

File # 13-402, 14-097, 14-135
14-419 and 15-094

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

IN THE MATTER OF

OKANAGAN STRATA MANAGEMENT LTD.
(X028562)

CONSENT ORDER

RESPONDENT: Okanagan Strata Management Ltd.,
Brokerage

DATE OF REVIEW MEETING: September 29, 2016

DATE OF CONSENT ORDER: September 29, 2016

CONSENT ORDER REVIEW COMMITTEE: M. Leslie
G. Martin
T. O'Grady

ALSO PRESENT: R.O. Fawcett, Executive Officer
G. Thiele, Director, Legal Services
J. Moore, Legal Counsel for the Real
Estate Council

PROCEEDINGS:

On September 29, 2016 the Consent Order Review Committee (the "Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Okanagan Strata Management Ltd.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Okanagan Strata Management Ltd. and on behalf of the Council;

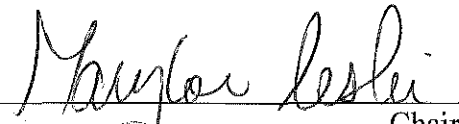
NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Okanagan Strata Management Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that Okanagan Strata Management Ltd.:

1. be reprimanded;
2. pay a discipline penalty to the Council in the amount of \$6,000.00 within ninety (90) days of the date of this Order; and
3. pay enforcement expenses of this Consent Order to the Council in the amount of \$3,000.00 within sixty (60) days from the date of this Order.

If Okanagan Strata Management Ltd. fails to comply with any term of this Order, the Council may suspend or cancel its licence without further notice to it, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 29 day of September, 2016 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE


_____, Chair
Consent Order Review Committee
MARYLOU LESLIE

Attch.

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

**IN THE MATTER OF
OKANAGAN STRATA MANAGEMENT LTD.
(X028562)**

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

The following agreement has been reached between Okanagan Strata Management Ltd. ("OSM"), and the Real Estate Council of British Columbia (the "Council").

- A. OSM hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that it:
1. be reprimanded;
 2. pay a discipline penalty to the Council in the amount of \$6,000.00 within ninety (90) days from the date of the Order herein; and
 3. pay enforcement expenses of this Consent Order to the Council in the amount of \$3,000.00 within sixty (60) days from the date of the Order herein.
- B. OSM further consents that if it fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel its licence without further notice to it pursuant to section 43(3) and 43(4) of the RESA.
- C. As a basis for this Order, OSM acknowledges and agrees that the facts set forth herein are correct:
1. OSM's licensing history is as follows:

Brokerage	Licence Level	Licence Category	Start Date	End Date
Okanagan Strata Management Ltd. (X028562)	Brokerage	Trading, Rental, Strata	12/23/2015	Present
Okanagan Strata Management Ltd. (X028562)	Brokerage	Trading, Rental, Strata	12/23/2013	12/22/2015
Okanagan Strata Management Ltd. (X028562)	Brokerage	Trading, Rental, Strata	3/17/2013	12/22/2013

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

Okanagan Strata Management Ltd. (X028562)	Brokerage	Rental, Strata	12/23/2011	3/17/2013
Okanagan Strata Management Ltd. (X028562)	Brokerage	Rental, Strata	12/30/2009	12/22/2011
Okanagan Strata Management Ltd. (X028562)	Brokerage	Strata	12/23/2009	12/30/2009
Okanagan Strata Management Ltd. (X028562)	Brokerage	Strata	12/23/2005	12/22/2009

2. In February 2015, OSM changed ownership.
3. OSM has no previous discipline history with the Council.

D. File 13-402- Facts

4. Since April 19, 2011 OSM provided limited strata management services to Strata Corporation KAS0XXX. [REDACTED] was the owner of OSM and a managing broker at the time.
5. For the months January 2014 through to May 2014, OSM failed to transfer the requisite contingency reserve fund (“CRF”) from the strata corporation’s operating trust account into its CRF account within 7 days after the end of the month in which CRF money was received.
6. [REDACTED] stated to the Council that OSM was in the process of changing bank accounts, which change was to take effect on April 30, 2014. The failure to transfer funds was done intentionally as a delay to avoid duplication and to ensure that the correct amount was transferred during the transition between banking institutions.
7. On April 30, 2014, the strata corporation’s contract with OSM was terminated.

E. File 14-097- Facts

8. Since September 2012, OSM provided strata management services to Strata Corporation NES2XXX. [REDACTED] was the owner of OSM, and a managing broker at the time.
9. In March 2014, OSM made an unauthorized payment in the amount of \$204.68 to [REDACTED] on behalf of the strata corporation. [REDACTED] stated to the Council the he made arrangements with [REDACTED] to issue a refund for the overpayment.
10. Between June 2014 and August 2014, [REDACTED] mad a series of withdrawals totaling \$16,896.92, by way of pre-authorized debit, from OSM’s trust account held on behalf of the strata corporation. This amount was not owed to [REDACTED] and the withdrawals had not been authorized by the strata council.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

11. The strata council stated to the Council that after reviewing the financial statements they received in September 2014, they contacted OSM by email about the unauthorized [REDACTED] withdrawals.
12. [REDACTED] stated to the Council that he advised the strata council in an email that in late August he discovered that [REDACTED] had been withdrawing payments for other strata clients from the strata corporation's account. He subsequently contacted [REDACTED] and had been reassured that the matter would be resolved.
13. The strata council stated that [REDACTED] advised it to seek legal advice and pursue [REDACTED] on their own for a refund.
14. In late September 2014, [REDACTED] provided a refund to the strata corporation for the overcharged amounts for the months of June, July, and August.
15. In September and October 2014, [REDACTED] withdrew excessive funds from OSM's trust account.
16. On December 1, 2014, the strata corporation's contract with OSM was terminated.
17. In January 2015, the strata council advised the Council that [REDACTED] had reimbursed the strata corporation the remainder of the funds that it was owed.

F. File 14-135- Facts

18. OSM provided strata management services to Strata Corporation KAS2XXX. [REDACTED] was the owner of OSM, and a managing broker at the time.
19. On April 1, 2014, [REDACTED] arranged for the transfer of the strata corporation's operating and contingency reserve fund ("CRF") trust accounts from [REDACTED] ("Credit Union") to the [REDACTED].
20. The strata fees collected for the strata corporation for the month of April 2014 were deposited into the [REDACTED] operating trust account and \$2645.63 was transferred to the [REDACTED] CRF trust account.
21. For the months April 2014 until August 2014, OSM should have transferred an additional \$3,113.00 each month to the [REDACTED] CFR trust account. OSM did not do so, and at the end of August 2014, a total of \$15, 565.00 should have been transferred into the CRF trust account.
22. [REDACTED] stated to the Council that the Credit Union would not close the accounts held by OSM unless the Credit Union was provided with minutes from the strata corporation's general meeting indicating that each strata council member had voted in

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

favour of closing the [REDACTED] accounts. This led to the inability to transfer the appropriate CFR funds between April and August 2014. A letter indicating each member's consent was provided to Credit Union in June 2014.

23. The Council noted during its review of the strata corporation's monthly financial statements that there was at all relevant times sufficient funds held on behalf of the strata corporation in the [REDACTED] operating trust account to have enabled OSM to effect the requisite monthly transfer of funds to the [REDACTED] CFR trust account.

G. File 14-419- Facts

24. Since 2003, OSM provided strata management services to strata corporation KAS7XX. [REDACTED] was the owner of OSM, and a managing broker at the time.
25. At the beginning of May 2014, [REDACTED] arranged for the transfer of the strata corporation's operating and contingency reserve fund ("CRF") trust accounts from [REDACTED] to the [REDACTED].
26. The Council noted during its review of the strata corporation's monthly financial statements that as of May 31, 2014, a negative balance of \$585.70 had been reported in the strata corporation's operating account.
27. OSM did not report the negative balance to the Council.
28. The negative balance was carried forward into July 2014, when it was reconciled and eliminated.
29. On November 26, 2014, the strata corporation's contract with OSM was terminated.

H. File 15-094- Facts

30. In October 2014, the Council conducted an inspection of OSM's books and records in response to a number of complaints that had been made against OSM, a number of its representatives and its managing brokers. [REDACTED] was the owner of OSM and, he and Mr. Dumont were two of the managing brokers.
31. During the inspection, the auditor identified a number of issues, which included the following:
 - (a) The brokerage's general accounts had not been reconciled between May 2014 and August 2014, resulting in the general operating accounts being grossly misstated;
 - (b) The brokerage's pooled rental trust accounts had not been reconciled for a number of years;

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

- (c) A shortage of \$9,684.16 was identified in the brokerage's long term pooled rental trust accounts; and
 - (d) Bank reconciliations for multiple strata corporation trust accounts were reconciled later than what was required by section 8-2 of the Council Rules.
32. On January 9, 2015, the Council sent a copy of the office and records inspection report ("ORIR") to OSM and the managing brokers, and requested responses by January 30, 2015 to the issues identified by the auditor. [REDACTED] and Mr. Dumont provided a response to the Council on February 7, 2015 which addressed most, but not all of the issues noted in the ORIR.
33. On February 25, 2015, the managing brokers were asked to provide by March 18, 2015, information about issues they had not addressed, including details about the shortage in the rental trust account, No information was received and in April 2015 a follow up email was sent to OSM and the managing brokers.
34. On May 22, 2015, [REDACTED] notified the Council that he was out of town until May 25, 2015 and would not be able to respond to the Council until then.
35. On June 3, 2015 and September 28, 2015 the Council received responses to all of the outstanding issues and provided evidence to the Council that the shortfall in the long term pooled rental trust account had been rectified.

I. File 13-402 - Proposed Acceptance of Findings and Waiver

Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, OSM is prepared to accept the following findings if made against it by the Council's Consent Order Review Committee:

- 1. OSM committed professional misconduct within the meaning of section 35(1)(a) of RESA when:
 - (a) contrary to section 25 of the RESA, it failed to maintain proper books, accounts and other records; and
 - (b) contrary to section 7-9(4) of the Council Rules, for the months January 2014 through to May 2014, it failed to transfer the requisite contingency reserve fund ("CRF") from client KAS [REDACTED] operating trust account into its CRF account within 7 days after the end of the month in which CRF money was received.

J. File 14-097 - Proposed Acceptance of Findings and Waiver

Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, OSM is prepared to accept the following findings if made against it by the Council's Consent Order Review Committee:

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

1. OSM committed professional misconduct within the meaning of section 35(1)(a) of RESA when, without the authorization or consent of client NES [REDACTED] strata council, in March 2014, it processed an unauthorized and unnecessary expenditure to [REDACTED], and between June 2014 and August 2014, permitted [REDACTED] to withdraw a total of \$16,896.92, all of which was from NES [REDACTED]'s operating trust account at Okanagan Strata Management, contrary to section 30 of the RESA.

K. File 14-135 -- Proposed Acceptance of Findings and Waiver

Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, OSM is prepared to accept the following findings if made against it by the Council's Consent Order Review Committee:

1. OSM committed professional misconduct within the meaning of section 35(1)(a) of RESA when:
 - (a) contrary to section 25 of the RESA, it failed to maintain proper books, accounts and other records; and
 - (b) contrary to section 7-9(4) of the Council Rules, for the months April 2014 through to August 2014, it failed to transfer the requisite contingency reserve fund ("CRF") amounts (for a total of \$15,565.00) from client KAS [REDACTED] operating trust account into its CRF account within 7 days after the end of the month in which CRF money was received.

L. File 14-419 - Proposed Acceptance of Findings and Waiver

Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, OSM is prepared to accept the following findings if made against it by the Council's Consent Order Review Committee:

1. OSM committed professional misconduct within the meaning of section 35(1)(a) of RESA, when contrary to section 25 of the RESA, and sections 7-5(2) and (3) of the Council Rules it:
 - (a) allowed the trust accounts for client KAS [REDACTED] to maintain negative balances, during the period May 21 to June 30, 2014;
 - (b) did not take immediate steps to eliminate those negative balances; and
 - (c) did not notify the Council of those negative balances within 10 days of the negative balances arising.

M. File 15-094 - Proposed Acceptance of Findings and Waiver

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

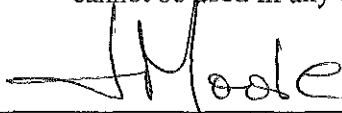
Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, OSM is prepared to accept the following findings if made against it by the Council's Consent Order Review Committee:

1. OSM committed professional misconduct within the meaning of section 35(1)(a) of RESA , as identified during the Council's inspection of the brokerage's books and records in October 2014, when:
 - (a) contrary to section 25 of the RESA, and sections 8-1, 8-2 and 8-3 of the Council Rules, it failed to :
 - (i) maintain and retain financial records in connection to its business and prepare monthly bank reconciliations within five weeks of the end of the month;
 - (ii) maintain a liability listing, and to reconcile the pooled rental trust account accurately and appropriately for a number of years; and
 - (iii) for the months of July, August and September 2014, reconcile the trust accounts held on behalf of certain strata corporations in a timely manner, and in accordance with the Council Rules;
 - (b) contrary to section 27(2) of the RESA, it failed to promptly pay into the brokerage's trust account deposits received by the brokerage;
 - (c) contrary to section 5-1(5)e and 5-1(5)(g) of the Council Rules , it failed to include in the rental management service agreements a description of the records to be kept by the brokerage on behalf of the client and a provision relating to the use and disclosure of personal information;
 - (d) contrary to section 7-5(2) of the Council Rules, it failed to take immediate steps to eliminate the negative balance of \$9684.16 that was in the long tem pooled rental trust accounts, or to notify the Council about the negative balance within the requisite time frame as required under the Council Rules; and
 - (e) contrary to section 7-9(7) of the Council Rules, it failed to provide certain of its strata corporation clients with a monthly trust bank statement and reconciliation within six weeks following the end of the month.
3. OSM hereby waives its right to appeal pursuant to section 54 of RESA.
4. OSM acknowledges that it has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
5. OSM 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.


AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

6. OSM 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.

7. 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.



Janice L. Moore, Legal Counsel
Real Estate Council of British Columbia



Michael Patrick Dumont on behalf of
Okanagan Strata Management Ltd.

As to Part C, D, E, F, G, and H only (Agreed Statement of Facts)

Dated 27 day of Sept, 2016

As to Parts A, B, C, D, E, F, F, H, I, J, K, L, and M (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

Dated 27th day of September, 2016