

File # 14-522

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

IN THE MATTER OF

DAVID SCOTT PIERCY
(149414)

AND

SCOTT PIERCY PERSONAL REAL ESTATE CORPORATION
(149414PC)

CONSENT ORDER

RESPONDENTS:

David Scott Piercy, Representative,
Island Group Services Inc. dba Engel &
Volkers Vancouver Island, while
licensed with Max Wright Real Estate
Corporation (Vic) dba Sotheby's
International Realty Canada (Vic)

Scott Piercy Personal Real Estate
Corporation, Island Group Services Inc.
dba Engel & Volkers Vancouver Island,
while licensed with Max Wright Real
Estate Corporation (Vic) dba Sotheby's
International Realty Canada (Vic)

DATE OF REVIEW MEETING:

July 7, 2016

DATE OF CONSENT ORDER:

July 19th, 2016

CONSENT ORDER REVIEW COMMITTEE:

C. Lindberg
S. Lynch, Chair
C. Squires

ALSO PRESENT:

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

PROCEEDINGS:

On July 7, 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 David Scott Piercy and Scott Piercy Personal Real Estate Corporation.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by David Scott Piercy, Scott Piercy Personal Real Estate Corporation and on behalf of the Council;

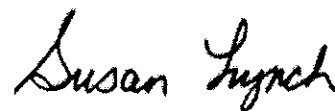
NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that David Scott Piercy and Scott Piercy Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. David Scott Piercy and Scott Piercy Personal Real Estate Corporation each be reprimanded;
2. David Scott Piercy and Scott Piercy Personal Real Estate Corporation 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 this Order;
3. David Scott Piercy, at his own expense, register for and 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 in the time period as directed by the Council;
4. David Scott Piercy and Scott Piercy Personal Real Estate Corporation 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 David Scott Piercy or Scott Piercy Personal Real Estate Corporation 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 19th day of July, 2016 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



S. Lynch, Chair
Consent Order Review Committee

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

IN THE MATTER OF

**DAVID SCOTT PIERCY
(149414)**

AND

**SCOTT PIERCY PERSONAL REAL ESTATE CORPORATION
(149141PC)**

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

The following agreement has been reached between David Scott Piercy ("Mr. Piercy"), Scott Piercy Personal Real Estate Corporation and the Real Estate Council of British Columbia (the "Council").

- A. Mr. Piercy and Scott Piercy Personal Real Estate Corporation hereby consent to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that they each be reprimanded.
- B. Mr. Piercy and Scott Piercy Real Estate Corporation further consent that they be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000 within ninety (90) days of the Order.
- C. Mr. Piercy further consents that he, at his own expense, will register for and 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.
- D. Mr. Piercy and Scott Piercy Personal Real Estate Corporation 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 the Order herein.
- E. Further, Mr. Piercy and Scott Piercy Personal Real Estate Corporation consent to an Order that if they fail to comply with any of the terms of the Order set out above in paragraph A through D, as applicable, 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 RESA.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

F. As a basis for this Order, Mr. Piercy and Scott Piercy Personal Real Estate Corporation acknowledge and agree that the facts set forth herein are correct:

1. Mr. Piercy was at all relevant times licensed as a representative with Sotheby's International Realty Canada (the "Brokerage").
2. Mr. Piercy's licensing history is as follows:

Start Date	End Date	Brokerage	Branch Name	Licence Level	Licence Category
06/10/2014	To Present	Sovi Properties Ltd. Db a Engel & Volkers Vancouver Island (X030447)		Representative	Trading
04/10/2014	05/10/2014	*** Unlicensed ***		N/A	N/A
18/01/2007	03/10/2014	Max Wright Real Estate Corporation db a Sotheby's International Realty Canada Victoria (X028762)	Victoria	Representative	Trading
16/01/2007	17/01/2007	*** Unlicensed ***		N/A	N/A
25/07/2006	15/01/2007	Boorman Investment Co. Ltd. Db a Boorman's (X000374)		Representative	Trading

Scott Piercy Personal Real Estate Corporation Licensing History

Start Date	End Date	Brokerage	Branch Name	Licence Level	Licence Category
21/11/2013	To Present	Scott Piercy Personal Real Estate Corporation (149414PC)		Personal Real Estate Corporation	Trading

3. On August 22, 2012, Mr. Piercy entered into a listing agreement with M.P. for the sale of her property located on Erie Street in Victoria, BC (the "Property"). M.P. did not reside in B.C.
4. On February 7, 2013, Mr. Piercy and M.P. extended the listing agreement to June 30, 2013. When the listing agreement expired at the end of June, M.P. stated that Mr. Piercy suggested she rent the Property while it was listed.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

5. M.P. agreed to allow Mr. Piercy to rent her Property as long as it was kept in showable condition and if he continued to show it.
6. Mr. Piercy secured a potential renter and by email dated July 15, 2013, sent M.P. the terms of the rental that included the tenant's name, start date of the tenancy, monthly rental amount, damage deposit, and stated that the commission would be one month's rent. Mr. Piercy resent the email to M.P. on August 14, 2014 and stated "I am happy to help if you can not get up here."
7. M.P. stated to the Council that she negotiated the rental terms with Mr. Piercy. Mr. Piercy prepared the tenancy agreement and by email dated August 7, 2013, sent it to M.P. and the tenant for signature. M.P. stated she was never provided with a fully executed copy of the tenancy agreement.
8. M.P. also stated that Mr. Piercy coordinated setting up the deposit of rent cheques to her bank account and since she resided full time in Seattle, Mr. Piercy would help manage the rental of her Property.
9. On January 17, 2014, Mr. Piercy sent an email to M.P. with an invoice charging for the referral of a rental tenant. The invoice was on his Brokerage's letterhead, dated September 1, 2013 in the amount of \$2,500 plus GST for "Client rental referral". The invoice stated "make cheque payable to Scott Piercy". M.P. stated that she paid Mr. Piercy \$2,500 to represent her as her property manager.
10. In a statement dated July 28, 2015, provided through his lawyer, Mr. Piercy stated that the \$2,500 was not processed through the Brokerage on the advice of his managing broker. Mr. Piercy stated that when he asked his managing broker whether the payment for \$2,500 should be processed through the Brokerage he was told that since no real estate services were supplied, it was in order for him to receive the payment directly.
11. The above statement was accompanied by an email dated July 28, 2015 from J.L., a licensee and colleague of Mr. Piercy, who stated that he was present during the conversation with Mr. Piercy and his managing broker. J.L. stated that when Mr. Piercy enquired whether a payment from M.P., for referral of a rental client, should be paid to the Brokerage, the managing broker told him that it should not because it was not an office associated transaction.
12. On August 12, 2015, staff at the Council sent the email from J.L., to the managing broker for comment. On the same day the managing broker replied by email stating "I vehemently disagree with this statement from J.L." He further stated "[A]t no time did I enter into any discussion regarding M.P.'s property and the subsequent rental thereof."
13. On April 11, 2014, Mr. Piercy forwarded an email to M.P. concerning the tenant's concerns about a faulty washing machine. Mr. Piercy asked M.P. for instructions

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

on how she wished to proceed. M.P. replied directly to Mr. Piercy by email on April 14, 2016, requesting that he provide her with a formal quote.

14. In a statement dated September 3, 2015, through his lawyer, Mr. Piercy stated the tenants contacted him to express an interest in extending the tenancy for two months. Mr. Piercy also stated that he advised the tenants that they could offset the rent for the two-month extension against the \$10,000 security deposit.
15. An email dated September 23, 2014 from M.P. to Mr. Piercy reveals that M.P. had been making numerous attempts to call Mr. Piercy to find out the status of her tenants. M.P. also stated to Mr. Piercy that although the tenants had extended the tenancy on two occasions, she had not received any rent for the extended months.
16. By email dated September 29, 2014, Mr. Piercy informed M.P. that the tenants were vacating the Property and would have it cleaned. In the same email, Mr. Piercy offered to check the Property for damage and advise M.P. of any problems. He also stated that the outstanding rent for the last month and a half ought to be deducted from the damage deposit.
17. M.P. replied to the above email on September 29, 2014, stating that was not what had been discussed previously. They had agreed that if the tenants stayed another month they would pay another month's rent. M.P. also stated that after the tenants left she would like Mr. Piercy to check the Property and looked forward to receiving his inspection report. She also stated that she would like him to check to make sure that the decks and drains had been cleaned.
18. By return email dated September 29, 2014, Mr. Piercy agreed to M.P.'s request to check that the decks and drains had been cleaned after the tenants vacated the Property.
19. M.P. stated to Council that she had no direct contact with the tenants at her Property at any time during the rental period. M.P. also stated that after the tenants moved in, Mr. Piercy did not show the Property to any potential buyers and did not make attempts to sell the Property.
20. Mr. Piercy's managing broker stated he was not aware of Mr. Piercy's dealings with M.P. in relation to the rental of the Property.
21. Mr. Piercy has offered to reimburse \$2,500 to M.P. by July 31, 2016.
22. Mr. Piercy and Scott Piercy Personal Real Estate Corporation have no prior discipline history with the Council.

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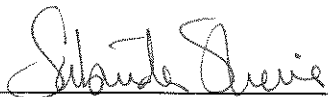
AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

G. 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. Piercy and Scott Piercy Personal Real Estate Corporation are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
 - a. Mr. Piercy and Scott Piercy Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of the RESA, while acting for M.P. in the sale of her property on Erie Street, Victoria, BC (the "Property"), when:
 - i. contrary to section 3(1)(a) of the RESA, Mr. Piercy provided real estate services on behalf of another when he was not licensed to provide those services, in that he provided rental property management services to M.P. by:
 - a. locating tenants for the Property;
 - b. negotiating the rent after consulting with M.P.;
 - c. drafting a tenancy agreement from August 21, 2013 to August 20, 2014;
 - d. coordinating repair of the washing machine between the tenants and M.P.;
 - e. receiving notice from the tenants to extend the tenancy;
 - f. advising the tenants that they could use the security deposit to pay part of the monthly rent;
 - g. advising M.P. of the tenants notice to vacate the Property;
 - h. offering to check the Property for damage after the tenants vacated;
 - i. agreeing to M.P.'s request to check the decks and drains after the tenants vacated the Property; and
 - j. suggesting that M.P. use the damage deposit to cover unpaid rent.
 - ii. contrary to section 7(3)(a) of the RESA, Mr. Piercy provided real estate services other than on behalf of brokerage in relation to which he was licensed, when he provided the rental property management services, set out in the above paragraph (i) and numbered (a) to (j), on his own and not through the brokerage;
 - iii. contrary to section 7(3)(b) of the RESA, Mr. Piercy accepted remuneration in relation to rental property management services, specifically the placement of a tenant in the property, directly from M.P. and not from the brokerage in relation to which he was licensed;
 - iv. contrary to section 3-2(b) of the Council Rules, Mr. Piercy failed to keep the managing broker informed of the real estate services he provided to M.P. on behalf of the brokerage; and

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

- v. contrary to sections 3-3(a) and 3-3(b) of the Council Rules, Mr. Piercy failed to act in the best interests of his client and failed to act in accordance with the lawful instructions of his client, M.P. when he did not follow through with the agreement to continue to show the Property to potential buyers in order to obtain a sale, even after the tenants had moved in.
2. Mr. Piercy and Scott Piercy Personal Real Estate Corporation waive their right to appeal pursuant to section 54 of the RESA.
3. Mr. Piercy and Scott Piercy Personal Real Estate Corporation acknowledge that they have a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Mr. Piercy and Scott Piercy Personal Real Estate Corporation 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. Piercy and Scott Piercy Personal Real Estate Corporation 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.
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**



**David Scott Piercy on his behalf and on
behalf of Scott Piercy Personal Real Estate
Corporation**

**As to Part F only (Agreed Statement of
penalty, Facts)**

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

Dated 4 day of July, 2016

Dated 30th day of June, 2016