

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

AND

IN THE MATTER OF

DAVIDE CANOSA
(154770)

CONSENT ORDER

RESPONDENT: Davide Canosa, Representative, Multiple Realty Ltd

DATE OF CONSENT ORDER: December 16, 2020

CONSENT ORDER REVIEW COMMITTEE: S. Heath
S. Sidhu
C. Ludgate

COUNSEL: Kyle A. Ferguson, Legal Counsel for the Real Estate Council of BC

PROCEEDINGS:

On December 16, 2020, the Consent Order Review Committee (“CORC”) resolved to accept the Consent Order Proposal (the “Proposal”) submitted by Davide Canosa (“Mr. Canosa”).

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Mr. Canosa.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and having found that Mr. Canosa committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(c) of the *Real Estate Services Act* (“RESA”) and acted contrary to sections 3-3(b), 3-3(c) and 3-4 of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Mr. Canosa’s licence be suspended for 45 days (the “Suspension Period”).
2. Mr. Canosa be prohibited from acting as an unlicensed assistant during the licence suspension period.
3. Mr. Canosa pay a discipline penalty to the Council in the amount of \$3,500 within two (2) months following the end of the Suspension Period.

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4. Mr. Canosa at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Sauder School of Business at the University of British Columbia in the time period as directed by the Council.
 5. Mr. Canosa pay enforcement expenses to Council in the amount of \$1,500 within two (2) months following the end of the Suspension Period.

If Mr. Canosa 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 RESA.

Dated this 16th day of December 2020 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Sandra Heath”

Sandra Heath
Consent Order Review Committee

Attch.

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

AND

IN THE MATTER OF

**DAVIDE CANOSA
(154770)**

CONSENT ORDER PROPOSAL BY DAVIDE CANOSA

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Davide Canosa ("Mr. Canosa") to the Consent Order Review Committee ("CORC") of the Real Estate Council of BC (the "Council") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

Amendments to the RESA increasing the maximum fines for licensee misconduct came into force on September 30, 2016. This Consent Order concerns misconduct that occurred in September to October 2013, and as such it is subject to discipline penalties under the prior penalty regime.

For the purposes of the Proposal, Mr. Canosa and the Council have agreed upon the following facts:

1. Mr. Canosa (License #154770) has been licensed as a trading representative since 2008, with the following gaps in his licensing history, during which he was unlicensed:
 - a) May 21-23, 2012;
 - b) May 24-25, 2014; and
 - c) May 26-29, 2018.
2. Mr. Canosa was at all relevant times licensed as a trading representative with Multiple Realty Ltd. (the "Brokerage").
3. In or around early September 2013, Mr. Canosa met with a prospective seller (the "Seller") of the property located at XXXX Wxxxxx Street, Vancouver (the "Property") to discuss the listing of the Property for sale.

The Listing Agreement

4. On or around September 9, 2013, Mr. Canosa prepared a Multiple Listing Service ("MLS") agreement for the sale of the Property (the "Listing Agreement") between Multiple Realty Ltd. and the Seller. The term of the Listing Agreement that Mr. Canosa prepared was September 9, 2013 to February 9, 2014. The listing price as set out in the Listing Agreement was \$749,000.

5. On or around September 10, 2013, Mr. Canosa emailed the Listing Agreement to the Seller. On or around September 25, 2013, the Seller returned a signed copy of the Listing Agreement to Mr. Canosa.
6. Following receipt of the executed Listing Agreement, Mr. Canosa submitted the executed Listing Agreement to his Brokerage's head office so that the listing could be processed. On September 30, 2013, a staff member at the Brokerage contacted Mr. Canosa and advised him that the Listing Agreement had to be delivered to the Real Estate Board of Greater Vancouver for data entry within three days of the listing date. Mr. Canosa was advised that because the term of the Listing Agreement commenced on September 9, 2013, the Listing Agreement would not be accepted.
7. To facilitate the listing of the Property on MLS, Mr. Canosa struck out the prior term on the Listing Agreement and changed the term of the Listing Agreement to September 30, 2013 to February 30, 2014. Next to that change, Mr. Canosa wrote "SS". Noticing that the February 30, 2014 date was in error, Mr. Canosa changed that date to February 28, 2014, and again initialed "SS" next to that change.
8. Mr. Canosa did not have the Seller's express or written authorization to change the term on the Listing Agreement and initial "SS" next to those changes.

The Amendments to the Listing Agreement

9. On or around October 5, 2013, an offer was received in respect of the Property with a purchase price of \$747,000. The Seller did not accept the offer.
10. On or around October 7, 2013, Mr. Canosa prepared a Listing Amendment Form that changed the listing price to \$868,000 (the "First Amendment Form"). Mr. Sxxxx signed this First Amendment Form.
11. Later in October 2013, Mr. Canosa prepared a Listing Amendment Form that changed the listing price to \$749,000 (the "Second Amendment Form"). Mr. Canosa crossed out the listing price on the First Amendment Form and wrote in the reduced price, next to which he signed "SS" on behalf of the Seller.
12. The Seller verbally agreed to the listing price changes. Mr. Canosa however did not have the express or written authorization to initial "SS" the Second Amendment Form on behalf of the Seller.
13. An offer to purchase the Property was received on or around November 20, 2013 in the amount of \$740,000, which was not accepted by the Seller.
14. A further offer to purchase the Property was received on or around February 15, 2014 by prospective buyers who had attended an open house of the Property conducted by Mr. Canosa, and they engaged Mr. Canosa to prepare an offer to purchase on their behalf (the "February 15, 2014 Offer").
15. The Listing Agreement expired and was not renewed.

16. On or around May 30, 2014, the Seller sold the Property for \$745,000 to the buyers who had made the February 15, 2014 Offer through Mr. Canosa.
17. On June 24, 2014, Mr. Canosa's brokerage, Multiple Realty Ltd., filed a claim against the Seller in the Small Claims Court Seller seeking unpaid commissions. The brokerage's claim against the Seller was dismissed on August 12, 2015.

Mr. Canosa's Prior Discipline (File No. 09-097)

18. Mr. Canosa has one prior disciplinary matter. At the outset of the hearing of that prior disciplinary matter held on February 2, 2012, Mr. Canosa admitted that in May 2009, during the first year of his licensing, he:
 - a) failed to obtain the consent of a seller to act in the capacity of a limited dual agent;
 - b) failed to ensure that the listing agreement with the seller included the details of an arrangement he had made with the seller and the seller's family that would reduce the amount of remuneration payable under the agreement;
 - c) failed to promptly provide his managing broker with original or copies of all trading records; and
 - d) failed to apply reasonable skill and care in the drafting of the contract of purchase and sale, in that the contract did not provide the date upon which the deposit was payable.
19. Following a hearing on the matter, the Discipline Committee found that the other allegations against Mr. Canosa had not been proven. The Discipline Committee determined that Mr. Canosa:
 - a) be reprimanded; and
 - b) pay \$1,000 in enforcement expenses.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the facts outlined herein, Mr. Canosa proposes the following findings of misconduct be made by the CORC:

1. Mr. Canosa committed professional misconduct within the meaning of section 35(1)(a) of the RESA when in his capacity as the listing agent for the seller of a property located at XXXX Wxxxxx Street, Vancouver BC (the "Property"):
 - (a) without taking reasonable, sufficient, or any steps to obtain the seller's authorization, he made changes to the Multiple Listing Service agreement for the Property ("Listing Agreement") made between the seller and his related brokerage, Multiple Realty Ltd., as follows:
 - i. changed the term of the Listing Agreement from September 9, 2013 to February 9, 2014 to September 30, 2013 to February 30, 2014 (sic);
 - ii. changed the term of the Listing Agreement from September 30, 2013 to February 30, 2014

(sic) to September 30, 2013 to February 28, 2014;

- iii. added the seller's initials to the Listing Agreement, to effect the changes set out in (i) and (ii) above;
- iv. prepared an amendment form dated October 16, 2013 to the Listing Agreement ("Second Amendment Form") that changed the list price to \$749,000; and
- v. added the seller's initials to the Second Amendment Form, to effect the changes as set out in (iv) above and did not provide a copy of the Second Amendment Form to the seller,

contrary to sections 3-3(b) [act in accordance with the lawful instructions of the client], 3-3(c) [act only within the scope of the authority given by the client], and 3-4 [duty to act honestly and with reasonable care and skill] of the Rules; and section 35(1)(c) [deceptive dealing] of the RESA.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Canosa proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

6. Mr. Canosa's licence be suspended for 45 days (the "Suspension Period").
7. Mr. Canosa be prohibited from acting as an unlicensed assistant during the licence suspension period.
8. Mr. Canosa pay a discipline penalty to the Council in the amount of \$3,500 within two (2) months following the end of the Suspension Period.
9. Mr. Canosa at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Sauder School of Business at the University of British Columbia in the time period as directed by the Council.
10. Mr. Canosa pay enforcement expenses to Council in the amount of \$1,500 within two (2) months following the end of the Suspension Period.
11. If Mr. Canosa fails to comply with any of the terms of this Order, a discipline committee may suspend or cancel Mr. Canosa's licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Canosa acknowledges and understands that the Council may refer or decline to refer the Proposal to the CORC. If the Proposal is referred to the CORC, it may be accepted or rejected by the CORC. If the Proposal is rejected by the CORC, the matter may be referred to a disciplinary hearing.

2. Mr. Canosa acknowledges that he has 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 CORC; and, that he has obtained independent legal advice or has chosen not to do so, and that he is making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Mr. Canosa acknowledges and is aware that the Council will publish the Proposal and the Consent Order or summaries thereof in its Report from Council newsletter, on the Council's website, on CanLII, a website for legal research and in such other places and by such other means as the Council in its sole discretion deems appropriate.
4. Mr. Canosa acknowledges and is 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 any Consent Order made by the Council in relation to this matter.
5. Mr. Canosa hereby waives his right to appeal pursuant to section 54 of the RESA.
6. If the Proposal is accepted and/or relied upon by the Council, Mr. Canosa will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Mr. Canosa from making full answer and defence to any civil or criminal proceeding(s).
7. The Proposal and its contents are made by Mr. Canosa 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 Mr. Canosa in any civil proceeding with respect to the matter.

"Davide Canosa"

DAVIDE CANOSA

Dated 7th day of December 2020