

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

YANA MASALITINA AKA YANA LYON
(157768)

CONSENT ORDER

RESPONDENT: Yana Masalitina aka Yana Lyon,
Representative, currently unlicensed,
while licensed with 621104 B.C. Ltd. dba
Homelife Benchmark Titus Realty

DATE OF REVIEW MEETING: September 13, 2017

DATE OF CONSENT ORDER: September 13, 2017

CONSENT ORDER REVIEW COMMITTEE: R. Holmes, Q.C., Chair
G. Martin
M. Wong
S. Sidhu

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

PROCEEDINGS:

On September 13, 2017, the Consent Order Review Committee ("Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Yana Masalitina aka Yana Lyon ("Yana Lyon").

WHEREAS the ASF, a copy of which is attached hereto, has been executed on behalf of the Council and by Yana Lyon.

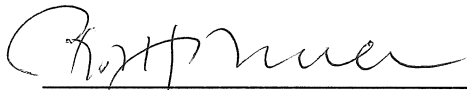
NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Yana Lyon committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Yana Lyon be reprimanded;
2. Yana Lyon pay a discipline penalty to the Council in the amount of \$7,500.00 within ninety (90) days of the date of this Order;
3. Yana Lyon be under direct supervision of a managing broker for a period of not less than one year following the reinstatement or issuance of her licence, as more particularly described in the terms of Enhanced Supervision attached as Schedule 1 to this Order. Ms. Lyon further agrees that the terms of the Enhanced Supervision form part of this consent order, pursuant to section 41 of the RESA;
4. Yana Lyon, at her own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course, as provided by Sauder School of Business at the University of British Columbia in the time period as directed by the Council; and
5. Yana Lyon pay enforcement expenses of this Consent Order to the Council in the amount \$1,500.00 within sixty (60) days from the date of this Order.

If Yana Lyon fails to comply with any term of this Order, the Council may suspend or cancel her licence without further notice to her, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 13th day of September, 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

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

IN THE MATTER OF

YANA MASALITINA AKA YANA LYON
(157768)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Yana Masalitina aka Yana Lyon ("Ms. Lyon") and the Real Estate Council of British Columbia ("Council").

- A. Ms. Lyon hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (the "RESA") that:
- a. she be reprimanded;
 - b. she pay a discipline penalty to the Council in the amount of \$7,500.00 within ninety (90) days of the date of this Order;
 - c. be under the direct supervision of a managing broker for a period of not less than one year following the reinstatement or issuance of her licence, as more particularly described in the terms of Enhanced Supervision attached as Schedule 1 to this Order. Ms. Lyon further agrees that the terms of Enhanced Supervision form part of this consent order, pursuant to section 41 of the RESA;
 - d. at her own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course 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;
 - e. she 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 Consent Order; and
 - f. after relicensing, if she fails to comply with any of the terms of the Order as set out above, a Discipline Committee may suspend or cancel her licence without further notice to her pursuant to section 43(3) and 43(4) of the RESA.
- B. As a basis for this Order, the Council and Ms. Lyon acknowledge and agree that the facts set forth herein are correct:
1. Ms. Lyon was at all relevant times licensed as a representative with Homelife Benchmark Titus Realty.
 2. Ms. Lyon's licensing history is as follows:

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Start Date	End Date	Brokerage	Licence Level	Licence Category
19/12/2015	30/06/2016	Homelife Benchmark Titus Realty (X027474)	Representative	Trading
19/12/2013	18/12/2015	Homelife Benchmark Titus Realty (X027474)	Representative	Trading
19/12/2011	18/12/2013	Homelife Benchmark Titus Realty (X027474)	Representative	Trading
13/10/2010	23/11/2011	Homelife Benchmark Titus Realty (X027474)	Representative	Trading
10/05/2010	13/10/2010	Regency Realty Ltd. (Del56) dba Royal LePage Regency Realty (Del56) (X025340)	Representative	Trading
30/11/2009	10/05/2010	Masters Realty (2000) Inc. dba RE/MAX Masters Realty (X027315)	Representative	Trading
24/11/2009	30/11/2009	Crest Realty Westside Ltd. dba RE/MAX Crest Realty Westside (X028929)	Representative	Trading

1. On June 22, 2015, Council received a complaint against Ms. Lyon, from M. R., the buyer of a property located at ██████ Barclay Street, Vancouver, B.C. (the "Property").
2. On May 20, 2015, M. R. entered into a Contract of Purchase and Sale to purchase the Property. Details of the Contract were as follows:

Price: \$3,050,000
Deposit: \$50,000 – held in trust with Homelife Benchmark within 24 hours of acceptance.
Seller to receive 70% of deposit if buyer fails to complete.
Deposit to be increased to \$200,000 on or before June 12, 2015.
Completion: September 8, 2015
Agent for Seller: None
Agent for Buyer: Yana Lyon
Conditions: Unconditional offer

3. On June 12, 2015, an Addendum to the Contract (the "Addendum 1") was prepared by Ms. Lyon. The addendum included a change to "increase the deposit to \$50,000 on June 13 non-refundable and pay outstanding \$100,000 before or on June 18, 2015". It also included a change of the buyer's name on the Contract to reflect the buyer's legal name.
4. On June 12, 2015, a second Addendum to the Contract (the "Addendum 2") was prepared by Ms. Lyon. The addendum changed the total amount of the deposit from \$200,000 to \$100,000, changed the date on which the deposit was to be increased from June 12, 2015 to June 15, 2015 and it reflected that the deposit increase of \$50,000 was to be paid directly to the seller and was non-refundable. It also included the change of the buyer from M.R. to S.R.
5. Ms. Lyon was not available to meet with M.R. so she arranged for M.R. to deliver the Addendum 2 and the non-refundable \$50,000 deposit cheque to G. A., a business associate of Ms. Lyon. G. A. was not a licensee with the brokerage nor was he an unlicensed assistant for Ms. Lyon.
6. Ms. Lyon states that she gave clear instructions to G. A. to take the Addendum 2 and the \$50,000 non-refundable deposit and deliver both to the seller but to ensure that the

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Addendum 2 was signed before giving the bank draft to the seller. Ms. Lyon states that G.A. acted contrary to her instructions and provided the bank draft to the seller without first ensuring that the seller had signed the Addendum.

7. Subsequently, the seller refused to sign the Addendum 2, but kept the \$50,000 non-refundable bank draft and gave the bank draft to his lawyer.
8. On August 5, 2015, the managing broker of Homelife Benchmark Titus Realty, advised the Council that the seller's lawyer had couriered the \$50,000 bank draft to the brokerage after the Contract had collapsed because the seller did not agree with the deposit terms. The bank draft was forwarded to the brokerage on the understanding the brokerage would return the draft to M.R. which the brokerage did.
9. Ms. Lyon has no prior discipline with the Council.

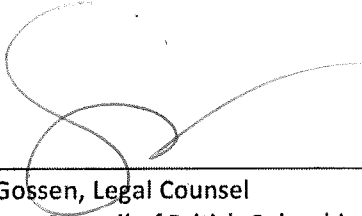
C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts herein, and without making any admission of liability, Ms. Lyon is prepared to accept the following findings if made against her by the Council's Consent Order Review Committee:
 - (a) while licensed as a representative with 621104 B.C. Ltd. dba Homelife Benchmark Titus Realty, Ms. Lyon committed professional misconduct within the meaning of section 35(1)(a) of the RESA in her capacity as a buyer's agent for a property located at XXXX Barclay Street, Vancouver (the "Property") in that:
 - i. she failed to act honestly and with reasonable care and skill and further failed to act in the best interest of her client in that she permitted the buyer to provide a non-refundable bank draft ("Deposit") to an unlicensed third party for delivery to the seller, contrary to sections 3-4 and 3-3(a) of the Rules;
 - ii. she failed to follow the lawful instructions of the buyer to ensure that the required addendum was signed by the seller before the Deposit was delivered to the seller, contrary to section 3-3(b) of the Rules; and
 - iii. she failed to advise her client to seek independent professional advice with respect to the Deposit to be paid directly to the seller, contrary to section 3-3(d) of the Rules.
2. Ms. Lyon hereby waives her right to appeal pursuant to section 54 of the RESA.
3. Ms. Lyon acknowledges that she has been advised that she has the right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Ms. Lyon 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.



AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

5. Ms. Lyon acknowledges and is 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 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 proceeding of any kind.



Jessica Gossen, Legal Counsel
Real Estate Council of British Columbia

As to Part B only (Agreed Statement of Facts)

Dated 6, day of Sept, 2017



Yana Masalitina aka Yana Lyon

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

Dated 8, day of July, 2017

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Schedule 1: Terms of Enhanced Supervision Condition

From the date of reinstatement or issuance of your licence, whatever the case may be, your licence is subject to the following conditions:

- 1) Ms. Lyon's licence will be restricted to the proposed brokerage noted on her application for re-licensing (the "Application") or another brokerage acceptable to the Council (the "Brokerage"), for a period of not less than one year.
- 2) Ms. Lyon will be subject to direct and enhanced supervision by the managing broker proposed on the Application or otherwise approved by the Council (the "Managing Broker"), as set out in these conditions for a period of not less than one year (the "Enhanced Supervision Period").
- 3) Ms. Lyon must keep the Managing Broker informed on a timely basis of the real estate services that she is providing and other activities she is engaging in. Ms. Lyon must consult with the Managing Broker in advance of making any decision or taking any action in respect of which she has questions or concerns regarding compliance with RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation(s), as well as service agreements and policies and procedures of the Brokerage.
- 4) Ms. Lyon must report all her transactions to the Brokerage promptly, and ensure that no such transactions are conducted outside the Brokerage.
- 5) Ms. Lyon must ensure that all documents relevant to each transaction are provided to the Brokerage and contained in the deal file, including the contract of purchase and sale, all offers received for the listing, assignment agreements, addendums, trade records sheets, disclosure statements, releases and other pertinent information.
- 6) The Managing Broker must provide quarterly reports to the Council confirming:
 - a. that Ms. Lyon's real estate services have been conducted under the direct and enhanced supervision of the Managing Broker;
 - b. that Ms. Lyon's activities have been carried out competently and in compliance with the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation(s), and in accordance with policies and procedures of the Brokerage;
 - c. that they have reviewed all documents signed by Ms. Lyon's clients and that all documents relevant to the transaction have been provided to the client and are contained in the trade records file; and
 - d. the number of real estate transactions that MS. Lyon has conducted and details regarding the client(s), the agency offered; and any customer relationships.
- 7) The Managing Broker must immediately report to the Council anything of an adverse nature with respect to Ms. Lyon's real estate services, including failure on her part to observe the requirements of the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation, complaints received by the Brokerage, the nature of the complaint and the parties, and how it was resolved.

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AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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- 8) The Managing Broker must ensure that Ms. Lyon and her unlicensed or licensed assistants, if any, receive adequate, appropriate and ongoing training with respect to their obligations under the RESA, Regulations, Bylaws, and Rules, and in accordance with the Brokerage's policies and procedures.
- 9) The Managing Broker must be provided with a copy of these conditions and, prior to the commencement of the Enhanced Supervision Period, must confirm in writing to the Council that he/she has read these conditions, is aware of his/her duties under these conditions, and agrees to accept those duties. Any successor managing broker must also be provided with a copy of these conditions and provide the same confirmation within 14 days of assuming the Managing Broker's duties.
- 10) If for any reason the Managing Broker is unable to perform any of the duties imposed herein, the Managing Broker must immediately advise Council of this inability.
- 11) If the Managing Broker is unable to perform any of these duties due to Ms. Lyon's conduct, the Managing Broker fails to perform his/her duties, Ms. Lyon no longer has an acceptable managing broker or she fails to meet her obligations under these conditions, her licence will be suspended and will remain suspended until all conditions herein are met. Any suspension of Ms. Lyon's licence under this paragraph does not limit the Council's ability to take further disciplinary action for breach of the conditions or of the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation.

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