

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*

**AND IN THE MATTER OF
DENISE RENEE DECARY**

**WRITTEN REASONS FOR CANCELLATION ORDER UNDER
SECTION 43(4) OF THE *REAL ESTATE SERVICES ACT***

DATE AND PLACE OF HEARING:	July 28, 2016 Office of the Real Estate Council Vancouver, B.C.
DISCIPLINE HEARING COMMITTEE:	T. O'Grady H. Exner G. Martin (Chair)
COUNSEL FOR THE APPLICANT REAL ESTATE COUNCIL OF BC:	Jessica Gossen

INTRODUCTION

An *ex parte* hearing was held on July 28, 2016, pursuant to sections 39, 43(3) and 43(4) of the *Real Estate Services Act* ("RESA") by a Discipline Hearing Committee (the "Committee") of the Real Estate Council of BC (the "Council") to consider an application by the Council to cancel the licence of Denise Renee Decary.

Section 43 of the RESA pertains to discipline orders and states:

- (1) After a discipline hearing, the discipline committee must
 - (a) act under this section if it determines that the licensee has committed professional misconduct or conduct unbecoming a licensee, or
 - (b) in any other case, dismiss the matter.
- (2) If subsection (1) (a) applies, the discipline committee must, by order, do one or more of the following:
 - (a) reprimand the licensee;
 - (b) suspend the licensee's licence for the period of time the committee considers appropriate or until specified conditions are fulfilled;
 - (c) cancel the licensee's licence;

- (d) impose restrictions or conditions on the licensee's licence or vary any restrictions or conditions applicable to the licence;
 - (e) require the licensee to cease or to carry out any specified activity related to the licensee's real estate business;
 - (f) require the licensee to enrol in and complete a course of studies or training specified in the order;
 - (g) prohibit the licensee from applying for a licence for a specified period of time or until specified conditions are fulfilled;
 - (h) require the licensee to pay amounts in accordance with section 44 (1) and (2) [*recovery of enforcement expenses*];
 - (i) require the licensee to pay a discipline penalty in an amount of
 - (i) not more than \$20 000, in the case of a brokerage or former brokerage, or
 - (ii) not more than \$10 000, in any other case.
- (3) An order under subsection (2) may provide that,
- (a) if the licensee fails to comply with the order, or
 - (b) if the licensee fails to comply with one or more specified restrictions or conditions of the licensee's licence,
- a discipline committee may suspend or cancel the licence under subsection (4).
- (4) If the licensee fails to comply as specified by a provision under subsection (3), a discipline committee may, by order, suspend or cancel the licensee's licence, as applicable, without the need for giving the licensee further notice or the opportunity to be heard.

Upon reading the affidavits of Carmen DeFoy, Angie Smith and Janet Murray sworn July 28, 2016 and hearing submissions from legal counsel for the Council, the Committee issued a cancellation order (the "Order") on August 3, 2016, that the licence of Denise Renee Decary (hereafter "Ms. Decary") be cancelled effective immediately pursuant to section 43(4) of the RESA.

These are the written reasons for the Order.

PROCEEDINGS

Background

The Council first licensed Ms. Decary on September 24, 2008, as a representative with 338249 B.C. Ltd. dba Homelife Peninsula Property Management ("Homelife"). She remained licensed with Homelife until May 27, 2014. Between May 28, 2014 and November 13, 2014 Ms. Decary was unlicensed. From November 14, 2014 to the present Ms. Decary has been licensed as representative with Haven Management Co. Ltd.

Ms. Decary was the subject of a Consent Order of the Council dated June 1, 2016 ("June 1, 2016 Order"). The conduct underlying the June 1, 2016 Order related to providing rental property management outside of her brokerage. The June 1, 2016 Order provided as follows:

1. The licence of Denise Renee Decary be suspended for thirty (30) days;
2. Denise Renee Decary, at her own expense, register for and successfully complete the Rental Property Management 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;
3. Denise Renee Decary 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.

The June 1, 2016 Order also stated:

If Denise Renee Decary 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*.

On July 22, 2016, the Council received a complaint that Ms. Decary was providing real estate services during the course of a suspension imposed by the June 1, 2016 Order.

Evidence

Affidavit Evidence of Carmen deFoy sworn July 28, 2016

Carmen deFoy is a compliance officer with the Council. Attached to Ms. deFoy's affidavit was a copy of a letter dated June 1, 2016 from the Council to Ms. Decary (June 1, 2016 Letter) that stated her suspension period was between July 6, 2016 to August 4, 2016 inclusive. Also attached to the June 1, 2016 Letter was a signed copy of the June 1, 2016 Order and a document titled "Procedure to be Followed in Case of Representative/Associate Broker Licence Suspension/Cancellation" which provided detailed instructions with respect to the obligations and restrictions that were applicable during the period of suspension.

The June 1, 2016 Letter also stated that if Ms. Decary failed to comply with any terms of the Order, the Council may suspend or cancel her licence without further notice to her pursuant to sections 43(3) and 43(4) of the RESA.

Ms. deFoy stated that on July 20, 2016, a written complaint was received from Ms. Decary's former managing broker alleging that Ms. Decary was providing real estate services during her period of suspension. Accompanying the complaint were two advertisements from Craigslist for properties for rent at "[REDACTED]" and "Brookwood", which identified the contact person as "T." and listed Ms. Decary's cell phone number to contact. The complaint also had a printout

of an email chain in which Ms. Decary responded to an inquiry made about the [REDACTED] property.

Ms. deFoy commenced an investigation to recover online advertisements related to rental property management services and Ms. Decary. Ms. deFoy located five advertisements that all identified "T.S.", who was Ms. Decary's current managing broker, as the contact person and a cell telephone number that was verified by independent sources as belonging to Ms. Decary.

In the course of her investigation, Ms. deFoy exchanged several text messages with "T." using the listed cell number to arrange a showing of the properties at [REDACTED] and Brookwood. Ms. deFoy also called the cell number which was answered by a woman who said "Denise speaking". When Ms. deFoy asked to speak with T., the woman said that it was she who had in fact been texting with Ms. deFoy. When Ms. deFoy asked for her name, the woman stated it was "Lisa".

Ms. deFoy stated that Lisa made representations about the properties at [REDACTED] and Brookwood, including the rent amounts, whether pets were allowed and the length of the lease. Lisa also told Ms. deFoy that she would call her back with respect to viewing the [REDACTED] property.

Affidavit Evidence of Janet Murray sworn July 28, 2016

Janet Murray is a compliance officer with the Council. Ms. Murray stated that at 6pm on July 21, 2016, she and her husband attended the advertised open house at Brookwood. When they arrived at the property, Ms. Murray stated she saw two women. An older European woman was viewing the property and a slim built white woman, who she later learned was Ms. Decary, was describing the property and telling her that the utilities were included in the rent. Ms. Decary handed the older woman an application and business card and told her that her office contact information was at the bottom of the application. When the older woman left, Ms. Decary introduced herself to Ms. Murray as "Denise". Ms. Decary then provided information about the owners of the property and the type of tenants they were seeking; the areas of the property that the tenants were allowed to use; the parking facilities; that cable and internet as well as the utilities were included in the rent; and that the owners were looking for a one year lease.

When Ms. Murray asked if any other rentals were available, Ms. Decary told her she had another unit available at [REDACTED]. Ms. Murray stated that Ms. Decary handed her an application form that was titled "Haven Properties Application to Rent" and pointed to the contact information on the form and told her to call her and follow up on more rentals.

Ms. Murray stated that when her husband asked if he could take some pictures with his cell phone, Ms. Decary appeared to move in a manner to avoid being included in the pictures. Attached to Ms. Murray's affidavit were two photographs taken by her husband of the person who identified herself as Denise and were later identified to be Ms. Decary.

Ms. Murray stated that when her husband asked for a business card, Ms. Decary said she had handed the last one to the older woman. They all walked outside to her car so she could look for more cards. Ms. Decary gave them a business card of a company that sold car window screens that had her name printed on it. Ms. Decary stated that the cell number on the card was the best way to contact her.

On June 27, 2016, Ms. Murray reviewed Ms. Decary's licensing file at the Council and specifically the photograph submitted with her licensing application. Ms. Murray confirmed that the individual she and her husband spoke with on July 21, 2016, matched the photograph in Ms. Decary's licensing file.

Affidavit Evidence of Angie Smith sworn July 28, 2016

Angie Smith is a senior compliance officer with the Council. Ms. Smith stated that on July 25, 2016, she and a Council auditor interviewed T.S., the managing broker of Haven Management Co. Ltd., about the Craigslist advertisement for an open house at Brookwood. Ms. Smith stated she specifically asked whether the cell phone number and email address that were listed in the advertisement belonged to T.S. T.S. replied that the cell phone number and email address were not his and that they belonged to Denise Decary.

Ms. Smith stated that T.S. was not aware who conducted the open house at Brookwood on July 21, 2016, but in the course of the interview, T.S. spoke with Ms. Decary who confirmed she had conducted the open house.

Submissions by the Council

The Council submitted that the conduct underlying Ms. Decary's June 1, 2016 Order was of significance and relevant to this hearing to demonstrate Ms. Decary's behaviour. Disciplinary proceedings were commenced when the Council learned that between fall 2013 and late spring 2014, Ms. Decary provided rental property management services to approximately 19 properties outside her brokerage. Ms. Decary made a proposal dated May 13, 2016 to the Council whereby she admitted her professional misconduct and agreed to resolve her discipline matter. The consent order proposal was accepted by the Consent Order Review Committee on May 26, 2016 and the order was signed on June 1, 2016.

Included in her proposal and the terms of the June 1, 2016 Order, to which Ms. Decary agreed, was a provision that if Ms. Decary was not in compliance with the terms of the order, the Council could suspend or cancel her licence by virtue of sections 43(3) and 43(4) of the RESA. A letter was sent to Ms. Decary on June 1, 2016 that specified the dates of her suspension period and again stated that if she was not in compliance with the terms of the order, the Council could suspend or cancel her license in accordance with sections 43(3) and 43(4) of the RESA. In addition, Ms. Decary was sent a document that identified what she could and could not do as a suspended licensee. The document specifically stated she could not show property and advertise during her suspension period.

The Council submitted that based on the affidavit evidence of Ms. deFoy, Ms. Murray and Ms. Smith, it had met the criteria for an order under section 43(4) of the RESA. The evidence established that Ms. Decary had breached the terms of her June 1, 2016 Consent Order. The Council submitted that Ms. Decary demonstrated a blatant disregard for the June 1, 2016 Order.

The Council submitted that Ms. Decary not only defied the terms of an Order to which she had agreed, but was also deceptive and mislead the public during the course of her suspension. This was demonstrated when she advertised rental properties and used her managing broker's name as the contact person but provided her contact information in order to speak with prospective clients. Further evidence of deception was exhibited when Ms. Decary answered Ms. deFoy's telephone call by stating "Denise speaking" and told her that she and not "T." had been responding to Ms. deFoy's text enquiries. And when Ms. deFoy asked for her to repeat her name, Ms. Decary stated it was "Lisa". Such deliberate conduct to mislead demonstrated that Ms. Decary knew that she was not acting in compliance with the terms of the June 1, 2016 Order. Ms. Decary also demonstrated a flagrant disregard of the June 1, 2016 Order when she blatantly conducted open houses and did not try to hide her identity.

The Council submitted it was of paramount importance that Council's orders should be complied with and Ms. Decary's conduct undermined the authority and the effectiveness of the Council to regulate its licensees.

The Council also submitted that Ms. Decary's conduct raised an issue as to her governability. Counsel submitted that to have a licence provide real estate services is a privilege and not a right. The privilege carries significant obligations and the public is entitled to assume that the services they are seeking are provided by a person entitled to provide those services. Ms. Decary's conduct undermines public confidence in the real estate industry to regulate its licensees.

Counsel referred to the *McLean* case, a decision of the BC Law Society that sets out factors to consider in assessing whether a person is deemed ungovernable and submitted such factors could also be applied to a licensee. Counsel also submitted that section 43(4) of the RESA was used by the Council in the matter of the Lester Lin Cancellation Order dated December 17, 2015. In that case, the evidence satisfied a discipline committee that Mr. Lin was providing real estate services during this period of suspension and Mr. Lin's license was cancelled effective immediately.

The Council submitted that it was in the public interest to make an order under section 43(4) of the RESA. Ms. Decary's conduct showed a deliberate and calculated breach of the June 1, 2016 Order and such a disregard of the rules must be dealt with in a swift and effective way.

REASONS FOR DECISION

At the conclusion of the hearing, the Committee considered all the affidavit evidence and the submissions of the Council.

The Committee determined that Ms. Decary knowingly and deliberately breached the terms of her June 1, 2016 Order. It was satisfied that the evidence demonstrated Ms. Decary knowingly and deliberately provided real estate services within the meaning of RESA during the period she was suspended. This was supported by the following evidence:

- i) placing advertisements for rental properties on Craigslist;
- ii) advertising her managing broker's name as the contact person but providing her personal cell phone and email contact information;
- iii) answering an enquiry about a rental property made to her cell phone with the greeting "Denise speaking" and when asked to repeat her name stating it was "Lisa";
- iv) conducting open houses and having her identity confirmed;
- v) presenting business cards with her name and cell phone number for a business other than where she was licensed; and
- vi) confirmation from her managing broker that she was conducting open houses.

The Committee held that the evidence demonstrated Ms. Decary acted in a deceptive manner. It noted that Ms. Decary's actions were carried out with an intent to avoid detection, which confirmed that she was cognizant of what she should not have been doing while suspended. The Committee also held that Ms. Decary exhibited a flagrant disregard for the Council by not complying with the June 1, 2016 Order. In doing so, she undermined the regulatory authority of the Council and its effectiveness in carrying out its mandate to protect the public interest by regulating its members.

In addition, the Committee agreed with the Council's submission that Ms. Decary's conduct raised an issue as to her governability. The Committee noted that the complaint, discipline and consent order process take many months to complete and by agreeing to the June 1, 2016 Order, attempts had been made to rehabilitate Ms. Decary. The Committee determined it was not necessary to keep giving Ms. Decary chances to redeem herself. Ms. Decary had the required education and training and knew what was expected of her when she admitted her misconduct and proposed the agreed to terms of the consent order. Instead, she displayed a deliberate disregard of the June 1, 2016 Order.

The Committee noted that it was important to send a message to all of its industry members that Council orders were to be obeyed. The Council must uphold and protect the public interest in relation to the conduct and integrity of licensees and it does this by ensuring that all licensees provide real estate services in compliance with all of the public protection provisions contained in the RESA and its related legislation. Ms. Decary's conduct deprived the public of the protections created by the government and the Council.

The Committee was satisfied there had been conduct for it to make an order under section 43(4) of the RESA, in that Ms. Decary failed to comply with the June 1, 2016 Order when she provided real estate services during the time she was suspended and that cancellation of her licence was the appropriate order.

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DECISION

The Discipline Hearing Committee ordered on August 3, 2016 that:

1. The licence of Denise Renee Decary be canceled effective immediately pursuant to sections 43(4) of the *Real Estate Services Act*.
2. The Council will not consider an application for re-licensing from Ms. Decary:
 - a. for a period of one (1) year from the date of this Order;
 - b. until the enforcement expenses and any other monies owing to the Council have been paid; and
 - c. unless she has successfully completed the remedial Rental Property Management Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the six month period preceding her application for re-licensing.

DATED at VANCOUVER, BRITISH COLUMBIA THIS 3rd DAY OF August, 2016.

FOR THE DISCIPLINE HEARING COMMITTEE



Gerry Martin
Discipline Hearing Committee Chair