

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
AND
IN THE MATTER OF
KATHELEEN BLAKE
AND
KENNETH BLAKE
CONSENT ORDER

RESPONDENTS: Kathleen Blake, Managing Broker
Colyvan Pacific Real Estate
Management Services Ltd.
Kenneth Blake, Managing Broker
Colyvan Pacific Real Estate

DATE OF REVIEW MEETING: December 18, 2007

DATE OF CONSENT ORDER: January 11, 2008

CONSENT ORDER REVIEW COMMITTEE: J. Whyte (Chair)
B. Brown
C. Chen
S. Sidhu

ALSO PRESENT: R.O. Fawcett, Executive Officer
D.P. Berger, RECBC Staff

PROCEEDINGS:

On December 18, 2007 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by Kathleen Blake and Kenneth Blake as submitted, which was a seven (7) days suspension for Kathleen Blake and a reprimand for Kenneth Blake. Kathleen Blake and Kenneth Blake are both required to successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 3 (Professional Ethics) of the Rental Property Management Licensing Course as provided by the Real Estate Division of the Sauder School of Business at the University of British Columbia within the time period as directed by the Council. Both Kathleen Blake and Kenneth Blake acknowledge that any course taken as a result of a discipline penalty may not be used as a credit towards the Relicensing Education Program (REP). Further Kathleen Blake and Kenneth Blake are jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount of \$750.00 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 Kathleen Blake and Kenneth Blake 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. Kathleen Blake be suspended for seven (7) days as she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (contravention of Act, Regulations or Rules) by contravening section 3-4 of the Council Rules (duty to act with reasonable care and skill) in that she:
 - (a) failed to provide the owner of the said property the following documents upon request in a timely manner:
 - (i) copy of the original rental property management contract signed May 17, 2006 as required by section 5-2 of the Council Rules;
 - (ii) copies of letters sent to tenants in May 2006 appointing Colyvan as the owner’s rental property manager;
 - (iii) copies of statements for June, September and October, 2006;
 - (b) failed to act on the said owners request in a timely manner to proceed with a rental increase presentation to the Residential Tenancy Branch with respect to the upper unit;
 - (c) failed to ensure that the said rental property management agreement signed by the said owner had the correct address for the owner with respect to any notices;
2. Kenneth Blake is reprimanded for committing professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (contravention of Act, Regulations or Rules) by contravening section 3-1 of the Council Rules in that as managing broker he failed to ensure the business of the brokerage was carried out competently with respect to the management of the said property and failed to ensure that there was an adequate level of supervision of Ms. Blake in the management of the said property.
3. Kathleen Blake and Kenneth Blake are required to successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 3 (Professional Ethics) of the Rental Property Management

Licensing Course as provided by the Real Estate Division of the Sauder School of Business at the University of British Columbia.

3. Kathleen Blake and Kenneth Blake are ordered to be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount of \$750.00 within sixty (60) days from the date of this Order.

If Kathleen Blake or Kenneth Blake 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 January, 2008 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"Judi Whyte"

J. Whyte
Chair

Consent Order Review Committee

Atch.

File No. 214-06

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

IN THE MATTER OF

**KATHLEEN ANN BLAKE
(092108)**

**KENNETH GEORGE BLAKE
(000646)**

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

The following agreement has been reached between Kathleen Ann Blake ("Ms. Blake"), Kenneth George Blake ("Mr. Blake") and the Real Estate Council of British Columbia ("Council").

- A. Ms. Blake hereby consents to an Order to be made pursuant to section 43 of the *Real Estate Services Act* (the “Act”) that her licence be suspended for seven (7) days and that she successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 3 (Professional Ethics) both of the Rental Property Management Licensing Course within the time period as directed by the Council. Ms. Blake acknowledges that any course taken as a result of a discipline penalty may not be used as a credit towards the Relicensing Education Program (REP).
- B. Mr. Blake hereby consents to an Order to be made pursuant to section 43 of the *Real Estate Services Act* (the “Act”) that he be reprimanded and that he successfully completes the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 3 (Professional Ethics), both of the Rental Property Management Licensing Course within the time period as directed by the Council. Mr. Blake acknowledges that any course taken as a result of a discipline penalty may not be used as a credit towards the Relicensing Education Program (REP).
- C. Ms. Blake and Mr. Blake consent to be jointly and severally liable to pay enforcement expenses to the Real Estate Council in the amount of \$750.00 within sixty (60) days of the date of the Order herein.
- D. Ms. Blake and Mr. Blake consent to an Order that if they 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 section 43(3) and 43(4) of the *Real Estate Services Act*.
- E. As the basis for this Order, Ms. Blake and Mr. Blake acknowledge that the facts set forth herein are correct:

1. Ms. Blake was at the relevant time was licensed as a representative with Colyvan Pacific Real Estate Management Services Ltd. Ms. Blake’s licensing history is as follows:

Feb 8/91 – Apr 15/92	Representative, Ascent Real Estate Management Corporation
Jan 29/93 – Nov 30/94	Representative, Maude, MacKay & Company Limited
Dec 2/94 – Jul 2/97	Representative, Prominent Realty Group Inc. dba Re/Max Prominent Realty Group

Jul 2/97 – Oct 6/97	Representative, Excellence In Real Estate Holdings Corporation dba Re/Max West coast
Oct 10/97 – Nov 15/01	Representative, Richview Management Limited
Nov 15/01 – Present	Representative, Colyvan Pacific Real Estate Management Services Ltd.

2. Mr. Blake was at the relevant time was licensed as the managing broker with Colyvan Pacific Real Estate Management Services Ltd. Mr. Blake's licensing history is as follows:

Apr 23/76 – Jan 2/79	Representative, Block Bros Realty Ltd.
June 30/79 – Jun 30/81	Representative, United Realty Ltd.
Jan 29/82 – Jul 1/82	Representative, A.E. LePage (BC) Ltd. (Nbby)
Jul 1/82 – Aug 31/92	Associate Broker, A.E. LePage (BC) Ltd. (Nbby)
Sept 1/82 – Mar 8/83	Associate Broker, A.E. LePage Real Estate Services
Mar 8/83 – Dec 21/84	Managing Broker, A.E. LePage Real Estate Services
Dec 21/84 – Jan 8/93	Managing Broker, Royal LePage Real Estate Services Ltd. (Bbyeh)
Jan 8/93 – Jul 3/96	Managing Broker, Central Realty Ltd. dba Re/Max Central
Jul 2/96 – Sep 21/98	Managing Broker, Legend Real Estate Group Ltd. (Van)
Sept 21/98 – Nov 1/99	Managing Broker, 480749 BC Ltd. dba Realty Executives - Central
Nov 1/99 – Dec 30/02	Managing Broker, Kerrisdale Realty Ltd. (Bby)

Dec 30/02 – Present Managing Broker, Colyvan Pacific Real Estate Management Services Ltd.

3. Colyvan Pacific Real Estate Management Services Ltd. (“Colyvan”) commenced managing rental property for Len Paulovich, situated at 4852 – 54A Street, Delta, B.C. on or about June 1, 2006. The property consisted of two rental units, an upper unit and a lower unit. Mr. Paulovich was residing in Manning, Alberta at the material time in question.
4. On or about September 12, 2006 Mr. Paulovich sent an email to Ms. Blake indicating that during the four and a half months she managed this property he had not received any periodic reports as to the status of her activities for the property nor any documents. He requested that the following documents be delivered to him immediately:
 - Copy of the original contract that he signed with Colyvan Pacific in late May;
 - Copies of letters that she sent to each of his tenants at the end of May 2006;
 - Copy of the submission that was submitted for a hearing, requesting a rent increase for Steve McKay;
 - Report on the results of the above hearing;
 - Copies of the reports that were generated from formal inspections of the tenants quarters; and
 - A statement showing what transactions had occurred with respect to this property such as rent receipts, disbursements, etc.
5. On or about September 15, 2006 Mr. Paulovich attended at the Colyvan office where he met with Ms. Blake who handed him an envelope with some of the documents and she advised him that she had not had time to gather all of the documents he had requested.
6. On or about September 21, 2006 Mr. Paulovich sent another email to Ms. Blake indicating that he was still missing many of the documents that he requested on September 12, 2006. He indicated that he had partial documentation for operations through July 31 and to August 31 and copies of letters sent to his tenants on June 21. He indicated that there was nothing for June including the Vancity statement of account activity. He requested the statements for June once again. He also indicated that a copy of the letter to the tenant Ron Dion dated June 21, 2006 was incomplete and requested that she provide him with a full copy of this letter. He also made a further request for those documents that he earlier requested in his September 12, 2006 email.

7. On or about September 25, 2006 Ms. Blake sent an email to Mr. Paulovich indicating that Colyvan would be closing his account by the end of September 2006.
8. On or about September 26, 2006 Mr. Paulovich sent an email to Ms. Blake asking her whether she would be collecting rent for October 2006.
9. On or about September 27, 2006 Ms. Blake sent an email to Mr. Paulovich indicating that there was a three month cancellation clause and that they were willing to waive at least one month and that they would collect both October and November rent and then close the account for November 30, 2006.
10. On or about September 27, 2006 Mr. Paulovich sent an email to Ms. Blake indicating that he wanted the account closed effective October 30, 2006 after she collected the rents for October.
11. Mr. Blake indicated that Colyvan had not been acting in his best interest and that they had not fulfilled all of the terms and the spirit of their contract by withholding vital documentation and financial statements from him and by not keeping him informed about what was happening with his property.
12. Mr. Paulovich then filed a complaint with the Real Estate Council dated November 27, 2006 and indicated that Colyvan had refused to forward to him the following items despite repeated requests:

Item 1

- Copy of the original contract that he signed on May 17, 2004
- Copies of the letters sent to his tenants in late May when they were informed of his decision to engage Colyvan as his agent
- Copies of the inspection reports for inspections conducted on June 26, 2006 and any other subsequent inspections
- Copies of statements for June, September and October 2006 showing the disposition of the monies collected on his behalf

Item 2

- Levying extra charges for maintaining a bank account in his name (\$15.90/month)
- Audit fees (\$159.00) which he claimed were not stipulated in the contract he signed

Item 3

- Levying a service charge of \$53.00 for storage with no explanation or documentation clarifying what this charge was for.

Item 4

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- Failing to act upon his request made on May 17, 2006 to proceed with a rental increase presentation to the Residential Tenancy Branch then lying to him that she had done so.
13. Ms. Blake maintains that she gave direction to her support staff to forward a copy of the original management contract to Mr. Paulovich and it was her understanding that it had been forwarded to him.
 14. Mr. Paulovich maintains that he never received the original contract and made repeated requests for same over the ensuing months.
 15. The Council forwarded a copy of the management contract it had received from Colyvan to Mr. Paulovich in January of 2007. Mr. Paulovich noted that under the heading “#10 Notice” it stated that the owner’s address was P.O. Box 5182 Dhahran 313 Saudi Arabia. He indicated that he had no connection to Saudi Arabia and did not want his notices sent there.
 16. Mr. Paulovich maintains that he instructed Ms. Blake on May 17, 2006 to proceed with a rental increase presentation to the Residential Tenancy Branch. He claims that Ms. Blake advised him in an email dated June 29, 2006 “I have sent over the documents for a hearing on a rate increase, I do not know when the hearing will be.”
 17. Ms. Blake maintains that she did not have enough time to finish the presentation for a rental increase for the upper suite to the Residential Tenancy Branch because she was prematurely terminated by Mr. Paulovich.
 18. Mr. Paulovich indicates that the uncompleted notice of rent increase for the upper suite was dated May 18, 2006. He indicated that Ms. Blake was terminated on September 21, 2006 and that there was a four month period between the beginning of the rent increase procedure and termination which he felt was enough time for her to carry out his instructions.
 19. Ms. Blake submits that she conducted an inspection of the grounds and the upper floor unit with Mr. Paulovich and no request was made for a written inspection report.
 20. Ms. Blake admits that the monthly statements for rent collection were sent to the wrong address, that of the rental property itself, and once the error was discovered a correction of the address was made.
 21. Ms. Blake submits that pursuant to the management contract it allows for charges which from time to time may be levied and included an audit fee.

22. With respect to the storage charges Ms. Blake indicated that Colyvan made arrangements to store files offsite and the charges for same were prorated. She indicated that Mr. Paulovich was charged to strata rate and not the individual property rate and she indicated that Colyvan was prepared to refund Mr. Paulovich this charge.
23. The Council issued a letter of warning to Ms. Blake dated April 28, 1999 with respect to a pervious complaint cautioning her to ensure that monthly statements are sent out to clients on time, utility bills are paid on time, or if there is a shortage of funds that she contact the owner immediately. She was further cautioned to ensure that withholding tax is paid and that security deposits are transferred in a timely manner to a new property manager and that all inquiries are answered by her in a timely manner.

F. Proposed Acceptance of Findings and Waiver

Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Kathleen Ann Blake and Kenneth George Blake are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:

1. Kathleen Ann Blake committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (contravention of Act, Regulations or Rules) by contravening section 3-4 of the Council Rules (duty to act with reasonable care and skill) in that she:
 - (a) failed to provide the owner of the said property the following documents upon request in a timely manner:
 - (iv) copy of the original rental property management contract signed May 17, 2006 as required by section 5-2 of the Council Rules;
 - (v) copies of letters sent to tenants in May 2006 appointing Colyvan as the owner's rental property manager;
 - (vi) copies of statements for June, September and October, 2006;
 - (b) failed to act on the said owners request in a timely manner to proceed with a rental increase presentation to the Residential Tenancy Branch with respect to the upper unit;
 - (c) failed to ensure that the said rental property management agreement signed by the said owner had the correct address for the owner with respect to any notices;

2. Kenneth George Blake as managing broker for Colyvan Pacific Real Estate Management Services Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (contravention of Act, Regulations or Rules) by contravening section 3-1 of the Council Rules in that as managing broker he failed to ensure the business of the brokerage was carried out competently with respect to the management of the said property and failed to ensure that there was an adequate level of supervision of Ms. Blake in the management of the said property.
3. Ms. Blake and Mr. Blake hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.
4. Ms. Blake and Mr. Blake acknowledge that they have been advised to obtain independent legal advice with respect to this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
5. Ms. Blake and Mr. Blake acknowledge and are aware that the Council will publish the Consent Order and penalty herein in its Report from Council and on the Council's website.
6. Ms. Blake and Mr. Blake 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.
7. The 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 proposed acceptance of findings cannot be used in any other proceeding of any kind.

"David P. Berger"

David P. Berger, Legal Counsel
Real Estate Council of British Columbia

As to Part E only (Agreed Statement
of Facts)

Dated 3rd day of December, 2007

"Kathleen Ann Blake"

Kathleen Ann Blake

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

Dated 3rd day of December, 2007

"Kenneth George Blake"

Kenneth George Blake

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

Dated 3rd day of December, 2007