby, B.C. (the "First Property"). AM, a representative licensed with Zolo Realty at the relevant time, acted for the buyers (the "Buyers") in the subject transaction and a subsequent transaction for a different property which completed successfully.
4. The Buyers were experienced real estate investors from Alberta and were prepared to purchase multiple properties.

5. On January 21, 2016, the sellers of the First Property (the "Sellers") and the Buyers entered into a Contract of Purchase and Sale (the "First Contract") with respect to the First Property at the purchase price of \$267,000.00. The First Contract was subject to a number of conditions, including financing, inspection, approval of Property Disclosure Statement and strata documents, among other subjects, to be removed by January 30, 2016.
6. The First Contract provided for a deposit in the amount of \$15,000.00, due within 24 hours of acceptance of the contract and to be held in trust by Zolo Realty. The Buyers submitted a bank draft in the amount of \$15,000.00 and the funds were entered into the brokerage trust account.
7. On January 25, 2016, AM received an e-mail from the Buyers' mortgage broker advising that financing was unlikely to be approved for the purchase of the First Property. The mortgage broker also advised the Buyers of the "bad news".
8. On January 26, 2016, the mortgage broker confirmed in an e-mail that several lenders had concerns about the ongoing repairs and "*won't lend on the property until all is complete and everything finalized in terms of assessments etc.*".
9. On January 27, 2016, AM advised the Sellers' agent, TK, by e-mail that the Buyers were unable to obtain financing and enclosed a copy of the message from the mortgage broker. AM asked TK for a release from the First Contract.
10. Also on January 27, 2016, the Buyers submitted an offer on another property located in the same strata complex but in a different building (the "Second Property"). The Second Property was a three-bedroom unit, as opposed to the First Property which was a two-bedroom unit, and it was upgraded with over \$60,000.00 worth of renovations.
11. On January 28, 2016, TK introduced AM to another mortgage broker and made efforts to salvage the First Contract. The mortgage broker reviewed the file and confirmed that financing for the First Property would be unlikely to be approved due to various concerns about ongoing repairs.
12. On January 29, 2016, and again on February 11, 2016, AM sent e-mails to TK requesting a mutual release from the First Contract. In both e-mails, he attached forms provided by the local real estate board for reporting collapsed deals and terminating listing contracts. Neither form was correct for releasing parties to a contract of purchase and sale where deposit monies were being held in trust. Both forms were recommended by AM's managing broker, Mr. Abbasi.
13. Mr. Abbasi acknowledged that he provided guidance to AM but inadvertently misdirected him to use incorrect forms.
14. On February 18, 2016, AM e-mailed TK the correct mutual release form (the "Release Form") for releasing the parties from the First Contract and trust monies, and asked TK for her clients' signatures. AM explained in the e-mail that his clients did their best to complete the deal on the First Property.

15. The Release Form, although it was the correct form, contained the following errors: 1) the date of the First Contract was indicated as January 20, 2016, when in fact it was entered into on January 21, 2016; 2) the \$15,000.00 deposit was to be released to "Zolo Realty in trust" instead of the Buyers; and 3) AM signed the document as a witness to the signatures of the Buyers, which was inappropriate given that the Buyers signed the document electronically in Alberta.
16. In any event, the Sellers refused to sign the Release Form and entered into a dispute with the Buyers and Zolo Realty to claim the deposit.

The Deposit

17. In the meantime, the Buyers proceeded with the Contract of Purchase and Sale with respect to the Second Property (the "Second Contract") which was accepted on January 27, 2016. The Second Contract also provided for a \$15,000.00 deposit due within 24 hours of acceptance.
18. The Buyers did not have any issues obtaining financing for the purchase of the Second Property and removed subjects on February 10, 2016.
19. On February 16, 2016, acting on the Buyers' instructions, AM advised the conveyance staff at Zolo Realty that the deposit for the Second Contract was to be drawn from the deposit being held in trust for the First Contract. AM did not advise the Buyers that a separate deposit was required to meet their deposit obligations with respect to the Second Contract.
20. On February 16, 2016, the deposit for the First Contract was "released" to the Buyers from the trust account but it was immediately re-entered into the trust account for the Second Contract.
21. At this point, the deposit with respect to the Second Contract was late, as it was due on January 28, 2016. AM did not advise his managing broker or the Buyers that the deposit was late, nor did he advise the Buyers to seek legal advice on the risks associated with late deposits.
22. There is no evidence that the sellers of the Second Property took issue with the late deposit. In any event, the transaction proceeded without incident.
23. On April 8, 2016, in response to instructions from the Buyers, Mr. Abbasi instructed the conveyance staff at Zolo Realty that the deposit from the First Contract was to be used as deposit for the Second Contract.
24. The Sellers of the First Property continued to claim the \$15,000.00 deposit but learned that the funds had already been disbursed from the trust account.

25. On April 9, 2016, TK e-mailed AM with a proposal that the Sellers and the Buyers split the deposit in equal halves of \$7,500.00. Managing brokers of both brokerages became involved and attempted to resolve the dispute.
26. The Second Contract completed on April 26, 2016.
27. On or about March 20, 2017, at the direction of the Council, Zolo Realty transferred \$15,000.00 into its trust account to restore the deposit for the First Contract.
28. The dispute over the deposit was resolved in July 2017 when Zolo Realty and the Sellers entered into a mutual release agreement.
29. A Notice of Discipline Hearing was issued on August 15, 2017, and served on Mr. Abbasi and Zolo Realty.
30. Mr. Abbasi and Zolo Realty do not have a prior discipline history with the Council.
31. Mr. Abbasi was cooperative with the Council's investigation and emphasized that he takes these matters seriously. Mr. Abbasi explained that Zolo Realty has a policy, which was instituted long before this matter arose, that trust funds be released only in certain circumstances set out in section 30(2) of the RESA, and that this incident was truly an isolated error. An audit conducted by the Council confirmed that other than minor inconsistencies, there were no concerns with respect to the operation of Zolo Realty.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purpose of the Proposal and based on the Facts outlined herein, Mr. Abbasi and Zolo Realty propose the following findings of misconduct be made by the CORC:

1. Mr. Abbasi, while acting as a managing broker for Zolo Realty, committed professional misconduct within the meaning of section 35(1)(a) of the RESA, in that:
 - a. contrary to section 6-2 of the RESA and section 3-1(1)(b) of the Rules, he failed to ensure that the business of the brokerage was carried out competently and in accordance with the applicable laws, in that he misguided AM to use incorrect forms for releasing Zolo Realty's clients from the First Contract;
 - b. contrary to sections 3-1(1)(b) and 3-1(3)(a) of the Rules, he failed to ensure that trust accounts and the records of the brokerage were maintained in accordance with the applicable laws, in that he authorized the \$15,000.00 deposit which was held in accordance with the First Contract to be released from trust without a written agreement of the parties and allowed the funds to be used as deposit for the Second Contract; and
2. Zolo Realty committed professional misconduct within the meaning of section 35(1)(a) of the RESA in regards to the \$15,000.00 deposit that it held as a stakeholder in accordance with the First Contract, in that contrary to section 30(2) of the RESA, it released the deposit from the trust account without a written agreement of the parties to the First Contract.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Abbasi and Zolo Realty propose that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

1. Zolo Realty be reprimanded.
2. Zolo Realty must within ninety (90) days from the date of the Order find a secondary managing broker.
3. Upon the appointment of a secondary managing broker at Zolo Realty, Mr. Abbasi's licence immediately be suspended for thirty (30) days.
4. Mr. Abbasi is prohibited from acting as an unlicensed assistant during the period of his licence suspension.
5. Mr. Abbasi, at his own expense, register for and successfully complete the Broker's Licensing Course and Examination as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period directed by the Council.
6. Mr. Abbasi and Zolo Realty agree to be jointly and severally liable to pay enforcement expenses pursuant to section 44 of the RESA in the amount of \$1,500.00 within sixty (60) days from the date of the Order herein.
7. If either Mr. Abbasi or Zolo Realty fail to comply with any of the terms of the Order set out above, a Discipline Committee may suspend or cancel their licences without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Abbasi and Zolo Realty acknowledge and understand that the Council may refer or decline to refer the Proposal to the CORC. If the Proposal is referred to the CORC, it may be accepted or rejected by the CORC. If the Proposal is rejected by the CORC, the matter may be referred to a disciplinary hearing.
2. Mr. Abbasi and Zolo Realty have been advised of and understand their right to obtain independent legal advice regarding the disciplinary process, including with respect to the execution and submission of the Proposal.
3. Mr. Abbasi and Zolo Realty acknowledge and are aware that the Council will publish the Proposal and the Consent Order or summaries thereof in its Report from Council newsletter, on the Council's website, on CanLII, a website for legal research and in such other places and by such other means as the Council in its sole discretion deems appropriate.

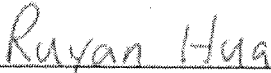
4. Mr. Abbasi and Zolo Realty acknowledge and are aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the RESA, to appeal any decision of the Council, including any Consent Order made by the Council in relation to this matter.
5. Mr. Abbasi and Zolo Realty hereby waive their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Abbasi and Zolo Realty for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of Mr. Abbasi and Zolo Realty in any civil proceeding with respect to the matter.



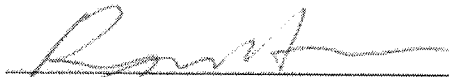
MUSTAFA ABBASI

Dated 22nd day of November, 2017

Signature of Mustafa Abbasi witnessed on the above date by:



Witness Name (Please Print)



Witness Signature



MUSTAFA ABBASI ON BEHALF OF ZOLO REALTY
(BC) INC. DBA ZOLO REALTY

Dated 22nd day of November, 2017

Signature of Mustafa Abbasi witnessed on the above date by:



Witness Name (Please Print)



Witness Signature