

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

AND

IN THE MATTER OF  
BARBARA ANN MONICAL  
(010225)

CONSENT ORDER

RESPONDENT: Barbara Ann Monical, Associate Broker  
Trading and Rental Property  
Management, RE/MAX 100

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  
Jessica Gossen, 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 Barbara Ann Monical.

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

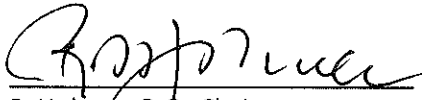
1. have her licence suspended for thirty (30) days;

2. 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 as directed by the Council;
3. shall 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;

If Barbara Ann Monical 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 22<sup>nd</sup> 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

BARBARA ANN MONICAL  
(010225)

AGREED STATEMENT OF FACTS,  
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Barbara Ann Monical ("Ms. Monical") and the Real Estate Council of British Columbia (the "Council").

- A. Ms. Monical hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that her licence be suspended for thirty (30) days, that she, 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 as directed by the Council. Further, she agrees 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. Ms. Monical further consents to an Order that if she fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel her licence without further notice to her pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.
- B. As a basis for this Order, Ms. Monical acknowledges and agrees that the facts set forth herein are correct:
  - 1. Ms. Monical was at all relevant times licensed as a representative with Country Lakes Realty Inc. dba RE/MAX Country Lakes Realty
  - 2. Ms. Monical's licensing history is as follows:

Brokerage	Licence Level	Licence Category	Start Date	End Date
South Cariboo Realty Inc. (X032820)	Associate Broker	Trading, Rental	7/26/2016	Present
Country Lakes Realty Inc. (X024159)	Associate Broker	Trading, Rental	6/30/2009	7/26/2016
Country Lakes Realty Inc. (IntLks) (X028420)	Associate Broker	Trading, Rental	2/1/2005	6/30/2009

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Rocky Mountain Recreation Ltd. (X024742)	Associate Broker	Trading, Rental	3/19/2002	2/1/2005
413753 B.C. Ltd. (X022233)	Managing Broker	Trading, Rental	6/30/2001	3/19/2002
413753 B.C. Ltd. (108mile) (X025603)	Managing Broker	Trading, Rental	2/19/2001	3/19/2002
413753 B.C. Ltd. (X022233)	Managing Broker	Trading, Rental	6/30/1999	6/29/2001
413753 B.C. Ltd. (108mile) (X025603)	Managing Broker	Trading, Rental	2/19/1999	2/18/2001
413753 B.C. Ltd. (X022233)	Managing Broker	Trading, Rental	7/18/1997	6/29/1999
413753 B.C. Ltd. (X022233)	Associate Broker	Trading, Rental	2/2/1996	7/18/1997
Nrs Block Bros. Realty Ltd. (100 Mi) (X020591)	Associate Broker	Trading, Rental	6/30/1993	2/2/1996
Nrs Block Bros. Realty Ltd. (100 Mi) (X020591)	Representative	Trading, Rental	7/1/1989	6/29/1993
Block Bros. Realty Ltd. (100 Mi) (X014488)	Representative	Trading, Rental	4/12/1985	7/1/1989
Block Bros. Realty Ltd. (100 Mi)(Old) (143491)	Representative	Trading, Rental	6/23/1976	4/12/1985

3. On May 28, 2015 Council received a complaint from I.C., the buyer for a property located at 4XXX Stewart Road, 108 Mile House, BC (the "Property") against a licensee, Barbara Monical of RE/MAX Country Lakes Realty.
4. The Contract of Purchase and Sale (the "First Contract") was signed by a Power of Attorney (POA) on behalf of the seller, M.C. on February 2, 2015. A licensee, D.C. of Royal LePage 100 Mile Realty represented I.C. and J.C. as the buyers' agent, and Barbara Monical acted for the seller. The subjects on February 14, 2015 were removed as contemplated by the contract, and the deposit was provided by the buyers and deposited into D.C.'s brokerage's trust account.
5. On March 13, 2015, approximately one week before completion, the seller passed away. This extinguished the POA. The Executrix named in the will was not the same person as the POA. The First Contract collapsed.
6. On March 20, 2015, I.C., one of the buyers signed a release of the contract which directed that the deposit be paid back to the buyers. The release was signed by the Executrix as the seller.
7. Subsequently, the buyers approached the Executrix directly to advise that they were still interested in buying the property. After discussion, it was agreed between the

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

Executrix and the buyers that the buyers would rent the property until the estate had been probated and the property could be sold. The Executrix was not comfortable with a private transaction.

8. The Executrix contacted Ms. Monical and asked her to draw up a new contract on behalf of the buyers. Because Ms. Monical had previously acted for the buyers, she was of the view that a limited dual agency was the appropriate option. She contacted the buyers and on their instruction drew up a new Contract of Purchase and Sale (the "Second Contract"). As she believed that this contract represented a new transaction and because of the direct contact between the buyers and the seller, she did not believe it was required of her to contact the licensee who had acted in the collapsed transaction. D.C. did not have any knowledge or involvement of this transaction. Her former clients did not contact her regarding their new arrangements with the Executrix. The Second Contract was subject only to probate on or before May 15, 2015. Completion was set for May 15, 2015 "or sooner".
9. On April 8, 2015, Ms. Monical faxed the Second Contract, a copy of the Working with a Realtor document and a Limited Dual Agency agreement to the buyers in care of a local Re/Max office with a cover sheet which explained where to sign or initial these documents. She also included instructions to the buyers to fill in the information required on the Individual Identification Information Record form without meeting with buyers and verifying their identities.
10. In her statement to Council, Ms. Monical stated that she made a practice of circling Limited Dual Agency on the Working with a Realtor Brochure "to draw their attention to it in detail before we do a contract".
11. Ms. Monical did not have a conversation with the buyers regarding agency prior to the contract being signed and paragraph 20 Agency Disclosure of the Second Contract was only partially completed at the time the buyers signed the contract. Ms. Monical added her name in hand writing into paragraph 20(c) when the contract was returned to her office by the buyers.
12. In her response, Ms. Monical stated that she did not identify I.C. and his partner personally, however she knew them by sight from the previous contract, and from her previous dealings with the parties and when they dealt with other licensees in her office.
14. I.C. stated to the Council that he paid the deposit of \$5,000 by direct deposit to ReMax and signed the contract, assuming that "everything was the same as before", although in a normal transaction, the deposit would be held by the selling brokerage.
15. After probate, but a few days before the transaction completed, the hot water tank burst causing water damage in the basement of the Property. When I.C. contacted Ms. Monical to arrange for the estate's insurer to cover the expense of the repair, she advised I.C. that matter was a landlord tenant matter in which she had not been involved. She was of the view that he needed to contact the Executrix directly to

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

deal with that issue, as it was related to a tenancy issue. I.C. then contacted D.C. for assistance. D.C. was not aware of the Second Contract or that I.C. had taken possession of the Property. I.C. contends that when Ms. Monical prepared the Second Contract, he understood that it was the same as the First Contract, and was not aware that he was not being represented by D.C.

17. The sellers did repair the damage by replacing the rug and the transaction proceeded to completion. It was agreed between the managing brokers of the brokerages involved that D.C. would receive 75% of the selling side of the transaction.

Previous Discipline

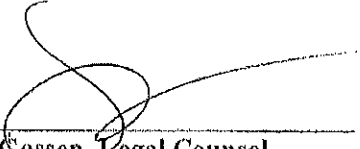
18. On January 25, 1994, Ms. Monical was subject to a disciplinary hearing where she was suspended for 45 days when:
  - (a) she had been found negligent within the meaning of section 9.12 of the Regulations under the former *Real Estate Act* in failing to deliver a listing contract to her agent or to the Multiple Listing Service for a period of almost five months; and
  - (b) she misconducted herself within the meaning of Section 20(1)(c) of the former *Real Estate Act* in falsifying an MLS catalogue page in order to make it appear to a property owner that the said listing had been processed on the Multiple Listing Service.

C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Barbara Ann Monical is prepared to accept the following findings if made against her by the Council's Consent Order Review Committee:
  - (a) Barbara Ann Monical committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* when in her capacity as limited dual agent in the sale of the property located at 4XXX Stewart Road, 108 Mile House, BC, she:
    - (i) failed to disclose material information regarding the change in the nature of her representation to the buyers when she prepared a second Contract of Purchase and Sale as a Limited Dual Agent without ensuring that the buyers were not represented by another licensee, contrary to section 5-10(a) of the Rules and section 3-3(f) of the Rules;
    - (ii) failed to act honestly and with reasonable care and skill when she arranged for the buyers to fill out the identification forms without meeting with the buyers and verifying their identities, contrary to section 3-4 of the Rules.

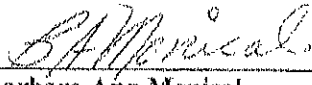
**AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER**

2. Ms. Monical hereby waives her right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Ms. Monical acknowledges that she has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Ms. Monical 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. Monical 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 civil proceedings.

  
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Jessica S. Gossen, Legal Counsel  
Real Estate Council of British Columbia

As to Part B only (Agreed Statement of Facts)

Dated 10 day of January, 2017

  
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Barbara Ann Monical

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

Dated 10<sup>th</sup> day of January, 2017