

File # 15-022

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

IN THE MATTER OF
DEBRA ANN MOWBRAY
(141029)

CONSENT ORDER

RESPONDENT: Debra Ann Mowbray, Representative,
Top Performers Ltd. dba RE/MAX
Top Performers

DATE OF REVIEW MEETING: August 31, 2016

DATE OF CONSENT ORDER: September 8, 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 Debra Ann Mowbray.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Debra Ann Mowbray 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 Debra Ann Mowbray committed professional

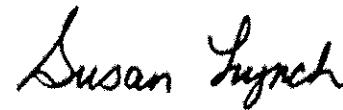
misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that Debra Ann Mowbray:

1. be reprimanded;
2. 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. 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 Debra Ann Mowbray 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 8th 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

DEBRA ANN MOWBRAY (141029)

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

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

- A. Ms. Mowbray hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (the "Act") that she be reprimanded and that she be liable to pay a discipline penalty to Council in the amount of \$2,500.00 within ninety (90) days of the date of the Order.
- B. Ms. Mowbray hereby consents to an Order made pursuant to sections 41 and 43 of the Act that she be liable to pay enforcement expenses of this Consent Order to Council in the amount of \$1,500.00 within sixty (60) days of the date of this Order.
- C. Ms. Mowbray further consents to an Order that if she fails to comply with any of the terms of the Order as 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 Act.
- D. As a basis for this Order, Ms. Mowbray acknowledges and agrees that the facts set forth herein are correct:
1. Ms. Mowbray'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>
2012/12/07	Present	Top Performers Ltd. (X029867)	Representative	Trading
2007/04/13	2012/12/07	Top 20 Realty Ltd. (X022293)	Representative	Trading
2004/12/29	2007/04/13	Sussex Group - S.R.C. Realty Corporation (Gib) (X024312)	Representative	Trading

2. From December 7, 2012 to the present, Ms. Mowbray has been employed as a representative of Top Performers Ltd. dba RE/MAX Top Performers ("Top performers")

3. At all material times, Mr. W [REDACTED] was acting as the agent of D.F. (the "Seller") in the sale of property located at Roberts Creek, British Columbia (the "Property").
4. On May 12, 2014, the Property was listed for sale on a Multiple Listing Service (the "MLS Listing").
5. The MLS Listing stated that the Property was zoned "Residential R1".
6. Sunshine Coast Regional District Zoning Bylaw 310 regulates the use of land, buildings and structures within Roberts Creek, British Columbia (the "Bylaw").
7. The Bylaw provides that an R1 property 2,000 to 3,500 square metres in size permits one single family dwelling and one auxiliary dwelling unit of certain size.
8. The Property contains a primary dwelling and a rental dwelling. The rental dwelling floor area is over 55 square metres in size and as a result the Property is legally non-conforming.
9. The MLS Listing did not state that the Property does not conform to the Bylaw or that the Property is legally non-conforming.
10. On or about June 2015, Ms. Mowbray was acting as the agent of K.D. and M.H. (the "Buyers") in the purchase of the Property.
11. The Buyers claim they intended to purchase the Property and then demolish and rebuild the primary dwelling. The Buyers state that they made their intention known to Ms. Mowbray.
12. Ms. Mowbray states that she was aware that the Buyers intended to perform renovations on the Property but was unaware the Buyers intended to fully demolish and rebuild the primary residence.
13. Ms. Mowbray obtained and provided the Buyers with a Property Report from Sunshine Coast Regional District that set out the approximate area of the Property as 3,414 square meters.
14. Ms. Mowbray states that she cannot recall whether she ever discussed the Property Report or any potential zoning issues with the Buyers including the Bylaw.
15. Ms. Mowbray did not advise the Buyers that the Property did not conform to the Bylaw or that the Property had legally non-conforming status.
16. On June 5, 2015, Ms. Mowbray drafted a Contract of Purchase and Sale for the Property on behalf of the Buyers.
17. On June 6, 2015, while negotiating the purchase of the Property, the Buyers sent an e-mail to Ms. Mowbray that stated:

...We have two houses to demolish instead of one. We would have to do some expensive redo of retaining walls to build which wouldn't be a cost at the other property.... I do not place any value actually on the

*two homes rather it is a problem as it will cost the bring down (sic)...
All in all this is our final offer...*

18. The Contract of Purchase and Sale was accepted by the Seller on June 6, 2015 and the purchase of the Property was completed on July 30, 2015.
19. On or about June 23, 2015, after the subjects had been removed, the Buyers discovered the Property had zoning restrictions and was legal non-conforming.
20. By letter dated August 20, 2015, a Senior Planner at the Sunshine Coast Regional District wrote to the Buyers as follows:

The R1 zone permits one dwelling on a parcel any size; one dwelling plus an ancillary dwelling (55 square metres) on a parcel exceeding 2,000 square metres up to 3,500 square metres; and on properties exceeding 3,500 square metres, two single family dwellings, without a specific floor space maximum.

...In accordance with the zoning bylaw and section 911 of the Local Government Act you would not be able to build a new dwelling of greater than 55 square metres (592 square feet) or add on to either of the existing dwellings.

Options include removing of the dwellings, seeking a site specific bylaw amendment/rezoning for the property or applying to the Board of Variance. Each of these options contains unique challenges and they are options to consider, however the latter two are applications that can be made but the outcome cannot be assured.

21. By email dated June 25, 2015, Ms. Mowbray wrote to the Buyers as follows:

I am sorry you are unhappy with your purchase.

According to my manager, at this time, to help mitigate any potential loss in your minds, I need to ask you:

1. *Would you like to ask for price reduction? Or,*
2. *Do you want to cancel the sale and get your deposit back?*

Please advise of which of these two options you prefer.

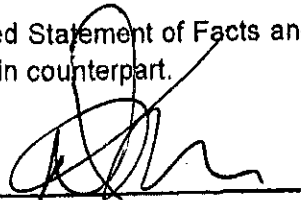
22. By email date June 25, 2015 to Ms. Mowbray, the Buyers responded as follows:

With regards to compensation, we are open to suggestions, although we will not be initializing such suggestions, to do so might lead the current seller to believe that we are reneging on the purchase. The mistake is not his.

If we hear back from you ---- great, if not we will proceed as planned.

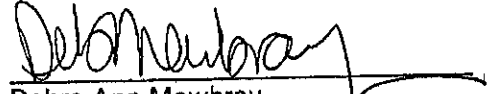
23. The Buyers completed the purchase of the Property.
24. Ms. Mowbray has no prior discipline history with Council.
- E. Proposed Acceptance of Findings and Waiver.
 1. Based upon the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Ms. Mowbray is prepared to accept the following findings made against her by Council's Consent Order Review Committee, that she committed professional misconduct within the meaning of section 35(1) by contravening section 35(1)(a) of the Act, in relation to her position as the Buyers' agent in the purchase of the Property, in that:
 - (a) In contravention of section 3-3(a) and 3-3(h) and 3-4 of Council Rules, she failed to act in the best interests of her clients, failed to use reasonable efforts to discover relevant facts respecting real estate that her clients were considering acquiring and failed to act with reasonable care and skill when she failed to ascertain information regarding the Property's zoning restrictions and failed to advise her clients that the Property is legal non-conforming.
 2. Ms. Mowbray hereby waives her right to appeal pursuant to section 54 of the Act.
 3. Ms. Mowbray 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. Mowbray 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. Ms. Mowbray 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: 9th day of August, 2016.



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

Dated: 8th day of August, 2016.