

File # 13-310

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

IN THE MATTER OF

KEITH MICHAEL LAMBOURNE
(153012)

AND

KAIEN 757 HOLDINGS LTD. DBA
ROYAL LEPAGE PRINCE RUPERT
(X029398)

CONSENT ORDER

RESPONDENTS: Keith Michael Lambourne, Managing
Broker, Kaien 757 Holdings Ltd. dba
Royal LePage Prince Rupert

Kaien 757 Holdings Ltd. dba Royal
LePage Prince Rupert, Brokerage

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
S. Sheina, 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 Keith Michael Lambourne and Kaien 757 Holdings Ltd. dba Royal LePage Prince Rupert (“Royal LePage Prince Rupert”).

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Keith Michael Lambourne, Royal LePage Prince Rupert and on behalf of the Council;

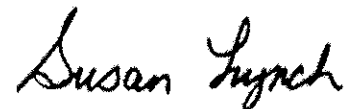
NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Keith Michael Lambourne and Royal LePage Prince Rupert committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Keith Michael Lambourne and Royal LePage Prince Rupert each be reprimanded;
2. Keith Michael Lambourne and Royal LePage Prince Rupert be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days of the date of the Order;
3. Mr. Lambourne, at his own expense, register for and successfully complete the Broker’s 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. Mr. Lambourne and Royal LePage Prince Rupert 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 Keith Michael Lambourne or Royal LePage Prince Rupert 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 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

KEITH MICHAEL LAMBOURNE
(153012)

AND

KAIEN 757 HOLDINGS LTD., DBA ROYAL LEPAGE PRINCE RUPERT
(X029398)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached among Keith Michael Lambourne ("Mr. Lambourne"), Kaien 757 Holdings Ltd. dba Royal LePage Prince Rupert ("Royal LePage Prince Rupert") and the Real Estate Council of British Columbia (the "Council").

- A. Mr. Lambourne hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that he be reprimanded.
- B. Mr. Lambourne on behalf of Royal LePage Prince Rupert hereby consents to an Order to be made pursuant to sections 41 and 43 of the RESA that the brokerage be reprimanded.
- C. Mr. Lambourne and Royal LePage Prince Rupert hereby consent to an Order that they be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days of the Order herein.
- D. Mr. Lambourne hereby consents to an Order that he will take the Broker's Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia, within the time period as directed by the Council.
- E. Mr. Lambourne and Royal LePage Prince Rupert hereby consent to an Order that they be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days of the date of the Order herein.
- F. Mr. Lambourne and Royal LePage Prince Rupert further consent to an Order that if they fail to comply with any of the terms of the Order set out above, the Council may suspend or cancel their licences without further notice to them pursuant to sections 43(3) and 43(4) of the RESA.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

G. As a basis for this Order, Mr. Lambourne and Royal LePage Prince Rupert acknowledge and agree that the facts set forth herein are correct:

1. Mr. Lambourne is currently licensed as a managing broker with Royal LePage Prince Rupert and has been licensed as such at all material times. His licensing history is as follows:

<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>	<u>Start Date</u>	<u>End Date</u>
Kaien 757 Holdings Ltd. dba Royal LePage Prince Rupert(X029398)	Managing Broker	Trading, Rental	23/12/2015	Present
Kaien 757 Holdings Ltd. dba Royal LePage Prince Rupert (X029398)	Managing Broker	Trading	13/07/2012	23/12/2015
Kaien 757 Holdings Ltd. dba Royal LePage Prince Rupert (X029398)	Associate Broker	Trading	02/10/2011	13/07/2012
Kaien 757 Holdings Ltd. dba Royal LePage Prince Rupert (X029398)	Representative	Trading	02/10/2009	01/10/2011
Webber Realty Ltd. dba dba Royal LePage Prince Rupert (X003143)	Representative	Trading	14/05/2009	01/10/2009
Tinker Realty Inc. (X028667)	Representative	Trading	10/10/2007	14/05/2009

2. Royal LePage Prince Rupert is licensed as a brokerage and has been so licensed since October 2, 2010. Its licensing history is as follows:

<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>	<u>Start Date</u>	<u>End Date</u>
Royal LePage Prince Rupert dba Royal LePage Prince Rupert (X029398)	Brokerage	Trading, Rental	12/23/2015	Present
Royal LePage Prince Rupert dba Royal LePage Prince Rupert (X029398)	Brokerage	Trading	10/02/2015	12/23/2015
Royal LePage Prince Rupert dba Royal LePage Prince Rupert (X029398)	Brokerage	Trading	10/02/2013	10/01/2015

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND
WAIVER

Page 3

Royal LePage Prince Rupert dba Royal LePage Prince Rupert (X029398)	Brokerage	Trading	7/13/2012	10/01/2013
Royal LePage Prince Rupert dba Royal LePage Prince Rupert (X029398)	Brokerage	Trading, Rental	10/02/2011	7/13/2012
Royal LePage Prince Rupert dba dba Royal LePage Prince Rupert (X029398)	Brokerage	Trading, Rental	10/02/2009	10/01/2011

3. On April 28, 2014, the Council received a complaint against Mr. Lambourne from JE, the managing broker and owner of a "competing office in Prince Rupert". The complaint alleged a failure to collect deposits in a timely manner on numerous occasions and failure to notify JE that such deposits had not been collected.
4. Between September 13, 2013 and May 9, 2014, five licensees of Royal Le Page Prince Rupert, acted as the designated agents for five separate buyer clients for five different properties at Amrose Avenue, Cassiar Avenue, Piggott Place, Barrow Place and Kootenay Avenue in Prince Rupert, BC. The five licensees failed to collect the deposits for each of the five properties according to the terms of the respective Contracts of Purchase and Sale.
5. Mr. Lambourne did not discover that the deposits for each of the five properties had not been collected as required by the Contracts of Purchase and Sale, until after the due date for the deposits had lapsed.
6. In reply to Council's investigation, Mr. Lambourne's assistant, VA, sent an email to Council staff on June 9, 2014, providing a copy of the transaction record sheet with respect to the offer on the Amrose Property in Prince Rupert, BC. VA stated that the brokerage was unable to locate the Contract of Purchase and Sale or the rest of the deal file.
7. During a telephone call with Council staff in April 2016, VA stated that during September 13, 2013 and May 9, 2014, the brokerage did not have a system in place that had adequate safe guards to ensure that deposits were received on time.
8. On June 5, 2014, Mr. Lambourne sent a lengthy email to his licensees with respect to timely collection of deposits. In it he stated "we have just been reported to the Real Estate Council for late deposits and it turns out we are indefensible on five contracts". He further stated "there is no excuse that we can make to the Council. We failed to do our jobs, we are going to get smacked and we deserve to get smacked."

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

Page 4

9. Mr. Lambourne also stated in his June 5, 2014 email that since the present system had proved to be ineffective it would be changed and he laid out a six step system that had to be followed to ensure the timely collection of deposits.

Mitigating Facts

10. In his email dated June 5, 2014, Mr. Lambourne accepted responsibility for all the actions of his agents and took *"full responsibility for not ensuring that the systems we have in place were robust enough to catch these failures."* His email further reminded his licensees that a *"failure to collect a deposit within the agreed upon time period voids the contract and puts your client's purchase or sale at risk."*
11. At the end of his June 5, 2014 email, Mr. Lambourne stated a copy of this email would be sent to the Council "to show that we are now aware of the errors that were made and are taking steps to remedy them.
12. There is no previous discipline history for Mr. Lambourne or for Royal LePage Prince Rupert.

F. Proposed Acceptance of Findings and Waiver

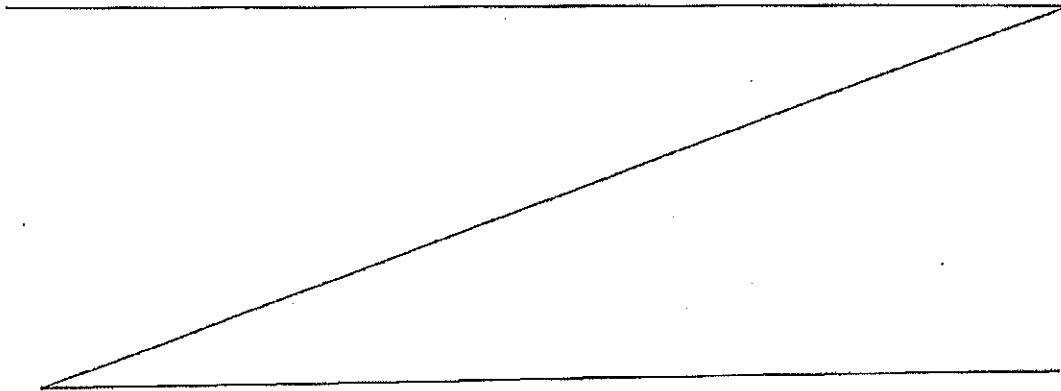
1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Mr. Lambourne and Royal LePage Prince Rupert are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
 - (a) Royal LePage Prince Rupert committed professional misconduct within the meaning of section 35(1)(a) of the RESA, when it failed to retain the Contract of Purchase and Sale for the acquisition of property located at Amrose Avenue in Prince Rupert, BC, contrary to section 8-5(1) of the Council Rules.
 - (b) Mr. Lambourne committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that he:
 - (i) failed to be in active charge and control of the brokerage's real estate business and its licensees and ensure the brokerage was in compliance with the RESA and the Council Rules, by not retaining a copy of the Contract of Purchase and Sale for the property at Amrose Avenue in Prince Rupert BC, contrary to section 6(2) of the RESA and section 3-1(1)(b) of the Council Rules; and
 - (ii) failed to provide adequate supervision by ensuring that procedures were in place which were effectively implemented by the licensees of the Brokerage with respect to the timely collection of deposits after acceptance of offers, in accordance with the terms of the agreement, on transactions at Amrose Avenue, Cassiar Avenue, Piggott Place, Barrow

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

Page 5

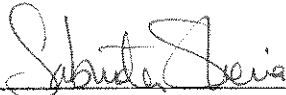
Place and Kootenay Avenue, between September 13, 2013 and May 9, 2014, contrary to section 3-1(1)(a) and (c) of the Council Rules and section 6(2)(b) of the RESA.

2. Mr. Lambourne and Royal LePage Prince Rupert hereby waive their right to appeal pursuant to section 54 of the RESA.
3. Mr. Lambourne and Royal LePage Prince Rupert 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. Lambourne and Royal LePage Prince Rupert 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. Lambourne and Royal LePage Prince Rupert acknowledge and are 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.



AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

6. The Agreed Statement of Facts, 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. Such agreed statement of facts and proposed acceptance of findings cannot be used in any other proceeding of any kind.



Sabinder Sheina, Legal Counsel
Real Estate Council of British Columbia

As to Part F only (Agreed Statement of Facts)

Dated 9 day of August, 2016



Keith Michael Lambourne

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

Dated 8th day of AUGUST, 2016



Keith Michael Lambourne on behalf of
Kaion 757 Holdings Ltd. dba Royal
LePage Prince Rupert

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

Dated 8th day of AUGUST, 2016