

File # 14-470

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

**IN THE MATTER OF
JOHN ROBERT BERTA
(095350)**

AND

**RIF- RENT IT FURNISHED REALTY INC. DBA
RENT IT FURNISHED REALTY
(X029887)**

CONSENT ORDER

RESPONDENTS:

John Robert Berta, Associate Broker,
Marcus & Millichap Real Estate
Investments Canada dba Marcus &
Millichap, while licensed as
Managing Broker with RIF-Rent It
Furnished Realty Inc. dba Rent It
Furnished Realty

RIF-Rent It Furnished Realty Inc. dba
Rent It Furnished Realty, Brokerage

DATE OF REVIEW MEETING:

August 31, 2016

DATE OF CONSENT ORDER:

September 12, 2016

CONSENT ORDER REVIEW COMMITTEE:

D. Fimrite
M. Leslie
S. Lynch, Chair
T. O'Grady

ALSO PRESENT:

R.O. Fawcett, Executive Officer
G. Thiele, Director, Legal Services
D. McKnight, Legal Counsel for the
Real Estate Council

PROCEEDINGS:

On August 31, 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 John Robert Berta and RIF-Rent It Furnished Realty Inc. dba Rent It Furnished Realty ("Rent It Furnished Realty").

WHEREAS the ASF, a copy of which is attached hereto, has been executed by John Robert Berta, Rent it Furnished Realty and on behalf of the Council;

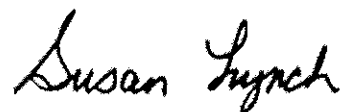
NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that John Robert Berta and Rent It Furnished Realty committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. John Robert Berta and Rent It Furnished Realty each be reprimanded;
2. John Robert Berta pay a discipline penalty to the Council in the amount of \$1,500.00 within ninety (90) days of the date of this Order;
3. Rent It Furnished Realty pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days of the date of this Order; and
4. John Robert Berta and Rent It Furnished Realty 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 John Robert Berta or Rent It Furnished Realty 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 12th day of September, 2016 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



S. Lynch, 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

JOHN ROBERT BERTA (095350)

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

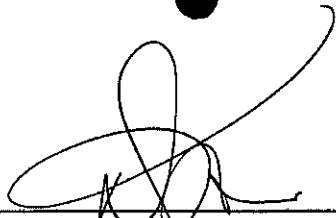
The following agreement has been reached between John Robert Berta ("Mr. Berta") and the Real Estate Council of British Columbia ("Council").

- A. Mr. Berta hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (the "Act") that he be reprimanded and that he be liable to pay a discipline penalty to Council in the amount of \$1,500.00 within 90 days of the date of the Order.
- B. Mr. Berta hereby consents to an Order made pursuant to sections 41 and 43 of the Act that he is jointly and severally liable with Rent It Furnished Inc. dba Rent It Furnished Realty ("Rent It Furnished Realty") to pay enforcement expenses of this Consent Order to Council in the amount of \$1,500.00 within 60 days of the date of this Order.
- C. Mr. Berta further consents to an Order that if he fails to comply with any of the terms of the Order as 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 Act.
- D. As a basis for this Order, Mr. Berta acknowledges and agrees that the facts set forth herein are correct:
 - 1. Mr. Berta's licensing history is as follows:

<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>
17/02/2016	Present	Marcus & Millichap Real estate Investment Services Canada Inc. (X031002)	Associate Broker	Trading
23/01/2015	16/02/2016	***Unlicensed***		
15/05/2013	22/01/2015	RIF - Rent It Furnished Inc. dba Rent It Furnished Realty (X029887)	Managing Broker	Trading, Rental
08/09/2007	14/05/2013	***Unlicensed*	N/A	N/A
20/02/2007	07/09/2007	Century 21 Coastal Realty Ltd. (Abb) (X028780)	Associate Broker	Trading, Rental
07/11/2006	19/02/2007	***Unlicensed***	N/A	N/A
23/08/2006	6/11/2006	Star-West Realty Ltd. dba RE/MAX Select Properties (X022527)	Managing Broker	Trading, Rental
31/07/2006	22/08/2006	Star-West Realty Ltd. dba RE/MAX Select Properties (X022527)	Representative	Trading, Rental
08/02/2005	31/07/2006	Park Georgia Realty Ltd. (VnGra) (X012668)	Representative	Trading, Rental
23/08/2004	08/02/2005	DominionGrand Realty Corp. (X022805)	Representative	Trading, Rental
22/05/1998	22/08/2004	***Unlicensed**	N/A	N/A
15/01/1997	21/05/1998	McCarthy Realty Ltd. (X017880)	15/01/1997	21/05/1998
18/01/1996	14/01/1997	***Unlicensed***	N/A	N/A
18/01/1994	17/01/1996	Taina Realty Ltd. (X022841)	Representative	Trading, Rental
22/01/1993	17/01/1994	***Unlicensed***	N/A	N/A
19/06/1992	21/01/1993	Sussex Group - S.R.C. Realty Corporation (Nvn) (X022548)	Representative	Trading, Rental
17/06/1992	18/06/1992	***Unlicensed***	N/A	N/A
16/09/1991	16/06/1992	Mitten Realty Ltd. (X010267)	Representative	Trading, Rental

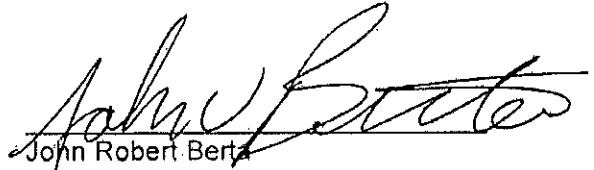
2. From May 15, 2013 until January 22, 2015, Mr. Berta was employed as managing broker of Rent It Furnished Realty.
3. In January 2015, the Audit Department of the Council conducted an office and records inspection of Rent It Furnished Realty for the period of August 1, 2014 until January 21, 2015 (the "Inspection").
4. The Inspection included a review of the following aspects of Rent It Furnished Realty's office and records, accounting systems and records, deal files, monthly trust and general bank accounts reconciliations including bank statements and deposit slips, general ledger records, brokerage licence and website.
5. The Inspection revealed a number of compliance issues with the books and records of Rent It Furnished Realty's records including that Rent It Furnished Realty had not prepared bank reconciliations within five weeks after the end of the month being reconciled for a number of accounts.
6. Further, as of October 2014, Rent It Furnished Realty's commission trust account did not reconcile to the trust liabilities listing.
7. In addition, Rent It Furnished Realty did not maintain a deal list for the trades it had engaged in and could not generate a list of rental properties identified by fiscal year.
8. The Inspection revealed that Rent It Furnished Realty failed to retain a record sheet respecting funds held or received in relation to some real estate transactions.
9. Further, Rent It Furnished Realty's operating account was being referred to as a "Trust Account" in the accountant's annual report filings for the years 2011 to 2014, when it was not a trust account.
10. The Inspection revealed that for the years 2011 to 2014, Rent It Furnished Realty failed to submit an April 30th annual letter to their financial institute identifying each pooled trust account and identifying on whose behalf the funds were being held.
11. In response to the Inspection, the Council initiated an investigation into the conduct of Mr. Berta as managing broker of Rent It Finished Realty (the "Investigation").
12. In response to the Investigation, Mr. Berta acknowledged that when acting as managing broker he had no control over how and when bank reconciliations were prepared and that bank reconciliations had been prepared late on numerous occasions.
13. Mr. Berta submitted he was not a signatory on the brokerage trust accounts when acting as managing broker because [REDACTED] licensee and owner of Rent if Furnished Realty, (" [REDACTED] ") "did not know him well enough and was not comfortable" adding him as a signatory.
14. Mr. Berta stated that there was no one available in the brokerage to complete the monthly bank account reconciliations.

15. Mr. Berta stated that files were created to maintain the records properly, but went missing.
 16. Mr. Berta states he left the brokerage as he realized that [REDACTED] was not willing to make necessary changes to comply with the Act and Council's Rules.
 17. Mr. Berta has no prior discipline history with Council.
- E. Proposed Acceptance of Findings and Waiver.
1. Based upon the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Mr. Berta is prepared to accept the following findings made against him by Council's Consent Order Review Committee, that he committed professional misconduct within the meaning of section 35(1) by contravening section 35(1)(a) of the Act, in relation to his position as managing broker of Rent It Furnished Realty, in that:
 - (a) In contravention of section 6(2) of the RESA and sections 3-1(1) and 3-1(3) of Council Rules, he failed to be in active charge of the brokerage's real estate business and failed to ensure the trust accounts and records of the brokerage were maintained in accordance with the Act, when he did not have signing authority on each trust account and failed to complete monthly account reconciliations within five weeks following the end of the month.
 2. Mr. Berta hereby waives his right to appeal pursuant to section 54 of the Act.
 3. Mr. Berta 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. Berta acknowledges and is aware that Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on Council's website and on CanLII, a website for legal research.
 5. Mr. Berta acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the 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 and Waiver contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. The Agreed Statement of Facts and Proposed Acceptance of Findings cannot be used in any other proceeding of any kind.
 7. This Agreed Statement of Facts and Proposed Acceptance of Findings and Waiver may be signed in counterpart.



David T. McKnight,
Legal Counsel Real Estate Council
of British Columbia
As to Part D only (Agreed Statement of
Facts)

Dated: 11th day of April, 2016.



John Robert Berta
As to Parts A, B, C, D and E
(Agreed Statement of Facts, Proposed
Acceptance of Findings and Waiver)

Dated: 11 day of April, 2016.

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*

S.B.C. 2004, c.42

IN THE MATTER OF

RIF - RENT IT FURNISHED INC. DBA RENT IT FURNISHED REALTY (X029887)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Nasir Rajabali Mecklai ("Mr. Mecklai"), managing broker and RIF - Rent It Furnished Inc. dba Rent It Furnished Realty ("Rent It Furnished Realty") and the Real Estate Council of British Columbia (the "Council").

- A. Mr. Mecklai, on behalf of Rent It Furnished Realty, hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (the "Act") that Rent It Furnished be reprimanded.
- B. Mr. Mecklai, on behalf of Rent It Furnished Realty, hereby consents to an Order made pursuant to sections 41 and 43 of the Act that Rent It Furnished Realty be liable to pay a discipline penalty to Council in the amount of \$5000.00 within 90 days of the date of this Order.
- C. Mr. Mecklai, on behalf of Rent It Furnished Realty, hereby consents to an Order made pursuant to sections 41 and 43 of the Act that Rent It Furnished Realty be jointly and severally liable with John Robert Berta to pay enforcement expenses of this Consent Order to Council in the amount of \$1,500.00 within 60 days of the date of this Order.
- D. Mr. Mecklai, on behalf of Rent It Furnished Realty, hereby consents to an Order that if Rent It Furnished Realty fails to comply with any of the terms of the Order as 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 Act.
- E. As a basis for this Order, Mr. Mecklai and Rent It Furnished Realty acknowledges and agrees that the facts set forth herein are correct:
 - 1. Rent It Furnished Realty licensing history is as follows:

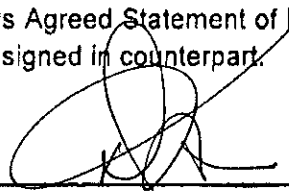
<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>
29/11/2014	Present	RIF - Rent It Furnished Inc. dba Rent It Furnished Realty (X029887)	Brokerage	Trading, Rental
27/02/2013	28/11/2014	RIF - Rent It Furnished Inc. dba Rent It Furnished Realty (X029887)	Brokerage	Trading, Rental
29/11/2012	27/02/2013	RIF - Rent It Furnished Inc. dba Rent It Furnished Realty (X029887)	Brokerage	Trading, Rental
15/09/2012	28/11/2012	RIF - Rent It Furnished Inc. dba Rent It Furnished Realty (X029887)	Brokerage	Trading, Rental
29/11/2010	15/09/2012	RIF - Rent It Furnished Inc. dba Rent It Furnished Realty (X029887)	Brokerage	Trading, Rental

2. From November 29, 2010 to July 8, 2015, Rent It Furnished Realty has engaged eight (8) managing brokers.
3. From April 27, 2015 to the present, Mr. Mecklai has been acting as the managing broker of Rent It Furnished Realty.
4. From November 29, 2010 to the present, Erika Weimer ("Ms. Weimer") has been licensed as a property manager and has owned Rent It Furnished Realty.
5. In January 2015, the Audit Department of the Council conducted an office and records inspection of Rent It Furnished Realty for the period of August 1, 2014 to January 21, 2015 (the "Inspection").
6. The Inspection included a review of the following aspects of Rent It Furnished Realty's office and records, accounting systems and records, deal files, monthly trust and general bank accounts reconciliations including bank statements and deposit slips, general ledger records, brokerage licence and website.
7. The Inspection revealed that Rent It Furnished Realty's records did not comply with the Act and Council's Rules and that Rent It Furnished Realty had not prepared bank reconciliations within five weeks after the end of the month being reconciled for a number of accounts.
8. Further, as of October 2014 Rent It Furnished Realty's commission trust account did not reconcile to the trust liabilities listing.

9. In addition, Rent It Furnished Realty did not maintain a deal list for the trades it had engaged in and could not generate a list of rental properties identified by fiscal year.
10. The Inspection revealed that Rent It Furnished Realty failed to retain a record sheet respecting funds held or received in relation to a real estate transaction.
11. In response to the Inspection findings, Ms. Weimer states that all real estate transactions performed by Rent It Furnished Realty were directly and solely supervised by the managing brokers.
12. Ms. Weimer further states she relied on the managing brokers employed by Rent It Furnished Realty to ensure that record sheets respecting funds held or received in relation to a real estate transaction were properly retained.
13. The Inspection revealed that Rent It Furnished Realty's operating account was being referred to as a "Trust Account" in the Accountant's Annual Report filings for the years 2011 to 2014, when it was not a trust account.
14. Ms. Weimer acknowledges that the operating account was mislabeled however she states that no trust funds received by Rent It Furnished Realty were ever deposited into the operating account.
15. The Inspection revealed that for the years 2011 to 2014, Rent It Furnished Realty failed to submit an April 30th annual letter to its financial institute identifying each pooled trust account and providing a list identifying on whose behalf the funds were being held.
16. In response to the Inspection, the Council initiated an investigation into the conduct of Rent It Furnished Realty as a brokerage and Mr. Mecklai as managing broker (the "Investigation").
17. The Investigation showed that the two previous managing brokers named in the Investigation, John Robert Berta and Karen Elizabeth Grunlund, complained that they took steps to try and bring the administration of Rent It Furnished into compliance, but they were prevented from doing so by Ms. Weimer. These complaints were sent to the Council in response to the Investigation.
18. Ms. Weimer denies that she prevented the managing brokers from administering the brokerage. She claims that she relied on the licensed managing brokers and a reputable accounting firm to point out any issues of non-compliance and acted immediately when issues came to the surface.
19. Following the Inspection and Investigation, Rent It Furnished Realty rectified all issues of non-compliance identified by Council and as of May 8, 2015 is fully compliant.

20. Rent It Furnished has made significant investments in its operations and accounting systems and has hired an independent accounting firm and a licensed controller to conduct all future trust audits and to manage the internal accounting department.
 21. Rent It Furnished Realty has no prior discipline history with Council.
- F. Proposed Acceptance of Findings and Waiver.
1. Based upon the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, on behalf of Rent It Furnished Realty, Mr. Mecklai is prepared to accept the following findings against Rent It Furnished Realty by Council's Consent Order Review Committee, that it committed professional misconduct within the meaning of section 35(1) by contravening section 35(1)(a) of the Act, in that:
 - (a) In contravention of section 25 of the RESA and sections 8-2 and 8-3 of Council Rules, Rent It Furnished Realty failed to maintain proper books, accounts and records in accordance with Council Rules, failed to maintain and prepare a monthly reconciliation of banking statements for each trust account; and failed to maintain and prepare a monthly trust liability and asset reconciliation for each pooled trust account.
 2. Rent It Furnished Realty hereby waives its right to appeal pursuant to section 54 of the Act.
 3. Rent It Furnished Realty acknowledges it has the right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
 4. Rent It Furnished Realty acknowledges and is aware that Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on Council's website and on CanLII, a website for legal research.
 5. Rent It Furnished Realty acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the 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 and Waiver contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. The Agreed Statement of Facts and Proposed Acceptance of Findings cannot be used in any other proceeding of any kind.

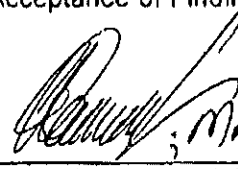
7. This Agreed Statement of Facts and Proposed Acceptance of Findings and Waiver may be signed in counterpart.



David T. McKnight,
Legal Counsel, Real Estate Council
of British Columbia

As to Part E only (Agreed Statement of
Facts)

Dated: 12th day of April, 2016

; MANAGING BROKER

Nasir Rajabali Mecklai on behalf of RIF
Rent It Furnished Inc. dba Rent It
Furnished Realty

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

Dated: 12 day of April, 2016