

CITATION: Ratcliff (Re), 2024 BCSRE 25

Date: 2024-04-23

File # 18-397

BC FINANCIAL SERVICES AUTHORITY

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended**

AND

IN THE MATTER OF

**LEWIS NEIL RATCLIFF
(172363)**

AND

**LEWIS RATCLIFF PERSONAL REAL ESTATE CORPORATION
(172363PC)**

CONSENT ORDER

[This Order has been redacted before publication.]

RESPONDENTS: Lewis Neil Ratcliff, Representative Trading, Island Group Services Inc.
dba Engel & Volkers Vancouver Island (Victoria)

Lewis Ratcliff Personal Real Estate Corporation

DATE OF CONSENT ORDER: April 23, 2024

COUNSEL: Gareth Reeves, Senior Legal Counsel for the BC Financial Services
Authority

PROCEEDINGS:

On April 23, 2024, the Superintendent of Real Estate (the "Superintendent"), or the Superintendent's authorized delegate, of the BC Financial Services Authority ("BCFSA") accepted the Consent Order Proposal (the "Proposal") submitted by Lewis Neil Ratcliff ("L Ratcliff"), on their own behalf and on behalf of Lewis Ratcliff Personal Real Estate Corporation ("L Ratcliff PREC").

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by L Ratcliff, on their own behalf and on behalf of Lewis Ratcliff Personal Real Estate Corporation.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and in particular having found that L Ratcliff and Lewis Ratcliff Personal Real Estate Corporation committed professional misconduct within the meaning of sections 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* (“RESA”) and sections 30(a) (previously 3-3(a)), 30(d) (previously 3-3(d)), 34 (previously 3-4), and 57 (previously 5-11) of the *Real Estate Services Rules* (the “Rules”) and section 8.2(4) of the *Real Estate Services Regulation*, pursuant to section 43 of the RESA the Superintendent orders that:

1. L Ratcliff and L Ratcliff PREC jointly and severally pay a discipline penalty to BCFSA in the amount of \$40,000 within four (4) months from the date of this Order; and
2. L Ratcliff and L Ratcliff PREC jointly and severally pay enforcement expenses to BCFSA in the amount of \$3,500 within four (4) months from the date of this Order.

If L Ratcliff and/or L Ratcliff PREC fail to comply with any term of this Order, the Superintendent may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 23rd day of April, 2024 at the City of Vancouver, British Columbia.

Superintendent of the BC Financial Services Authority

“Original Signed by Jonathan Vandall”

Jonathan Vandall
Delegate of the Superintendent of Real Estate
Province of British Columbia

Attch.

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CONSENT ORDER PROPOSAL

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Lewis Neil Ratcliff ("L Ratcliff") on his own behalf and on behalf of Lewis Ratcliff Personal Real Estate Corporation ("L Ratcliff PREC") to the Superintendent of Real Estate (the "Superintendent") of the BC Financial Services Authority ("BCFSA") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, L Ratcliff on his own behalf and on behalf of L Ratcliff PREC and the Superintendent have agreed upon the following facts:

1. L Ratcliff was first licensed as a representative to provide trading services on November 25, 2015.
2. L Ratcliff PREC was first licensed on November 25, 2017.
3. L Ratcliff was at all relevant times licensed as a trading representative with Engel & Volkers Vancouver Island's Victoria branch (X035133) (the "Brokerage").
4. In February 2017, L Ratcliff met with [Seller 1], the owner of a property located at [Property 1], North Saanich, BC, [Postal Code Redacted] (the "Property").
5. [Seller 1] was 80 years old when she first met L Ratcliff.
6. In the Spring of 2017, [Seller 1] was seeking to sell the Property via a private sale and did not wish to list her property on the Multiple Listing Service.
7. On April 11, 2017, [Seller 1] entered into a Multiple Listing Contract authorizing Engel & Volkers Vancouver Island to list the Property between April 12, 2017 and July 12, 2017.
8. On that same date, [Seller 1] signed a "Working With a Realtor (Designated Agency)" form indicating that L Ratcliff was the designated agent for [Seller 1].

9. The Property was not listed on the Multiple Listing Service. L Ratcliff found a buyer through his previous contacts.
10. On April 12, 2017, L Ratcliff prepared a Contract of Purchase and Sale for the Property on behalf of [Company 1] offering to purchase the Property for \$1,500,000 with completion and adjustment dates on June 30, 2017 and the possession date on July 1, 2017 (the "CPS").
11. On that same date, [Individual 1], the director of [Company 1], signed a "Working With a Realtor (Designated Agent)" form on behalf of [Company 1] confirming L Ratcliff was the designated agent for [Company 1].
12. L Ratcliff met with [Seller 1] and presented the revised Contract to her. [Seller 1] signed in acceptance of the CPS.
13. Despite L Ratcliff not having experience drafting contracts of purchase and sale regarding rezoning, L Ratcliff did not consult with his managing broker at the time before drafting the CPS and presenting it to [Seller 1] or [Company 1] for acceptance.
14. The CPS contained the following deficiencies:
 - a. L Ratcliff completed sections 21(A) and 21(B) providing for agency disclosure as an agent for both [Seller 1] and [Company 1] instead of section 21(C) providing that L Ratcliff was in a limited dual agency relationship with [Seller 1] and [Company 1];
 - b. Included a condition precedent, clause 7, stating "Subject to Buyer receiving approval from City of North Saanich to rezone property at [Property 1]. This is for the sole benefit of the buyer", which was open-ended in that it did not include a date by which the buyer needed to provide notice that the condition had been satisfied or waived; and
 - c. Included a clause, clause 6, stating "The Buyer reserves the right to assign this contract in whole or in part to any third party without further notice to the Seller; said assignment not to relieve the Buyer from his or her obligation to complete the terms and conditions of this contract should the assignee default.", which was contrary to clause 20A stating "RESTRICTION ON ASSIGNMENT OF CONTRACT: The Buyer and the Seller agree that this Contract: (a) must not be assigned without the written consent of the Seller; and (b) the Seller is entitled to any profit resulting from an assignment of the contract by the Buyer or any subsequent assignee."
15. Despite the inclusion of clause 6, L Ratcliff did not provide [Seller 1] with a "Notice to Seller Regarding Assignment Terms" at any time.
16. L Ratcliff said he did not know the "Notice to Seller Regarding Assignment Terms" form was required.
17. During the April 12, 2017 meeting at which [Seller 1] signed the CPS, [Seller 1] also signed a "Consent to Designated Agent Acting for Both Buyer/Tenant and Seller/Landlord and to Limiting The Scope of the Agency Relationship" agreement (the "Dual Agency Agreement"). The Dual Agency Agreement provided that L Ratcliff would act as limited dual agent for both [Seller 1] and [Company 1] and modifying the duties owed by L Ratcliff to [Seller 1] and [Company 1] accordingly. It stated that L Ratcliff would "deal with [[Company 1]] and [[Seller 1]] impartially".

18. On April 12, 2017, L Ratcliff also incorrectly prepared a Disclosure of Remuneration form disclosing remuneration of 3% on the first \$100,000 and 1.5% on the balance of the purchase price to [Company 1], but completed the first portion of Part B entitled "Disclosure of Commission When Acting for One Party" and not the second portion of Part B entitled "Disclosure of Commission When Acting as Limited Dual Agent" as required by the form.
19. L Ratcliff did not fully explain to [Seller 1] and did not ensure that she understood that, by him changing from a designated agent to a limited dual agent, he would no longer be acting in her best interests and that she would no longer have an agent in the transaction acting solely in her best interests before she signed the Dual Agency Agreement.
20. L Ratcliff did not recommend that [Seller 1] seek independent professional advice to ensure she properly understood the agency relationship or the change in agency relationship prior to signing the Dual Agency Agreement.
21. L Ratcliff did not advise [Seller 1] to seek independent professional advice in respect of the rezoning of the Property, how the process would proceed, or how long it would take before she entered into the CPS.
22. L Ratcliff did not provide [Seller 1] with information regarding the risks to her in the event the CPS was assigned and did not provide her with the required "Notice to Seller Regarding Assignment Terms" form.
23. On about April 13, 2017, L Ratcliff learned that the District of North Saanich had placed a hold on rezoning applications in relation to the Property and that as a result, the timing for future rezoning was not certain.
24. On April 22, 2017, L Ratcliff prepared and had [Copmany 1] and [Seller 1] sign a Contract of Purchase and Sale Amendment to Remove Subjects form (the "Subjects Form") for the purpose of both removing subjects and amending the CPS. The form purported to remove conditions precedent 1-5 which were intended to be removed and also clause 6 and condition precedent 7 which were not intended to be removed. Further, the form amended the CPS to insert a clause, contrary to the form's purpose, which is to remove conditions precedent. The inserted clause, clause 8, stated the following: "Seller agrees to complete purchase of [Property 1] within 30 days of rezoning approval from City of North Saanich."
25. L Ratcliff also inserted an interlineation into clause 8 stating "Completion, adjustment, & Possession dates will be adjusted upon rezoning approval" on the Subjects Form but did not have [Seller 1] or [Company 1] initial that interlineation.
26. Clause 7 and clause 8 together, favoured [Company 1] because it effectively permitted [Company 1] to extend the CPS indefinitely without paying a deposit.
27. L Ratcliff did not explain to [Seller 1], before she signed the Subjects Form, that amending the CPS to include clause 8 would allow the buyer to effectively extend the completion date indefinitely while not making payment of a deposit.
28. The completion date of June 30, 2017 passed without the rezoning condition being fulfilled.
29. At the end of June 2017, [Seller 1] began to question the validity of the CPS and advised L Ratcliff that they wished to terminate the listing contract as they had wanted a quick sale.

30. On July 21, 2017, L Ratcliff and the managing broker of the brokerage, [Managing Broker 1] met with [Seller 1], and her children, [Individual 2] and [Individual 3], to discuss the rezoning process and adding a date to the rezoning clause.
31. On July 24, 2017, L Ratcliff prepared a proposed amendment to the CPS which sought to set out a deadline for the rezoning to be satisfied on or before April 12, 2018 or the CPS would then expire and become void.
32. Nether [Seller 1] nor [Company 1] endorsed the amendment.
33. No further communication occurred between [Seller 1] and L Ratcliff until April 2018.
34. On March 9, 2018, [Seller 1] relisted the Property and accepted a new offer-to-purchase for the Property while represented by her son [Licencee 1] of [Brokerage 1] and entered into a new contract of purchase and sale with the buyer, [Company 2] ("[Company 2]"). The contract with [Company 2] also contained a condition precedent that the sale of the Property was subject to rezoning.
35. L Ratcliff and [Company 1] took the position that the original CPS remained valid and binding and superseded the March 9, 2018 contract with [Company 2].
36. On June 21, 2018, [Lawyer 1], legal counsel for [Seller 1], wrote to [Company 1]; [Company 3], a related company to [Company 1]; and [Individual 1] raising various issues with the enforceability of the CPS and demanding that [Company 1] stop making representations that it had a valid contract to purchase the Property.
37. On June 22, 2018, [Lawyer 2], legal counsel for [Company 1], wrote to [Lawyer 1] to affirm the CPS and indicate his client intended to proceed with the purchase of the Property.
38. The contract with [Company 2] expired without subjects being removed by [Company 2], due to the Capital Regional Housing Commission's refusal to consider rezoning while there was an ongoing dispute between [Company 1] and [Company 2] as to whom was the rightful buyer of the Property.
39. Had the sale of the Property contemplated by the CPS completed, L Ratcliff stood to gain \$44,161.50 in commission plus GST.
40. The CPS has not completed to date and the Property remains owned by [Seller 1].
41. On August 1, 2018, [Seller 1] filed a complaint with the Victoria Real Estate Board ("VREB") against L Ratcliff concerning the Property.
42. On August 1, 2019, the VREB issued a summary of the proceeding against L Ratcliff confirming that the Professional Standards Appeal Board of the VREB had confirmed the Hearing Panel's decision that L Ratcliff had breached certain provisions of the REALTOR Code of Ethics and had issued L Ratcliff a reprimand, a \$7,500 fine (plus GST), and required him to complete the UBC Real Estate Trading Services Remedial Education Course within 90 days.
43. L Ratcliff has no prior discipline history.
44. A Second Amended Notice of Discipline Hearing was issued on March 12, 2024.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, L Ratcliff and L Ratcliff PREC propose the following findings of misconduct be made by the Superintendent:

1. Between April 1, 2017 to April 31, 2018 L Ratcliff and L Ratcliff PREC committed professional misconduct within the meaning of section 35(1)(a) and/or 35(1)(d) of the RESA while licensed as a trading representative at Engel & Volkers Vancouver Island (Victoria) when they:
 - a. failed to advise their client, [Seller 1], the seller, to seek professional advice on matters outside of their expertise in respect of the rezoning of property prior to the seller entering into and/or amending a contract of purchase of sale ("CPS") for a property located at [Property 1], North Saanich, BC (the "Property") that included a condition precedent that the sale was subject to the Property being rezoned contrary to section 30(d) of the Rules (previously Rules, s 3-3(d)) [*advise client to seek professional advice on matters outside expertise*] and section 34 of the Rules (previously Rules, s 3-4) [*act with reasonable care and skill*];
 - b. demonstrated incompetence in preparing and amending a contract of purchase of sale for the Property that contained multiple errors, conflicting subject clauses and open-ended clauses contrary to section 34 of the Rules (previously Rules, s 3-4) [*act with reasonable care and skill*], including by:
 - i. failing to include typical contract language for a transaction involving rezoning to ensure the parties clearly understood their respective commitments and obligations;
 - ii. inserting a condition precedent (clause 7) in the CPS addendum for the Property with regard to the buyer receiving approval from the City of North Saanich to rezone the Property that was open-ended in that it did not include a date by which the buyer needed to provide notice that the condition had been satisfied or waived;
 - iii. inserting an amendment to the CPS for the Property under the "Amendment to Remove Subjects Form" on April 22, 2017 contrary to the form's purpose;
 - iv. listing both conditions precedent being removed and not being removed under the "Amendment to Remove Subjects Form" on April 22, 2017 contrary to the form's purpose;
 - v. amending the CPS to include a condition precedent which adjusted the completion date, adjustment date and possession date upon rezoning approval which, when read together with clause 7 of the CPS, could permit the buyer to extend the completion date indefinitely or could render the CPS void for uncertainty;
 - vi. failing to ensure that the buyer and seller initialed a modification by interlineation to the language of clause 8 under the "Amendment to Remove Subjects Form" on April 22, 2017 prior to executing the form;

- vii. inserting a clause (clause 6) in the CPS addendum for the Property, which reserved the right for the buyer to assign the CPS without notice to seller which was contrary to an assignment restriction in section 20A of the CPS; and/or
- viii. failing to properly complete the required limited dual agency relationship licensee information in section 21 of the CPS regarding Agency Disclosure (Part C);
- c. failed to properly complete the limited dual agent section of the "Disclosure of Remuneration Form" as the representative for both the buyer and seller in Part B (Disclosure of Commissions) as required in the transaction pursuant to section 57 of the Rules (previously section 5-11 of the Rules), contrary to section 34 of the Rules (previously Rules, s 3-4) [*act with reasonable care and skill*];
- d. failed to provide a "Notice to Seller Regarding Assignment Terms" form to [Seller 1], the seller, contrary section 8.2(4) of the Regulation and section 34 of the Rules (previously Rules, s 3-4) [*act with reasonable care and skill*];
- e. prior to entering into a dual agency with [Seller 1], the seller, failed to adequately explain to and/or ensure the seller understood and/or was capable of understanding the consequence of changing the relationship with L Ratcliff from designated agency to dual agency and/or failing to recommend that the seller seek professional advice to ensure proper understanding of the agency relationship prior to entering into a dual agency with L Ratcliff, contrary to section 34 (previously Rules, s 3-4) [*act with reasonable care and skill*] and section 30(a) of the Rules (previously Rules, s 3-3(a) [*act in the best interests of the client*]); and
- f. failed to act with impartiality while serving as a limited dual agent, contrary to section 34 of the Rules (previously Rules, s 3-4) [*act with reasonable care and skill*] including by:
 - i. drafting and inserting an amendment to the CPS which was favorable to the buyer and could permit the buyer to extend the completion date indefinitely and hold payment of the deposit without adequately explaining the consequence of the amendment to [Seller 1], the seller;
 - ii. failing to provide information to the seller regarding the risks to the seller in the event the CPS was assigned considering the assignment clause and/or failing to suggest that the seller obtain professional advice regarding the amendment adjusting the completion date and/or the assignment clause; and/or
 - iii. between July 2017 and April 2018 failing to communicate with [Seller 1], the seller, to provide information regarding the rezoning of the Property and/or the status of the transaction.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, L Ratcliff and L Ratcliff PREC propose that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the Superintendent, pursuant to section 43 of the RESA:

1. L Ratcliff and L Ratcliff PREC be jointly and severally liable to pay a discipline penalty to BCFSa in the amount of \$40,000 within four (4) months from the date of this Order;

2. L Ratcliff and L Ratcliff PREC be jointly and severally liable to pay enforcement expenses to BCFSA in the amount of \$3,500 within four (4) months from the date of this Order;
3. If L Ratcliff and L Ratcliff PREC fail to comply with any of the terms of this Order, the Superintendent may suspend or cancel their licences without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. L Ratcliff and L Ratcliff PREC acknowledge and understand that the Superintendent may accept or reject the Proposal. If the Proposal is rejected by the Superintendent, the matter may be referred to a disciplinary hearing.
2. L Ratcliff and L Ratcliff PREC acknowledge that they have been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of the Proposal to the Superintendent; and, that they have obtained independent legal advice or have chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. L Ratcliff and L Ratcliff PREC acknowledge and are aware that BCFSA will publish the Proposal and the Consent Order or summaries thereof on BCFSA's website, on CanLII, a website for legal research and in such other places and by such other means as BCFSA in its sole discretion deems appropriate.
4. L Ratcliff and L Ratcliff PREC hereby waive their right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, L Ratcliff and L Ratcliff PREC will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict L Ratcliff and L Ratcliff PREC from making full answer and defence to any civil or criminal proceeding(s).
6. The Proposal and its contents are made by L Ratcliff and L Ratcliff PREC for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of L Ratcliff and L Ratcliff PREC in any civil proceeding with respect to the matter.

"Original signed by Lewis Ratcliff"

**Lewis Neil Ratcliff on their own behalf and on behalf of
LEWIS RATCLIFF PERSONAL REAL ESTATE
CORPORATION**

Dated 23 day of April, 2024