

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

**IN THE MATTER OF
BAYWOOD PROPERTY MANAGEMENT LTD.**

AND

WILLIAM KENNETH CARTER

CONSENT ORDER

RESPONDENTS: William Kenneth Carter, Managing
broker, Baywood Property
Management Ltd.

Baywood Property Management Ltd.,
Brokerage

DATE OF REVIEW MEETING: June 10, 2010

DATE OF CONSENT ORDER: June 25, 2010

CONSENT ORDER REVIEW COMMITTEE: W. Brown
G. Martin (Chair)
J. McNeal

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

PROCEEDINGS:

On June 10, 2010 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by Baywood Property Management Ltd. and William Kenneth Carter as submitted, which was that Baywood Property Management Ltd. and William Kenneth Carter each be reprimanded.

Baywood Property Management Ltd. and William Kenneth Carter are ordered to be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,000.00 within sixty (60) of the date of this order and be jointly and severally liable 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 Baywood Property Management Ltd., William Kenneth Carter 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. Baywood 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 committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it:
 - (a) In contravention of sections 5-8, 5-11 and 5-12 of the Council Rules failed to promptly and in writing disclose to the Strata Corporation that Douglas Downs, president and director of Eagleye Restoration Services Ltd. (Eagleye Restoration”) , a restoration contractor providing services to the Strata Corporation, was also a director of the Brokerage;
 - (b) In contravention of section 25 of the *Real Estate Services Act* failed to maintain proper books and records in accordance with the Council Rules, in that from on or about December 2005 the Brokerage, on behalf of the Strata Corporation, it failed to record all invoices which it received from Eagleye Restoration;
 - (c) In contravention of sections 3-3(1)(a) and 3-4 of the Council Rules, it failed to act in the best interest of the Strata Corporation and with reasonable care and skill, in that:
 - (i) It failed to file an insurance claim on behalf of the Strata Corporation for water penetration damages that occurred in 2005 totaling on or about \$10,906.16;
 - (ii) It failed to provide a roofing inspection report to the representative of the Strata Corporation’s insurance company regarding another insurance claim filed on behalf of the Strata Corporation, which resulted in the claim being denied;
 - (d) In contravention of section 3-3(1)(b) of the Council Rules, the Brokerage failed to act in accordance with the lawful instructions of the client, in that it failed to

investigate the reasons why an invoice in the amount of \$500 was paid to Eagleye Restoration in June 2007;

- (e) In contravention of section 7-9(2) of the Council Rules, it failed to maintain at least one separate trust account in the name of the Strata Corporation for the operating money and at least one separate trust account in the name of the Strata Corporation for the contingency reserve fund money and special levy money or both.
2. William Kenneth Carter, managing broker of managing broker of Baywood Property Management Ltd. (“Brokerage”) committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that: in the provision of strata management services to VIS457 (“Strata Corporation”):
- (a) In contravention of sections 5-8, 5-11 and 5-12 of the Council Rules, failed to promptly and in writing disclose to the Strata Corporation that Douglas Downs, president and director of Eagleye Restoration Services Ltd. (“Eagleye Restoration”), a restoration contractor providing services to the Strata Corporation, was also a director and shareholder of the Brokerage;
 - (b) In contravention of section 6(2) and section 25 of the Real Estate Services Act and section 3-3(1) and (3) of the Council Rules, failed to ensure the Brokerage maintained proper books and records in accordance with the Council Rules, in that from on or about December 2005 the Brokerage, on behalf of the Strata Corporation, failed to record all invoices which it received from Eagleye Restoration and, or in the alternative, failed to ensure there was an adequate level of supervision for related Brokerage employees and/or licensees who were performing this services, contrary to sections 3-1(1)(c) and 3-1(3)(a) of the Council Rules;
 - (c) In contravention to sections 3-3(1)(a) and 3-4 of the Council Rules, he failed to ensure he and the Brokerage acted in the best interest of the Strata Corporation and with reasonable care and skill, in that:
 - (i) They and each of them failed to file an insurance claim on behalf of the Strata Corporation for water penetration damages that occurred in 2005 totaling on or about \$10,906.16;
 - (ii) They and each of them failed to provide a roofing inspection report to the representative of the Strata Corporation’s insurance company regarding another insurance claim filed on behalf of the Strata Corporation,. Which resulted in the claim being denied;
 - (d) In contravention of section 3-3(1)(b) of the Council Rules, he and the Brokerage failed to act in accordance with the lawful instructions of the client, in that they and each of them failed to investigate the reasons why an invoice in the amount of \$500 was paid to Eagleye Restoration in June 2007;

- (e) In contravention of section 7-9(2), he failed to ensure the Brokerage maintained at least one separate trust account in the name of the Strata Corporation for the operating money and at least one separate trust account in the name of the Strata Corporation for the contingency reserve fund money and special levy money or both;
 - (f) In contravention of section 6(2) of the *Real Estate Services Act* and section 3-1 of the Council Rules he failed to ensure he was actively engaged in the management of the said Brokerage that the said business of the Brokerage was carried out competently and in accordance with the Act, Regulations, Rules and/or Bylaws; and that there was an adequate level of supervision for related associate brokers and representatives.
3. Baywood Property Management Ltd. and William Kenneth Carter are ordered to be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,000.00 within sixty (60) days of the date of this Order.
 4. Baywood Property Management Ltd. and William Kenneth Carter are ordered to be jointly and severally 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 Baywood Property Management Ltd. or William Kenneth Carter 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 24th day of June, 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

Attch.

File No. 08-278

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
AND
IN THE MATTER OF
WILLIAM KENNETH CARTER**

AND

BAYWOOD PROPERTY MANAGEMENT LTD.

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

The following agreement has been reached between Baywood Property Management Ltd. (the “Brokerage”), William Kenneth Carter (“Mr. Carter”) and the Real Estate Council of British Columbia (the “Council”).

- A. The Brokerage hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (the “Act”) that the Brokerage be reprimanded.
- B. Mr. Carter hereby consents to an Order to be made pursuant to sections 41 and 43 of the Act that Mr. Carter be reprimanded.
- C. Mr. Carter and the Brokerage hereby consent to an Order to jointly and severally pay a discipline penalty of \$2,000,00 and enforcement expenses in the amount of \$1,000.00 to the Council within 60 days of the date of the Order herein.
- D. If Mr. Carter or the Brokerage 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 (4) of the Act.
- E. On the basis of this Order, Mr. Carter and the Brokerage acknowledge that the facts set forth herein are correct:
 - 1. The Brokerage is duly licensed as a brokerage and has been licensed since September 1, 1994.
 - 2. Mr. Carter was, at the relevant time, the managing broker for the Brokerage. Mr. Carter’s licensing history is as follows:

Apr.29/85 – Jul.26/85	Representative, Rental, Equitex Investment Realty Limited
Nov.2/88 – May 25/90	Representative, Trading, Rental, P.R. Brown & Sons, Limited
Jul.30/90 – Aug.29/91	Representative, Trading, Rental, Perimeter Properties Inc.

Aug.29/91 – Sep.7/93	Managing Broker, Trading, Rental, Perimeter Properties Inc.
Sept.14/93 – Sept.1/94	Managing Broker, Trading, Rental, Adler Agencies Ltd.
Sept.1/94 – Jan.1/06	Managing Broker, Trading, Rental, Baywood Property Management Ltd.
Jan.1/06 – Present	Managing Broker, Trading, Rental, Strata, Baywood Property Management Ltd.

3. On December 22, 2009 Council received a complaint from Barry Loucks, strata council president on behalf of Strata Plan VIS-XXX (“Strata Corporation”) against William Carter and Baywood Property Management Ltd. (“Baywood”).
4. Baywood had been providing strata management services to the Strata Corporation, which is located in Victoria.
5. Since January 2006, Baywood had been using Eagleeye Restoration Services Ltd. (“Eagleeye Restoration”) to provide restoration services to the Strata Corporation.
6. The approximate amount of strata monies spent on Eagleeye Restoration’s services was \$75,000.
7. In the spring of 2007 Baywood discovered that Mr. Downs, President and a director of Eagleeye Restoration was also a director of Baywood.
8. The Strata Corporation brought this apparent conflict of interest to Mr. Carter’s attention, at which time Mr. Carter presented the Strata Corporation with a letter of disclosure regarding Mr. Downs being a director of Baywood.
9. The Strata Corporation ascertained that Baywood was holding \$28,316.69 in unpaid invoices from Eagleeye Restoration for work purportedly performed at the Strata Corporation dating back to December 5, 2005.
10. The Strata Corporation received an invoice from Eagleeye Restoration dated September 9, 2008 which summarized the unpaid invoices #1211, #1212, #1425, #1446, #1548, and #1609.
11. The Strata Corporation reported that it had no prior knowledge that these invoices had even existed, as Baywood had not posted them as accounts

payable and, therefore, the invoices did not appear in the financial statements.

12. The Strata Corporation explained that there were no provisions in the annual operating budget for these unpaid expenditures and it noted that the balance sheet prepared by Baywood, as at August 6, 2008, showed no accounts payable.
13. In contrast, however, the Strata Corporation pointed out that the balance sheet as at August 28, 2008 showed an accounts payable of \$28,316.69.
14. Mr. Carter advised the Strata Corporation that he had spoken with Mr. Downs on three or four occasions about the unpaid invoices prior to August 2008. Mr. Carter also mentioned to the Strata Corporation that some of the invoices were waiting payment pending clarification of the job site.
15. The Strata Corporation explained that its previous strata council believed that a claim had been filed since there were no payables in the financial statements. When the large invoice was received from Eagle Eye Restoration in September 2008, it was surprised that the Strata Corporation was required to pay these invoices.
16. On February 25, 2009 Mr. Carter advised the Strata Corporation that Baywood had not filed an insurance claim on behalf of the Strata Corporation for these unpaid expenditures.
17. The Strata Corporation also discovered that a claim of \$10,906.16 in water penetration damages from 2005 was not submitted as a claim to its insurer.
18. The Strata Corporation has since filed a claim for these expenses, but it is uncertain whether this claim will not be covered.
19. The Strata Corporation discovered in September 2008 that a claim for water damage that occurred in 2006 was denied by their insurer. Mr. Carter had not notified the Strata Corporation of this fact and the adjuster's August 2007 letter denying the claim until September 2008.
20. The Strata Corporation learned from its insurer that the claim was not accepted because of a roof inspection report which indicated that the roof needed replacement. The Strata Corporation reported that they had resubmitted their claim, but that this claim may be disadvantaged because of the time delay.

21. On February 25, 2009 Council sought clarification from the Strata Corporation regarding the matter of the unpaid invoices of Eagleye Restoration and whether the Strata Corporation was aware of the work having been completed for those invoices.
22. The Strata Corporation was aware that the repairs were being done, but it understood that the invoices were being covered by the Strata Corporation's insurance policy. The Strata Corporation believes that Baywood failed to file an insurance claim for these repairs performed by Eagleye Restoration.
23. On April 27, 2009 legal counsel replied on behalf of Mr. Carter and Baywood.
24. The letter indicated that Mr. Carter started Baywood in September 1, 1994. Mr. Downs of Eagleye Restoration was a friend of Mr. Carter who lent \$10,000 to Mr. Carter to be used as start-up Strata Corporation capital for Baywood.
25. In error, Mr. Carter believed that every company needed at least one outside shareholder and director and, as such, he asked Mr. Downs to be that outside shareholder.
26. Mr. Downs owned 10 of the 60 shares of Baywood and Mr. Carter owned the remaining 50 shares.
27. Mr. Downs had incorporated a consulting business in 1998 called Douglas Consulting Services Inc. and later incorporated Eagleye Restoration on December 5, 2003.
28. Mr. Guy indicated that Mr. Downs advised him that when he began his consulting and restoration businesses, he advised the Strata Corporation that he was both principal of Douglas Consulting Services Inc. and a director of Baywood.
29. Mr. Carter recalled having made disclosure to the past strata council president, BK, and that this disclosure was made at a strata council meeting in 1998. Mr. Carter no longer has access to those strata records.
30. Mr. Carter's relationship with Mr. Downs was regarded by Baywood as an advantage to its clients given that Eagleye Restoration's services were called upon frequently at night, on weekends and holidays and Eagleye Restoration never turned work down. In recent years when it was sometimes extremely difficult to hire contractors, Baywood's connection with Eagleye Restoration was a significant advantage. Mr. Carter saw the

relationship between Baywood and Eagleye as not in conflict, but rather a benefit to the Strata Corporation, since the building suffered from many leak problems that required Eagleye Restoration's services.

31. Mr. Guy provided a copy of a May 7, 2007 letter which Baywood had sent to the Strata Corporation in which Mr. Carter disclosed the relationship between Mr. Downs and Baywood. In this letter Mr. Carter advised that in order for Baywood to continue to use Mr. Down's services at its building, his resignation as director of Baywood was appropriate.
32. Mr. Carter believed that Strata Corporation had no objection with Mr. Downs being director and the Strata Corporation continued to benefit from Mr. Downs' services.
33. Mr. Carter explained at length why the invoices had not been paid by Baywood:
 - a. With respect to invoice # 1211 from Eagleye Restoration, because the Strata Corporation did not have sufficient funds to pay the invoice in full, on February 26, 2006, Baywood wrote cheque #24 for \$2,767.13 payable to Eagleye Restoration, which Baywood held back pending receipt of particulars requested of Eagleye Restoration by memo of March 28, 2006. Mr. Carter indicated that because of the high number incidents of damage in the building, Baywood made requests for further information from Eagleye Restoration to help identify which invoices were associated with which repaired damage incidents, and also in order to determine what was to be claimed under the Strata Corporation's insurance policy. Eagleye Restoration did not reply to this memo, and the cheque became stale-dated and was reversed in the financial statements in November 6, 2006. On December 14, 2006, Eagleye Restoration sent Baywood a fax attaching invoice #1211 and invoice #1212. Because no particulars were provided for these invoices, payment was never made by Baywood.
 - b. With respect to invoice #1212, Mr. Carter indicated that Eagleye Restoration had revised its original estimate for this invoice on November 6, 2006 and, as a result of this revision, the amount of the invoice did not match the estimate amount. On February 26, 2006, Baywood wrote cheque #23 for \$2,604.77 payable to Eagleye Restoration but held it back again pending receipt of the particulars for this invoice. This cheque was also later reversed. Eagleye Restoration had faxed the invoice and revised its quote on December 14, 2006 but had not provided any new information to enable Baywood to process this payment.

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- c. With respect to invoices #1425, #1446 and #1548, Baywood had no record of having received these invoices prior to Eagleye Restoration having requested payment of its outstanding invoices in August 2008.
- d. With respect to invoice #1609, Mr. Carter advised that Eagleye Restoration had sent in an invoice on April 30, 2008, which was entered into the statements for the Strata Corporation, but not until August 2008.
- e. Mr. Carter explained that before Baywood could deal with these invoices, it required additional information. Outstanding invoices #1425, #1446 and #1538 were not received by Baywood until they came to light in August 2008.
- f. Generally, Mr. Carter relied upon his administrator/bookkeeper to record all financial entries correctly. Mr. Carter could not oversee the entry of every invoice on all statements, and had to rely on his staff to do the work correctly every time. Unbeknownst to Mr. Carter, in the case of invoices #1211, #1212 and #1609, the administrator did not enter the invoices as accounts payable.
- g. Mr. Carter acknowledged that three of the invoices were not recorded in a timely way but the Strata Corporation did not suffer any prejudice or additional expenses as a result.
34. Mr. Carter acknowledges Baywood did not file an insurance claim for the Strata Corporation for water damages due to a roof leak that occurred sometime in 2005. The reason for this was because Mr. Carter had an identical claim which arose in 2006, whereby the insurance company refused coverage. Mr. Carter believes that Baywood's failure to file this claim caused no harm to the Strata Corporation.
35. Mr. Carter believed that a roof inspection report was completed by Mr. Downs, which included his opinion that the roof required replacement.
36. Mr. Carter suggests that, from the August 10, 2007 letter received from the Strata Corporation's adjusters, it was clear that Mr. Downs of Eagleye Restoration had told the adjuster that the roof was nearing the end of its life and that the loss was caused by wear and tear or settlement, and hence excluded from coverage.
37. Mr. Carter believed that because the adjuster was aware that Mr. Downs was familiar with the roof's condition and because the Strata

Corporation's insurance policy excluded this type of loss, there was no reason for Baywood to suspect that the delivery of a roof inspection report to the Strata Corporation would have changed anything. Mr. Carter submitted that there was no failure on the part of Baywood or Mr. Carter to act in the Strata Corporation's best interest.

38. Mr. Carter stated that he had reported to the Strata Corporation at a strata council meeting held on June 24, 2008, that the \$500 was a deductible was the responsibility of the strata owner of Unit #104 and not that of the Strata Corporation. The strata minutes record that the questioned \$500 was unresolved.
39. Mr. Carter indicated that the Strata Corporation decided to investigate the matter further to see if the bill was valid at all. Mr. Downs advised that Eagleye Restoration would reverse the bill to the Strata Corporation since it was the owner's responsibility to pay it.
40. Baywood was asked obtain duct cleaning quotes and consequently called three companies seeking quotes. Two companies were no longer in business, one quote was obtained and presented by Mr. Carter to the Strata Corporation on June 28, 2008.
41. At the August 19, 2008 strata council meeting, Mr. Carter was asked by the Strata Corporation to arrange for the cleaning to be done. Around this time, a strata owner obtained a second quote for the work, which was presented at a strata council meeting held on November 18, 2008. The Strata Corporation instructed Baywood to proceed with this second quote. The confusion arose between the cleaning company and the owners about the date the work was to be done. Mr. Carter explained that Baywood's service agreement ended before a new date could be arranged and, as such, this was not a case of Mr. Carter not following instructions, but rather the work not happening as quickly as the Strata Corporation would prefer.
42. As to the door issue, Mr. Carter advised that the door had been damaged by a strata owner and required touch-up. He had asked the regular handyman to attend to these small repairs. The handyman reported that he could not obtain matching paint and that he had attempted to access the door sill, but that the owners were not home. Mr. Carter had on three occasions requested that the work be done and he was of the opinion that these repair items were not a high priority in the scheme of the repairs that would warrant a larger firm with higher fees to do the work and, again, there is no foundation to a claim that Mr. Carter failed to follow the instructions of his clients.

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43. Appendix 7 of Baywood's service agreement with the Strata Corporation did not require the Baywood to hold separate trust accounts until January 1, 2008, as set out in schedule 'B' to that agreement. Mr. Carter stated that the Strata Corporation did not collect enough on account of operating fund money and CRF money that would make it feasible to hold two accounts.
44. The May 14, 2007 strata council meeting minutes disclosed that the CRF had then been depleted to pay for flood damage. Those minutes noted what the Strata Corporation were to do and that a separate investment account was to be created for the CRF.
45. Mr. Carter stated that this was to be outside the purview of Baywood's management responsibilities and since the Strata Council itself should hold the CRF money, it was in his opinion that section 7-9(2) does not apply.
46. Mr. Carter further stated that on January 31, 2008, \$15,933.43 of the \$18,351.75 balance in the operating account was CRF money. He noted that the Strata Corporation's insurance premium of \$11,374 was payable in February 2008 and so the CRF money was not withdrawn and the investment account was not created because the money was needed in the operating account to pay expenses.
47. During the August 19, 2008 strata council meeting, the Strata Corporation was still planning to investigate the CRF. Mr. Guy believed that Baywood was not holding CRF money and therefore cannot be in breach of section 7-9(2) of the Council Rules.
48. In September 1, 2009 Council staff contacted the former strata council president, BK, regarding the disclosure made by Mr. Carter regarding his relationship with Mr. Downs. BK advised that she was not on the strata council when Baywood was hired by the Strata Corporation. She stated that she was aware that Mr. Downs was a director of Baywood, but that it was not discussed formally at a strata council meeting. BK confirmed that Mr. Carter worked above board and that he would always obtain quotes from companies other than from Eagleye. She also confirmed that while she was on the strata council, the strata council was always pleased with the work performed by Eagleye.
- F. Proposed Acceptance of Findings and Waiver
1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, William Kenneth Carter and Baywood Property Management Ltd. are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:

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- a. William Kenneth Carter, managing broker of Baywood Property Management Ltd. (“Brokerage”) in the provision of strata management services to VIS-XXX (“Strata Corporation”):
- (i) in contravention of sections 5-8, 5-11 and 5-12 of the Council Rules, failed to promptly and in writing disclose to the Strata Corporation that Douglas Downs, president and director of Eagleye Restoration Services Ltd. (“Eagleye Restoration”), a restoration contractor providing services to the Strata Corporation, was also a director and shareholder of the Brokerage;
 - (ii) in contravention of section 6(2) and section 25 of the *Real Estate Services Act* and section 3-3(1) and (3) of the Council Rules, failed to ensure the Brokerage maintained proper books and records in accordance with the Council Rules, in that from on or about December 2005 the Brokerage, on behalf of the Strata Corporation, failed to record all invoices which it received from Eagleye Restoration and, or in the alternative, failed to ensure there was an adequate level of supervision for related Brokerage employees and/or licensees who were performing this service, contrary to sections 3-1(1)(c) and 3-1(3)(a) of the Council Rules;
 - (iii) in contravention of sections 3-3(1)(a) and 3-4 of the Council Rules, he failed to ensure he and the Brokerage acted in the best interest of the Strata Corporation and with reasonable care and skill, in that:
 - (a) they and each of them failed to file an insurance claim on behalf of the Strata Corporation for water penetration damages that occurred in 2005 totaling on or about \$10,906.16;
 - (b) they and each of them failed to provide a roofing inspection report to the representative of the Strata Corporation’s insurance company regarding another insurance claim filed on behalf of the Strata Corporation, which resulted in the claim being denied;
 - (iv) in contravention of section 3-3(1)(b) of the Council Rules, he and the Brokerage failed to act in accordance with the lawful instructions of the client, in that they and each of them failed to investigate the reasons why an invoice in the amount of \$500 was paid to Eagleye Restoration in June 2007;

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- (v) in contravention of section 7-9(2), he failed to ensure the Brokerage maintained at least one separate trust account in the name of the Strata Corporation for the operating money and at least one separate trust account in the name of the Strata Corporation for the contingency reserve fund money and special levy money or both;
 - (vi) in contravention of section 6(2) of the *Real Estate Services Act* and section 3-1 of the Council Rules he failed to ensure he was actively engaged in the management of the said Brokerage that the said business of the Brokerage was carried out competently and in accordance with the Act, Regulations, Rules and/or Bylaws; and that there was an adequate level of supervision for related associate brokers and representatives.
- b. Baywood Property Management Ltd.:
- (i) in contravention of sections 5-8, 5-11 and 5-12 of the Council Rules failed to promptly and in writing disclose to the Strata Corporation that Douglas Downs, president and director of Eagleye Restoration Services Ltd. (“Eagleye Restoration”), a restoration contractor providing services to the Strata Corporation, was also a director of the Brokerage;
 - (ii) in contravention of section 25 of the *Real Estate Services Act* failed to maintain proper books and records in accordance with the Council Rules, in that from on or about December 2005 the Brokerage, on behalf of the Strata Corporation, it failed to record all invoices which it received from Eagleye Restoration;
 - (iii) in contravention of sections 3-3(1)(a) and 3-4 of the Council Rules, it failed to act in the best interest of the Strata Corporation and with reasonable care and skill, in that:
 - (a) it failed to file an insurance claim on behalf of the Strata Corporation for water penetration damages that occurred in 2005 totaling on or about \$10,906.16;
 - (b) it failed to provide a roofing inspection report to the representative of the Strata Corporation’s insurance company regarding another insurance claim filed on behalf of the Strata Corporation, which resulted in the claim being denied;

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- (iv) in contravention of section 3-3(1)(b) of the Council Rules, the Brokerage failed to act in accordance with the lawful instructions of the client, in that it failed to investigate the reasons why an invoice in the amount of \$500 was paid to Eagleye Restoration in June 2007;
 - (v) in contravention of section 7-9(2) of the Council Rules, it failed to maintain at least one separate trust account in the name of the Strata Corporation for the operating money and at least one separate trust account in the name of the Strata Corporation for the contingency reserve fund money and special levy money or both.
2. Mr. Carter and the Brokerage waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.
 3. Mr. Carter acknowledges that he has obtained legal advice with respect to this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
 4. The Brokerage acknowledges that it has been advised to obtain independent legal advice with respect to this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver and it has waived that right.
 5. Mr. Carter and the Brokerage 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. Mr. Carter and the Brokerage 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.

"Brian K. Evans"
Brian K. Evans, Legal Counsel
Real Estate Council of British Columbia

"William Kenneth Carter"
William Kenneth Carter

Baywood Property Management Ltd.

Real Estate Council of British Columbia
As to Part E only (Agreed Statement of Facts)

Per:
“William Kenneth Carter”
William Kenneth Carter

Dated: May 11, 2010

Dated: May 7, 2010

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