

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

**IN THE MATTER OF
RAYMOND JOHN KEEN**

CONSENT ORDER

RESPONDENT: Raymond John Keen, Representative,
Global West Real Estate Services Ltd.
dba Re/Max Commercial Solutions,
while licensed with 0844146 B.C.
Ltd. dba Kendall Property
Management

DATE OF REVIEW MEETING: November 28, 2014

DATE OF CONSENT ORDER: December 8, 2014

CONSENT ORDER REVIEW COMMITTEE: H. Exner
S. McGougan, Chair
D. Rishel

ALSO PRESENT: R.O. Fawcett, Executive Officer
G. Thiele, Director, Legal Services
B. Woolley, Legal Counsel for the
Real Estate Council

PROCEEDINGS:

On November 28, 2014 the Consent Order Review Committee (the “Committee”) resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver (“ASF”) submitted by Raymond John Keen.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Raymond John Keen and on behalf of the Council;

NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Raymond John Keen committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that Raymond John Keen:

1. be suspended for fourteen (14) days;
2. at his own expense, register for and successfully complete the Strata Management Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council; and
3. pay enforcement expenses of this Consent Order to the Council in the amount \$1,250.00 within sixty (60) days from the date of this Order.

If Raymond John Keen 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 *Real Estate Services Act*.

Dated this 8th day of December, 2014 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"S. McGougan"

S. McGougan, Chair
Consent Order Review Committee

Attch.

File #13-031

IN THE MATTER OF THE REAL ESTATE SERVICES ACT**S.B.C. 2004, c. 42
IN THE MATTER OF****RAYMOND JOHN KEEN (158385)****AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER**

The following agreement has been reached between Raymond John Keen ("Mr. Keen") and the Real Estate Council of British Columbia (the "Council").

- A. Mr. Keen hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (the "Act") that his license be suspended for fourteen (14) days and that he successfully complete the Strata Property Management Remedial Education Course as provided by the Sauder School of Business at the University of British Columbia within the time period as directed by Council. Mr. Keen acknowledges that any course taken as a result of a discipline penalty may not be used as a credit towards the Relicensing Education Program. Further, he agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within, sixty (60) days from the date of the Order herein. Mr. Keen further consents to an Order that if he fails to comply with any of the terms of the Order set out above, the Council may suspend or cancel his licence without further notice to him pursuant to sections 43(3) and 43(4) of the Act.
- B. As a basis for this Order, Mr. Keen acknowledges and agrees that the facts set forth herein are correct:
1. Mr. Keen was at all relevant times licensed as a representative (rental, strata) for Kendall Property Management ("Kendall Management").
 2. Mr. Keen's licensing history is as follows:

<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>
2011/09/01	Present	0844146 B.C. Ltd. (X029201)	Representative	Rental, Strata
2011/08/26	2011/09/01	0749318 B.C. Ltd. (X028726)	Representative	Rental

3. On January 1, 2012 Kendall Management entered into a services agreement (the "Service Agreement") with Strata Corporation KASXXXX for the provision of strata management services for property situate at XXXX O.L. Road (the "Property").
4. The Property is comprised of strata lots ("Strata Lots") and strata lots governed by a Use Plan (the "Use Plan Strata Lots").
5. The Use Plan Strata Lots were subject to governance by the Use Plan Committee, in addition to governance by Strata Corporation KAS XXXX and its Strata Council (the "Strata Council").
6. Mr. Keen was the representative of Kendall Management who acted as the manager for both the Strata Lots and the strata lots to which the Use Plan applied (the "Use Plan Strata Lots"). Mr. Keen, although providing certain strata management services to both the Strata Lots and the Use Plan Strata Lots, and notwithstanding that the Service Agreement covered both the Strata Lots and the Use Plan Strata Lots, was of the opinion in February 2013 that the Service Agreement and his obligations associated with services provided under the Act did not cover the management of the Use Plan Strata Lots.
7. OKVR had been appointed by the Strata Council and by the Use Plan Committee as the short term rental manager for some of the Strata Lots and all of the Use Plan Strata Lots in the Property.
8. The Strata Council and the Use Plan Committee has alleged that on April 18, 2013 they terminated the appointment of OKVR as the short term rental manager and provided notice of that termination to SK, the owner of OKVR, on April 18, 2013 although this matter remains subject to outstanding litigation.
9. It appears that Mr. Keen and certain of the owners of Strata Lots, certain of the owners of Use Plan Strata Lots, and certain members of the Strata Council and Use Plan Committee, had disagreements as to the services to be provided under the Service Agreement, the provision of certain information including budgets, and management generally, but particularly in relation to the Use Plan Strata Lots and the provision of services by OKVR.
10. Kendall Management terminated the Service Agreement effective May 31, 2013.
11. After the termination of the Service Agreement Mr. Keen continued to provide only those services he believed were Use Plan services to owners of Strata Lots and Use Plan Strata Lots in Strata Corporation KAS XXXX and that Mr. Keen believed he was independently required to provide pursuant to the Use Plan. In particular, Mr. Keen advised all owners and residents that he was the Use Plan Manager that he would be retaining the keys for the Concierge Unit at the Property and would continue to provide core service required of the Use Plan

Manager. The keys for the Use Plan Strata Lots were available through the Concierge Unit, to which none of the owners of Strata Lots or Use Plan Strata Lots had direct key card access, but which could be accessed when manned by OKVR or after hours by way of a 24 hour phone line manned by OKVR.

12. After the termination of the Service Agreement and the termination of OKVR as the short term rental manager, Mr. Keen continued to hold out OKVR as the short term rental manager, to use their services, and advised the owners of Strata Lots and Use Plan Strata Lots that OKVR were the designated short term rental managers.
13. Mr. Keen had never disclosed in writing to Strata Corporation KAS XXXX that he and SK, the owner of OKVR, were in a long term personal relationship.

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, Mr. Keen is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
 - (a) That Mr. Keen committed professional misconduct within the meaning of section 35(l)(a) of the Act in that he:
 - (i) contrary to section 3-3(l)(b) of the Council Rules and section 3-4 of the Council Rules, failed to act in accordance with instructions of the client and failed to use reasonable care and skill, in that he did not clearly describe the method of access to Strata Lots and Use Plan Strata Lots at the Property in June 2013 without explaining the method of access and seeking the input, direction or approval of the Complainant, such that some owners believed that he had improperly changed the method of access to Strata Lots and Use Plan Strata Lots;
 - (ii) contrary to section 3-3(l)(b) of the Council Rules and section 3-4 of the Council Rules, failed to act in accordance with instructions of the client and failed to use reasonable care and skill, in that without instructions from the Complainant he continued to use the services of OKVR as the short term rental management company for the Strata Lots and Use Plan Strata Lots, after OKVR had been terminated according to the Complainant;
 - (iii) contrary to section 3-3(l)(c) of the Council Rules and section 3-4 of the Council Rules, failed to act only within the scope of authority given by the client and failed to act with reasonable care and skill, in that in June 2013 he communicated to the owners of all Strata Lots and Use Plan Strata Lots comprising the Property that he was

retaining control of use of and access to the Use Plan Strata Lots forming part of the Property, without the direction or approval of the Complainant;

- (iv) contrary to section 3-3(l)(c) of the Council Rules, failed to act within the scope of authority given by the client, in that he informed the owners of all strata units comprising the Property that he was retaining the keys to the “Concierge Unit” in the Property until he received a court order or otherwise, without the direction or approval of the Complainant;
 - (v) contrary to section 3-3(l)(j) of the Council Rules, failed to fully and properly disclose a conflict of interest, in that he failed to disclose in writing to the Complainant that he was in a close personal relationship with SK, the owner of OKVR, while at the same time he continued to use OKVR as the short term rental management company for the Complainant; and
 - (vi) contrary to section 5-1(1) of the Council Rules, provided strata management services and/or rental property management services without a written service agreement between the client and the brokerage in that he provided or continued to provide strata management services as required by the Use Plan to the Complainant after the Service Agreement had been terminated.
2. Mr. Keen hereby waives his right to appeal pursuant to section 54 of the Act,
 3. Mr. Keen acknowledges that he has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
 4. Mr. Keen 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. Mr, Keen 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. The Agreed Statement of Facts and Proposed Acceptance of Findings cannot be used in any other proceeding of any kind.

This Agreed Statement of Facts and Proposed Acceptance of Findings may be signed in counterparts.

“Bruce Woolley, Q.C.”

Bruce Woolley, Q.C.
Legal Counsel
Real Estate Council of British Columbia
As to Part B only (Agreed Statement of Facts)

Dated November 5th, 2014

“Raymond John Keen”

Raymond John Keen
As to Parts A, B and C (Agreed
Statement of Facts, Proposed
Acceptance of Findings and Waiver)

Dated Nov 4, 2014