

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*

**S.B.C. 2004, C. 42
AND**

**IN THE MATTER OF
PAUL MARTIN STAPLEY**

CONSENT ORDER

RESPONDENT: Paul Martin Stapley, Managing Broker,
Peak Property Management Inc.

DATE OF REVIEW MEETING: May 6, 2010

DATE OF CONSENT ORDER: May 25, 2010

CONSENT ORDER REVIEW COMMITTEE: W. Brown (Chair)
J. Finlayson
J. McNeal
B. Turner

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

PROCEEDINGS:

On May 6, 2010 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by Paul Martin Stapley as submitted, which was that Paul Martin Stapley be reprimanded. He is ordered to pay a discipline penalty to the Council in the amount of \$1,500.00 within ninety (90) days of the date of this order, and to successfully complete Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period as directed by the Council. Further, he is ordered 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 Paul Martin Stapley 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. Paul Martin Stapley be reprimanded as he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by:
 - (a) failing to respond until March 17, 2008 to an initial request made on December 20, 2007 with an initial response date of January 15, 2008 and a reminder of February 4, 2008, contrary to section 37 of the *Real Estate Services Act*;
 - (b) failing to respond until June 4, 2008 to an initial request made on April 2, 2008 with an initial response date of April 23, 2008 and a reminder of May 14, 2008, contrary to section 37 of the *Real Estate Services Act*.

2. Paul Martin Stapley committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* by:
 - (a) Failing to pay commission-based remuneration for licensees engaged by the brokerage, who are providing rental management and/or strata management services, from a brokerage trust account or commission trust account, contrary to section 7-5 of the Council Rules;
 - (b) Failing to take immediate steps to eliminate negative balances within rental management services trust accounts, contrary to section 7-5 of the Council Rules;
 - (c) Failing to transfer CRF funds within 7 days of the end of the month, contrary to section 7-9(4) of the Council Rules;
 - (d) Failing to arrange for a qualified second co-signatory for all CRF or special levy trust accounts for the strata corporations within the care of the brokerage, contrary to section 7-9(6) of the Council Rules;
 - (e) Failing to prepare and maintain monthly reconciliations of the pooled rental management services trust accounts, contrary to section 8-2 and 8-3 of the Council Rules; and

3. Paul Martin Stapley is ordered to pay a discipline penalty to the Council in the amount of \$1,500.00 within ninety (90) days of the date of the Order herein.
4. Paul Martin Stapley is ordered to successfully complete Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period as directed by the Council.
5. Paul Martin Stapley is ordered 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 Mr. Stapley 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 25th day of May, 2010 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“W. Brown”

W. Brown, Chair
Consent Order Review Committee

Attch.

**Files #08-183
08-392**

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

IN THE MATTER OF

**Paul Martin Stapley
(081966)**

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

The following agreement has been reached between Paul Martin Stapley (“Mr. Stapley”) and the Real Estate Council of British Columbia (the “Council”)

- A. Mr. Stapley hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded, that he pay a discipline penalty in the amount of \$1,500 within 90 days of the date of this order, that he successfully complete the Trading Services Remedial Education course as provided by Sauder School of Business at the University of British Columbia within the time period as directed by the Council. Further, that he pay enforcement expenses to the Council in the amount of \$1,000 within sixty days of the date of the Order herein. Mr. Stapley further consents to an Order that if he fails to comply with any of the terms of this Order, a Discipline Hearing Committee may suspend or cancel his license without further notice to him pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.
- B. As a basis for this Order, Mr. Stapley acknowledges and agrees that the facts set out below are correct:
1. Mr. Stapley was at all relevant times licensed as the managing broker for Peak Property Management Inc.
 2. Mr. Stapley’s licensing history is as follows:

First licensed, Representative, Trading, Rental, August 10, 1989.

Aug. 10/89 - Nov.15/90	Representative, Trading, Rental, Advance Realty Ltd. dba Royal LePage Advance Realty
Nov. 15/90 – Dec. 24/90	Representative, Trading, Rental, Showcase Realty Plus Ltd. dba Royal LePage Showcase Plus

Dec. 24/90 – Jul. 31/95	Representative, Trading, Rental, Alderson Properties Ltd. dba Realty World Coronation West
Jul. 31/95 – Jul. 30/97	Managing Broker, Trading, Rental, Peak Property Management Inc.
Jul. 31/95 – Mar. 13/98	Managing Broker, Trading, Rental, Alderson Properties Ltd. dba Realty World Coronation West
Jul. 31/97 – Jul. 30/99	Managing Broker, Trading, Rental, Peak Property Management Inc.
Mar. 13/98 – Jun. 15/01	Managing Broker, Trading, Rental, Coronation Real Estate Services Ltd.
Jul. 31/99 - May 30/02	Managing Broker, Trading, Rental, Peak Property Management Inc.
May 30/02 – Sep. 4/02	Associate Broker, Trading, Rental, Peak Property Management Inc.
Sep. 4/02 – Jan.1/06	Managing Broker, Trading, Rental, Advance Realty Ltd. dba Royal LePage Advance Realty
Jan. 1/06 – Present	Managing Broker, Trading, Rental, Strata, Peak Property Management Inc.

3. Peak Property Management Inc. provides strata management services.
4. In 2007 and 2008, Mr. Stapley suffered from a serious medical condition. Concerns about his condition continued into 2009. In his capacity as managing broker he hired certain employees to operate his business. During this period Mr. Stapley's attention was focused more on his health than the operation of his business and its obligations under the Real Estate Services Act.

Facts Pertaining to Complaint #08-183

5. In the months of May, June, July and August 2008, Peak Property Management staff made certain accounting errors that effected the company's compliance with certain sections of the Real Estate Services Act and the Council Rules including:
 - a. Making commission payments to brokerage licensees out of the rental trust account rather than the real estate trust account;
 - b. Making duplicate payments to service providers;
 - c. As a result of the above errors, causing the pooled rental trust account to have a negative balance;
 - d. Failing to transfer CRF funds received on behalf of Strata Plan LMS-1807 within 7 days after the end of the month for the months of July, August and September 2008;
 - e. Failing to prepare and retain monthly reconciliations of the pooled rental management services trust account for the months of November and December, 2007.
6. Mr. Stapley failed to arrange a qualified second co-signatory for all CRF or special levy trust accounts for the strata corporations within the care of the brokerage.
7. Peak Property Management Inc. failed to prepare and maintain a separate list of all trades in real estate in which the brokerage was involved for the 2008 fiscal year.
8. On December 20, 2007, the Council wrote to Mr. Stapley and requested a response by January 15, 2008 related to the allegations pertaining to the facts cited above. Mr. Stapley did not respond by that date and only responded after a follow up letter was sent to him on February 4, 2008. Mr. Stapley's response was not received until March 17, 2008 due to his being hospitalized at the time.
9. On April 2, 2008, the Council again wrote to Mr. Stapley and requested a response to this second letter by April 23, 2008. Mr. Stapley did not respond until June 4, 2008 notwithstanding a follow up letter sent to him on May 14, 2008.

Facts Pertaining to Complaint #08-392

10. During the relevant period, Peak Property Management Inc. was the property manager for Strata Plan NW-2333. Peak Property Management Inc. was replaced effective February 1, 2009.
11. During the months of March and June 2008 the trust account for Strata Plan NW-2333 fell into a negative balance. The payments that caused these negative

balances were approved by the Strata, but Peak Property Management Inc. staff did not advise the Strata that by making these payments they would overdraw the funds residing in the relevant trust account. The negative balances in question were \$200.16 and \$660.29 respectively.

12. From March through November 2008, Mr. Book was hired by Peak Property Management Inc. to manage the affairs of Strata Plan NW-2333. Mr. Book was new to property management and Mr. Stapley admits to failing to properly supervise Mr. Book's activities.
13. During this period, Peak Property Management Inc. failed to ensure that approved monthly financial statements were properly prepared and delivered. Many of the financial statements provided to the Strata contained accounting errors including duplicate postings, missing postings and postings to incorrect accounts.
14. On March 3, 2009, the Strata made a formal complaint to the Council.

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, Paul Martin Stapley is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
 - a. Paul Martin Stapley committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("Act") [contravention of the Act, Regulation or Council Rules] by:
 - i. Failing to respond until March 17, 2008 to an initial request made on December 20, 2007 with an initial response date of January 15, 2008 and a reminder of February 4, 2008, contrary to section 25 of the *Real Estate Services Act*; and
 - ii. Failing to respond until June 4, 2008 to an initial request made on April 2, 2008 with an initial response date of April 23, 2008 and a reminder of May 14, 2008, contrary to section 31 of the *Real Estate Services Act*.
 - b. Paul Martin Stapley committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* ("Act") [demonstrating incompetence in performing any activity for which a license is required] by:
 - i. Failing to pay commission-based remuneration for licensees engaged by the brokerage, who are providing rental management and/or strata management services, from a brokerage trust account or commission trust account, contrary to section 7-5 of the Council Rules;

- ii. Failing to take immediate steps to eliminate negative balances within rental management services trust accounts, contrary to section 7-5 of the Council Rules;
 - iii. Failing to transfer CRF funds within 7 days of the end of the month, contrary to section 7-9(4) of the Council Rules;
 - iv. Failing to arrange for a qualified second co-signatory for all CRF or special levy trust accounts for the strata corporations within the care of the brokerage; contrary to section 7-9(6) of the Council Rules;
 - v. Failing to prepare and maintain monthly reconciliations of the pooled rental management services trust accounts; contrary to section 8-2 and 8-3 of the Council Rules; and
 - vi. Failing to maintain a separate list of all trades in real estate in which the brokerage was involved for the 2008 fiscal year, contrary to section 8-4 of the Council Rules.
2. Mr. Stapley waives his right to appeal pursuant to section 54 of the Act.
 3. Mr. Stapley acknowledges that he has a right to seek independent legal advice before signing this Agreement Statement of Facts, Proposed Acceptance of Findings and Waiver.
 4. Mr. Stapley acknowledges and is aware that the Council will publish the consent Order and penalty set out herein in its Report from Council and on the Council's website.
 5. Mr. Stapley 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 Agreement 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.

“Graeme McFarlane”
 Graeme McFarlane, Legal Counsel for the
 Real Estate Council of British Columbia

“Paul Martin Stapley”
 Paul Martin Stapley

As to Parts A, B, and C (proposed penalty,

As to Part B only (Agreed Statement of Facts)

Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

Dated 8 day of April, 2010

Dated 31 day of March, 2010