

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

**NADINE MARY WESTGATE
(113522)**

CONSENT ORDER

RESPONDENT: Nadine Mary Westgate, Managing Broker,
Statesmen Realty Corporation dba Sage
Executive Group Real Estate

DATE OF REVIEW MEETING: July 17, 2019

DATE OF CONSENT ORDER: July 17, 2019

CONSENT ORDER REVIEW COMMITTEE: Y. Amlani (Chair)
R. Hanson
L. Allen

ALSO PRESENT: E. Duvall
E. Seeley, Executive Officer
C. McLaughlin, Manager, Legal Services
J. Whittow, QC, Legal Counsel for
the Real Estate Council
K. Murray, Legal Counsel for the Respondent

PROCEEDINGS:

On July 17, 2019, the Consent Order Review Committee (“CORC”) resolved to accept the Consent Order Proposal (the “Proposal”) submitted by Nadine Mary Westgate.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Nadine Mary Westgate.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Nadine Mary Westgate committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (“RESA”), pursuant to section 43 of the RESA the CORC orders that:

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1. Nadine Mary Westgate be reprimanded;
 2. Nadine Mary Westgate pay a discipline penalty to the Council in the amount of \$10,000 within ninety (90) days from the date of this Order;
 3. Nadine Mary Westgate, at her own expense, register for and successfully complete the Broker's 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; and
 4. Nadine Mary Westgate pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.
 5. Nadine Mary Westgate arrange and pay for an audit of the brokerage, which includes but is not limited to record keeping and timely filings, to be conducted by the Council no later than June 30, 2020.

If Nadine Mary Westgate 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 RESA.

Dated this 17th day of July, 2019, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"Yasin Amlani"

Yasin Amlani
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

**NADINE WESTGATE
(113522)**

CONSENT ORDER PROPOSAL BY NADINE WESTGATE

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Nadine Westgate ("Ms. Westgate") to the Consent Order Review Committee ("CORC") of the Real Estate Council of British Columbia (the "Council") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, Ms. Westgate and the Council have agreed upon the following facts:

1. Ms. Westgate has been licensed as a representative for trading and rental property management services since 1994 and as a managing broker, trading and rental, with Statesman Realty Corporation dba Sage Executive Group Real Estate ("Sage Executive Group Real Estate" or the "Brokerage") since 2005.
2. Ms. Westgate was at all relevant times licensed as a managing broker with the Brokerage.

File #15-599

3. Sage Executive Group Real Estate decided to open a branch office at XXXX Dobbin Road, West Kelowna (the "Branch").
4. On or about June 5, 2015, Ms. Westgate filed an application to the Council to license the Branch.
5. On or about June 9, 2015, Ms. Westgate was advised by Council that the Branch license application was deficient and Council required additional documentation, including a copy of the city or municipal business license for the Branch and the managing broker application.

6. On or about September 3, 2015 Ms. Westgate was advised by Council that they had not received any further correspondence regarding the Branch license application and that after three months applications are considered stale-dated.
7. On March 31, 2016, the Okanagan Mainline Real Estate Board (“OMREB”) informed the Council that the Brokerage was operating the Branch without a license despite its requests to Ms. Westgate to obtain a license for the Branch. The OMREB provided a photograph showing a sign at the Branch location showing the name of the Brokerage.
8. The Council determined that, in addition to signage, the Branch was included on the Brokerage website.
9. The Council contacted Ms. Westgate.
10. In or around April 2016, Ms. Westgate submitted the Branch business license to Council.
11. In or around April 2016 Ms. Westgate was further advised by Council that the Branch license application was still missing the managing broker application. It was then provided.
12. On April 22, 2016 the Council licensed the Branch.
13. Ms. Westgate explained to the Council that there were unexpected delays in obtaining a premises inspection and business licence from the municipality for the Branch. She further explained that the Branch was not staffed and was accessible only privately by the Brokerage’s agents at the time. She acknowledged that the signage and website information at the Branch should not to have been employed prior to issuance of the Branch licence.
14. A Notice of Disciplinary Hearing was issued on November 15, 2017 and served on Ms. Westgate.

File #16-529

15. On November 7, 2016, a licensee at the Brokerage prepared a contract on behalf of a buyer to purchase property located at XXXX H. Road, Vernon, at a price of \$150,000, to close November 30, 2016. The contract called for a deposit of \$8,000, to be paid within 12 hours of the day of removal of subjects.
16. On November 16, 2016, the buyer removed subjects, but the deposit was not paid as required.
17. On November 18, 2016, the licensee informed Ms. Westgate that the deposit had not been received.
18. Ms. Westgate failed to notify the listing brokerage that the deposit had not been received.

19. The transaction collapsed. The listing brokerage reported the matter to the Council.
20. Ms. Westgate explained to the Council that she was remiss in notifying the listing brokerage due to oversight.
21. A Notice of Disciplinary Hearing was issued on July 27, 2018 and served on Ms. Westgate.

File #17-020

22. On June 20, 2017, a licensee at the Brokerage prepared a contract on behalf of a buyer to purchase property located at XXXX 42 Avenue, Vernon, at a price of \$400,000, to close August 30, 2017, which was accepted by the seller (the "Contract"). The Contract called for a deposit of \$5,000, to be paid within 2 working days of acceptance, that is, by June 23, 2017.
23. The deposit was not paid on June 23, 2017 or at all.
24. On July 3, 2017, the licensee prepared and sent the seller's agent a General Release Form, requesting that the transaction be cancelled without forfeit of a deposit. On July 3rd, the licensee informed the seller's agent that the deposit had not been paid.
25. Also on July 3, 2017, the licensee informed Ms. Westgate that the deposit had not been received in accordance with the Contract.
26. On July 4, 2017, Ms. Westgate notified the seller's agent by telephone and email that the deposit had not been received.
27. On July 11, 2017, the seller made a complaint to the Council.
28. Ms. Westgate explained to the Council that the Contract had been received at the Brokerage as required and the failure to detect the failed deposit was oversight due to heavy workload.
29. Ms. Westgate has advised that the conveyancer who worked for the Brokerage during 2016 and 2017 is no longer with the Brokerage.
30. A Notice of Disciplinary Hearing was issued on January 10, 2019, and served on Ms. Westgate.

Prior Discipline

1. Ms. Westgate was the subject of previous discipline by the Council in 2011 and 2012:

- a. In 2011, Ms. Westgate admitted that she committed professional misconduct pursuant to s. 35(1)(a) of the RESA in that, contrary to section 6(2)(b) of the RESA and 3-1(1)(a) and (b) and 3-1(3) of the Council Rules, she failed to fulfill her responsibilities and duties as managing broker by failing to ensure that Accountant's Report, Brokerage Activity Report and notice to reader financial statements were filed on time. Ms. Westgate was reprimanded in conjunction with the brokerage and was jointly and severally liable with the brokerage to pay enforcement expenses in the amount of \$1,000.00; and
- b. In 2012, Ms. Westgate admitted that she committed professional misconduct pursuant to s. 35(1)(a) of the RESA in that, contrary to section 3-1 of the Council Rules and section 6(2) of the RESA, she failed to ensure that the business of the brokerage including the supervision of its licensees, was carried out competently and in accordance with the Act, regulations, rules and bylaws by failing to follow up to ensure that a licensee ceased offering to provide real estate services through an unlicensed entity. Ms. Westgate was reprimanded and ordered to pay enforcement expenses in the amount of \$1,000.00.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Ms. Westgate proposes the following findings of misconduct be made by the CORC:

File #15-599

1. Ms. Westgate committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that between June 2015 and April 2016:
 - a. she permitted an unlicensed branch office of the Brokerage to operate, in that signage was displayed, advertising material for the Brokerage included reference to the Branch and associated licensees had access to the Branch, contrary to section 5(4) of RESA; and
 - b. she failed to ensure that the business of the Brokerage was carried out competently and in accordance with RESA and the Regulations, Rules and/or Bylaws, contrary to section 6(2) of RESA and section 3-1(1) of the Rules.

File #16-529

1. Ms. Westgate committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that, in or about November 2016, when the Brokerage was providing services to a buyer in connection with the purchase of property:
 - a. she failed to ensure that written notice was promptly provided to the seller that the deposit due under the contract for the purchase of property was not received, contrary to section 3-1(4) and 3-1(5) of the Rules, and

- b. she failed to ensure that the business of the brokerage was carried out competently and in accordance with RESA and the Regulations, Rules and/or Bylaws, contrary to section 6(2) of RESA and section 3-1(1) of the Rules.

File #17-020

1. Ms. Westgate committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that, in or about June 2017, when the Brokerage was providing services to a buyer in connection with the purchase of property:
 - a. she failed to ensure that written notice was promptly provided to the seller that the deposit due under the contract for the purchase of property was not received, contrary to section 3-1(4) and 3-1(5) of the Rules, and
 - b. she failed to ensure that the business of the brokerage was carried out competently and in accordance with RESA and the Regulations, Rules and/or Bylaws, contrary to section 6(2) of RESA and section 3-1(1) of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Ms. Westgate 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:

1. Ms. Westgate be reprimanded.
2. Ms. Westgate pay a discipline penalty to the Council in the amount of \$10,000.00 within ninety (90) days of the date of this Consent Order.
3. Ms. Westgate at her own expense, register for and successfully complete the Managing Broker 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. Ms. Westgate pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Consent Order.
5. Ms. Westgate arrange and pay for an audit of the Brokerage, which includes but is not limited to record keeping and timely filings, to be conducted by the Council no later than June 30, 2020.
6. If Ms. Westgate fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Ms. Westgate's licence without further notice to Ms. Westgate.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Westgate 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. Ms. Westgate acknowledges that she 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 she has obtained independent legal advice or has chosen not to do so, and that she is making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Ms. Westgate 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. Ms. Westgate 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. Ms. Westgate hereby waives her right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Ms. Westgate 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 Ms. Westgate in any civil proceeding with respect to the matter.

"Nadine Westgate"

NADINE WESTGATE

Dated 4th day of June, 2019