

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

AND

IN THE MATTER OF

JOHN MICHAEL WILCHUK
(018628)

CONSENT ORDER

RESPONDENT: John Michael Wilchuk, Representative,
Sutton Centre Realty Ltd. dba Sutton
Centre Realty

DATE OF REVIEW MEETING: May 17, 2017

DATE OF CONSENT ORDER: May 17, 2017

CONSENT ORDER REVIEW COMMITTEE: R. Holmes, Q.C., Chair
J. Daly
E. Mignosa
T. Styffe
M. Leslie

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

PROCEEDINGS:

On May 17, 2017 the Consent Order Review Committee ("Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by John Michael Wilchuk.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by John Michael Wilchuk and on behalf of the Council;

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

1. be reprimanded;

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2. at his own expense, shall 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
 3. 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 John Michael Wilchuk fails to comply with any term of this Order, the Council may suspend or cancel his licence without further notice to him, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 17th day of May, 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.

File #14-423

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

**IN THE MATTER OF
JOHN MICHAEL WILCHUK
(018628)**

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

The following agreement has been reached between John Michael Wilchuk (“Mr. Wilchuk”) and the Real Estate Council of British Columbia (the “Council”).

- A. Mr. Wilchuk hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (the “Act”) that he be reprimanded, and at his 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 as directed by Council.
- B. Mr. Wilchuk hereby consents to an Order made pursuant to sections 41 and 43 of the Act that he be liable to pay the enforcement expenses of this Consent Order to Council in the amount of \$1,500.00 within 60 days of the date of this Order.
- C. Mr. Wilchuk further consents to an Order that if he fails to comply with any of the terms of the Order as set out above, a Discipline Hearing Committee may suspend or cancel his licence without further notice to him pursuant to section 43(3) and 43(4) of the Act.
- D. As a basis for this Order, Mr. Wilchuk acknowledges and agrees that the facts set forth herein are correct:

1. Mr. Wilchuk’s licensing history is as follows:

<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>
2014/07/03	Present	Sutton Centre Realty Ltd.	Representative	Trading, Rental
2009/11/09	2014/06/30	Sutton Centre Realty Ltd.	Representative	Trading, Rental
2009/01/21	2009/10/30	Sutton Centre Realty Ltd.	Representative	Trading, Rental

<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>
2001/06/08	2008/12/31	Sutton Centre Realty Ltd.	Representative	Trading, Rental
2000/07/01	2000/11/03	Coronation Real Estate Services (Burnaby) Ltd.	Representative	Trading, Rental
1998/06/17	1998/06/29	United Realty Ltd.	Representative	Trading, Rental
1992/06/30	1998/06/17	United Realty Ltd. (Bby)	Representative	Trading, Rental
1985/01/10	1989/06/29	United Realty Ltd. (Bby)	Representative	Trading, Rental
1982/11/03	1985/01/10	Merit Realty & Insurance Services Ltd.	Representative	Trading, Rental
1982/06/30	1982/11/01	Century 21-Slinger Realty Ltd.	Representative	Trading, Rental

2. Mr. Wilchuk acted as the Buyer's agent with respect to the purchase of property at [REDACTED] Union Street, Burnaby, BC (the "Subject Property") by Contract of Purchase and Sale dated June 24, 2010. The Subject Property was one-half of a duplex unit built in 2006.
3. [REDACTED] entered into a Contract of Purchase and Sale to purchase the Subject Property for \$710,000, with a \$70,000 deposit due within 24 hours of subject removal. The sale was subject to financing, property disclosure statement ("PDS"), inspection, and title, all to be removed by June 30, 2010.
4. The following clause was not included in the Contract of Purchase and Sale:

Subject to the Buyer confirming on or before (date) that the Seller is duly licensed pursuant to the Homeowner Protection Act and that the mandatory warranty insurance pursuant to that Act is in place. This condition is for the sole benefit of the Buyer.
5. The PDS was completed by the Seller. The Seller answered "no" to the question "Was the unit or related common property covered by home warranty insurance under the Homeowner Protection Act?"

6. On June 30, 2010, [REDACTED] removed her subject conditions, and the sale moved to completion.
7. On June 1, 2014, a Multiple Listing Contract was entered into between [REDACTED] and [REDACTED], licensed with Sutton Centre Realty as the listing agents and [REDACTED] as the seller, and the Subject Property was listed for sale.
8. On June 25, 2014, a Contract of Purchase and Sale was entered into for the Subject Property between [REDACTED] and the buyers. The sale was subject to financing, inspection, title, PDS, fire/property insurance, and warranty insurance coverage.
9. [REDACTED] contacted the Home Owners Protection Office to query about the new home warranty. It was discovered that the builder of the Subject Property had registered the property incorrectly as a single family dwelling when it was a duplex; both sides of the duplex required a new home warranty.
10. On July 9, 2014, the builder of the Subject Property, [REDACTED] Construction Ltd. submitted a New Home Registration Form for both duplex units, and billed [REDACTED] \$1,900 to register the new home warranty for the Subject Property.

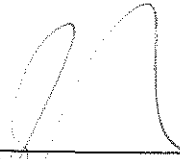
E. Proposed Acceptance of Findings and Waiver:

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, John Michael Wilchuk is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
 - (a) John Wilchuk committed professional misconduct within the meaning of section 35(1)(a) of RESA in that:
 - (i) contravened rule 3-3(a) and 3-4 of the Council Rules, in that he failed to act in the best interests of a purchaser and with reasonable care and skill by failing to insert into a contract of purchase and sale a clause confirming that the seller was duly licensed pursuant to the Homeowner Protection Act and that the mandatory warranty insurance pursuant to that Act was in place;
 - (ii) contravened rule 3-3(a) and 3-4 of the Council Rules, in that he failed to act in the best interests of a purchaser and with reasonable care and skill by failing to advise a purchaser to obtain a copy of a new home warranty for property prior to the removal of subjects;
 - (iii) contravened rule 3-3(a) and 3-4 of the Council Rules, in that he failed to act in the best interests of a purchaser and with reasonable care and skill by failing to advise a purchaser of the ramifications of purchasing property without the necessary new home warranty;

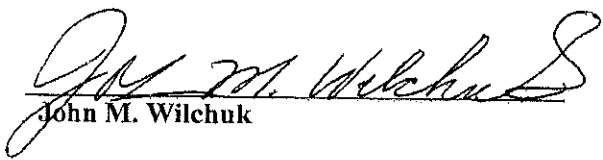
(iv) contravened rule 3-3(a) and 3-4 of the Council Rules, in that he failed to act in the best interests of a purchaser and with reasonable care and skill by allowing a purchaser to purchase property when it was not legally permissible under the Homeowner Protection Act and regulations made thereunder; and

(v) contravened rule 3-3(h) of the Council Rules, in that he failed to make reasonable efforts to discover relevant facts respecting property by failing to determine whether the property had a new home warranty.

2. Mr. Wilchuk hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Mr. Wilchuk acknowledges that he has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Mr. Wilchuk 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. Mr. Wilchuk acknowledges and is 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.
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.



 John A. McLachlan, Legal Counsel
 Real Estate Council of British Columbia



 John M. Wilchuk

As to Part D only (Agreed Statement of Facts)

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

Dated 8 day of May, 2017

Dated 02 day of FEBRUARY, 2017