

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

AND

IN THE MATTER OF

LORRAINE SUSAN FUGLE
(153362)

CONSENT ORDER

RESPONDENT: Lorraine Susan Fugle, Managing Broker,
Advanced Property Management Inc.

DATE OF REVIEW MEETING: June 28, 2017

DATE OF CONSENT ORDER: August 18, 2017

CONSENT ORDER REVIEW COMMITTEE: R. Holmes Q.C., Chair
C. Geurts
L. Hrycan
K. Khoo
S. Sidhu
T. Styffe

ALSO PRESENT: E. Seeley, Acting Executive Officer
G. Thiele, Director, Legal Services
J. Moore, Legal Counsel for the Real
Estate Council

PROCEEDINGS:

On June 28, 2017, an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Lorraine Susan Fugle was considered by the Consent Order Review Committee (the "Committee") but not accepted. On August 14, 2017, a revised ASF acceptable to the Committee was submitted by Lorraine Susan Fugle.

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

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

1. Lorraine Susan Fugle be reprimanded;

2. Lorraine Susan Fugle shall 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. Lorraine Susan Fugle shall 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 Lorraine Susan Fugle 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 18th day of August, 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

LORRAINE SUSAN FUGLE
(153362)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Lorraine Susan Fugle ("Ms. Fugle") and the Real Estate Council of British Columbia ("Council").

- A. Ms. Fugle hereby consents to an Order to be made pursuant to sections 41, 43 and 44 of the *Real Estate Services Act* (the "RESA") that:
1. she be reprimanded;
 2. she pay a discipline penalty in the amount of \$1,000.00 ninety (90) days from the date of the Consent Order;
 3. she pay enforcement expenses in the amount of \$1,500.00 within sixty (60) days from the date of the Consent Order; and
 4. 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.
- B. As a basis for this Order, the Council and Ms. Fugle acknowledge and agree that the facts set forth herein are correct:
1. Ms. Fugle was at all relevant times licensed as a managing broker with Advanced Property Management Inc. ("Advanced Property Management"). Her licensing history is as follows:

| Start Date | End Date | Brokerage | Licence Level | Licence Category |
|------------|------------|--|-----------------|------------------|
| 27/11/2015 | Present | Advanced Property Management Inc. (X028799) | Managing Broker | Rental, Strata |
| 27/11/2013 | 26/11/2015 | Advanced Property Management Inc. (X028799) | Managing Broker | Rental, Strata |

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

Page 2

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|------------|------------|--|-----------------|----------------|
| 27/11/2011 | 26/11/2013 | Advanced Property Management Inc. (X028799) | Managing Broker | Rental, Strata |
| 21/12/2009 | 26/11/2011 | Advanced Property Management Inc. (X028799) | Managing Broker | Rental, Strata |
| 27/11/2009 | 21/12/2009 | Advanced Property Management Inc. (X028799) | Managing Broker | Rental |
| 27/11/2007 | 26/11/2009 | Advanced Property Management Inc. (X028799) | Representative | Rental |

2. Ms. S. was the owner of a residential property located at XXXX Western Road, Courtney BC ("Property").
3. On August 6, 2010, Advanced Property Management entered into a rental property management service agreement with Ms. S.
4. On August 12, 2010, a tenant entered into a lease agreement for the Property for a one year fixed term commencing on October 1, 2010 and ending on September 30, 2011.
5. When the tenant moved into the Property, restoration work was underway as a result of a prior insurance claim by Ms. S. for water damage.
6. In an email dated November 29, 2010, Ms. Fugle advised Ms. S. that the tenants had initially told her that they would be vacating the premises at the end of December because of the ongoing restoration work. In a subsequent conversation the tenant requested that the tenancy agreement be amended to a month to month arrangement, and that the rent be reduced to \$950.00 for each month that the property remained under construction.
7. On November 29, 2010, Ms. S's son replied to Ms. Fugle and stated that Ms. S. approved of the reduction in the rent to \$950.00 per month "for the time the house was under the repairs". He asked Ms. Fugle "Are the tenants wanting to leave on the 31st or [are they] going to stay if we put them on month to month?"
8. On December 1, 2010, Ms. Fugle amended the tenancy agreement to change the tenancy to a month to month tenancy.
9. The tenants paid a reduced rent until May 1, 2011.
10. In May 2011, the tenants gave notice to end the tenancy, and on June 30, 2011 moved out. A move out inspection was completed and the tenant's security deposit returned to them.
11. On July 1, 2011 a new tenant moved into the Property. In July 2012, the new tenant moved out and another tenant moved into the Property. Both of these tenancies were uneventful.

12. On February 28, 2013, the property management agreement was terminated by mutual agreement between Ms. S. and Advanced Property Management.
13. Ms. S. stated to the Council that she did not consent to the change to the month to month tenancy. Ms. S. acknowledged that a new tenant moved into the Property on July 1, 2011, a day after the old tenant moved out.
14. Ms. Fugle acknowledged that she had misunderstood the email conversation she had with Ms. S's son, and had assumed that in addition to approving the new rent amount Ms. S. had also approved amending the term of the tenancy agreement to a month to month. Ms. Fugle realized that she should have obtained explicit instructions and written authorization directly from Ms. S. to change the tenancy to a month to month. Ms. Fugle noted that the 2nd tenant was in place to rent the property the day after the 1st tenant vacated so there was no interruption in the occupancy of the Property and rental payments were continuous throughout all the tenancies.
15. Ms. Fugle has a prior discipline history with the Council as follows:
 - (a) On December 11, 2015, Ms. Fugle entered into a Consent Order with the Council in that she committed professional misconduct within the meaning of section 35(1)(a) of the RESA with respect to the provision of certain rental property management services and certain strata management services, by:
 - (i) contravening sections 3-4 and 4-7 of the Council Rules, in that she failed to use reasonable care and skill and she published advertising that she knew contained a false statement concerning the provision of real estate services, in that she published or permitted to be published on the Advanced website as of February 19, 2015 information that stated TM was a licensee of Advanced when in fact her license had been transferred to another brokerage on January 15, 2015;
 - (ii) contravening sections 3-4 and 4-7 of the Council Rules, in that she failed to use reasonable care and skill and she published advertising that she knew contained a false statement concerning the provision of real estate services, in that she published or permitted to be published on the Advanced website as of February 19, 2015 information that stated MM, AB and AF were "currently preparing to write the examination for property management" when in fact none of MM, AB, or AF were preparing to write such examination;
 - (iii) contravening section 6(2) of the RESA and section 3-1(1) of the Rules, in that she failed to ensure that the brokerage performed certain duties and she failed to ensure the business of the brokerage was carried out in accordance with RESA and Council Rules, in that two unlicensed

assistants, AB and LA, performed rental property management services by signing "Move In Inspection Reports" in 2013;

- (iv) contravening section 5-1(5)(e) of the Council Rules and section 5-1(5.1)(e) of the Council Rules, in that she failed to ensure the service agreements for rental property management and strata management contained the necessary provisions concerning records, in that neither of Advanced's forms of service agreements for rental property management or strata management contained complete provisions relating to the records to be kept by Advanced;
 - (v) contravening section 5-1(7) of the Council Rules, in that she failed to ensure that all authorized signatories of the brokerage were a related licensee of the brokerage, in that she informed Council Staff that MM and LA were signatories for the Advanced trust accounts when in fact MM and LA were not licensed under RESA; and
 - (vi) contravening section 6(2) of the RESA, in that she failed to ensure that the brokerage complied with section 7-9(4) of the Council Rules, in that the monthly contingency transfer of \$750.00 was not made from the operating trust account to the contingency trust account within seven (7) days following the end of the month of September 2014 for EPS 6X.
- (b) Ms. Fugle was reprimanded and was jointly and severally liable with Advanced Property Management Inc., the related Brokerage, to pay: 1) a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of the Order and 2) enforcement expenses in the amount of \$1,500.00 within sixty (60) days from the date of the Order.

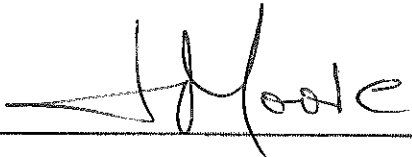
C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts herein, and without making any admission of liability, Ms. Fugle is prepared to accept the following findings if made against her by the Council's Consent Order Review Committee:
 - (a) Ms. Fugle committed professional misconduct within the meaning of section 35(1)(a) of the RESA, with respect to the provision of rental property management services by her and Advance Property Management, pursuant to a property management agreement dated August 6, 2010, in relation to property located at XXXX Western Road, Courtney, BC owned by Ms. S., when contrary to one or more of sections 3-3(a) and (c) and 3-4 of the Rules, she failed to act in the best interest of the client, failed to act only within the scope of authority given by the client, and failed to act with reasonable care and skill, in that she amended a tenancy agreement dated August 12, 2010 that provided for a fixed term tenancy of 12 months, commencing on October 1, 2010 by entering into,

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

on behalf of Ms. S., an addendum that changed the tenancy to a month to month tenancy, without the prior written authorization or consent of Ms. S.

2. Ms. Fugle hereby waives her right to appeal pursuant to section 54 of the RESA.
3. Ms. Fugle 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. Fugle 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. Ms. Fugle 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.



Janice L. Moore, Legal Counsel
Real Estate Council of British Columbia

As to Part B only (Agreed Statement
of Facts)

Dated 14th day of August, 2017



Lorraine Susan Fugle

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

Dated 17 day of July, 2017