

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

AND

IN THE MATTER OF

MICHAEL THOMAS O'GRADY
(168381)

CONSENT ORDER

RESPONDENT: Michael Thomas O'Grady,
representative, Power Play Realty Corp.
dba Prudential Power Play Realty

DATE OF REVIEW MEETING: February 22, 2017

DATE OF CONSENT ORDER: February 22, 2017

CONSENT ORDER REVIEW COMMITTEE: R. Holmes, Q.C., Chair
R. Gialloreto
S. Sidhu
L. Hrycan
J. Daly

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

PROCEEDINGS:

On February 22, 2017 the Consent Order Review Committee ("Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Michael Thomas O'Grady.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Michael Thomas O'Grady 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 Michael Thomas O'Grady committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that Michael Thomas O'Grady:

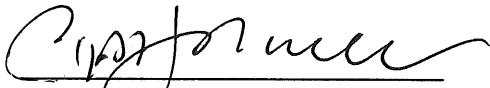
1. be reprimanded;

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2. pay a discipline penalty to the Council in the amount of \$2,500 within sixty (60) days of the date of the Order; and
 3. pay enforcement expenses of this Consent Order to the Council in the amount \$1,500 within sixty (60) days from the date of the Order.

If Michael Thomas O'Grady 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 22nd day of February, 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**

IN THE MATTER OF

**MICHAEL THOMAS O'GRADY
(168381)**

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

The following agreement has been reached between Michael Thomas O'Grady ("Mr. O'Grady") and the Real Estate Council of British Columbia ("Council").

- A. Mr. O'Grady consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that he be reprimanded.
- B. Mr. O'Grady also consents to an order that he will pay a discipline penalty to the Council in the amount of \$2,500.00 within sixty (60) days from the date of the Order herein.
- C. Mr. O'Grady further consents to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500.00 within sixty (60) days from the date of the Order herein.
- D. Mr. O'Grady further consents that if he fails to comply with any of the terms of the Order 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 RESA.
- E. As a basis for this Order, Mr. O'Grady acknowledges and agrees that the facts set forth herein are correct:
 - 1. At all relevant times, Mr. O'Grady was licensed as a trading representative with Power Play Realty Corp. dba Prudential Power Play Realty ("Brokerage").
 - 2. Mr. O'Grady's licensing history is as follows:

Start Date	End Date	Brokerage	Licence Level	Licence Category
02/05/2014	Present	Prudential Power Play Realty (X027263)	Representative	Trading

- 3. The complainant was the buyer of a mobile/manufactured home on [REDACTED] Street in Langley BC (the "Property") that was listed by Mr. O'Grady.

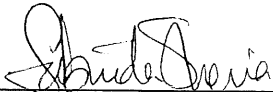
4. On May 26, 2015, the buyer entered into an agreement of Contract and Purchase and Sale for the Property ("Contract"). Pertinent details of the Contract included the following:
 - a. the buyer and sellers consented to a limited dual agency relationship with Mr. O'Grady;
 - b. the sellers did not complete a Property Disclosure Statement;
 - c. the buyer had subject conditions pertinent to title search, fire/property insurance, and park acceptance to be removed by May 30, 2015; and
 - d. the inspection of property clause had been crossed out and had "waived" written across it and had been initialled by the buyer and the sellers.
5. On May 26, 2015, the buyer signed a document further to the Contract dated May 26, 2015, that stated he waived his right to a building inspection and was accepting the Property "as is". The document also stated that the buyer had been advised to obtain independent legal advice before signing the waiver and was aware of his decision and its consequences.
6. On May 26, 2015, the buyer removed the subject conditions and the sale became unconditional.
7. The buyer filed a complaint with the Council on October 8, 2015 claiming that Mr. O'Grady did not disclose that the ensuite bathroom in the master bedroom closet of the Property was constructed without a permit and was not built to code.
8. On December 10, 2015, following the advice of Council staff, the buyer had an electrician inspect the Property to ensure the CSA sticker was still valid. The buyer advised that the original CSA sticker was still valid and that no electrical work had been replaced or modified.
9. On January 26, 2016, in response to Council's investigation, Mr. O'Grady stated that:
 - a. the buyer "was fully aware of what he was buying, acted quite knowledgeable, and stated on more than one occasion that he renovated mobile/manufactured homes in the past"; and
 - b. the Property transaction had been completed so efficiently by the buyer who "contacted me, viewed a couple of properties, made an offer, accepted a counter, personally inspected a second time, received park approval, waived a certified building inspection" within a day so he could return to conclude his business in California.
10. With respect to the ensuite bathroom, Mr. O'Grady stated:
 - a. it was obvious that it was a "handyman special" since "the bathroom was built into the master bedroom closet that is two feet deep"; and

- b. it was obvious to” a layperson and to anyone during a reasonable inspection that it was built without a permit”.
11. Mr. O’Grady also stated that since the bathroom is in a closet, it was an “obvious patent defect” and there was no intent to hide a latent defect.
12. In a response received on January 26, 2016 to Council’s investigation, Mr. O’Grady’s managing broker stated:
 - a. he had discussed the ensuite matter with Mr. O’Grady in late July 2015 who “acknowledged that it was an oversight on his part in not showing it on the listing as a possible content defect”; and
 - b. that he reviewed the brokerage’s realtor library and found a section on mobile manufactured homes which stipulated that “the agent will disclose to the buyer defects about the physical condition of the property known to the agent.”
13. On the advice of his managing broker, Mr. O’Grady offered to settle the matter with the buyer by recompensing him the original cost estimate provided in his statement. The buyer countered and the matter was not settled.
14. Mr. O’Grady has no prior discipline history with the Council.

F. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Mr. O’Grady is prepared to accept the following findings if made against him by the Council’s Consent Order Review Committee:
 - a) Mr. O’Grady committed professional misconduct within the meaning of section 35(1)(a) of the RESA, in that while acting as a limited dual agent, he failed to disclose to the buyer, before the buyer entered into an agreement for the purchase of a property located on [REDACTED] Street in Langley, BC., that the ensuite bathroom in the closet of the master bedroom was constructed without a permit and not built to code, contrary to sections 5-13 and 3-4 of the Rules.
2. Mr. O’Grady hereby waives his right to appeal pursuant to section 54 of the RESA.
3. Mr. O’Grady 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. O’Grady 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. O'Grady 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 civil proceedings.



**Sabinder Sheina, Legal Counsel
Real Estate Council of British Columbia**

**As to Part E only (Agreed Statement
of Facts)**

Dated 1, day of February, 2017



Michael Thomas O'Grady

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

Dated 20, day of January, 2017