

File # 15-540

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

IN THE MATTER OF
ANTONY GUY AKESTER
(028371)

AND
WAYNE ALBERT SMITHIES
(014188)

CONSENT ORDER

RESPONDENTS:

Antony Guy Akester, Associate
Broker, Martello Property Services
Inc.

Wayne Albert Smithies, Managing
Broker, Martello Property Services
Inc.

DATE OF REVIEW MEETING:

August 31, 2016

DATE OF CONSENT ORDER:

September 8, 2016

CONSENT ORDER REVIEW COMMITTEE:

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

ALSO PRESENT:

R.O. Fawcett, Executive Officer
G. Thiele, Director, Legal Services
E. Jeon, 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 Antony Guy Akester and Wayne Albert Smithies.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Antony Guy Akester, Wayne Albert Smithies and on behalf of the Council;

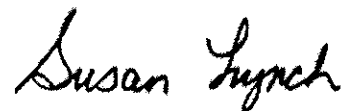
NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Antony Guy Akester and Wayne Albert Smithies committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Antony Guy Akester and Wayne Albert Smithies each be reprimanded;
2. Antony Guy Akester and Wayne Albert Smithies each pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days of the date of this Order; and
3. Antony Guy Akester and Wayne Albert Smithies 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 Antony Guy Akester or Wayne Albert Smithies 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

**ANTONY GUY AKESTER
028371**

AND

**WAYNE ALBERT SMITHIES
014188**

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

The following agreement has been reached between Antony Guy Akester ("Mr. Akester"), Wayne Albert Smithies ("Mr. Smithies"), and the Real Estate Council of British Columbia (the "Council").

- A. Mr. Akester hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded and that he pay a discipline penalty to the Council in the amount of \$1,000.00 within sixty (60) days of the date of this Order.
- B. Mr. Smithies hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded and that he pay a discipline penalty to the Council in the amount of \$1,000.00 within sixty (60) days of the date of this Order.
- C. Mr. Akester and Mr. Smithies hereby consent to an Order that they be jointly and severally liable to pay enforcement expenses to the Council in the total amount of \$1,500.00 within sixty (60) days from the date of the Order herein.
- D. Mr. Akester and Mr. Smithies further consent to an Order that if either of them fails 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 *Real Estate Services Act*.
- E. As a basis for this Order, Mr. Akester and Mr. Smithies 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. Mr. Akester was at all relevant times licensed as an Associate Broker with Martello Property Services Inc.
2. Mr. Akester's licensing history is as follows:

Start Date	End Date	Brokerage	Branch Name	Licence Level	Licence Category
21/04/2016		Martello Property Services Inc. (X018829)		Associate Broker	Trading, Rental
23/02/2016	20/04/2016	*** Unlicensed ***		N/A	N/A
16/05/2002	22/02/2016	Martello Property Services Inc. (X018829)		Associate Broker	Trading, Rental
15/05/2002	15/05/2002	*** Unlicensed ***		N/A	N/A
11/03/2001	14/05/2002	Tyne Hospitality Services Limited (X027324)		Managing Broker	Trading, Rental
01/12/2000	10/03/2001	*** Unlicensed ***		N/A	N/A
24/10/2000	30/11/2000	West Coast Realty Ltd. (X003156)		Associate Broker	Trading, Rental
22/08/2000	24/10/2000	West Coast Realty Ltd. (X027031)	West Vancouver	Associate Broker	Trading, Rental
23/02/2000	22/08/2000	Henley & Associates Realty Ltd. (X014927)		Associate Broker	Trading, Rental
01/12/1997	22/02/2000	*** Unlicensed ***		N/A	N/A
07/03/1986	30/11/1997	Penreal Capital Mgmt. Inc. (X015124)		Managing Broker	Trading, Rental
03/04/1985	06/03/1986	*** Unlicensed ***		N/A	N/A
25/09/1984	02/04/1985	Macauley Nicolls Maitland & Co. Ltd. (X001926)		Associate Broker	Trading, Rental

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30/06/1982 25/09/1984 Macaulay
Nicolls Maitland
& Co. Ltd.
(X001926) Representative Trading,
Rental

3. Mr. Smithies was at all relevant times licensed as the Managing Broker of Martello Property Services Inc.

4. Mr. Smithies' licensing history is as follows:

Start Date	End Date	Brokerage	Licence Level	Licence Category
22/09/2005	To Present	Martello Property Services Inc. (X018829)	Managing Broker	Trading, Rental, Strata
16/03/1993	21/09/2005	Martello Property Services Inc. (X018829)	Managing Broker	Trading, Rental
22/09/1991	16/03/1993	Martello Property Services Inc. (X018829)	Managing Broker	Rental
21/07/1988	21/09/1991	Martello Property Services Inc. (X018829)	Managing Broker	Trading, Rental
22/09/1983	21/07/1988	First City Property Management Ltd. (X012362)	Managing Broker	Trading, Rental

5. This complaint concerns the failure of Mr. Akester to complete a mandatory legal update course prior to renewing his licence.

The Council's Relicensing Education Program

6. Pursuant to section 2-8.1(2) of the Council Rules, in order to renew a licence, a licensee must:

(a) have completed the applicable continuing education courses respecting the real estate services and the level of licence in relation to which the application is made, and

(b) have passed the examinations corresponding to those courses prior to the date the licence is renewed. [emphasis added]

7. To satisfy the Council's Relicensing Education Program ("REP") requirements, licensees are required to complete a Legal Update course during each 24-month licence period prior to their licence expiry date.

8. Licensees are responsible for accurately reporting their completion of REP Legal Update course on their renewal application form.
9. In particular, effective January 2016, proof is required in their renewal application that they have completed the appropriate REP Legal Update course in the last two years. This requirement was communicated to licensees in the December 2015 edition of Report from Council, Volume 50, No. 2, on page 4 where it reads:

Renewal Reminder: Proof of REP Required in 2016

If you will be renewing your licence in 2016, keep in mind that when applying for renewal of a licence expiring after December 31, 2015, you'll need to submit proof that you have completed an appropriate Legal Update REP course in the last two years.

10. Licensees are also notified of their REP course requirement when they receive their renewal notice from the Council. As a reminder, a pink slip is enclosed in all renewal packages, which reads:

NOTICE A CHANGE?

If you've completed a Council renewal form in the past, you may notice that the enclosed form looks a little different. Here is what has changed:

New Financial Details: Questions 2 and 3 of Part A now require additional details about any bankruptcy, insolvency or receivership proceedings.

REP Proof Now Required! If your renewal date is January 1, 2016 or later, as part of your renewal application you must submit proof that you have completed the appropriate Legal Update REP course in the last two years. Attach a certificate of completion, or a copy of your education transcript from the course provider (e.g. real estate board). Make sure it includes your name, course name, and the date the course was completed.

11. If a licence renewal application does not include documentary evidence that the appropriate REP Legal Update course was completed in the last two years, the licence will not be renewed until proof of completion is submitted to the Council.

Mr. Akester's Renewal Application

12. Mr. Akester's licence was due for renewal on February 22, 2016.
13. On February 19, 2016, Mr. Akester submitted an Application for Licence Renewal form (the "Renewal Form") to the Council. The Renewal Form was signed by Mr. Akester on February 16, 2016 and by his managing broker, Mr. Smithies, on February 19, 2016.

14. The Council's Renewal Form, in Part C – Consents and Certification, specifically sets out clauses with respect to the licensee's completion of the REP Legal Update course and certification of the renewal application:

Confirmation of completion of REP requirements

I confirm that I have completed the Council's Relicensing Education Program (REP) requirements pursuant to section 2-8.1 of the Council Rules. I have attached evidence of my completion of the Legal Update REP course related to a real estate service I provide, in a format approved by the Council, pursuant to section 4-8 of the Bylaws.

Certification

I certify that I am the applicant for licensing and the information and statements contained in this application and any attachments are true and complete.

15. Mr. Akester signed and dated the Renewal Form in the signature box which is located below the certification clause.
16. Renewal Form also sets out, in Part C – Consents and Certification, a specific clause for certification by the managing broker of the related brokerage:

Certification of related brokerage

I, the managing broker, sole proprietor, director, officer or partner of the related brokerage, certify that I am satisfied from personal knowledge or from inquiries that the applicant is of good reputation and is suitable for licensing, and hereby approve this application.

17. Mr. Smithies signed and dated the Renewal Form in the signature box located below the certification clause for related brokerage and indicated "President" as his title.
18. On February 19, 2016, Council staff sent a written notice by fax to Mr. Smithies advising that the Council requires proof of completion of the mandatory REP Legal Update course before the licensee's renewal due date of February 22, 2016. Council staff requested Mr. Smithies to provide a copy of the certificate of course completion or education transcript with the licensee's name, course name and the date on which the course was completed.
19. On February 29, 2016, Council staff sent a second notice by fax to Mr. Smithies, again requesting proof of completion of the REP Legal Update course for Mr. Akester's renewal application.

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20. On March 2, 2016, Council staff contacted Mr. Smithies by telephone and asked him to submit proof of completion of the REP Legal Update course for Mr. Akester's renewal application.
21. On March 4, 2016, Mr. Akester telephoned Council staff to discuss his renewal application. Council staff advised him that since he had not taken the course, his licence expired on February 22, 2016 and as such, he could not engage in any licensed activity.
22. Also on March 4, 2016, Council staff sent an e-mail to Mr. Akester formally advising him of his unlicensed status due to his failure to take the REP Legal Update course. He was also advised in the e-mail that the matter was being referred to the Council's compliance department for review.
23. On May 10, 2016, Mr. Smithies submitted a response statement in which he apologized for the oversight in not ensuring that Mr. Akester had completed the most recent REP Legal Update course. He explained that Mr. Akester had completed a "legal update course some 3 years ago and he believed that that was adequate for the current course".
24. Mr. Smithies submitted that when Mr. Akester's licence was not renewed, he relieved Mr. Akester from his duties as a real estate salesperson until the course was completed.
25. Also on May 10, 2016, Mr. Akester submitted a response statement in which he explained that when he completed the Renewal Form, he failed to notice a separate pink form attached as a reminder that proof is now required that the REP Legal Update was completed in the last two years.
26. Mr. Akester stated that he was advised by Mr. Smithies on March 2, 2016 that he must complete the REP Legal Update Course, and that he was relieved from his duties until he complied with the requirement.
27. Mr. Akester explained in his May 10, 2016 statement that on March 9, 2016, he registered for the next available REP Legal Update course, which was scheduled for April 11, 2016. He enclosed a copy of the Education Transcript confirming completion of the REP Legal Update course.
28. Mr. Akester stated that no false application was intended and that he signed the Renewal Form in good faith.
29. Neither Mr. Akester nor Mr. Smithies have a prior discipline history with 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, Mr. Akester and Mr. Smithies are prepared to accept the

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

- (a) As an associate broker with Martello Property Services Inc., Mr. Akester:
 - i. committed professional misconduct within the meaning of section 35(1)(g) of the *Real Estate Services Act*, in that he made a false or misleading statement when he represented in his licence renewal application that he had completed the REP Legal Update course prior to the expiration of his licence on February 22, 2016 when he knew or ought to have known that he had not completed the course requirements; and
 - ii. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, in that contrary to section 2-8.1 of the Council Rules, he failed to complete the mandatory REP Legal Update course prior to the expiration of his licence on February 22, 2016 and prior to submitting his application for his licence renewal.
- (b) As the managing broker of Martello Property Services Inc., Mr. Smithies:
 - i. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, in that he contravened sections 6(2) of the *Real Estate Services Act* and section 3-1(1) of the Council Rules when he:
 - a. allowed Mr. Akester to make a false or misleading statement in his application for licence renewal received by the Council on February 19, 2016. In particular, Mr. Smithies certified on the application that Mr. Akester had completed the REP Legal Update course when he knew or ought to have known that Mr. Akester had not completed the course requirement; and
 - b. failed to ensure that Mr. Akester completed the mandatory REP Legal Update course in the two-year period prior to his licence expiry date as required under section 2-8.1 of the Council Rules.
- 2. Mr. Akester and Mr. Smithies hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.
- 3. Mr. Akester and Mr. Smithies acknowledge that they have been advised 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. Akester and Mr. Smithies 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.

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5. Mr. Akester and Mr. Smithies acknowledge and are aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services 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 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.



Esther Jeon, Legal Counsel

Real Estate Council of British Columbia

As to Part A only (Agreed Statement of Facts)

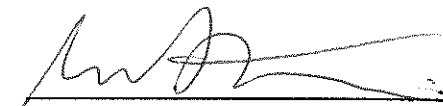
Dated 16 day of August, 2016



Mr. Antony Guy Akester

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

Dated 8 day of AUGUST, 2016



Mr. Wayne Albert Smithies

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

Dated 8 day of August, 2016