

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

AND

IN THE MATTER OF

DAILEEN COURTENAY FALK
(167406)

CONSENT ORDER

RESPONDENT: Daileen Courtenay Falk, Representative,
Currently terminated, while licensed with
Energy Realty Ltd. dba Century 21 Energy
Realty

DATE OF REVIEW MEETING: June 28, 2017

DATE OF CONSENT ORDER: June 28, 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
Esther Jeon, Legal Counsel for the Real
Estate Council

PROCEEDINGS:

On June 28, 2017, the Consent Order Review Committee ("Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Daileen Courtenay Falk.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by the Council and by Daileen Courtenay Falk.

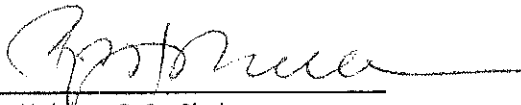
NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Daileen Courtenay Falk committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Daileen Courtenay Falk be reprimanded;
2. Daileen Courtenay Falk pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days of the date of this Order;
3. Daileen Courtenay Falk, 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;
4. following reinstatement of her licence, Daileen Courtenay Falk be under the enhanced direct supervision of a managing broker for a period of not less than one (1) year, as more particularly described in the terms of the Enhanced Supervision Condition attached as Schedule A, and agrees that the terms of Enhanced Supervision Condition form a part of this Order; and
5. Daileen Courtenay Falk pay enforcement expenses of this Consent Order to the Council in the amount \$1,500 within sixty (60) days from the date of this Order.

If Daileen Courtenay Falk 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 28th day of June, 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

DAILEEN COURTENAY FALK
(167406)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Daileen Courtenay Falk ("Ms. Falk") and the Real Estate Council of British Columbia ("Council").

- A. Ms. Falk hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (RESA) that:
1. she be reprimanded;
 2. she pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days of the date of the Order herein;
 3. 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;
 4. following reinstatement of her licence, she be under the enhanced direct supervision of a managing broker for a period of not less than one (1) year, as more particularly described in the terms of the Enhanced Supervision Condition attached as Schedule A, and agrees that the terms of Enhanced Supervision Condition form a part of any Order made pursuant to section 41 of the RESA;
 4. she pay enforcement expenses pursuant to section 44 of the RESA in the amount of \$1,500 within sixty (60) days from the date of the Order; and
 5. 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. Falk acknowledge and agree that the facts set forth herein are correct:
1. Ms. Falk was at all relevant times licensed as a representative with Energy Realty Ltd. dba Century 21 Energy Realty ("Energy Realty").
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AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

2. Ms. Falk's licensing history is as follows:

Start Date	End Date	Brokerage	Licence Level	Licence Category
14-Nov-13	30-Apr-16	Energy Realty Ltd. (X014557)	Representative	Trading

3. This matter relates to an incident involving the sale of a property located at [REDACTED] Avenue, Fort St. John, B.C. (the "Property"), which was owned by husband-and-wife, B.P. and J.P. at the relevant time (the "Sellers").
4. On May 11, 2015, the Sellers listed the Property with 2 Percent Realty Excellence ("2 Percent Realty") by entering into a Multiple Listing Contract at a listing price of \$489,900. The designated agent was A.B. of 2 Percent Realty (the "Listing Agent"). The listing contract was set to expire on July 11, 2015.
5. On or about July 6, 2015, the Sellers and the Listing Agent executed another Multiple Listing Contract with 2 Percent Realty (the "Listing Contract") and this time, listed the Property at \$469,900. The Listing Contract was set to expire on September 30, 2015.
6. The listing price for the Property was subsequently reduced in increments of \$10,000 and ultimately, it was reduced to \$439,900 by August 8, 2015.
7. Ms. Falk says she came across the Property when she was reviewing expired listings in search of listing opportunities. On or about August 12, 2015, Ms. Falk called the Sellers and discussed the possibility of listing the Property with Ms. Falk's brokerage. Ms. Falk says that before she made the call, she neglected to confirm if the Property was re-listed and assumed that the Sellers were not represented by another brokerage.
8. Shortly after the call, Ms. Falk attended the Property to meet with the Sellers and realized that the Property was in fact listed by another brokerage when she saw a 2 Percent Realty sign on the lawn.
9. Ms. Falk entered and viewed the Property, advised the Sellers on the appropriate listing price for the Property, provided comparable sales in the area and showed them previous listings of her brokerage. Ms. Falk represented to the Sellers that she would be able to bring them an offer and have the Property sold more quickly if it was listed with her brokerage.
10. Following the meeting with Ms. Falk, the Sellers e-mailed the Listing Agent, described the conversation they had with Ms. Falk and asked to speak to him on an urgent basis. The Sellers stated in the e-mail that they "just [wanted their] house sold" and expressed their willingness to give Ms. Falk their business if she could sell their house sooner.
11. Ultimately, the Sellers did not list the Property with Ms. Falk.
12. In the evening of August 12, 2015, an offer was submitted by another agent licensed with Ms. Falk's brokerage, which offer was presented by the Listing Agent and accepted by the Sellers. The transaction closed without incident.

13. Ms. Falk was unaware that another licensee at her brokerage was working to make an offer on the Property the same day she met with the Sellers.
 14. The Listing Agent complained to Ms. Falk's managing broker, K.P., and also filed a complaint with the B.C. Northern Real Estate Board regarding Ms. Falk's conduct. K.P. disciplined Ms. Falk "in-house" with a one-month suspension, whereby she was prohibited from conducting real estate transactions or talking to clients, from August 27, 2015 to September 27, 2015.
 15. K.P. also directed Ms. Falk to take upcoming Professional Development Program courses and review the Real Estate Board bylaws as well as the Real Estate Competition Guide, published by the Canadian Real Estate Association.
 16. On August 31, 2015, Ms. Falk sent an apology letter to the Listing Agent, in which she explained that the Sellers wanted to cancel the Listing Contract and list the Property with her brokerage. She apologized for "*getting a head {sic} of myself in these matters as I should have waited till {sic} that was completed*".
 17. On February 29, 2016, the Listing Agent filed a complaint with the Council against Ms. Falk.
 18. On April 30, 2016, Ms. Falk's licence was surrendered to the Council. The reason cited by Ms. Falk's then-managing broker was that she was "*leaving the industry*". Ms. Falk's licence expires on November 13, 2017.
 19. Ms. Falk does not have any previous 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. Falk is prepared to accept the following findings if made against her by the Council's Consent Order Review Committee:
 - (a) Ms. Falk, as a representative of Energy Realty Ltd. dba Century 21 Energy Realty, committed professional misconduct within the meaning of section 35(1)(a) of the RESA, in that:
 - (i) contrary to 5-6(2) of the Rules, Ms. Falk made an inducement representation to the Sellers that she would bring an offer and have the Property sold more quickly than 2 Percent Realty if the Property was listed with Ms. Falk's brokerage, without at the time of making the said representation or promise delivering to the Sellers a written, signed statement clearly setting out the details of the inducement representation;
 - (ii) contrary to section 3-4 of the Rules, Ms. Falk failed to act honestly and with reasonable care and skill, in that she:
 1. met with the Sellers, viewed the Property for the purposes of listing, advised on the price for the Property, provided comparable listings and otherwise provided real estate services to the Sellers, when she

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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knew or ought to have known that the Sellers were being represented by another licensee; and

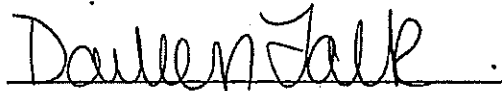
2. provided real estate services to the Sellers without ensuring that the Listing Contract had been cancelled or expired.
2. Ms. Falk hereby waives her right to appeal pursuant to section 54 of the RESA.
3. Ms. Falk acknowledges that she has been advised that she has the right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Ms. Falk 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. Falk 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.



Esther Jeon, Legal Counsel
Real Estate Council of British Columbia

As to Part B only (Agreed Statement of Facts)

Dated 16 day of June, 2017



Daileen Courtenay Falk

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

Dated 16 day of June, 2017

SCHEDULE A: ENHANCED SUPERVISION CONDITION

- 1) Ms. Falk's licence will be restricted to the proposed brokerage noted on her licence application (the "Application"), or another brokerage acceptable to Council, (the "Brokerage") for a period of not less than one (1) year.
- 2) Ms. Falk will be subject to enhanced supervision by her managing broker, as set out in these conditions, for a period of not less than one (1) year commencing on the date of the Order (the "Enhanced Supervision Period").
- 3) Ms. Falk must remain under the direct supervision of the managing broker proposed on the Application, or otherwise approved by the Council (the "Managing Broker"), during the Enhanced Supervision Period.
- 4) Ms. Falk 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 and must consult with the Managing Broker in advance of taking any action regarding any questions or concerns she may have regarding compliance with the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation and the Brokerage's policies and procedures.
- 5) Ms. Falk must report all her transactions to the Brokerage promptly, and ensure that no such transactions are conducted outside the Brokerage.
- 6) Ms. Falk 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.
- 7) The Managing Broker must submit to the Council quarterly reports and a final report at the end of the Enhanced Supervision Period (the "Final Report") confirming the following information:
 - a. that Ms. Falk's real estate services have been conducted under his/her direct supervision;
 - b. that Ms. Falk's activities have been carried out competently and in compliance with the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation, and in accordance with Brokerage's policies and procedures;
 - c. that the Managing Broker has reviewed all documents signed by Ms. Falk'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. Falk has conducted and details regarding the client(s), the agency offered and any customer relationships.
- 8) The Final Report will be reviewed by the Chair of the Council, who will determine if the requirement for enhanced supervision for the period set by Council has been met, and if not, will so advise the Managing Broker and Ms. Falk, at which time Ms. Falk may elect to:

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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- a. continue with enhanced supervision until the Chair of the Council is satisfied by further evidence that the required period and purpose of enhanced supervision has been met; or
 - b. have her licence suspended until a further order is made by the Council under section 43(4) or (5) of the RESA.
- 9) The Managing Broker must immediately report to the Council anything of an adverse nature with respect to Ms. Falk'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.
- 10) The Managing Broker must ensure that Ms. Falk 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.
- 11) 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 they have read these conditions, are aware of their duties under these conditions, and agree to accept those duties. Any acceptable successor managing broker will also be provided with a copy of these conditions and must provide the same confirmation within 14 days of assuming the Managing Broker's duties.
- 12) If for any reason the Managing Broker is unable to perform any of the duties imposed herein, they must immediately advise Council of this inability.
- 13) If the Managing Broker is unable or unwilling to perform any of these duties and/or fails to meet their obligations under these conditions, Ms. Falk's licence is suspended and will remain suspended until all conditions herein are met or a further order is made by Council under section 43(4) or (5) of the RESA. Any suspension of Ms. Falk'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.