

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

**DANIEL ARTHUR BOURKE DBA  
FARRELL MANAGEMENT (SOLE PROPRIETOR)**

**CONSENT ORDER**

RESPONDENT:	Daniel Arthur Bourke, representative, Pacific Quorum Properties Inc. while licensed as managing broker, Daniel Arthur Bourke dba Farrell Management (Sole Proprietor)
DATE OF REVIEW MEETING:	April 18, 2008
DATE OF CONSENT ORDER:	June 16, 2008
CONSENT ORDER REVIEW COMMITTEE:	J. Whyte (Chair) S. Sidhu W. Strandlund
ALSO PRESENT:	R.O. Fawcett, Executive Officer J. S. Gossen, Real Estate Council staff

**PROCEEDINGS:**

On April 18, 2008 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by Daniel Arthur Bourke dba Farrell Management (Sole Proprietor) as submitted, which was permanent ban on licensing as a managing broker and a one year suspension of his licence in any capacity. At the conclusion of his suspension as a representative, Mr. Bourke will be under the direct supervision of his managing broker for a period of one (1) year during which the managing broker will report to the Council anything of an adverse nature with respect to Mr. Bourke's activities. Further he agrees to pay enforcement expenses to the Council in the amount of \$1,000.00 and a discipline penalty of \$5,000 within two (2) years of the date of the Order herein as a condition of continued licensing under the *Real Estate Services Act*.

**WHEREAS** an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was executed by Daniel Arthur Bourke dba Farrell Management (Sole Proprietor)

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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. Daniel Arthur Bourke dba Farrell Management (Sole Proprietor) be suspended for one year and consents to a permanent ban on licensing as a managing broker as he committed professional misconduct within the meaning of section 35(1)(a) and section 35(1)(c) of the *Real Estate Services Act*, in that he:
  - (a) contravened section 25 of the Act by failing to maintain proper books records and accounts of the brokerage in accordance with the Act and the Council Rules;
  - (b) permitted payments out of the brokerage trust account which payments resulted in a negative balance in the trust account contrary to section 7-5(1) of the Council Rules;
  - (c) failed to immediately eliminate a negative balance in the trust account contrary to section 7-5(2) of the Council Rules;
  - (d) failed to immediately notify the Council of a negative trust balance contrary to section 7-5(3) of the Council Rules;
  - (e) misappropriated funds held or received from or on behalf of a principal in relation to real estate services for his own use or benefit by making withdrawals from trust for purposes other than those permitted in sections 30(1) and (2) of the Act; and
  - (f) failed to promptly pay or deliver all monies held or received from strata corporation clients to the brokerage trust accounts contrary to section 27(1)(a) of the Act.
  
2. Daniel Arthur Bourke dba Farrell Management (Sole Proprietor) at the conclusion of his suspension as a representative is required to be under the direct supervision of his managing broker for a period of one (1) year during which the managing broker will report to the Council anything of an adverse nature with respect to Mr. Bourke’s activities.

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3. Daniel Arthur Bourke dba Farrell Management (Sole Proprietor) is ordered to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,000.00 and a discipline penalty of \$5,000.00 within two (2) years of the date of this Order herein as a condition of continued licensing under the *Real Estate Services Act*.

If Daniel Arthur Bourke 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 Real Estate Services Act.

Dated this 16th day of June, 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

Attch.

**File #315-06**

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

**IN THE MATTER OF**

**DANIEL BOURKE  
and  
DANIEL ARTHUR BOURKE dba FARRELL MANAGEMENT  
(147809)**

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

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The following agreement has been reached between Daniel Bourke (“Mr. Bourke”), Daniel Arthur Bourke dba Farrell Management (“Brokerage”) and the Real Estate Council of British Columbia (the “Council”).

- A. Mr. Bourke hereby consents to an Order to be made pursuant to section 41 of the *Real Estate Services Act* that Mr. Bourke’s licence as representative be suspended for one (1) year and he will consent to a permanent ban on licensing as a managing broker. At the conclusion of his suspension Mr. Bourke will be under

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the direct supervision as a representative of his managing broker for a period of one (1) year during which the managing broker will report to the Council anything of an adverse nature with respect to Mr. Bourke's activities. Mr. Bourke agrees to pay enforcement expenses to the Council in the amount of \$1,000.00 and a discipline penalty of \$5,000 within two (2) years of the date of the Order herein as a condition of continued licensing under the *Real Estate Services Act*.

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

1. Mr. Bourke was at all relevant times licensed as the sole proprietor of the Brokerage, Daniel Arthur Bourke doing business as Farrell Management ("the Brokerage") located at 2300-285 Shaughnessy Street, Port Coquitlam, British Columbia.

2. Mr. Bourke's licensing history is as follows:

Jan 10/06 – Mar 31/07     Sole Proprietor, Daniel Arthur Bourke dba  
Farrell Management

Mar 31/07 - Present         Representative, Pacific Quorum Properties  
Inc.

3. Mr. Bourke started Farrell Management in 1996 to provide strata property management services and many of the clients whose portfolio was transferred to Quorum Properties Inc. had been with Farrell Management from the inception of the Company.

4. On January 16, 17, and 18, 2007 a Council auditor conducted an Office and Records Inspection of the Brokerage which was licensed to provide strata management services only.

5. The Brokerage operated several accounts including two Brokerage trust accounts and a general business bank account being Vancity Account No. 20529.

6. The Office and Records Inspection Report noted that on February 17, 2006, Mr. Bourke deposited 10 cheques totaling \$3,900.94 into a bank account which was later identified as being the Brokerage general bank account at Vancity. The Report states at page 7:

- *....These cheques represented owners' strata fees collected from various strata corporations managed. As these cheques were made*

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*payable to Farrell Management, Mr. Bourke was able to deposit them into the general bank account. Mr. Bourke explained that most of these monies had been (transferred) to the strata corporations prior to our inspection. Three cheque amounts were (transferred) into the appropriate strata trust account on March 1, 2006, two cheque amounts (transferred) on March 8, 2006 and four cheque amounts (transferred) on April 23, 2006. One cheque amount however, for \$2,454.91 was...transferred... from the general bank account to the strata trust account during our inspection on January 17, 2007.*

- *The brokerage commenced managing strata corporation LMS 3253 in January 2006. Mr. Bourke stated that he was unable to set up pre-authorized credits into the strata corporation's trust account until (February) 2006. The strata fees collected from the owners for the months of January, February and March 2006 were set up as pre-authorized credits directly into (the Brokerage general bank account). The pre-authorized credits into (this account) totaled \$21,066.08 for the three months. On March 29, 2006 Mr. Bourke transferred \$21,066.08 from (an) account in the name "FMI Reserves" (Vancity Acct. No. 37846) to the strata trust account for LMS 3253 (Vancity Acct. No. 106856).*
7. The "FMI Reserves" account was a brokerage account and the initials stood Farrell Management Investments.
  8. The Report further stated that:

*During the inspection, the following was noted:*

- *On November 18, 2006 Mr. Bourke transferred \$10,000.00 from the trust account of NW 3031 (Vancity Acct. No. 28266) to (the Farrell Management general account)..... On November 30, 2006 he transferred \$10,000.00 from (this account) back to NW 3031's trust account.*
- *On December 7, 2006 Mr. Bourke transferred \$7,000.00 from the trust account of NW 3031 (Vancity Acct. No. 28266) to ( the Farrell Management general account). On January 8, 2007 he transferred \$7,000.00 from (this) bank account back to NW 3031's trust account.*
- *On December 9, 2006 Mr. Bourke transferred \$1,000.00 from the trust account of NW 1094 (Vancity Acct. No. 20115) to (the Farrell Management general account).....(Mr. Bourke)...repaid it during our inspection on January 17, 2007 by transferring*

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*\$1,000.00 from ( the Farrell Management general account) to the strata trust account.*

- *On December 20, 2006 Mr. Bourke transferred \$2,000.00 from the trust account of NW 3031 (Vancity Acct. No. 28266) to (the Farrell Management general account). On January 8, 2007 Mr. Bourke transferred \$2,000.00 from ( this ).. account back to NW 3031's trust account.*
9. On January 18, 2007 Ms. Lisa Holst, Manager, Accounting & Audit, attended the brokerage along with Mr. Parente on to review the findings and met with Mr. Bourke.
  10. Mr. Bourke subsequently removed himself as signing authority on the trust accounts and restricted his ability to transfer funds between the accounts through online banking.
  11. On February 5, 2007, Mr. Bourke forwarded a Wind-up Report for Farrell Management to the Council and confirmed an agreement with Pacific Quorum Properties Inc. to transfer nine of the 14 properties the Brokerage managed to Pacific Quorum as of February 1, 2007.
  12. Mr. Bourke then notified all of the strata councils of the change and arranged for the transfer of bank accounts.
  13. The remaining five Strata Corporations were given sixty days' notice as per the *Strata Property Act* of the contract termination and while the Brokerage continued to prepare their financial documents during that time period, no cheques were signed.
  14. Mr. Bourke did not act in any capacity as a signing officer on any of the trust accounts effective February 1, 2007.
  15. On February 13, 2007 a copy of the Office and Records Inspection Report was sent to Mr. Bourke and he was asked to provide a written response to the Report by March 6, 2007.  
  
*".... (the funds) were not immediately transferred to the Strata Corporations accounts as they should have because I was not organized and had poor follow-up practices related to the receipt of funds. As Mr. Parente noted most payments were transferred at a later date and one not at all until it was pointed out to me; at which time I immediately transferred the funds."*
  16. With respect to the issue of preauthorized payments Mr. Bourke stated:

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*“Preauthorized payment proceeds were set up to be paid into the Farrell Management account and continued to be paid into the account for the months of January, February, and March at which time all three months were transferred to the Strata Corporation account.*

*My assumption and recollection, during my interview with Mr. Parente, was that their (sic) was a problem with the Strata Corporation account that I could not deposit the initial payment into the account in January, and that the subsequent monthly deposits were an oversight, as I was setting up new preauthorized payment deposits with the correct Strata Corporation account number in the months following, but had not changed the deposit account number on the payments set up in January.*

*While the problem in January could have been that while the account had been opened, the documents had not been signed by the strata council or returned to VanCity; the signature cards were not dated and I still can not recall exactly why this would have happened, I confirmed that the account was set up in late December 2006 but I have no explanation other than what has previously been stated that poor follow-up on my part and account practices resulted in this breach under the Real Estate Services Act.”*

17. Mr. Bourke acknowledges that the Report as it refers to the transfers of funds between the strata trust accounts and the brokerage general account is accurate.
18. Mr. Bourke acknowledges that he had failed to promptly pay money received from Strata Corporation clients to brokerage trust accounts. He states that all delays were due to poor accounting practices, which is also the case when, in January 2006, he set up pre-authorized payments for strata fee assessments for a new Strata Corporation client and deposited the funds directly into the Farrell Management brokerage general account. He rectified this by setting up new pre-authorized payments in February and March 2006 where the funds were deposited directly to the Strata Corporations’ trust accounts.
19. He states further that it was due to poor follow-up on the pre-authorized payments set up in January that allowed those funds to remain in the brokerage accounts and continued to be deposited to said brokerage account in the months of February and March, at which time the error was realized and all of the money was transferred from Farrell Management to the Strata Corporations’ account.
20. Mr. Bourke acknowledges that prior to licensing and the setting up of trust accounts, he had transferred funds from the Strata Corporations’ accounts

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to the brokerage account and thereby withdrew money from client accounts without authorization of the Brokerage clients.

21. Mr. Bourke states that he was ill prepared to meet the licensing requirements and did not take the necessary steps to implement the procedures needed to fulfill the licensing requirements and realizes that the administrative side of his business was seriously lacking. He states that errors in judgment were compounded by family illness and excess personal and professional stress.

22. Mitigating factors include:

a) Mr. Bourke has been conducting himself as a licensed representative of Pacific Quorum Properties Inc. since March 31, 2007. During that time, there have been no instances of misconduct and John Peccia of Pacific Quorum has advised the Council of the exemplary conduct, attitude and expertise of Mr. Bourke. Mr. Peccia writes:

*In the past twelve months Mr. Bourke has been employed by Pacific Quorum Properties as a licensed representative and has exhibited strong interpersonal skills and a level of experience much needed in our field. Mr. Bourke has shown strong attention to detail and compliance with the Strata Property Act and the Real Estate Services Act that are a reflection of this experience.*

*As a key employee in our organization a lengthy suspension would seriously affect our ability to serve our strata clients and possibly require the termination of some existing contracts, many of which are clients of Pacific Quorum, assumed from Farrell Management and have therefore come to rely upon Mr. Bourke's experience and expertise in the management of their strata in many cases for up to ten years.*

*I understand that the issues being reviewed by the Real Estate Council are of a serious nature and require review; however I feel that the errors in judgment based on what I know of Mr. Bourke and his direct involvement in our organization are uncharacteristic, based on the professionalism Dan exhibits on a daily basis.*

b) No strata corporation or client suffered any damage or complained to the Council regarding the conduct of Mr. Bourke.

c) Mr. Bourke has cooperated with the investigation of the Council in every way possible, has wound down the business of the Brokerage and provided an acceptable wind-up report in which all

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trust funds are fully accounted for; and finally has agreed to permanently withdraw from licensing as a managing broker.

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. Bourke is prepared to accept a finding against him by the Council's Consent Order Review Committee that he committed professional misconduct within the meaning of section 35(1)(a) and section 35(1)(c) of the *Real Estate Services Act* in that he:
  - (a) contravened section 25 of the Act by failing to maintain proper books records and accounts of the brokerage in accordance with the Act and the Council Rules,
  - (b) permitted payments out of the brokerage trust account which payments resulted in a negative balance in the trust account contrary to section 7-5(1) of the Council Rules;
  - (c) failed to immediately eliminate a negative balance in the trust account contrary to section 7-5(2) of the Council Rules;
  - (d) failed to immediately notify the Council of a negative trust balance contrary to section 7-5(3) of the Council Rules;
  - (e) misappropriated funds held or received from or on behalf of a principal in relation to real estate services for his own use or benefit by making withdrawals from trust for purposes other than those permitted in sections 30(1) and (2) of the Act; and
  - (f) failed to promptly pay or deliver all monies held or received from strata corporation clients to the brokerage trust accounts contrary to section 27(1)(a) of the Act.
2. Mr. Bourke hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Mr. Bourke acknowledges that he 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. Mr. Bourke 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. Bourke 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

As to Part B only (Agreed Statement  
of Facts)

Dated 12<sup>th</sup> day of March, 2008

“Daniel Arthur Bourke”

Daniel Arthur Bourke

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

Dated 11<sup>th</sup> day of March, 2008