

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*

S.B.C. 2004, c. 42

AND

IN THE MATTER OF

VICTOR MIRONYUK

(137819)

CONSENT ORDER

RESPONDENT: Victor Mironyuk, Representative,
TRG The Residential Group
Downtown Realty Ltd. dba TRG The
Residential Group Downtown Realty

DATE OF REVIEW MEETING: February 1, 2016

DATE OF CONSENT ORDER: February 15, 2016

CONSENT ORDER REVIEW COMMITTEE: C. Brown
M. Leslie
S. Lynch, Chair
E. Mignosa

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

PROCEEDINGS:

On February 1, 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 Victor Mironyuk.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Victor Mironyuk and on behalf of the Council;

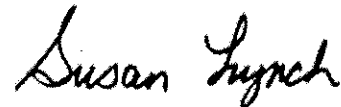
NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Victor Mironyuk committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that Victor Mironyuk:

1. be reprimanded;
2. pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of this Order;
3. at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course, as provided by Sauder School of Business at the University of British Columbia in the time period as directed by the Council;
4. pay enforcement expenses of this Consent Order to the Council in the amount \$1,500.00 within sixty (60) days from the date of this Order.

If Victor Mironyuk fails to comply with any term of this Order, the Council may suspend or cancel his licence without further notice to him, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 15th day of February, 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

VICTOR MIRONYUK
(137819)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Victor Mironyuk ("Mr. Mironyuk") and the Real Estate Council of British Columbia (the "Council").

- A. Mr. Mironyuk hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded; pay a discipline penalty of \$2,500 within ninety (90) days of this Order; and 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 within the time period as directed by the Council. Further, he agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500 within sixty (60) days from the date of the Order herein. Mr. Mironyuk further consents to an Order that if he fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel his licence without further notice to him pursuant to section 43(3) and 43(4) of the *Real Estate Services Act* ("RESA").
- B. As a basis for this Order, Mr. Mironyuk acknowledges and agrees that the facts set forth herein are correct:
1. Mr. Mironyuk was at all relevant times licensed as a representative with TRG The Residential Group Downtown Realty (the "Brokerage").
 2. Mr. Mironyuk 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>
03/01/2007	Present	TRG The Residential Group Downtown Realty Ltd. dba TRG The Residential Group	Representative	Trading

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

Downtown Realty(X028846

19/08/2004 03/01/2007 Dexter Properties Inc. Representative Trading
(VanHmr) dba Dexter
Associates Realty (VanHmr)
(X028080)

06/06/2003 19/08/2004 Dexter Properties Inc. (Van2) Representative Trading
dba Dexter Associates Realty
(Van2) (X022816)

3. Mr. Mironyuk operates a website which promotes his real estate services. In or about June 2014 he advertised a "BC Flat Fee MLS® Listing Power Package" ("Listing Package"). The Listing Package fees are comprised of an initial payment of \$499 and upon sale of the property an additional administrative brokerage fee in the amount of \$995 payable directly to the Brokerage
4. The advertisement for the Listing Package required an upfront payment in the amount of \$499 payable online via paypal. Upon receipt of the fee, the listing agreement and related paperwork was completed and processed.
5. Mr. Mironyuk stated to Council, by letter dated August 19, 2014, that before advertising the Listing Package on his website he spoke with Mr. V., one of his managing brokers to explain the promotion on his website and enquire whether the Brokerage would process credit card payments. He stated that Mr. V. told him that the Brokerage did not and could not process credit card payments for clients.
6. Mr. Mironyuk further stated that after he spoke with Mr. V., he conducted online research and found numerous licencees in the province who offered similar promotions and accepted online payment through Paypal for the initial listing fee. He stated that he contacted one licensee that had a website advertising an upfront fee listing program who confirmed receiving Paypal payments online. Relying on this information, Mr. Mironyuk stated he then created his website offering the Listing Package with payments to be made online via Paypal.
7. Mr. Mironyuk stated that the \$499 fee was collected by him directly via Paypal. He further stated that the fees which he collected online from clients were not delivered to the Brokerage.
8. In response to Council's investigation, Mr. L., another managing broker and business partner of Mr. V. sent a written response dated August 25, 2014. He stated that he had no knowledge of Mr. Mironyuk's website and never gave him any advice with respect to accepting payment directly online through credit cards or Paypal.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

9. Mr. L. also stated that he spoke to Mr. V. who confirmed that he spoke with Mr. Mironyuk in early 2013 with respect to accepting credit cards and told him "very clearly that he cannot do this as it is against Council Rules." Mr. L further stated that he asked Mr. V. to submit a statement regarding this fact.
10. Mr. V. confirmed to Council, by letter dated August 26, 2014, that he spoke to Mr. Mironyuk in early 2013 when Mr. L was out of town. He stated that he told Mr. Mironyuk that the Brokerage would not accept credit card payments from his website. Mr. V. also stated that "He [Mr. Mironyuk] then asked about receiving payment through Paypal like other websites are doing and I informed him NO you cannot do this, all payments must be made through your Brokerage."
11. Mr. V stated that he received a call from the Council inquiring about Mr. Mironyuk's website. When he saw the website he was surprised to see reference to Paypal. He stated he called Mr. Mironyuk and told him he was breaking Council Rules and to remove that reference from the website and have clients send a checque to the Brokerage for listing payment.
12. In June 2014, Mr. V. asked Mr. Mironyuk to contact the Council regarding his website. Mr. Mironyuk spoke with staff at the Council who informed him that he was in contravention of the RESA by directly collecting payments online via Paypal.
13. Immediately after speaking with Council, Mr. Mironyuk removed the Paypal payment option from his website. The website was amended to state that the fee for the Listing Package was to be delivered to the Brokerage or mailed by cheque payable to the Brokerage.
14. Mr. Mironyuk provided a list of properties and Paypal receipts.
15. Mr. Mironyuk accepted responsibility for his actions and acknowledged that he made an improper decision to accept payments directly from his clients. He states that he has familiarized himself with the relevant section of the RESA and that his actions will not be repeated.
16. On or about September 8, 2015, Council staff spoke with Mr. Mironyuk who denied having a conversation with Mr. V. about accepting Paypal payments on his website. Accordingly, he states he was never told by Mr. V. that he could not accept Paypal payments directly.
17. By email to Council dated September 9, 2015, Mr. V. stated he wanted to clarify some points in his letter dated August 26, 2014. He stated:

"The first paragraph has 2 statements, the first is Victor did call and asked [s/c] if the company could help with credit card payment from clients who want to put their listing on MLS. I informed him the company would not accept credit card payments.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The second statement about using Paypal is not clear to me if this question was asked by Victor. I was at the time going through another file with RECBC and PayPal being used by another Realtor in the office which I was trying to get the Realtor to stop using it on their website but they refused and I submitted their license back to the Council. I may have put that statement in the letter confusing it with the other file. Victor has commented to me that he never asked about PayPal and if [sic] had and was told NO he would never have started it, but he saw other websites using it so he put it on his website."

18. Mr. Mironyuk has no prior discipline history with the Council.

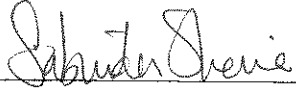
C. Proposed Acceptance of Findings and Waiver

Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Victor Mironyuk is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:

1. Victor Mironyuk committed professional misconduct within the meaning of section 35(1)(a) of the RESA as follows:
 - (a) contrary to section 27(1) (a) and (b) of the RESA he collected and received fees online via paypal, in relation to real estate transactions offered through his website and failed to promptly pay or deliver the fees received by him from, for or on behalf of his clients to his brokerage, TRG The Residential Group Realty; and
 - (b) he contravened section 3-4 of the Council Rules by failing to act honestly and with reasonable care and skill when he advertised online payment via Paypal for real estate services.
2. Mr. Mironyuk hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Mr. Mironyuk acknowledges that he has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Mr. Mironyuk acknowledges and is 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. Mironyuk acknowledges and is 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.

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 20 day of January, 2016



Victor Mironyuk

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

Dated 19 day of January, 2016