

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*

S.B.C. 2004, c. 42

AND

IN THE MATTER OF

LAWRENCE BRUCE MCGILLIVRAY

AND

FACILITECH PROPERTY MANAGEMENT LTD.

CONSENT ORDER

RESPONDENTS:

Lawrence Bruce McGillivray,
Associate Broker, Facilitech Property
Management Ltd., while licensed as
Managing Broker, Facilitech Property
Management Ltd.

Facilitech Property Management Ltd.,
Brokerage

DATE OF REVIEW MEETING:

February 11, 2010

DATE OF CONSENT ORDER:

February 16, 2010

CONSENT ORDER REVIEW COMMITTEE:

B. Binnie
G. Martin (Chair)
L. Tutt

ALSO PRESENT:

R. Fawcett, Executive Officer
D. Berger, Director, Legal Services
J. Gossen, Counsel for the Real Estate
Council

PROCEEDINGS:

On February 11, 2010 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by Lawrence

Bruce McGillivray and Facilitech Property Management Ltd. as submitted, which was that Lawrence Bruce McGillivray and Facilitech Property Management Ltd. be reprimanded, and that they be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500.00 within 120 days of the date of this Order. Further, Lawrence Bruce McGillivray and Facilitech Property Management Ltd. 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 120 days from the date of this Order.

WHEREAS an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was executed by Lawrence Bruce McGillivray, Facilitech Property Management Ltd. 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. Lawrence Bruce McGillivray be reprimanded as he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:
 - (a) committed professional misconduct within the meaning of section 35(1)(a) and section 35(1)(d) of the *Real Estate Services Act*;
 - (b) failed to fulfill 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*;
 - (c) contravened sections 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 April 30, 2009;
 - (d) failed to ensure that monthly trust reconciliations were prepared in a timely manner and in any event no later than 5 weeks after the end of the month being reconciled contrary to section 8-2(b) of the Council Rules;
 - (e) failed to ensure that the trust reconciliations prepared included date and initials of the managing broker or person designated by the managing broker contrary to section 7-4(2) of the Council Rules;

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- (f) failed to remit interest earned on a pooled trust account to the Real Estate Foundation contrary to section 29 of the *Real Estate Services Act*;
 - (g) failed to ensure that payments were not made out of a trust account which caused a negative balance or caused a negative balance to increase for a trust account that already had a negative balance contrary to section 7-5 of the Council Rules;
 - (h) failed to transfer money received by electronic deposit into a brokerage trust account no later than 3 days after the day upon which it was received contrary to section 7-9(2.1) of the Council Rules;
 - (i) failed to prepare records after the termination of real estate services contrary to section 8-3.1 of the Council Rules; and
 - (j) failed to retain records, original bank statements and cancelled cheques as they were lost in the mail and copies were not requested for a period of 12 months after they were lost contrary to section 8-10 of the Council Rules.
2. Facilitech Property Management Ltd. be reprimanded as it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it:
 - (a) contravened section 7-7(1) of the Council Rules and section 35 of the *Real Estate Services Act* in that it failed to file an Accountant's Report with the Council for the year ending December 31, 2008 on or before April 30, 2009; and
 - (b) failed to prepare and retain such financial records in connection with its business as are necessary to ensure that appropriate and timely accounting of all transactions relating to real estate services provided by the brokerage and its related licensees contrary to section 8-1 of the Council Rules.
 3. Lawrence Bruce McGillivray and Facilitech Property Management Ltd. are ordered to be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500.00 within 120 days of the date of this Order.
 4. Lawrence Bruce McGillivray and Facilitech Property Management Ltd. 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 120 days from the date of this Order.

If Mr. McGillivray or Facilitech Property Management Ltd. fail to comply with any of the terms of the Order set out above, the Council may suspend or cancel their licenses, without further notice to them pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 16th day of February, 2010 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“G. Martin”

G. Martin
Chair
Consent Order Review Committee

Atch.

File #08-534

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

IN THE MATTER OF

**LAWRENCE BRUCE MCGILLIVRAY
(048161)**

AND

**FACILITECH PROPERTY MANAGEMENT LTD.
(X024531)**

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached among Lawrence Bruce McGillivray (“Mr. McGillivray”), Facilitech Property Management Ltd. (“Facilitech”) and the Real Estate Council of British Columbia (the “Council”).

- A. Margo Wells on behalf of Facilitech hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that Facilitech be reprimanded.
- B. Mr. McGillivray hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded.
- C. Margo Wells on behalf of Facilitech and Mr. McGillivray consents to an Order that Facilitech and McGillivray be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500.00 within one hundred and twenty (120) days of the date of the Order herein.
- D. Margo Wells on behalf of Facilitech and Mr. McGillivray consent to be jointly and severally liable to pay the enforcement expenses to the Council in the amount of \$1,000.00 within one hundred and twenty (120) days of the Order herein.
- E. Margo Wells on behalf of Facilitech further consents to an Order that the brokerage will be liable to pay the costs of an audit of the brokerage books and records by the Council to be completed within six months of the date of the Order herein.
- F. Margo Wells on behalf of Facilitech and Mr. McGillivray further agree 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 sections 43(3) and 43(4) of the *Real Estate Services Act*.
- G. As a basis for this Order, Margo Wells on behalf of Facilitech and Mr. McGillivray acknowledge and agree that the facts set forth herein are correct:

- 1. Facilitech is licensed as a brokerage and has been since July, 12, 1995.
- 2. Mr. McGillivray is currently licensed as an Associate Broker with Facilitech and was so licensed at all material times. His licensing history is as follows:

Feb. 13/84 – Apr. 12/85	Representative, Trading, Rental, Block Bros. Realty Ltd. (Vnd) (Old)
Apr. 12/85 – May 17/89	Representative, Trading, Rental, Block Bros. Realty Ltd. (Vnd)

May 17/89 – Jul. 1/89	Associate Broker, Trading, Rental, Block Bros. Realty Ltd. (Vnd)
Jul. 1/89 – Jan. 8/91	Associate Broker, Trading, Rental, Nrs Block Bros. Realty Ltd. (Vnd)
Jan. 24/91 – Mar. 31/98	Associate Broker, Trading, Rental, Sutton Group Heritage West Realty Ltd.
Mar. 31/98 – May 15/02	Associate Broker, Trading, Rental, Broadway West Realty Ltd. dba Amex Broadway West Realty
May 15/02 – Jan. 1/06	Managing Broker, Trading, Rental, Facilitech Property Management Ltd.
Jan. 1/06 – Jun. 19/09	Managing Broker, Trading, Rental, Strata, Facilitech Property Management Ltd.
Jun. 19/09 - Present	Associate Broker, Trading, Rental, Strata, Facilitech Property Management Ltd.

3. A prior office and records inspection was conducted by the Council in April 2007 with the most recent follow up in May 2008.
4. The Accountant's Report for the brokerage fiscal year ended December 31, 2008 was not received at Council in an acceptable format until July 17, 2009. The Accountant's Report noted a number of exceptions.
5. Neil Sideen, Accounting Manager for the brokerage assisted Council staff in the review of the brokerage books and records. Mr. Sideen commenced employment with the brokerage in May 2009. Mr. Sideen is in the final stages of completion of his CGA designation and is currently completing the University degree requirement through Laurentian University.
6. The brokerage is licensed for trading, rental property management and strata management services.

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7. The brokerage office is located in an office on the 4th floor of the Holiday Inn at 1110 Howe Street, Vancouver, BC.

 8. The exceptions in the Accountant's Report included the following:
 - (a) As of November 18, 2009, Margo Wells has become the managing broker for the brokerage. Bob Adams, a director of the brokerage and a representative has indicated that the issues set out in the exceptions to the Accountant's Report have been dealt with. The brokerage has a new in-house bookkeeper who is finishing his CGA designation. He fully expects the brokerage to be able to be completely compliant in relation to its 2009 Accountant's Report due on or before April 30, 2010.

 - (b) The brokerage monthly trust liability and asset reconciliations from January 2008 to March 2009 were prepared in May of 2009. Accordingly, the trust reconciliations for this period were not prepared within five weeks after the end of the month being reconciled.

 - (c) The monthly bank reconciliations, and monthly trust liability and asset reconciliations for the period of time, January 2008 to March 2009 were not dated and initialled by a related managing broker or by a managing broker to indicate that they have been reviewed.

 - (d) Interest earned on the pooled real estate trust account in 2006 in the sum of \$225.57 had not been paid to the Real Estate Foundation up to the date of the Accountant's Report.

 - (e) In relation to property management pooled trust accounts there were several instances where individual owner accounts were permitted to have negative balances from the period January 2008 to March 2009.

 - (f) Individual owner accounts were charged for management fees and these fees were posted as charges before the cheques were prepared, issued and paid by the bank. This resulted in an overdraft showing owners' ledger accounts as the expenses were posted prior to rent being received.

 - (g) In some instances disbursements from individual owner accounts were paid out prior to the rent being received for the month in which the disbursements were paid thereby creating a negative balance in the individual owner accounts.

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- (h) Interest on the property management pooled trust account for 2008 was not paid to the Real Estate Foundation up to the date of the Accountant's Report.
 - (i) In relation to the pooled and individual trust accounts, the strata trust accounts for strata corporations no longer maintained by the brokerage were not closed and trust ledgers were not updated for any transactions that had occurred after the termination, no bank reconciliations were prepared after the termination and no statements were provided to the strata corporation after termination.
 - (j) Direct electronic deposits received into the pooled strata trust account on behalf of individual strata trust accounts for the month of January to November 2008 were transferred to the individual strata trust accounts later than three days after the date on which they were received. On average these transfers occurred around one week after receipt in the pooled strata trust account.
 - (k) The May 2008 and June 2008 original bank statements and cancelled cheques for the pooled real estate trust account were lost in the mail. Permanent electronic copies of the bank transactions without the cancelled cheque images were retained by reprints of the original bank statements with images of the cancelled cheques were not requested from the bank until May of 2009.
 - (l) In relation to two property management pooled trust accounts, the May 2008 and June 2008 original bank statements and cancelled cheques were lost in the mail. Again, the original bank statements with the cancelled cheques were not requested from the bank until May 2009.
 - (m) In relation to the strata management pooled and individual trust accounts, the May 2008 and June 2008 original bank statements and cancelled cheques for the individual strata trust accounts with the exception of two accounts were lost in the mail. Bank statements and cancelled cheques for March 2008 for one account were also missing, documents for February 2008 in relation to another account, October 8, 2008 in relation to another account and August 2008 in relation to a separate account were all noted as missing in the Accountant's Report.

H. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Facilitech Property Management Ltd. and Lawrence Bruce McGillivray are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
 - (a) Facilitech Property Management Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*
 - (i) contravened section 7-7(1) of the Council Rules [filing of Accountant's Report] and/or section 35 of the RESA [professional misconduct] in that it failed to file an Accountant's Report with the Real Estate Council for the year ending December 31, 2008 on or before April 30, 2009; and
 - (ii) failed prepare and retain such financial records in connection with its business as are necessary to ensure that appropriate and timely accounting of all transactions relating to real estate services provided by the brokerage and its related licensees contrary to section 8-1 of the Council Rules
 - (b) Lawrence Bruce McGillivray committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*
 - (i) committed professional misconduct within the meaning of section 35(1)(a) and/or section 35(1)(d) of the *Real Estate Services Act*;
 - (ii) fulfilled 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*;
 - (iii) contravened sections 3-1(1)(a) and (b) and/or 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 Real Estate Council on or before April 30, 2009;
 - (iv) failed to ensure that monthly trust reconciliations were prepared in a timely manner and in any event no later than 5 weeks after the end of the month being reconciled contrary

to section 8-2(b) of the Council Rules;

- (v) failed to ensure that the trust reconciliations prepared included date and initials of the managing broker or person designated by the managing broker contrary to section 7-4(2) of the Council Rules;
 - (vi) failed to remit interest earned on a pooled trust account to the Real Estate Foundation contrary to section 29 of the *Real Estate Services Act*;
 - (vii) failed to ensure that payments were not made out of a trust account which caused a negative balance or caused a negative balance to increase for a trust account that already had a negative balance contrary to section 7-5 of the Council Rules;
 - (viii) failed to transfer money received by electronic deposit into a brokerage trust account no later than 3 days after the day upon which it was received contrary to section 7-9(2.1) of the Council Rules;
 - (ix) failed to prepare records after the termination of real estate services contrary to section 8-3.1 of the Council Rules; and
 - (x) failed to retain records, original bank statements and cancelled cheques as they were lost in the mail and copies were not requested for a period of 12 months after they were lost contrary to section 8-10 of the Council Rules.
2. Facilitech and Mr. McGillivray hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.
 3. Facilitech and Mr. McGillivray and 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. Facilitech and Mr. McGillivray 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.
 5. Facilitech and Mr. McGillivray 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.

“Jessica S. Gossen”

“Lawrence Bruce McGillivray”

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

Lawrence Bruce McGillivray

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

As to Part E only (Agreed Statement of Facts)

Dated 27 day of November, 2009

Dated 27 day of November, 2009

“Margo Wells”

Margo Wells on behalf of Facilitech Property Management Ltd.

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

Dated 27 day of November, 2009