

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

**IN THE MATTER OF
JAMES ASHLEY HENRY
AND
MACDONALD REALTY OKANAGAN SOUTH LTD.**

CONSENT ORDER

RESPONDENTS: James Ashley Henry, Managing
Broker, Macdonald Realty Okanagan
South Ltd.

Macdonald Realty Okanagan South
Ltd.

DATE OF REVIEW MEETING: March 28, 2012

DATE OF CONSENT ORDER: April 11, 2012

CONSENT ORDER REVIEW COMMITTEE: B. Barry
A. Ghouri
J. Nagy
G. Martin (Chair)

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

PROCEEDINGS:

On March 28, 2012 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by James Ashley Henry and Macdonald Realty Okanagan South Ltd. ("Macdonald Realty") as submitted, which was that Macdonald Realty is suspended for sixty (60) days, from May 16, 2012 to July 14, 2012 (inclusive), but that the suspension will be terminated if and when Macdonald Realty files an Accountant's Report as required by section 7-7(1) of the Council Rules for the year ending March 31, 2011.

Mr. Henry's managing broker's licence, together with any secondary licences he may have, is suspended for sixty (60) days, from May 16, 2012 to July 14, 2012 (inclusive), but that

the suspension will be terminated if and when Macdonald Realty files an Accountant's Report as required by section 7-7(1) of the Council Rules for the year ending March 31, 2011. For greater certainty, during the suspension, Mr. Henry shall immediately be eligible to be licensed as an associate broker.

If the Accountant's Report referred to above is received on or before May 16, 2012, Macdonald Realty and Mr. Henry will be reprimanded and further, that Mr. Henry and Macdonald Realty will be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days of the date of this Order.

If the Accountant's Report referred to above is not received by July 14, 2012, then Macdonald Realty's licence will be cancelled effective July 15, 2012.

If the Accountant's Report referred to above is not received on or before July 14, 2012, then Mr. Henry's managing broker's licence, together with any secondary licences he may have, will be cancelled effective July 15, 2012. For greater certainty, upon cancellation of his managing broker's licence, Mr. Henry shall be permitted to continue to be licensed as an associate broker.

Further, Macdonald Realty and Mr. Henry are ordered 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 Macdonald Realty Okanagan South Ltd., James Ashley Henry 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. Macdonald Realty Okanagan South Ltd. is suspended for sixty (60) days from May 16, 2012 to July 14, 2012 (inclusive), but that the suspension will be terminated if and when Macdonald Realty files an Accountant's Report as required by section 7-7(1) of the Council Rules for the year ending March 31, 2011, as it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1) of the Council Rules in that it failed to file an Accountant's Report with the Council for the year ending March 31, 2011 on or before July 31, 2011.
2. James Ashley Henry's managing broker's licence, together with any secondary licences he may have, is suspended for sixty (60) days from May 16, 2012 to July 14, 2012 (inclusive), but that the suspension will be terminated if and when Macdonald Realty files an Accountant's Report as required by section 7-7(1) of the Council Rules for the year ending March 31, 2011. For greater certainty, during the suspension, Mr. Henry shall

immediately be eligible to be licensed as an associate broker, as he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* by contravening section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that he failed to ensure that the said Accountant's Report was filed with the Council on or before July 31, 2011.

3. If the Accountant's Report referred to above is received on or before May 16, 2012, Macdonald realty and Mr. Henry each will be reprimanded, and that they are jointly and severally liable to pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days of the date of this Order.
4. If the Accountant's Report referred to above is not received on or before July 14, 2012, Macdonald Realty's licence will be cancelled effective July 15, 2012.
5. If the Accountant's Report referred to above is not received on or before July 14, 2012, Mr. Henry's managing broker's licence, together with any secondary licences he may have, will be cancelled effective July 15, 2012. For greater certainty, upon cancellation of his managing broker's licence, Mr. Henry shall be permitted to continue being licensed as an associate broker.
6. Macdonald Realty and Mr. Henry are ordered 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.

If Macdonald Realty and James Ashley Henry 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 11th day of April, 2012 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"Gerry Martin"

G. Martin, Chair
Consent Order Review Committee

File #11-057

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

IN THE MATTER OF

**JAMES ASHLEY HENRY
(039681)
AND**

**MACDONALD REALTY OKANAGAN SOUTH LTD.
(X028734)**

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

The following agreement has been reached between James Ashley Henry ("Mr. Henry"), Macdonald Realty Okanagan South Ltd. ("Macdonald Realty") and the Real Estate Council of British Columbia (the "Council").

- A. Macdonald Realty hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that it be suspended for 60 days from May 16, 2012 to July 14, 2012 inclusive, but that the suspension will be terminated if and when Macdonald Realty files an Accountant's Report as required by section 7-7(1) of the Council Rules for the year ending March 31, 2011.
- B. Mr. Henry hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that his managing brokers' licence, together with any secondary licences he may have, will be suspended for 60 days from May 16, 2012 to July 14, 2012 inclusive, but that the suspension will be terminated if and when Macdonald Realty files an Accountant's Report as required by section 7-7(1) of the Council Rules for the Year ending March 31, 2011. For greater certainty, during the suspension, Mr. Henry shall immediately be eligible to be licenced as an associate broker.
- C. If the Accountant's Report referred to in (A) is received on or before May 16, 2012, Macdonald Realty and Mr. Henry each further consent to an Order that they will each be reprimanded and further that Mr. Henry and Macdonald Realty will be jointly and severally liable to pay a discipline penalty to the council in the amount of \$1,000.00 within ninety (90) days of the date of this Order.
- D. If the Accountant's Report referred to in (A) above is not received on or before July 14, 2012, then MacDonald Realty consents to an Order that its license will be cancelled effective July 15, 2012.

- E. If the Accountant's Report referred to in (A) above is not received on or before July 14, 2012, then Mr. Henry consents to an Order that his managing brokers licence, together with any secondary licences he may have, will be cancelled effective July 15, 2012. For greater certainty, upon cancellation of his managing brokers licence, Mr. Henry shall be permitted to continue being licenced as an associate broker.
- F. Macdonald Realty and Mr. Henry consent to an Order that they be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00 within sixty (60) days of the date of this Consent Order.
- G. Macdonald Realty and Mr. Henry further consent to an Order that if they fail to comply with any of the terms of the Order set out above, a Discipline Hearing Committee of 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*.
- H. As a basis for this Order, Macdonald Realty and Mr. Henry acknowledge and agree that the facts set forth herein are correct:
1. Macdonald Realty is licensed as a brokerage and has been since March 31, 2008.
 2. Mr. Henry is currently licensed as a Managing Broker with Macdonald Realty and was so licensed at all material times. His licensing history is as follows:

		Macdonald Realty Okanagan South Ltd. (X028734)	Managing Broker	Trading, Rental
2007/11/16	Present			
2007/11/08	2007/11/15	*** Unlicensed ***		
2007/06/29	2007/11/07	Mountain Realty At Big White Ltd. (X027123)	Managing Broker	Trading, Rental, Strata
2006/09/26	2007/06/29	Mountain Realty At Big White Ltd. (X027123)	Managing Broker	Trading, Rental
2006/03/13	2006/09/26	Red Resort Properties Ltd. (X028679)	Managing Broker	Trading, Rental
2005/12/30	2006/03/13	Mountain Realty At Big White Ltd. (X027123)	Managing Broker	Trading, Rental, Strata
2000/06/29	2005/12/30	Mountain Realty At Big	Managing	Trading, Rental

		White Ltd. (X027123)	Broker	
1999/07/23	2000/06/29	Macdonald Realty, Kelowna, (1995) Ltd. dba Macdonald Realty Kelowna (X024618)	Associate Broker	Trading, Rental
1999/07/15	1999/07/22	*** Unlicensed ***		
1998/07/11	1999/07/14	554609 B.C. Ltd. dba Macdonald Realtors Mountain Resort Realty (X026378)	Managing Broker	Trading, Rental
1998/07/10	1998/07/10	*** Unlicensed ***		
1998/02/17	1998/07/09	554609 B.C. Ltd. (X026378)	Managing Broker	Trading, Rental
1994/02/08	1998/02/17	Horizon Realty Ltd. dba Coldwell Banker Horizon Realty (X021319)	Associate Broker	Trading, Rental
1993/11/15	1994/02/07	High West Realty Corporation (X022632)	Managing Broker	Trading, Rental
1993/05/19	1993/11/15	High West Realty Corporation (X022632)	Representative	Trading, Rental
1992/04/28	1993/05/19	Horizon Realty Ltd. dba Coldwell Banker Horizon Realty (X021319)	Representative	Trading, Rental
1988/07/11	1992/04/28	4 Seasons Realty Corp. (X013889)		
1986/04/02	1988/07/10	*** Unlicensed ***	Representative	Trading, Rental
1986/01/08	1986/04/01	Summer Realty (1985) Ltd. (X014673)	Representative	Trading, Rental
1982/05/03	1986/01/08	Carruthers & Meikle Ltd (X000549)	Representative	Trading, Rental

Secondary Licences

(039681-1)

2008/12/16	Present	British Columbia Strata Management Inc. (X029088)	Managing Broker	Trading, Rental, Strata
2008/12/05	2008/12/15	*** Unlicensed ***		
2008/03/07	2008/12/04	Macdonald Realty Okanagan South Ltd.(Mdwy) (X028982)	Managing Broker	Trading, Rental

(039681-2)

2011/09/12	Present	494888 B.C. Ltd. dba Strata Pro Property Management Services (X028609)	Managing Broker	Rental, Strata
2010/02/09	2011/09/12	Macdonald Realty Okanagan South Ltd. (Wstbrg) (X029031)	Managing Broker	Trading, Rental

(039681-3)

2011/09/12	Present	Mountain Strata Management Ltd. (X029058)	Managing Broker	Strata
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3. The fiscal year end of Macdonald Realty was March 31, 2011. The Accountant's Report was due to be filed with the Council on or before July 31, 2011.
4. A letter was sent from the Council to Macdonald Realty dated April 6, 2011 advising that the Accountant's Report, Brokerage Activity Report and review engagement financial statements (collectively the "Accountant's Report Filing") were due to be received by the Council on or before July 31, 2011.
5. A letter was sent from the Council to Macdonald Realty dated August 3, 2011 advising that if the Accountant's Report Filing was not received within 30 days of July 31, 2011, the matter would be forwarded to the Council's Legal Department for further action.
6. Council staff spoke with Mr. Henry on August 23, 2011. Mr. Henry advised that he had not yet paid his accountant in full for preparing the previous year's accountants report, and would not have the money until the beginning of September, 2011 to do so.

7. A letter was sent to Macdonald Realty from the Council dated October 4, 2011 advising that as a complete Accountant's Report Filing was not received by the Council as of that date, the file was being forwarded to the legal department.
8. On November 3, 2011 a Notice of Discipline Hearing was sent to Macdonald Realty and Mr. Henry.

Discipline History

9. Mr. Henry's discipline history is as follows:

Henry, James Ashley	039681	235-06 RECBC (Acct. Rpt.) Mountain Realty at Big White Ltd.	Reprimand to Brokerage and Henry and joint enforcement
	039681	09-464 RECBC (Acct. Rpt.) British Columbia Strata Management Inc.	Reprimand to Brokerage and Henry and joint enforcement
	039681	10-132 RECBC (Acct. Rpt.) Macdonald Realty Okanagan South Ltd.	Reprimand to Brokerage and Henry and joint enforcement

10. Mr. Henry was also issued a letter of warning on May 10, 2006 cautioning him that as a managing broker he has an obligation to ensure that the brokerage has policies and procedures in place to ensure that all individuals engaged by the brokerage, to undertake real estate services, are duly licensed and the licence certificates are retained in the brokerage, available for public inspection.

11. Macdonald Realty's discipline history is as follows:

MacDonald Realty Okanagan South Ltd.	X028734	10-132 RECBC (Acct. Rpt)	Reprimand and Joint enforcement with James Henry
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I. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Macdonald Realty and Mr. Henry are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
 - (a) Macdonald Realty Okanagan South Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1) of the Council Rules in that it failed to file an Accountant's Report with the Council for the year ending March 31, 2011 on or before July 31, 2011; and

- (b) James Ashley Henry committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* by contravening section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules (managing broker responsibilities) in that he failed to ensure that the said Accountant's Report was filed with the Council on or before July 31, 2011.
- 2. Macdonald Realty and Mr. Henry hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.
- 3. Macdonald Realty and Mr. Henry acknowledge that they have the right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
- 4. Macdonald Realty and Mr. Henry 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, and CanLii, a website for legal research.
- 5. Macdonald Realty and Mr. Henry 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.

“Joni Worton”

**Joni R. Worton, Legal Counsel
Real Estate Council of British Columbia**

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

Dated 20th day of March, 2012

“James Ashley Henry”

James Ashley Henry

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

Dated 29th day of February, 2012

“James Ashley Henry”

**James Ashley Henry on behalf of
MacDonald Realty Okanagan South Ltd.**

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

Dated 29th day of February, 2012