

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
AND
IN THE MATTER OF**

DEBORAH JO ACHESON

CONSENT ORDER

RESPONDENT:	Deborah Jo Acheson Representative, Dedicated Property Management Ltd.
DATE OF CONSENT ORDER:	May 22, 2007
CONSENT ORDER REVIEW COMMITTEE:	S. Sidhu (Chair) P. Jones J. Whyte
ALSO PRESENT:	R.O. Fawcett, Executive Officer J.S. Gossen, RECBC Staff

PROCEEDINGS:

On May 22, 2007 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by Deborah Jo Acheson as submitted, which was a cancellation of her licence as a representative. Deborah Jo Acheson will not apply for licensing as a representative for a period of seven (7) years commencing March 31, 2006 and further, her application for licensing will be subject to a qualification hearing. She is required to pay enforcement expenses to the Council in the amount of \$5,000.00 within two (2) years of the date of the Order herein and a discipline penalty of \$10,000.00 as a condition of future licensing under the *Real Estate Services Act*.

WHEREAS an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was executed by Deborah Jo Acheson 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. Deborah Jo Acheson's licence as a representative is cancelled and she is prohibited from applying for licensing as a representative for

a period of seven (7) years commencing March 31, 2006 and further, her application for licensing will be subject to a qualification hearing in any event as she committed professional misconduct within the meaning of section 35(1)(a) and (c) the *Real Estate Act* in that she:

- (a) misappropriated funds held or received from, for or on behalf of a principal in relation to real estate services for her own use or benefit by making withdrawals from trust for purposes other than those permitted by sections 30(1) and (2), which conduct constitutes wrongful taking, and thereby committed professional misconduct contrary to section 35(1)(c) of the Act; and
 - (b) collapsed term investments held on behalf of clients of the brokerage, deposited these funds into the strata trust account of the brokerage and falsely characterized these deposits as owner contributions, which conduct constituted deceptive dealing, and thereby committed professional misconduct contrary to section 35(1)(c); and
 - (c) acted contrary to the lawful instructions of clients of the brokerage contrary to section 3-3(1)(b) of the Council Rules; and
 - (d) acted outside of the scope of authority given by clients to the brokerage contrary to section 3-3(1)(c) of the Council Rules.
2. Deborah Jo Acheson is required to pay enforcement expenses in the amount of \$5,000.00 to the Real Estate Council within two (2) years of the date of this Order herein and a discipline penalty of \$10,000.00 as a condition of future licensing under the *Real Estate Services Act*.

If Deborah Jo Acheson fails to comply with any of the terms of the Order set out above, the Council may, by Order, suspend or cancel her licence, as applicable without the need for giving her further notice or the opportunity to be heard pursuant to sections 43 (3) and 43(4) of the *Real Estate Services Act*.

Dated this 22nd day of May, 2007 at the City of Vancouver, British Columbia.

“Satnam Sidhu”

S. Sidhu
Chair

Consent Order Review Committee

Attch.

File #299-05

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

**IN THE MATTER OF
DEBORAH JO ACHESON
(119599)**

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

The following agreement has been reached between Deborah Jo Acheson ("Ms. Acheson") and the Real Estate Council of British Columbia (the "Council").

A. Ms. Acheson hereby consents to an Order to be made pursuant to section 41 of the *Real Estate Services Act* that Ms. Acheson's licence as a representative be cancelled and she will not apply for licensing as a representative for a period of seven (7) years commencing March 31, 2006 and further, her application for licensing will be subject to a qualification hearing in any event. Ms. Acheson agrees to pay enforcement expenses to the Council in the amount of \$5,000.00 within two (2) years of the date of the Order herein and a discipline penalty of \$10,000 as a condition of future licensing under the *Real Estate Services Act*.

B. As a basis for this Order, Ms. Acheson acknowledges and agrees that the facts sets forth herein are correct:

1. Ms. Acheson was at all relative times licensed as a representative with and was an officer and director of Dedicated Property Management Ltd. ("the brokerage") located 5097-47A Avenue, Delta, British Columbia.

2. Ms. Acheson's licensing history is as follows:

June 23/95 – Dec. 5/95	Representative, Gateway Property Management Corporation
Jan. 3/96 – Apr. 15/99	Representative, PCI Realty Corp.
Nov. 4/99 – Dec. 16/03	Representative, Progroup Realty Ltd. dba Re/Max Progroup Realty
Dec. 16/03 – Present	Representative, Dedicated Property Management Ltd.

3. On December 2, 2005 the Council received an application from the brokerage and its licensees including Ms. Acheson, as a director and owner of the brokerage as well as a representative licensed with the brokerage and Mr. Lem, as managing broker of the brokerage, requesting an amendment to their respective licenses to include the right to conduct strata property management as was required under the *Real Estate Services Act* commencing January 1, 2006.
4. The Council reviewed the application and requested further financial information. When that information was received by the Council on February 16, 2006, it indicated a discrepancy between the amount of funds identified by the books and records of the brokerage as being held by the brokerage for their strata clients and the actual amount of funds on deposit in the brokerage trust accounts.
5. The information provided to the Council was that in April 2005 when a strata client, K.D. terminated its contract with the brokerage, Ms. Acheson paid out a sum which the books and records of the brokerage erroneously showed as owing to the strata client. This payment represented an overpayment to K.D. and resulted in a significant trust deficit which had not been eliminated.
6. As a result of this information, the Council conducted an Office and Records Inspection and the report dated March 9, 2006 revealed the brokerage was not in sound financial circumstances as the general account was significantly overdrawn for the months of July, August, October and November 2005.
7. In addition, a shortfall in the brokerage rental trust account in the amount of \$23,382.12 was also identified. This sum was subsequently deposited into the rental property management trust account by Ms. Acheson and Mr. Lem arranged for Rebecca Lem, a CGA and Mr. Lem's sister to provide the necessary outside second signatory on the trust account.
8. The Office and Records Inspection report indicated that the brokerage was not maintaining general books and records in that the general trust accounts were not posted past September 2005 and the brokerage was not properly preparing trust bank reconciliations as required by the *Real Estate Services Act* with respect to the rental property trust account.
9. Further, the brokerage was not maintaining a monthly trust asset and liability listing reflecting the amount of money held for or on behalf of each principal at month end and the trust asset and liability list did not contain a record of all properties managed by the brokerage. Short falls in the trust asset and liability list were not identified due to the lack of management review.

10. The monthly statements provided to the strata clients did not disclose the short fall in funds held on their behalf and therefore misrepresented the funds being held on behalf of those clients to each client.
11. On March 10, 2006, Ms. Acheson and Mr. Lem met with David Campbell and Greg Clark, investigators with FICOM, Lisa Holst, manager of audit and investigation with the Council, Jessica Gossen, Council Lawyer and Susan Dzurus Bradley, Council auditor/investigator which time Ms. Acheson and Mr. Lem was advised their application for strata licensing would not be granted and that the Council required the brokerage to take a number of steps including:
 - (a) wind down the strata management side of the business;
 - (b) immediately replenish the rental management trust balances to reconcile with the owner liability statements and that while the business of the brokerage was being wound down or sold that the brokerage arrange for an independent signature on the trust account.
12. Subsequent to this meeting Ms. Acheson and Mr. Lem arranged to deposit the sum of \$50,000 as a contribution to the brokerage trust deficit.
13. On March 28, 2006, a meeting was held in the office of Ms. Acheson's legal counsel, Christopher Meyer, in which Ms. Acheson informed FICOM and the Council that between April 2005 and December 2005, Ms. Acheson had converted to cash approximately \$127,000 in client term deposits held on behalf of the brokerage strata clients and used the funds to pay brokerage operating expenses and expenses incurred by the brokerage on behalf of brokerage clients.
14. On March 28, 2006 the Council obtained an Order in Urgent Circumstances suspending the licenses of the brokerage, Ms. Acheson and Mr. Lem. Also on March 28, 2006 the Superintendent of Real Estate made Orders as follows:
 - (a) that the brokerage immediately cease and desist from conducting strata management services;
 - (b) that the brokerage return to the strata clients for which they provide strata services all property in the possession of the brokerage including books, records, funds belonging to the corporation;

- (c) that the Bank of Montreal hold all trust funds, securities, general accounts and client accounts.
- 15. The Council made an application to the Supreme Court of British Columbia to have a Receiver appointed pursuant to section 59 of the *Real Estate Services Act* in relation to the rental property trust accounts of the brokerage and on April 4, 2006 the Council made an application to extend the authority of the Receiver to include the strata property books, records and accounts.
- 16. The Council subsequently filed a caveat against real property owned by Ms. Acheson pursuant to section 46 of the *Real Estate Services Act*.
- 17. The caveat was removed so that Ms. Acheson could refinance the property and pay out certain debt including making a contribution to the brokerage deficit in the sum of \$52,743.91.
- 18. In a subsequent Office and Records Report dated September 27, 2006, the Council's review of the general operating bank account for twelve months ending December 31, 2005 of the brokerage showed a discrepancy between the amount of funds held by the brokerage and the amount claimed by each of the brokerage's known clients to be owing in the approximate sum of \$292,580.44.
- 19. The Receiver was subsequently discharged and after distribution of the brokerage's funds held by the Receiver in January of 2007, the balance of claims for monies owing by the brokerage's former clients totaled \$289,790.49.

C. Proposed Acceptance of Findings and Waiver

- 1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Ms. Acheson is prepared to accept the following findings if made against her by the Council's Consent Order Review Committee:
 - (a) Ms. Acheson committed professional misconduct within the meaning of section 35(1)(a), and section 35(1)(c) of the *Real Estate Services Act* in that she:
 - (i) misappropriated funds held or received from, for or on behalf of a principal in relation to real estate services for her own use or benefit by making withdrawals from trust for purposes other than those permitted by sections 30 (1) and (2), which conduct constitutes wrongful taking, and thereby committed

professional misconduct contrary to section 35(1)(c) of the Act; and

- (iii) collapsed term investments held on behalf of clients of the brokerage, deposited these funds into the strata trust account of the brokerage and falsely characterized these deposits as owner contributions, which conduct constituted deceptive dealing, and thereby committed professional misconduct contrary to section 35(1)(c); and
- (iv) acted contrary to the lawful instructions of clients of the brokerage contrary to section 3-3(1)(b) of the Council Rules; and
- (vi) acted outside of the scope of authority given by clients to the brokerage contrary to section 3-3(1)(c) of the Council Rules.

2. Ms. Acheson hereby waives her right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Ms. Acheson acknowledges that she is represented in these matters and has sought independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Ms. Acheson acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council and on the Council's website.
5. Ms. Acheson acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the 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.

"Jessica S. Gossen"
Jessica S. Gossen, Legal Counsel
Real Estate Council of British Columbia

"Deborah Jo Acheson"
DEBORAH JO ACHESON

As to Parts A, B, and C (proposed penalty,

As to Part B only (Agreed Statement
of Facts)

Dated 14 day of May, 2007

Agreed Statement of Facts, Proposed
Acceptance of Findings and Waiver)

Dated 11th day of May, 2007