

File # 14-441 and 15-298

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

IN THE MATTER OF
SAMUEL EVERARD WHIFFIN
(138294)

AND

HOLLAND PARK PROPERTY MARKETING LTD.
(X031105)

CONSENT ORDER

RESPONDENTS: Samuel Everard Whiffin, Managing
Broker, Holland Park Property
Marketing Ltd.
Holland Park Property Marketing Ltd.

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
J. Moore, 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 Samuel Everard Whiffin and Holland Park Property Marketing Ltd.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Samuel Everard Whiffin, Holland Park Property Marketing Ltd. 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 Samuel Everard Whiffin and Holland Park Property Marketing Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Samuel Everard Whiffin and Holland Park Property Marketing Ltd. each be reprimanded;
2. Samuel Everard Whiffin and Holland Park Property Marketing Ltd. be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of this Order; and
3. Samuel Everard Whiffin and Holland Park Property Marketing Ltd. be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within sixty (60) days from the date of this Order.

If Samuel Everard Whiffin or Holland Park Property Marketing Ltd. 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

Attch.

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

IN THE MATTER OF
SAMUEL EVERARD WHIFFIN
138294

AND

HOLLAND PARK PROPERTY MARKETING LTD.
X031105

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached among Samuel Everard Whiffin ("Mr. Whiffin") and Holland Park Property Marketing Ltd. ("Holland Park") and the Real Estate Council of British Columbia (the "Council"),

- A. Mr. Whiffin on behalf of Holland Park hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (the "RESA") that Holland Park be reprimanded.
- B. Mr. Whiffin hereby consents to an Order to be made pursuant to sections 41 and 43 of the RESA that he be reprimanded.
- C. Mr. Whiffin and Holland Park hereby consent to an Order that they be jointly and severally liable to:
 - (a) pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of the Order herein; and
 - (b) pay enforcement expenses to the Council in the amount of \$1,250.00 within sixty (60) days of the date of the Order herein.
- D. Mr. Whiffin and Holland Park hereby 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.
- E. As a basis for this Order Mr. Whiffin and Holland Park acknowledge and agree that the facts set forth herein are correct:

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

Page 2

1. Holland Park is licensed as a brokerage and has been so licensed since March 27, 2014.
2. Mr. Whiffin is currently licensed as a managing broker with Holland Park and has been licensed as such at all material times.

Start Date	End Date	Brokerage	Licence Level	Licence Category
2014/03/27	Present	Holland Park Property Marketing Ltd. (X031105)	Managing Broker	Trading

3. The fiscal year end of Holland Park was November 30, 2014.
4. A letter dated December 1, 2014, was sent from the Council to Holland Park advising that the accountant's report, brokerage activity report and review engagement report and financial statements required by section 7-7(1) of the Council Rules (collectively, the "Accountant's Report") were due to be received by the Council on or before March 30, 2015.
5. A letter dated April 3, 2015 was sent from the Council to Holland Park advising that if the Accountant's Report was not received within 30 days of the due date, a Notice of Discipline Hearing would be issued.
6. A letter dated May 7, 2015 was sent from the Council to Holland Park advising that the file had been forwarded to the Council's legal department, as the Council had yet to receive a completed Accountant's Report for Holland Park.
7. On June 2, 2015 a Notice of Discipline Hearing was issued to Holland Park and Mr. Whiffin.
8. On June 11, 2015 the Council conducted an audit of the brokerage. On August 21, 2015, Mr. Holland was asked to remedy certain outstanding issues identified during the audit, and respond to outstanding queries from, and provide various copies of bank statements and reconciliations to, the Council by September 11, 2015.
9. On October 7, 2015, the Accountant's Report was received from Holland Park in a form acceptable to Council. This completed the requirement for the filing of the Accountant's Report.
10. On October 15, 2015, Mr. Holland was asked to respond to the Council by November 5, 2015, with respect to certain issues that had been reported by the brokerage's external accountant in the 'Notes to the Financial Statements' that were included in the Accountant's Report filing.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

Page 3

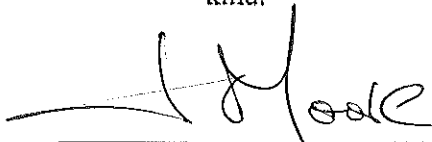
11. Between September 2015 and February 2016, the Council sent Mr. Whiffin various reminders to respond to outstanding requests by the Council with respect to the audit findings and Accountant's Report filing.
12. On January 18, 2016, Mr. Whiffin provided responses acceptable to the Council with respect to the outstanding issues identified in the audit.
13. On February 18, 2016, Mr. Whiffin provided responses acceptable to the Council with respect to the issues identified in the Accountant's Report filing.
14. There is no previous discipline history for Mr. Whiffin or for Holland Park.

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. Whiffin and Holland Park are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
 - (a) Holland Park committed professional misconduct within the meaning of section 35(1)(a) of RESA by contravening section 7-7(1) of the Council Rules in that it failed to file an Accountant's Report with the Council for the year ending November 30, 2014 on or before March 31, 2015; and,
 - (b) Mr. Whiffin committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that he:
 - (i) failed to fulfill his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the RESA;
 - (ii) failed to ensure that the Accountant's Report was filed with the Council on or before March 31, 2015 contrary to section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules;
 - (iii) failed to promptly respond to the Council's correspondence dated August 21, 2015, with respect to certain issues identified during an audit conducted at the brokerage on June 11, 2015, and further, in the Office and Records Inspection Report dated July 3, 2015, contrary to section 2-19 of the Council Rules; and
 - (iv) failed to promptly respond to the Council's correspondence dated October 15, 2015, with respect to certain issues identified in the 2015 Accountant's Report filing, contrary to section 2-19 of the Council Rules.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER


2. Mr. Whiffin and Holland Park hereby waive their right to appeal pursuant to section 54 of the RESA.
3. Mr. Whiffin and Holland Park 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. Whiffin and Holland Park 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. Whiffin and Holland Park 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, 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.



Janice L. Moore, Legal Counsel
Real Estate Council of British Columbia

As to Part E only (Agreed Statement of Facts)

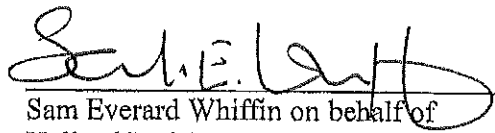
Dated 15th day of APRIL, 2016



Sam Everard Whiffin

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

Dated 15th day of APRIL, 2016



Sam Everard Whiffin on behalf of
Holland Park Property Marketing Ltd.

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

Dated 15th day of APRIL, 2016