

File # 15-773

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

IN THE MATTER OF
SHERYL (SHERRY) DIANE HART
(158997)

AND

FORT NELSON REALTY LTD. DBA
ROYAL LEPAGE FORT NELSON REALTY
(X016163)

CONSENT ORDER

RESPONDENTS:

Sheryl (Sherry) Diane Hart, Managing
Broker, Fort Nelson Realty Ltd. dba
Royal LePage Fort Nelson Realty

Fort Nelson Realty Ltd. dba Royal
LePage Fort Nelson Realty,
Brokerage

DATE OF REVIEW MEETING:

September 29, 2016

DATE OF CONSENT ORDER:

September 29, 2016

CONSENT ORDER REVIEW COMMITTEE:

H. Exner
M. Leslie
S. Lynch
G. Martin
J. Pearson
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 Sheryl (Sherry) Diane Hart and Fort Nelson Realty Ltd. dba Royal LePage Fort Nelson Realty ("Royal LePage Fort Nelson").

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Sheryl (Sherry) Diane Hart, Royal LePage Fort Nelson 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 Sheryl (Sherry) Diane Hart and Royal LePage Fort Nelson committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Sheryl (Sherry) Diane Hart and Royal LePage Fort Nelson each be reprimanded;
2. Sheryl (Sherry) Diane Hart pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of this Order;
3. Royal LePage Fort Nelson pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days of the date of the Order;
4. Sheryl (Sherry) Diane Hart and Royal LePage Fort Nelson be jointly and severally liable 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 this Order.

If Sheryl (Sherry) Diane Hart or Royal LePage Fort Nelson fails 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 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

Attch.



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

IN THE MATTER OF

**SHERYL (SHERRY) DIANE HART
(158997)**

AND

**FORT NELSON REALTY LTD.
DBA ROYAL LEPAGE FORT NELSON REALTY
(X016163)**

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

The following agreement has been reached among Sheryl (Sherry) Diane Hart ("Ms. Hart"), Fort Nelson Realty Ltd. dba Royal LePage Fort Nelson Realty ("Fort Nelson Realty") and the Real Estate Council of British Columbia (the "Council").

- A. Ms. Hart hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that she be reprimanded and that she pay a discipline penalty in the amount of \$2,500.00 to the Council within ninety (90) days of the date of the Order herein.
- B. Fort Nelson Realty hereby consents to an Order to be made pursuant to sections 41 and 43 of RESA that it be reprimanded and that it pay a discipline penalty in the amount of \$1,000.00 to the Council within ninety (90) days of the date of the Order herein.
- C. Ms. Hart and Fort Nelson Realty agree to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of the Order herein.
- D. Ms. Hart and Fort Nelson Realty further consent to an Order that if either of them fail 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 RESA.
- E. As a basis for this Order, Ms. Hart and Fort Nelson Realty acknowledge and agree that the facts set forth herein are correct:

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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1. Fort Nelson Realty was at all relevant times licensed as a brokerage and its 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>
4/17/2013	Present	Royal LePage Fort Nelson Realty (X016163)	Brokerage	Trading, Rental, Strata
10/16/2012	4/17/2013	Royal LePage Fort Nelson Realty (X016163)	Brokerage	Trading, Strata
10/10/2008	10/16/2012	Royal LePage Fort Nelson Realty (X016163)	Brokerage	Trading
10/27/1986	10/9/2008	Royal LePage Fort Nelson Realty (X016163)	Brokerage	Trading, Rental

2. Ms. Hart was at all relevant times licensed as a managing broker with Fort Nelson Realty and her 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>
2013/04/17	Present	Fort Nelson Realty Ltd. dba Royal LePage Fort Nelson Realty (X016163)	Managing Broker	Trading, Rental, Strata
2012/10/16	2013/04/17	Fort Nelson Realty Ltd. dba Royal LePage Fort Nelson Realty (X016163)	Managing Broker	Trading, Strata
2010/05/11	2012/10/16	Fort Nelson Realty Ltd. dba Royal LePage Fort Nelson Realty (X016163)	Representative	Trading

3. In October 2015, the Council conducted an office and records inspection at the brokerage. The last inspection by the Council had been conducted in 2010. The brokerage had recently come under new ownership and had begun providing rental property management services.
4. During the inspection, the auditor observed that a condition inspection report for a move-in inspection of a residential property located at [REDACTED] 52nd Avenue, Fort Nelson, had on September 3, 2015 been signed on behalf of the owner by K.H., who was an unlicensed assistant.

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5. Ms. Hart stated that K.H. had several years experience in landlord and tenant matters and had been hired in August 2015 on a part-time basis after the sudden departure of her associate broker. K.H.'s conduct was an oversight and not done intentionally to deceive. She was in the process of becoming licensed with the Council.
6. The auditor also observed that the trust liability listings had not been prepared for the rental property management services trust account for the months of July and August 2015. A further examination revealed that six individual client trust ledgers had been in an overdraft position since August 2015.
7. Ms. Hart had not notified the Council about the overdrafts nor had she taken any steps to eliminate those negative balances. On the request of the auditor, Ms. Hart replenished the over drafted accounts.
8. Ms. Hart stated that the rental management part of the business grew rapidly and the brokerage's manual ledger system was very cumbersome to keep up with. The overdrafts had resulted from excess bill payments on behalf of old clients and other accounting errors which were never resolved. The brokerage had since begun using software specifically designed for rental property management and Ms. Hart had completely restructured the rental trust account records. The accounting system had a built-in warning system that would prevent a payment from being issued if it would result in a negative balance.

Previous Discipline

9. Fort Nelson Realty has no discipline record with the Council.
10. Ms. Hart entered into a Consent Order with the Council dated May 19, 2015 wherein she accepted the findings by the Council's Consent Order Review Committee that she committed professional misconduct within the meaning of section 35(1)(a) of the RESA when contrary to section 3-4 of the Council Rules, she offered a manufactured home for sale without a valid CSA approval sticker or silver label, to reflect the additions and alterations made to the subject property as required by section 21 of the *BC Safety Standards Act*.
11. Ms. Hart was reprimanded, and ordered to successfully complete the Real Estate Trading Services Remedial Education course and to pay enforcement expense in the amount of \$1,250 to 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, Ms. Hart and Fort Nelson Realty are prepared to accept the

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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following findings if made against them by the Council's Consent Order Review Committee:

- (a) Fort Nelson Realty 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:
 - (i) allowed six individual client trust ledgers for rental trust accounts to remain in an overdraft position between August 2015 and October 2015, resulting in negative balances in each trust account;
 - (ii) did not notify the Council of those negative balances within 10 days after the negative balances arose; and
 - (iii) did not take immediate steps to eliminate those negative balances until requested by the Council's auditor to do so.
 - (b) Ms. Hart, in her capacity as managing broker for Fort Nelson Realty, committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, contrary to sections 3-1(1) (a) and (c) of the Council Rules, she:
 - (i) permitted six individual client trust ledgers for rental trust accounts to remain in an overdraft position between August 2015 and October 2015, resulting in negative balances in each trust account;
 - (ii) failed to ensure that the Council was notified no later than 10 days after the negative balances arose;
 - (iii) failed to ensure that the brokerage took immediate steps to eliminate those negative balances, until the brokerage was requested to do so by the Council's auditor; and
 - (iv) failed to ensure that there was a adequate level of supervision for an unlicensed employee of the brokerage, who was permitted to sign on behalf of the brokerage, a condition inspection report for a move- in inspection for property located at [REDACTED] 52nd Avenue, Fort Nelson, BC, when she was not licensed to provide real estate services.
2. Ms. Hart and Fort Nelson Realty hereby waive their right to appeal pursuant to section 54 of RESA.

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3. Ms. Hart and Fort Nelson Realty acknowledge that they have a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Ms. Hart and Fort Nelson Realty 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. Ms. Hart and Fort Nelson Realty acknowledge and are aware that the Superintendent of Real Estate has the right, pursuant to section 54 of 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 other proceeding of any kind.



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

As to Part E only (Agreed Statement
of Facts)

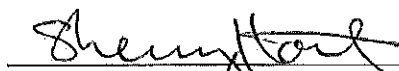
Dated 26 day of Sept, 2016



Sheryl Diane Hart

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

Dated 26th day of September, 2016



Sheryl Diane Hart on behalf of Fort Nelson
Realty Ltd. dba Royal LePage Fort Nelson

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

Dated 26th day of September, 2016