

File # 13-197

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

IN THE MATTER OF
KIRK VICTOR CHAMBERLAIN
(161292)

KIRK CHAMBERLAIN PERSONAL REAL ESTATE CORPORATION
(161292PC)

AND

GRANT JOHN KLATIK
(138636)

CONSENT ORDER

RESPONDENTS:

Kirk Victor Chamberlain,
Representative, 1068479 B.C. Ltd.
dba Chamberlain Property Group
while licensed with Okanagan Realty
Inc. dba Coldwell Banker Okanagan
Realty, Branch, Penticton

Kirk Chamberlain Personal Real
Estate Corporation, 1068479 B.C.
Ltd. dba Chamberlain Property Group
while licensed with Okanagan Realty
Inc. dba Coldwell Banker Okanagan
Realty, Branch, Penticton

Grant John Klatik, Representative,
1068479 B.C. Ltd. dba Chamberlain
Property Group while licensed with
Okanagan Realty Inc. dba Coldwell
Banker Okanagan Realty, Branch,
Penticton

DATE OF REVIEW MEETING:

May 26, 2016

DATE OF CONSENT ORDER: June 3, 2016

CONSENT ORDER REVIEW COMMITTEE: C. Brown
M. Leslie
S. McGougan
J. Nagy, Chair

ALSO PRESENT: R.O. Fawcett, Executive Officer
G. Thiele, Director, Legal Services
S. Sheina, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On May 26, 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 Kirk Victor Chamberlain, Kirk Chamberlain Personal Real Estate Corporation and Grant John Klatik.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Kirk Victor Chamberlain, Kirk Chamberlain Personal Real Estate Corporation, Grant John Klatik 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 Kirk Victor Chamberlain, Kirk Chamberlain Personal Real Estate Corporation and Grant John Klatik committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:


1. Kirk Victor Chamberlain, Kirk Chamberlain Personal Real Estate Corporation and Grant John Klatik each be reprimanded;
2. Kirk Victor Chamberlain, Kirk Chamberlain Personal Real Estate Corporation and Grant John Klatik be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$6,000.00 within sixty (60) days of the date of this Order;
3. Kirk Victor Chamberlain and Grant John Klatik each, at their own expense, register for and successfully complete Real Estate Trading Services 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. Kirk Victor Chamberlain, Kirk Chamberlain Personal Real Estate Corporation and Grant John Klatik 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 Kirk Victor Chamberlain, Kirk Chamberlain Personal Real Estate Corporation or Grant John Klatik 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 3rd day of June, 2016 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



J. Nagy, Chair
Consent Order Review Committee

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

IN THE MATTER OF

KIRK VICTOR CHAMBERLAIN
(161292)

KIRK CHAMBERLAIN PERSONAL REAL ESTATE CORPORATION
(161292)

AND

GRANT JOHN KLATIK
(138636)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Kirk Victor Chamberlain ("Mr. Chamberlain"), Kirk Chamberlain Personal Real Estate Corporation, Grant John Klatik ("Mr. Klatik") and the Real Estate Council of British Columbia (the "Council").

- A. Mr. Chamberlain, Kirk Chamberlain Personal Real Estate Corporation and Mr. Klatik hereby consent to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that they be reprimanded. They are ordered jointly and severally liable to pay a discipline penalty to the Council in the amount of \$6,000.00 within sixty (60) days of the date of the Order herein. Further, they are 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. Mr. Chamberlain and Mr. Klatik further agree to successfully complete the Real Estate Trading Services 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. Further, Mr. Chamberlain, Kirk Chamberlain Personal Real Estate Corporation and Mr. Klatik consent to an Order that if they 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 *Real Estate Services Act*.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

B. As a basis for this Order, Mr. Chamberlain, Kirk Chamberlain Personal Real Estate Corporation and Mr. Klatik acknowledge and agree that the facts set forth herein are correct:

1. Mr. Chamberlain was at all relevant times licensed as a representative with Okanagan Realty Inc. (Pen) dba Coldwell Banker Okanagan Realty (Pen) (the "Brokerage").
2. Mr. Chamberlain's 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>
2012/10/22	Present	Okanagan Realty Inc. (Pen) (X030648)	Representative	Trading
2012/10/02	2012/10/22	Okanagan Realty Inc. (X001125)	Representative	Trading
2011/08/04	2012/10/02	645857 B.C. Ltd. (X027731)	Representative	Trading
2011/03/15	2011/08/04	621104 B.C. Ltd. (X027474)	Representative	Trading

3. Mr. Chamberlain became licensed as Kirk Chamberlain Personal Real Estate Corporation on October 22, 2012.
4. Mr. Klatik's 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>
2013/04/10	Present	Okanagan Realty Inc. (Pen) (X030648)	Representative	Trading
2003/12/22	2013/04/10	Okanagan Realty Inc. (X001125)	Representative	Trading

5. On December 21, 2013, a Contract of Purchase and Sale ("Contract") was entered into for a property located at Harding Street, Summerland, BC (the "Property"). The Contract was printed on Mr. Chamberlain's web forms which indicted he had prepared the offer. However, the Contract identified Mr. Klatik as the designated agent representing the buyer.
6. The Contract stated that a deposit of \$10,000 was to be paid within 48 hours of final subject removal and held in trust by the Brokerage.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

7. Mr. Chamberlain and Mr. Klatik stated that a copy of the Contract was delivered to the downtown branch office on December 23, 2013, but because the conveyancer was on holidays it was not forwarded to the main branch as required.
6. On December 30, 2013, an extension was granted for some subjects to be removed by January 3, 2014, and accordingly the deposit was now due on January 5, 2014.
7. On January 3, 2014, the final subjects were removed, however, the deposit was not collected on January 5, 2015.
8. Mr. Klatik stated he was out of town until January 7, 2014, and on his return forgot to collect the deposit.
9. On January 8, 2014, conveyancing staff from the brokerage representing the seller, faxed the Conveyance Instruction Report of the sale of the Property to Mr. Chamberlain and Mr. Klatik's Brokerage.
10. B.B., the managing broker for Mr. Chamberlain and Mr. Klatik, stated she was only made aware on January 10, 2014, from her conveyance secretary that an offer had been written, accepted and was unconditional with respect to the Property. She further stated that her secretary became aware of the sale only after receiving the faxed instructions from the brokerage representing the seller.
11. B.B. stated she went to the Brokerage's main branch office on January 10, 2014, to enquire about the paperwork related to the Contact. She stated it was then that she learned the main branch had no record of the deal.
12. B.B. stated she then went to Mr. Chamberlain and Mr. Klatik's downtown office to enquire about the paperwork and the deposit.
13. Mr. Chamberlain and Mr. Klatik stated to B.B. that they were unable to locate a copy of the Contract and the deposit at the office so therefore assumed it must be at Mr. Chamberlain's home office in Kelowna. They further stated that they would deliver it to B.B. on January 13, 2014.
14. On January 11, 2014, Mr. Klatik stated he realized the deposit from the buyer had not been collected and the buyer was now out of town. Mr. Klatik stated he immediately informed D.W., the seller's representative, to ask how he wished to proceed.
15. On January 13, 2014, Mr. Chamberlain and Mr. Klatik stated that B.B. told them that the sale had collapsed due to the deposit not being collected pursuant to the terms of the Contact. B.B. also informed them that if the parties wished to go ahead with the sale, then a new Contact of Purchase and Sale would need to be drafted.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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16. On January 14, 2014, a bank draft in the amount of \$10,000 was collected and a copy of a new Contact of Purchase and Sale for the Property was sent to D.W. to present to the seller.
17. On January 15, 2014 a copy of the new Contact of Purchase and Sale signed and accepted by the seller was received and turned into the Brokerage.
18. Both Mr. Chamberlain and Mr. Klatik have no discipline history with the Council.

C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Kirk Victor Chamberlain, Kirk Chamberlain Personal Real Estate Corporation and Grant John Klatik are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
 - a. Kirk Victor Chamberlain and Kirk Chamberlain Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of RESA in that, while acting for the buyer in the purchase of a property located at Harding Street, Summerland, BC (the "Property") in that they:
 - i. failed to promptly provide to the managing broker the original or copy of the accepted offer on the Property, contrary to section 3-2(1)(b) of the Council Rules;
 - ii. failed to keep their managing broker informed of the real estate services being provided and activities being performed on behalf of the brokerage, contrary to section 3-2(2)(a) of the Council Rules; and
 - iii. failed to immediately notify their managing broker that the deposit for the Property had not been received in accordance with the terms of the contract which stated the deposit was due within 48 hours after final subject removal, contrary to section 3-2(2)(b) of the Council Rules.
 - b. Grant John Klatik committed professional misconduct within the meaning of section 35(1)(a) of RESA in that, while acting for the buyer in the purchase of a property located at Harding Street, Summerland, BC (the "Property") in that he:
 - i. failed to promptly provide to the managing broker the original or copy of the accepted offer on the Property, contrary to section 3-2(1)(b) of the Council Rules;
 - ii. failed to keep his managing broker informed of the real estate services being provided and activities being performed on behalf of the brokerage, contrary to section 3-2(2)(a) of the Council Rules; and
 - iii. failed to immediately notify his managing broker that the deposit for the Property had not been received in accordance with the terms of the contract

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

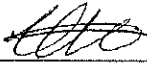
6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any other proceeding of any kind.



Sabinder Sheina, Legal Counsel
Real Estate Council of British Columbia

As to Part B only (Agreed Statement of Facts)

Dated 12 day of May, 2016



Kirk Victor Chamberlain on his behalf and
on behalf of Kirk Chamberlain Personal
Real Estate Corporation

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

Dated 18 day of APRIL, 2016



Grant John Klatik

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

Dated 18 day of APRIL, 2016