

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

**IN THE MATTER OF
DAVID JOHN HENSMAN**

AND

SIDONIA BERNADETTE (NINI) NESTOR

CONSENT ORDER

RESPONDENTS: David John Hensman, Managing
Broker, Teamwork Property
Management Ltd.

Sinonia Bernadette (Nini) Nestor,
Representative, Teamwork Property
Management Ltd.

DATE OF REVIEW MEETING: October 5, 2010

DATE OF CONSENT ORDER: October 19, 2010

CONSENT ORDER REVIEW COMMITTEE: B. Binnie
W. Brown
M. Cowe
A. Ghouri
G. Martin (Chair)

ALSO PRESENT: R. Fawcett, Executive Officer
D. Berger, Director, Legal Services
C. Gulabsingh, Legal Counsel for the
Real Estate Council

PROCEEDINGS:

On October 5, 2010 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by David John Hensman and Sidonia Bernadette (Nini) Nestor as submitted, which was that David John Hensman and Sidonia Bernadette (Nini) Nestor each be reprimanded. Further, David John Hensman and Sidonia Bernadette (Nini) Nestor are ordered to 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 to be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,000.00 within sixty (60) days from the date of this Order.

WHEREAS an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was executed by David John Hensman, Sidonia Bernadette (Nini) Nestor and the Real Estate Council of British Columbia (“Council”), a copy of which is attached hereto.

NOW THEREFORE, the Council has made the following findings and orders the following penalties based on the Agreed Statement of Facts and Proposed Acceptance of Findings:

1. David John Hensman be reprimanded as he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* while licensed as managing broker of Teamwork Property Management Ltd. (“Teamwork”) and while acting as strata property manager for seven strata corporation clients (the “Strata Corporation Clients”) in that he:
 - (a) contravened section 3-3(1)(a) of the Council Rules by failing to act in the best interests of the Strata Corporation Clients by investing contingency reserve funds in an investment program with RBC Dominion Securities which did not meet the requirements of section 95(2) of the *Strata Property Act* as required by section 7-9(8) of the Council Rules;
 - (b) contravened section 3-3(1)(a) of the Council Rules by failing to act in the best interests of the Strata Corporation Clients by failing to advise the Strata Corporation Clients that the RBC Dominion Securities investment program he suggested to the Strata Corporation Clients did not meet the requirements of section 95(2) of the *Strata Property Act* and section 7-9(8) of the Council Rules;
 - (c) contravened section 3-3(1)(d) of the Council Rules by failing to advise some or all of the Strata Corporation Clients to seek independent professional advice regarding the investment of contingency reserve funds before investing the Strata Corporation Clients’ contingency reserve funds in the investment program with RBC Dominion Securities suggested by Teamwork, a matter outside the scope of his expertise;
 - (d) contravened section 3-3(1)(f) of the Council Rules by failing to advise some or all of the Strata Corporation Clients with the details regarding the costs, fees and charges expected to be levied by RBC Dominion Securities if the Strata Corporation Clients invested

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- contingency reserve funds with RBC Dominion Securities through the program offered by Teamwork;
- (e) on or about January 6, 2009 contravened section 3-4 of the Council Rules by failing to act with reasonable care and skill by providing incorrect information to the treasurer of one of the Strata Corporation Clients, that the strata corporation Contingency Reserve Fund money had no suffered a loss while invested with RBC Dominion Securities, which was not correct;
 - (f) contravened section 3-1(1)(b) of the Council Rules in that he failed to ensure that all trust accounts for one of the Strata Corporation Clients were designated as trust accounts in Teamwork's records and in the records of the institution holding the account as required by section 26(2) of the *Real Estate Services Act*;
 - (g) contravened section 3-1(1)(b) of the Council Rules in that he failed to ensure the brokerage specified the remuneration Teamwork would be paid in the service agreement reached between Teamwork; and one of the Strata Corporation Clients as required by section 5-1(4)(f) of the Council Rules; and
 - (h) contravened section 3-1(1)(b) of the Council Rules in that he failed to ensure the brokerage specified the remuneration Teamwork would be paid in the service agreement reached between Teamwork and one of the Strata Corporation Clients as required by section 5-1(4)(f) of the Council Rules.
2. Sidonia Bernadette (Nini) Nestor be reprimanded as he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* while licensed as a representative for Teamwork Property Management Ltd. and acting as property strata manager for one strata corporation client (the "Strata Corporation Client") in that she:
- (a) contravened section 3-3(1)(a) of the Council Rules by failing to act in the best interests of the Strata Corporation Client by investing contingency reserve funds in an investment program with RBC Dominion Securities which did not meet the requirements of section 95(2) of the *Strata Property Act* as required by section 7-9(8) of the Council Rules; and
 - (b) contravened section 3-3(1)(a) of the Council Rules by failing to act in the best interests of the Strata Corporation Client by failing to advise the Strata Corporation Client that the RBC Dominion Securities investment program she suggested did not meet the

requirements of section 95(2) of the *Strata Property Act* and section 7-9(8) of the Council Rules.

3. David John Hensman and Sidonia Bernadette (Nini) Nestor are ordered to be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days from the date of this Order.
4. David John Hensman and Sidonia Bernadette (Nini) Nestor are ordered to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,000.00 within sixty (60) days from the date of this Order.

If David John Hensman or Sidonia Bernadette (Nini) Nestor 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 *Real Estate Services Act*.

Dated this 19th day of October, 2010 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“G. Martin”

G. Martin, Chair
Consent Order Review Committee

Attch.

File #08-402

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

**IN THE MATTER OF
DAVID JOHN HENSMAN
(147344)**

AND

**SIDONIA BERNADETTE (NINI) NESTOR
(147349)**

**AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER**

The following agreement has been reached between David John Hensman (“Mr. Hensman”), Sidonia Bernadette (Nini) Nestor (“Ms. Nestor”) and the Real Estate Council of British Columbia (the “Council”).

- A. Mr. Hensman hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded.

- B. Ms. Nestor hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that she be reprimanded.

- C. Mr. Hensman and Ms. Nestor agree to be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days from the date of the Order herein and to be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,000.00 within sixty (60) days from the date of the Order herein.

- D. Mr. Hensman and Ms. Nestor further consent to an Order that if either of them fail to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel their licenses without further notice to them pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.

- E. As a basis for this Order, Mr. Hensman and Ms. Nestor acknowledge and agree that the facts set forth herein are correct:
 - 1. At all relevant times, Mr. Hensman was licensed as a Managing Broker, (Strata) with Teamwork Property Management Ltd. (X024541) (“Teamwork”).

2. At all relevant times, Ms. Nestor was licensed as a Representative, (Strata) with Teamwork.
3. Mr. Hensman's licensing history is as follows:

Dec. 30/05 – Present	Managing Broker, Strata, Teamwork Property Management Ltd.
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4. Ms. Nestor's licensing history is as follows:

Dec. 30/05 – Present	Representative, Strata, Teamwork Property Management Ltd.
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5. On March 9, 2009 Council Compliance staff contacted Mr. Hensman at Teamwork to inquire about investments from the Contingency Reserve Fund ("CRF") of a strata corporation client that had been placed into a portfolio at RBC Dominion Securities at the direction of the strata council elected in 2006/2007.
6. The RBC Dominion Securities investment portfolio included investments that were not fixed or guaranteed and were not in compliance with the provisions of the *Strata Property Act*.
7. Mr. Hensman confirmed to Council staff that the CRF money of the strata corporation in question was withdrawn from the RBC Dominion Securities in February 2009 and placed in a regular interest bearing trust account at the same institution where that strata corporation held its operating account.
8. On March 10, 2009, Council Compliance and Audit staff conducted a spot audit at the Teamwork office which identified a total of eight strata corporation clients whose CRF money had also been invested in similar investment portfolios through RBC Dominion Securities, which included investments that were not fixed or guaranteed.
9. Of the eight strata corporation clients identified, Mr. Hensman was responsible for seven of them, and Ms. Nestor was responsible for managing one of them.
10. Teamwork was authorized by the various strata councils prior to investing the CRF money with RBC Dominion Securities to so invest them,, and with the exception of one of Mr. Hensman's strata corporation clients, the authorizations were recorded in the strata council meeting minutes.

11. The strata council meeting minutes reflected that when Teamwork, under the guidance of Mr. Hensman, proposed investing CRF money with RBC Dominion Securities, they were offering the strata corporation clients the opportunity to earn a “*greater rate of return*” on CRF money with the goal of achieving a 6% annual rate of return. For five of the strata corporation clients, the strata council meeting minutes also recorded that the new investment fund was “*better secured*”.
12. Mr. Hensman says that before Teamwork invested the CRF money with RBC Dominion Securities, he verbally advised the various strata councils to seek independent legal advice, if they felt they needed it, and provided them with the opportunity to consult with RBC Dominion Securities directly, if they wanted to.
13. Mr. Hensman also stated that he notified each of the strata corporation clients, at their respective strata council meetings, (and recorded in the council meeting minutes) that the investments would be “net of fees” but he did not provide any detail of the real costs associated with these types of investments. In the case of two of the strata corporation clients, there was nothing in the service agreements regarding fees to be charged by Teamwork to the strata corporation clients.
14. All of the strata corporation clients whose CRF money was invested with RBC Dominion Securities lost money with the investments. In January 2009, Teamwork, on the advice of RBC Dominion Securities, transferred all of the money out of the portfolio previously recommended by RBC Dominion Securities and into a secured investment. However, these transfers took place without express authorization from all of the various strata councils.
15. In response to an email from one of the strata council presidents, Mr. Hensman erroneously contended, via email sent in January 2009, that the CRF money invested with RBC Dominion Securities had not suffered a loss.
16. A review of Teamwork’s accounts, books and records by Council staff revealed that Mr. Hensman, on behalf of Teamwork, had failed to insure the trust account for one of the strata corporation clients had been, and was designated as a trust account when Teamwork was hired as the property strata managers for that strata corporation client.

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, David John Hensman and Sidonia Bernadette (Nini) Nestor are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:

(a) David John Hensman committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* [contravention of Act, Regulation or Council Rules] while licensed as managing broker of Teamworks Property Management Ltd. ("Teamwork") and while acting as strata property manager for seven strata corporation clients (the "Strata Corporation Clients") in that he:

(i) contravened section 3-3(1)(a) of the Council Rules by failing to act in the best interests of the Strata Corporation Clients by investing contingency reserve funds in an investment program with RBC Dominion Securities which did not meet the requirements of section 95(2) of the *Strata Property Act* as required by 7-9(8) of the Council Rules;

(ii) contravened section 3-3(1)(a) of the Council Rules by failing to act in the best interests of the Strata Corporation Clients by failing to advise the Strata Corporation Clients that the RBC Dominion Securities investment program he suggested to the Strata Corporation Clients did not meet the requirements of section 95(2) of the *Strata Property Act* and section 7-9(8) of the Council Rules;

(iii) contravened section 3-3(1)(d) of the Council Rules by failing to advise some or all of the Strata Corporation Clients to seek independent professional advice regarding the investment of contingency reserve funds before investing the Strata

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- Corporation Clients' contingency reserve funds in the investment program with RBC Dominion Securities suggested by Teamwork, a matter outside the scope of his expertise;
- (iv) contravened section 3-3(1)(f) of the Council Rules by failing to advise some or all of the Strata Corporation Clients with the details regarding the costs, fees and charges expected to be levied by RBC Dominion Securities if the Strata Corporation Clients invested contingency reserve funds with RBC Dominion Securities through the program offered by Teamwork;
 - (v) on or about January 6, 2009 contravened section 3-4 of the Council Rules by failing to act with reasonable care and skill by providing incorrect information to the treasurer one of the Strata Corporation Clients, that the strata corporation Contingency Reserve Fund money had not suffered a loss while invested with RBC Dominion Securities, which was not correct.
 - (vi) contravened section 3-1(1)(b) of the Council Rules in that he failed to ensure that all trust accounts for one of the Strata Corporation Clients were designated as trust accounts in Teamwork's records and in the records of the institution holding the account as required by section 26(2) of RESA;
 - (vii) contravened section 3-1(1)(b) of the Council Rules in that he failed to ensure the brokerage specified the remuneration Teamwork would be paid in the service agreement reached between Teamwork and one of the Strata Corporation Clients as required by section 5-1(4)(f) of the Council Rules; and
 - (viii) contravened section 3-1(1)(b) of the Council Rules in that he failed to ensure the brokerage specified the remuneration Teamwork would be paid in the service agreement reached between Teamwork and one of the Strata Corporation Clients as required by section 5-1(4)(f) of the Council Rules.

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- (b) Sidonia Bernadette (Nini) Nestor committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* [contravention of Act, Regulation or Council Rules], while licensed as a representative for Teamwork Property Management Ltd. and acting as property strata manager for one strata corporation client (the “Strata Corporation Client”) in that she:
- (i) contravened section 3-3(1)(a) of the Council Rules by failing to act in the best interests of the Strata Corporation Clients by investing contingency reserve funds in an investment program with RBC Dominion Securities which did not meet the requirements of section 95(2) of the *Strata Property Act* as required by 7-9(8) of the Council Rules; and
 - (ii) contravened section 3-3(1)(a) of the Council Rules by failing to act in the best interests of the Strata Corporation Client by failing to advise the Strata Corporation Client that the RBC Dominion Securities investment program she suggested did not meet the requirements of section 95(2) of the *Strata Property Act* and section 7-9(8) of the Council Rules.

2. Mr. Hensman and Ms. Nestor hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.

3. Mr. Hensman and Ms. Nestor acknowledge that they have a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.

4. Mr. Hensman and Ms. Nestor acknowledge and are aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter and on the Council’s website.

5. Mr. Hensman and Ms. Nestor acknowledge and are 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.

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.

"Carolyn S. Gulabsingh"

**Carolyn S. Gulabsingh, Legal Counsel
Real Estate Council of British Columbia**

**As to Part E only (Agreed Statement
of Facts)**

Dated 13 day of May, 2010

"David John Hensman"

David John Hensman

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

Dated 10 day of May, 2010

"Sidonia Bernadette Nestor"

Sidonia Bernadette Nestor

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

Dated 10 day of May, 2010