

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

IAN DAVID HOUGHTON (156010)

AND

PINO LEONE BACINELLO (141765)

AND

PACIFIC M&A AND BUSINESS BROKERS LTD. (X028863)

CONSENT ORDER

RESPONDENT:	Ian David Houghton, Representative, Pacific M&A and Business Brokers Ltd.
	Pino Leone Bacinello, Managing Broker, Pacific M&A and Business Brokers Ltd.
	Pacific M&A and Business Brokers Ltd., Brokerage
DATE OF REVIEW MEETING:	October 18, 2017
DATE OF CONSENT ORDER:	October 18, 2017
CONSENT ORDER REVIEW COMMITTEE:	R. Holmes, Q.C., Chair K. Lonsdale S. Heath
ALSO PRESENT:	G. Thiele, Director, Legal Services Jessica Gossen, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On October 18, 2017, the Consent Order Review Committee ("Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Ian David Houghton, Pino Leone Bacinello, on his own behalf, and on behalf of Pacific M&A and Business Brokers Ltd.

WHEREAS the ASF, a copy of which is attached hereto, has been executed on behalf of the Council and by Ian David Houghton, Pino Leone Bacinello, on his own behalf, and on behalf of Pacific M&A and Business Brokers Ltd.

NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Ian David Houghton, Pino Leone Bacinello, and Pacific M&A and Business Brokers Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Ian David Houghton, Pino Leone Bacinello, and Pacific M&A and Business Brokers Ltd. each be reprimanded;
2. Ian David Houghton pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days of the date of this Order;
3. Pino Leone Bacinello and Pacific M&A and Business Brokers Ltd. be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$4,000.00 within ninety (90) days of the date of this Order; and
4. Ian David Houghton, Pino Leone Bacinello, and Pacific M&A and Business Brokers Ltd. be jointly and severally liable to 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 Ian David Houghton, Pino Leone Bacinello, or Pacific M&A and Business Brokers Ltd. fail 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 18th day of October, 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

Atch.

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

IN THE MATTER OF

**IAN DAVID HOUGHTON
(156010)**

**PINO LEONE BACINELLO
(141765)**

AND

**PACIFIC M&A AND BUSINESS BROKERS LTD.
(X028863)**

**AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER**

The following agreement has been reached between Ian David Houghton ("Mr. Houghton"), Pino Leone Bacinello ("Mr. Bacinello"), Pacific M&A And Business Brokers Ltd. ("Pacific M&A") and the Real Estate Council of British Columbia (the "Council").

- A. Mr. Houghton hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded, and that he pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days of the date of this Order.
- B. Mr. Bacinello hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded.
- C. Pacific M&A hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that it be reprimanded.
- D. Mr. Bacinello and Pacific M&A hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that they be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$4,000.00 within ninety (90) days of the date of this Order.
- E. Mr. Houghton, Mr. Bacinello, and Pacific M&A hereby consent to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that they be jointly and severally liable 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.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

- F. Mr. Houghton, Mr. Bacinello, and Pacific M&A further consent to an Order that if they fail to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel their licences without further notice to them pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.
- G. As a basis for this Order, Mr. Houghton, Mr. Bacinello and Pacific M&A acknowledges and agrees that the facts set forth herein are correct:

- 1. Mr. Houghton was at all relevant times licensed as a representative with Pacific M&A.
- 2. Mr. Houghton’s licensing history is as follows:

Brokerage	Licence Level	Licence Category	Start Date	End Date
Pacific M&A And Business Brokers Ltd. (X028863)	Representative	Trading	18/11/2008	Present

- 3. Mr. Bacinello was at all relevant times licensed as a managing broker with Pacific M&A.
- 4. Mr. Bacinello’s licensing history is as follows:

Brokerage	Licence Level	Licence Category	Start Date	End Date
Pacific M&A And Business Brokers Ltd. (X028863)	Managing Broker	Trading	24/09/2009	To Present
Pacific M&A And Business Brokers Ltd. (X028863)	Representative	Trading	28/04/2005	24/09/2009

- 5. Pacific M&A was at all relevant times licensed as a brokerage.
- 6. Pacific M&A’s licensing history is as follows:

Brokerage	Licence Level	Licence Category	Start Date	End Date
Pacific M&A And Business Brokers Ltd. (X028863)	Brokerage	Trading	24/09/2009	Present
Pacific M&A And Business Brokers Ltd. (X028863)	Brokerage	Trading, Rental	26/01/2007	24/09/2009

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

7. On July 30, 2012, Council received a complaint from a lawyer on behalf of the Seller, XXX Enterprises Ltd. (the "Business") located at XX, XX & XX – 1XXX Derwent Way in Delta, BC. The complaint was made on behalf of G.P. and B.J., who were shareholders of the Seller. The nature of the complaint was related primarily to a commission dispute. The transaction, being a purchase of shares in the Business, was not subject to the *Real Estate Services Act* ("RESA").
8. The background was that on March 18, 2011, Mr. Houghton, on behalf of Pacific M&A, presented a business evaluation of the Seller for the shareholders.
9. A listing Engagement and Fee Agreement ("Listing") was entered into on May 19, 2011, between the Seller and Pacific M&A with Mr. Houghton listed as the Seller's agent. In the Listing the Seller engaged Pacific M&A to sell 100% of the shares of the Seller but it also stated that Pacific M&A "is a licensed entity under the British Columbia Real Estate Services Act and the Broker is a licensee. Both hold valid Trading Services Licenses under the British Columbia Real Estate Services Act."
8. On September 26, 2011, an Offer to Purchase was entered into with a purchase price agreed to at \$479,000. The Offer and ultimately the Share Purchase Agreement ("SPA") stipulated that the purchase price was subject to any adjustments as outlined in Paragraph 7.k), which stated, in part, the purchase price would be based on a Transferred Net Working Capital ("TNWC"). Any increase or decrease to the TNWC at closing would result in a dollar for dollar adjustment to the Purchase Price.
10. The dispute arose because of the definition of the term "Total Consideration" in the SPA. The shareholders of the Seller took the view that the commission was based on a calculation of the purchase price that was subject to be varied up or down depending on the calculation of the TNWC at completion. The sale of a seasonal business. The Seller took the position that any increase or decrease to the TNWC at closing would result in a dollar for dollar adjustment to the Purchase Price.
11. The licensees took the position that they were owed commission based on the original sale price. The licensees deducted the amount that they were owed as commission from the deposit monies and forwarded the remainder to the lawyer acting for the Seller.
12. On November 28, 2011, Pacific M&A. sent an invoice to the Seller outlining the commission due as being \$57,480 plus HST. Pacific M&A had the shareholders and the Buyer sign an authorization dated November 30, 2011 to release the deposit money, which provided that the "Purchaser and Vendors acknowledge that pursuant to the Real Estate Services Act, Pacific is the stakeholder of the Deposit moneys held in "Trust" pending the completion of the transaction and not on behalf of any of the principals of the transaction."
13. The transaction completed November 30, 2011.
14. The Seller sued, filing a Notice of Claim in Provincial Small Claims Court on July 30, 2012, and as such Council's file was held in abeyance pending the decision of the court.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

15. When the Provincial Court Action was commenced Pacific M & A immediately paid the amount in dispute into Court.
16. On August 15, 2013 the court found in favor of the Seller and ordered the brokerage to pay the shareholders of the Seller the sum of \$16,369.70.
17. The licensees appealed the Small Claim court's decision to the Supreme Court of British Columbia which appeal was ultimately dismissed by the court on May 20, 2014. The monies that had been paid into court were paid out to the shareholders.
18. Despite the fact that this transaction involved a share purchase and the transaction was not subject to RESA as it was not a trade in real estate as that term is defined in RESA, Pacific M&A, Pino Bacinello, and Ian Houghton failed to disclose to the Seller that the RESA did not apply to the transaction and that the funds held in the brokerage trust account were not held pursuant to the provisions of RESA, and, because of the form of documents used by the licensees, they unwittingly misled the shareholders of the Seller as to the applicability of the RESA to the transaction. Pacific M&A has changed its systems and the forms that it uses in share sales.
19. Pacific M&A, Mr. Houghton and Mr. Bacinello have no prior discipline history with the Council.

H. Proposed Acceptance of Findings and Waiver

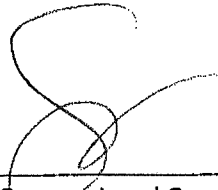
1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Ian David Houghton, Pino Leone Bacinello and Pacific M&A and Business Brokers Ltd. are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
 - (a) Ian David Houghton committed conduct unbecoming a licensee contrary to section 35(2) of the RESA when, in a transaction which was not subject to the provisions of the RESA, he:
 - i) failed to disclose to the client that the RESA did not apply to the transaction and that the funds held in the brokerage trust account were not held pursuant to the provisions of RESA, and/or;
 - ii) misled the clients as to the applicability of the RESA to the transaction.
 - (b) Pino Leone Bacinello committed conduct unbecoming a licensee contrary to section 35(2) of the RESA when, in a transaction which was not subject to the provisions of the RESA, he:
 - i) failed to disclose to the client that the RESA did not apply to the transaction and that the funds held in the brokerage trust account were not held pursuant to the provisions of RESA, and/or;
 - ii) misled the clients as to the applicability of the RESA to the transaction.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

- (c) Pacific M&A and Business Brokers Ltd. committed conduct unbecoming a licensee contrary to section 35(2) of the RESA when, in a transaction which was not subject to the provisions of the RESA, it:
 - i) failed to disclose to the client that the RESA did not apply to the transaction and that the funds held in the brokerage trust account were not held pursuant to the provisions of RESA, and/or;
 - ii) misled the clients as to the applicability of the RESA to the transaction.
- 2. Mr. Houghton, Mr. Bacinello and Pacific M&A hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.
- 3. Mr. Houghton, Mr. Bacinello and Pacific M&A acknowledge that they have a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
- 4. Mr. Houghton, Mr. Bacinello and Pacific M&A acknowledge and are 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. Houghton, Mr. Bacinello and Pacific M&A acknowledge and are 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.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

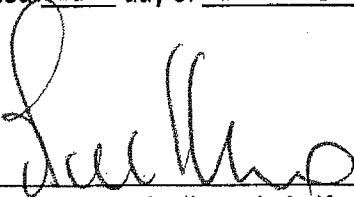
6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any civil proceedings.



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

As to Part G only (Agreed Statement of Facts)

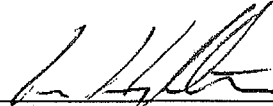
Dated 03 day of October, 2017



Pino Leone Bacinello on behalf of Pacific
M&A and Business Brokers Ltd.

As to Parts C, D, E, F, G and H (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

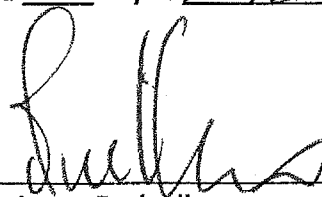
Dated 29 day of September, 2017



Ian David Houghton

As to Parts A, E, F, G, and H (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

Dated 29 day of SEPTEMBER, 2017



Pino Leone Bacinello

As to Parts B, D, E, F, G and H (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

Dated 29 day of September, 2017