

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

**IN THE MATTER OF**

**KEVIN JAMES CHEALE  
(151301)**

**KEVIN CHEALE PERSONAL REAL ESTATE CORPORATION  
(151301PC)  
AND**

**MARK CLIFFORD SHILLINGTON  
(156407)**

**CONSENT ORDER**

**RESPONDENTS:**

Kevin James Cheale, Representative,  
Shilton Investments Inc. dba  
RE/MAX Management Solutions,  
while licensed with Norwich Real  
Estate Services Inc. (KelSuth) dba  
RE/MAX Kelowna (KelSuth)

Kevin Cheale Personal Real Estate  
Corporation, Shilton Investments Inc.  
dba RE/MAX Management Solutions,  
while licensed with Norwich Real  
Estate Services Inc. (KelSuth) dba  
RE/MAX Kelowna (KelSuth)

Mark Clifford Shillington, Managing  
Broker, Shilton Investments Inc. dba  
RE/MAX Management Solutions,  
while licensed with Norwich Real  
Estate Services Inc. (KelSuth) dba  
RE/MAX Kelowna (KelSuth)

**DATE OF REVIEW MEETING:**

December 8, 2016

**DATE OF CONSENT ORDER:**

January 5, 2017

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CONSENT ORDER REVIEW COMMITTEE: R. Holmes, Chair  
S. Heath  
G. Martin  
M. Leslie  
K. Khoo

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

**PROCEEDINGS:**

On December 8, 2016, an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Kevin James Cheale, Kevin Cheale Personal Real Estate Corporation and Mark Clifford Shillington was considered by the Consent Order Review Committee (the "Committee") and rejected. On January 2, 2017, a revised ASF acceptable to the Committee was submitted by Kevin James Cheale, Kevin Cheale Personal Real Estate Corporation and Mark Clifford Shillington.

**WHEREAS** the ASF, a copy of which is attached hereto, has been executed by Kevin James Cheale, Kevin Cheale Personal Real Estate Corporation, Mark Clifford Shillington 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 Kevin James Cheale, Kevin Cheale Personal Real Estate Corporation, and Mark Clifford Shillington committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Kevin James Cheale, Kevin Cheale Personal Real Estate Corporation and Mark Clifford Shillington each be reprimanded;
2. Kevin James Cheale and Kevin Cheale Personal Real Estate Corporation be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of the Order;
3. Kevin James Cheale, at his own expense, register for and successfully complete the Rental Property Management Remedial Education Course, as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council;
4. Kevin James Cheale, Kevin Cheale Personal Real Estate Corporation and Mark Clifford Shillington are ordered to be jointly and severally liable to

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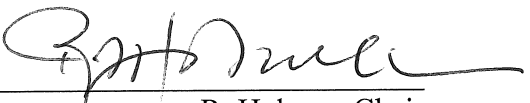
pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Order;

5. Kevin James Cheale hereby consents to an Order that he will review the components on licensee standards and trust accounting from the Managing Broker's licensing course with his managing broker; and
6. Kevin James Cheale hereby consents to an Order that he will review with his managing broker the next service agreement he enters into on behalf of the brokerage for its compliance with RESA and the Rules made under RESA.

If Kevin James Cheale, Kevin Cheale Personal Real Estate Corporation or Mark Clifford Shillington fail to comply with any term of this Order, the Council may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 5 day of January, 2017 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

  
\_\_\_\_\_  
R. Holmes, 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  
KEVIN JAMES CHEALE  
(151301)**

**AND**

**KEVIN CHEALE PERSONAL REAL ESTATE CORPORATION  
(151301PC)**

**AND**

**MARK CLIFFORD SHILLINGTON  
(156407)**

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

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The following agreement has been reached between Kevin James Cheale ("Mr. Cheale"), Kevin Cheale Personal Real Estate Corporation ("Kevin Cheale PREC"), Mark Clifford Shillington ("Mr. Shillington"), and the Real Estate Council of British Columbia (the "Council").

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- A. Mr. Cheale and Kevin Cheale PREC hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that they be reprimanded and be jointly and severally liable to pay a discipline penalty in the sum of \$2,500.00 within ninety (90) from the date of the Order herein.
  - B. Mr. Cheale hereby consents to an Order that and at his own expense, he successfully complete the Property Management Remedial Education Course, as provided by the Sauder School of Business at the University of British Columbia, within the time period as directed by the Council.
  - C. Mr. Shillington hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded.
  - D. Mr. Cheale, Kevin Cheale PREC and Mr. Shillington hereby consent to an Order that they be jointly and severally liable to pay enforcement expenses to the Council in the total amount of \$1,500.00 within sixty (60) days from the date of the Order herein.

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

- E. Mr. Cheale hereby consents to an Order that he will review the components on licensee standards and trust accounting from the Managing Broker's licensing course with his managing broker.
- F. Mr. Cheale hereby consents to an Order that he will review with his managing broker the next service agreement he enters into on behalf the brokerage for its compliance with RESA and the Rules made under RESA.
- G. Mr. Cheale, Kevin Cheale and Mr. Shillington further consent to an Order that if either of them fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel their licences without further notice to them pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.
- H. As a basis for this Order, Mr. Cheale and Mr. Shillington acknowledge and agree that the facts set forth herein are correct:
  - 1. Mr. Cheale was at all relevant times licensed as a representative with Norwich Real Estate Services Inc. dba RE/MAX Kelowna.
  - 2. Mr. Cheale's licensing history is as follows:

<u>Start Date</u>	<u>End Date</u>	<u>Licensing History</u>	<u>Licence Level</u>	<u>Licence Category</u>
2015/10/01	Present	Shilton Investments Inc. dba RE/MAX Management Solutions (X031936)	Representative	Rental
<del>2014/07/28</del>	<del>2015/10/01</del>	<del>Norwich Real Estate Services Inc. (KelSuth) dba RE/MAX Kelowna (KelSuth) (X031196)</del>	<del>Representative</del>	<del>Rental</del>
2014/04/02	2014/07/28	Norwich Real Estate Services Inc. dba RE/MAX Kelowna(X017071)	Representative	Rental
2007/03/20	2014/04/01	Horizon Realty Ltd. (KelCom) (X028652)	Representative	Rental

- 3. Mr. Cheale became licensed as Kevin Cheale Personal Real Estate Corporation on October 1, 2015.
- 4. Mr. Shillington was at all relevant times licensed as a Managing Broker with Norwich Real Estate Services Inc. dba RE/MAX Kelowna.

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

5. Mr. Shillington's licensing history is as follows:

<u>Start Date</u>	<u>End Date</u>	<u>Licensing History</u>	<u>Licence Level</u>	<u>Licence Category</u>
2015/10/01	Present	Shilton Investments Inc. dba RE/MAX Management Solutions (X031936)	Managing Broker	Trading, Rental, Strata
2014/07/15	2015/10/01	Norwich Real Estate Services Inc. dba RE/MAX Kelowna (X017071)	Managing Broker	Trading, Rental, Strata
2014/03/07	2014/07/15	Norwich Real Estate Services Inc. dba RE/MAX Kelowna (X017071)	Managing Broker	Rental, Strata
2013/11/20	2014/03/07	Norwich Real Estate Services Inc. dba RE/MAX Kelowna (X017071)	Managing Broker	Trading, Rental, Strata
2012/06/07	2013/11/20	Norwich Real Estate Services Inc. dba RE/MAX Kelowna (X017071)	Representative	Rental, Strata
2009/02/24	2012/06/07	Norwich Real Estate Services Inc. dba RE/MAX Kelowna (X017071)	Representative	Rental

**File#14-074**

6. On or about March 25, 2014 Mr. Cheale emailed a tenancy agreement to K.D. to sign for a property located on Carrington Road, West Kelowna (the "Property"). Horizon Realty was indicated as the agent for the owner on the tenancy agreement and addendum for the Property.
7. On March 27, 2014, K.D. signed the Tenancy Agreement for the Property for a one year lease commencing on May 1, 2014.
8. On March 30, 2014 the owners of the Property gave 1 months' notice to end the service agreement with Horizon Realty.
9. On April 2, 2014 Mr. Cheale transferred his licence to RE/MAX Kelowna.

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

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10. On Friday April 4, 2014, K.D. provided Mr. Cheale for the security deposit of \$625 for the property via an email money transfer. This transfer was to Mr. Cheale's personal bank account because the brokerage did not have the banking capacity to accept email transfers of monies at that time, The prospective tenant was relocating to British Columbia from elsewhere and needed to immediately provide monies to secure the rental of the property.
11. On Monday April 7, 2014 Mr. Cheale deposited the deposit of \$625 for the Property into RE/MAX Kelowna's trust account. This deposit was confirmed by Mr. Shillington the managing broker at the time for RE/MAX Kelowna.
12. Mr. Shillington informed Council that as K.D. was moving to B.C. from out of province, Mr. Cheale told her that the only way to secure the Property was to provide the deposit through an email money transfer into the brokerage's trust account. While it may have been possible for Mr. Cheale's former brokerage to accept a deposit via this method, RE/MAX Kelowna was not set up for this type of money transfer. Mr. Shillington informed Mr. Cheale that in the future all deposits must be made in accordance with the Council Rules and must be paid directly into the brokerage's trust account.
13. On April 9, 2014, Mr. Cheale signed the tenancy agreement for the property on behalf of the owners, Mr. Cheale and Mr. Shillington both confirm that Mr. Cheale had the verbal approval of the owners of the Property to sign the tenancy agreement on their behalf despite not having a valid service agreement due to Mr. Cheale changing brokerages. Additionally, the tenancy agreement was modified to reflect the change of Mr. Cheale's brokerage. Mr. Shillington and Mr Cheale states that no other aspects of the tenancy agreement were changed.
14. Mr. Cheale did not have K.D. resign the tenancy agreement reflecting the change in his brokerage.
15. On April 15, 2014 the service agreement for the Property with Horizon Realty was cancelled. On the same day, the owners of the Property signed a revised service agreement with RE/MAX Kelowna for the brokerage to provide rental property management services for the Property.

**File #14-400**

1. In or about November, 2014, Mr. Cheale incorporated Kevin Cheale Personal Real Estate Corporation ("PREC"). Mr. Cheale did not apply for a license for the PREC at this time.
2. On or about March 12, 2015, Mr. Cheale submitted his license renewal application to the Council. It was then that Mr. Cheale's unlicensed PREC was discovered.

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

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3. From the time of incorporation to the time that the unlicensed PREC was discovered, Mr. Cheale provided real estate services and received remuneration made out to the PREC from the Brokerage.
4. Mr. S, the managing broker of the Brokerage, and Mr. Cheale were not aware of the additional licensing requirement for the PREC until this contravention was brought to their attention.
5. Once the contravention with respect to PREC licensing was discovered, all payments in relation to real estate services provided by Mr. Cheale from the Brokerage was made out to Mr. Cheale, directly. Further, after becoming aware of the contravention, Mr. Cheale immediately applied for a license for his PREC which was processed and effective April 27, 2015.
6. Mr. Cheale has a prior discipline history with the Council as follows:

**Previous Discipline History**

20. On January 21, 2013 Mr. Cheale entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in his capacity as a rental property manager in that he acted outside the scope of his authority and without the knowledge or consent of the client by failing to execute a proper property management agreement with the client for a new rental property, failing to provide the client with a service agreement and copies of the residential tenancy agreements, and failing to advise the client that a security deposit and/or rental payment had not been provided by the tenant.

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Mr. Cheale was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, successfully complete the Rental Property Management Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,250.00.

I. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Kevin James Cheale and Mark Clifford Shillington are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
  - (a) Kevin James Cheale committed professional misconduct within the meaning of section 35(1)(a) of RESA in that he:



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

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**File #14-074**

- i. provided rental property management services without a written service agreement when he signed a tenancy agreement in relation to a property on Carrington Road, Kelowna on April 9, 2014, when his related brokerage signed a written rental property agreement with the client in relation to this property on April 15, 2014, contrary to sections 7(3)(a) of RESA and section 3-4 of the Council Rules; and
- ii. deposited a security deposit of \$625.00 in error into his personal bank account, contrary to section 27(1)(a) of RESA; and

**File #14-400**

- iii. failed to act with reasonable care and skill by failing to ensure that Kevin Cheale Personal Real Estate Corporation met the licensing requirements, contrary to section 3-4 of the Council Rules;
- iv. provided real estate services other than on behalf of the brokerage in relation to which they are licensed in that he provided real estate services on behalf an unlicensed entity, Kevin Cheale Personal Real Estate Corporation contrary to section 7(3)(a) of the *Real Estate Services Act*; and
- v. received remuneration in relation to real estate services from a person other than the brokerage in relation to which they are licensed in that Kevin Cheale Personal Real Estate Corporation received remuneration from the Brokerage in relation to which it was not licensed, contrary to section 7(3)(b) of the *Real Estate Services Act*.

**File # 14-074**

- (b) Mark Clifford Shillington committed professional misconduct within the meaning of section 35(1)(a) of RESA in that he:
  - i. failed to ensure the business of the Brokerage was carried out competently and in accordance with the Act, Regulations and the Council Rules and failed to provide an adequate level of supervision or related licensees of the Brokerage, in relation to rental management services provided for the property located on Carrington Road, Kelowna, contrary to 3-1(1) of the Council Rules; and
  - ii. failed to ensure that the Brokerage maintained proper books, accounts and records in accordance with the Act, Regulations and the Council Rules in relation to a security deposit paid into the Brokerage on April 11, 2014,

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

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without a rental service agreement in place until April 15, 2014, contrary to section 25 of RESA and sections 3-1(3)(a) and (b) of the Council Rules.

**File # 14-000**

- iii. failed to ensure that the business of Norwich Real Estate Services Inc. (KelSuth) dba Re/Max Kelowna (KelSuth) (the "Brokerage") was carried out in accordance with RESA, the Regulations and the Council Rules when you permitted Kevin Cheale, a licensee with the Brokerage, to provide real estate services in the name of a unlicensed personal real estate corporation, namely Kevin Cheale Personal Real Estate Corporation between November, 2014 to March, 2015.
  2. Mr. Cheale and Mr. Shillington hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.
  3. Mr. Cheale and Mr. Shillington acknowledge that they have the right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
  4. Mr. Cheale and Mr. Shillington acknowledge and are 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. Cheale and Mr. Shillington acknowledge and are 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.
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**AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER**

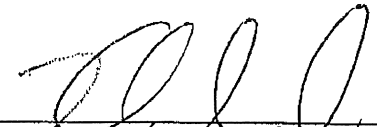
6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such Agreed Statement of Facts and Proposed Acceptance of Findings cannot be used in any other proceeding of any kind.



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

As to Part E only (Agreed Statement of Facts)

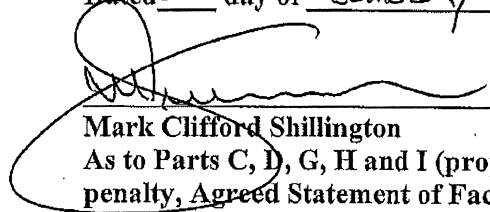
Dated 3 day of Jan, 2016



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Kevin James Cheale on his behalf and on behalf of Kevin Cheale Personal Real Estate Corporation

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

Dated 2<sup>nd</sup> day of January, 2017



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Mark Clifford Shillington  
As to Parts C, D, G, H and I (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

Dated 21 day of December, 2016