

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

**IN THE MATTER OF**

**MICHAEL SCOTT MILLER**

**CONSENT ORDER**

RESPONDENT: Michael Scott Miller, Managing Broker,  
HBM Property Management & Real Estate  
Ltd. dba Hometime Realty now known as  
Hometime Realty & Property Management

DATE OF REVIEW MEETING: August 27, 2012

DATE OF CONSENT ORDER: September 7, 2012

CONSENT ORDER REVIEW COMMITTEE: B. Brandle  
P. O'Donnell  
M. Ziegler (Chair)

ALSO PRESENT: R. Fawcett, Executive Officer  
D. Berger, Director, Legal Services  
P. Gilligan-Hackett, Legal Counsel for the  
Real Estate Council

PROCEEDINGS:

On August 27, 2012 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by Michael Scott Miller as submitted. It is therefore ordered that Michael Scott Miller be reprimanded. Michael Scott Miller is ordered to pay a discipline penalty to the Council in the amount of \$2,000.00 within sixty (60) days of the date of the Order herein, and successfully complete the Strata Management Remedial Education Course as provided by Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council. Further, Michael Scott Miller 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 Michael Scott Miller 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. Michael Scott Miller be reprimanded as he committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* in that he:
  - (a) contravened section 3-3(1)(a) of the Council Rules in that on January 8, 2008, he permitted \$20,000 to be transferred from the Strata's CRF trust account to the Strata's operating fund trust account without obtaining the authorization of the Strata Council;
  - (b) contravened section 3-3(1)(a) of the Council Rules in that on January 16, 2008, he permitted a payment of \$20,000 to be made to the Contractor from the Strata's operating fund trust account without obtaining the authorization of the Strata Council;
  - (c) contravened section 3-3(1)(a) of the Council Rules in that on February 12, 2008, he permitted a payment of \$5,000 to be made to the Contractor from the Strata's operating fund trust account without obtaining the authorization of the Strata Council;
  - (d) contravened section 3-3(1)(a) of the Council Rules in that on February 18, 2008, he permitted \$20,000 to be transferred from the Strata's CRF trust account to the Strata's operating trust account without obtaining the authorization of the Strata Council;
  - (e) contravened section 3-3(1)(a) of the Council Rules in that on February 25, 2008, he permitted a payment of \$20,000 to be made to YB from the Strata's operating fund trust account to satisfy a guarantee allegedly made by YB to the Contractor without obtaining the authorization of the Strata Council;
  - (f) contravened section 3-1(1) of the Council Rules in that he failed to be actively engaged in the management of the Brokerage, to ensure that the business of the Brokerage was carried out competently and in accordance with the Act, regulations, Rules and Bylaws, and to ensure that there was an adequate level of supervision for related associate brokers and representatives who perform duties on behalf of the Brokerage.
2. Michael Scott Miller is ordered 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.
3. Michael Scott Miller is ordered to successfully complete the Strata Management Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council.

3. Michael Scott Miller 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 Michael Scott Miller 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 7<sup>th</sup> day of September, 2012 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Michael Ziegler”

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M. Ziegler, Chair  
Consent Order Review Committee

Attch.

**File #08-503**

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

**IN THE MATTER OF**

**MICHAEL SCOTT MILLER  
(#093853)**

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

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The following agreement has been reached between Michael Scott Miller (“Mr. Miller”) and the Real Estate Council of British Columbia (the “Council”).

- A. Mr. Miller hereby consents to an Order to be made pursuant to sections 43 of the *Real Estate Services Act* that he be reprimanded, that he successfully complete the disciplinary education assignment applicable to the Strata Management Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia and that he pay a discipline penalty to the Council in the amount of \$2,000.00 within sixty (60) days from the date of the Order. Mr. Miller 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). Further, he agrees 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 the Order herein. Mr. Miller further consents to an Order that if he 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 sub-sections 43(3) and 43(4) of the *Real Estate Services Act*.

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

1. Mr. Miller's licensing history is as follows:

1991/06/04 – 1997/09/11 Representative, Rental – Locke Property Management & Real Estate Ltd.

1997/09/12 – 2000/11/16 Unlicensed

2000/11/17 – 2004/11/16 Managing Broker, Trading, Rental – HBN Property Management & Real Estate Ltd.

2002/12/04 – 2003/01/31 Managing Broker, Trading, Rental – Kathron Enterprises Inc.

2003/01/01 – 2004/11/16 Unlicensed

2004/11/17 – 2005/12/20 Managing Broker, Trading, Rental – HBM Property Management & Real Estate Ltd.

2005 – 12/20 – Present Managing Broker, Trading, Rental, Strata – HBM Property Management & Real Estate Ltd.

2. At all relevant times, HBM Property Management & Real Estate Ltd. dba Hometime Realty & Property Management (“Brokerage”) and The Owners of a Strata Plan on West Lakeshore Drive in Penticton BC (“Strata”) were parties to a Strata Management Contract with an effective date of January 16, 2007 (“Management Contract”).

3. At all relevant times, Mr. Miller was the Brokerage's Managing Broker, Trading, Rental, Strata and Pamela Anne Ramsay was a licensee at the Brokerage providing property management services to the Strata.

4. The Strata is a 47-unit motel-style facility located in Penticton. No owner lives in the Strata on a permanent basis.

5. The Strata employs two full-time resident caretakers, YB and EB, to administrate the Strata's rental pool.

6. On September 2, 2007, the Strata's owners approved a special levy for the construction of an on-site caretaker suite ("Caretaker Suite").
7. At the relevant times, the three members of the Strata's council ("Strata Council") were RH, JK, and RL. RH was the president of the Strata Council ("Strata President"). All Strata Council members lived in the Lower Mainland.
8. On November 30, 2007, Ms. Ramsay sent an e-mail to the Strata Council members attaching three quotes for construction of the Caretaker Suite. She wrote that one of the contractors providing a quote ("Contractor") was currently at the Strata doing renovations to individual units and could start as early as Monday.
9. On December 2, 2007, RL replied to Ms. Ramsay indicating that the Contractor's quote seemed the most reasonable and that if the Contractor was prepared to start immediately and its work was good, to go ahead.
10. As is set out below, there was no further contact between Ms. Ramsay and RL until the Spring, 2008.
11. On January 8, 2008, the Strata President signed a cheque to transfer \$20,000 from the Strata's contingency reserve fund ("CRF") trust account to the Strata's operating account. Neither RL nor JK were aware of this transfer. Mr. Miller says that "[w]ith respect to this particular matter it was actually myself that met with the [Strata President] and presented the contingency cheques for signing, not Ms. Ramsay". The Strata President says Ms. Ramsay frantically telephoned him to sign the cheque as "everyone was waiting for him to sign it". The Strata President says he had misgivings about signing the cheque, but that Ms. Ramsay gave him the impression that the other Strata Council members had approved the transfer.
12. Section 6 of the Management Contract reads:

*It is understood that the "manager" shall, at all times, be entitled to rely and act upon the instruction and direction received from the council. Receipt by the "manager" of instruction from the council's acting President constitutes full and sufficient authority for the "manager" to act in accordance therewith.*
13. On January 16, 2008, the Brokerage issued a cheque for \$20,000 payable to the Contractor from the Strata's operating trust account. The Strata President did not sign this cheque. However, Mr. Miller says the Strata President was aware that the purpose of the transfer of January 8, 2008 was to facilitate a payment to the Contractor.
14. On February 12, 2008, the Brokerage issued a cheque for \$5,000 payable to the Contractor from the Strata's operating trust account. The Strata President did not

sign this cheque and did not approve an associated transfer from the CRF trust account. Neither RL nor JK were aware of this payment. Mr. Miller says that the Strata President directed the Brokerage to release these funds.

15. Around February 15, 2008, Mr. Miller issued a cheque (post-dated to February 24, 2008) to YB for \$20,000 from the Strata's operating trust account. YB told the Brokerage she had personally written a cheque to the Contractor for that amount.
16. Mr. Miller says that prior to the \$20,000 cheque of February 15, 2008 being issued, YB had made a panicked phone call to the Brokerage. Mr. Miller says YB told him that the principal of the Contractor, ID, was standing in her office and yelling that he needed more money and that the construction contract ("Contract") called for an initial down payment of 40%. ID had apparently told YB that a truck loaded with materials would be arriving Monday morning and that if ID could not give the driver a cheque for around \$19,000, ID was going to walk away from the project. Mr. Miller said he believed that EB had also called the Brokerage shortly thereafter repeating YB's statements. According to Mr. Miller, YB had also said that if ID walked and the Caretaker Suite did not get built, EB and YB "*were through*". Shortly thereafter, YB and ID arrived at the Brokerage's offices looking for a cheque. Mr. Miller says he wrote a post-dated cheque to YB with the caveat that the Strata President had to sign a cheque transferring the funds from the CRF trust account to the operating trust account.
17. On February 18, 2008, the Strata President signed a cheque to transfer \$20,000 from the CRF trust account to the operating trust account. Neither RL nor JK were aware of the payment or the transfer.
18. The Contractor accepted the payments but did not perform any work or deliver any materials to the Strata for construction of the Caretaker Suite.
19. The Contractor never signed the Contract.
20. Shortly after February 8, 2008, Mr. Miller and Ms. Ramsay learned that the RCMP had ID under surveillance on suspicion of drug trafficking. They also subsequently learned that he had defrauded a subcontractor in Penticton and defrauded another individual who had paid him to perform construction work.
21. Mr. Miller says that the Brokerage informed the Strata President of the issues with the Contractor and that the Brokerage contacted its legal counsel to seek legal advice. The Brokerage's lawyer advised the Brokerage to write a letter to ID putting him on notice that failure to produce either receipts for the funds advanced to him or to have construction materials delivered to the Strata would result in termination of the Contract. Mr. Miller says the Brokerage's lawyer also advised the Brokerage that, if it was necessary to pursue a legal action, to waive the amount of the loss over the Small Claims limit and proceed in Small Claims Court.

22. On March 7, 2008, the Brokerage sent a demand letter to the Contractor.
23. Mr. Miller says the Strata President instructed the Brokerage to commence a Small Claims action and to waive the \$20,000 over the Small Claim limit.
24. On March 13 or 14, 2008, the Brokerage commenced a Small Claims action against the Contract and ID on behalf of the Strata. In the Small Claims action, the Brokerage waived the \$20,000 over the Small Claims limit.
25. The Brokerage did not discuss the matter with the Strata Council as a whole; did not obtain a resolution passed by a 3/4 vote at an AGM or SGM to commence litigation, which is required by section 171(2) of the *Strata Property Act*; and did not recommend that the Strata seek its own legal advice.
26. On March 25, 2008, Ms. Ramsay attended a City of Penticton (“City”) meeting at which she and EB unsuccessfully applied for a variance of the development permit for the Caretaker Suite. None of the Strata Council members were aware that there were any problems or potential problems with the development permit for the Caretaker Suite.
27. On April 9, 2008, Ms. Ramsay left a voicemail message for RL. RL responded by e-mail asking if they could discuss the issue by e-mail.
28. On the morning of April 10, 2008, Ms. Ramsay sent an e-mail to RL in which it was apparent that she did not know whether RL was a member of the Strata Council. RL responded a couple of hours later confirming she was the third member of the Strata Council.
29. Later that afternoon, Ms. Ramsay sent an e-mail to all three members of the Strata Council referring to a City meeting she had attended for the final approval on the development permit and noted that “*we were denied*”. Ms. Ramsay did not mention anything to do with the problems with the Contractor in the e-mail. JK asked for clarification of what the Strata Council was being asked to decide.
30. On April 10, 2008, RL had a telephone conversation with Ms. Ramsay in which Ms. Ramsay said she had obtained a permit from the City for the construction of the Caretaker Suite a year prior to the special levy being approved and that the permit had expired in the Summer of 2007. At no time during the conversation did Ms. Ramsay report an issue with the Contractor.
31. From April 13-21, 2008, the e-mail discussion between Ms. Ramsay and the members of the Strata Council regarding the permit continued. On April 17, 2008, the Strata President wrote that he was “*a little joked [sic] that we paid someone \$45,000 to build something that wasn’t even approved! Pam please explain and*

*what liability you have entailed this matter [sic].” Ms. Ramsay did not respond to this statement.*

32. Between May and August, 2008, Ms. Ramsay and the Strata Council exchanged e-mails regarding unrelated Strata matters. The issue of the Contractor and ID did not arise again until August 11, 2008.
33. On August 11, 2008 at 1:59 p.m., Ms. Ramsay sent the following e-mail to the Strata Council:

*[EB] contacted me this morning and is a little frustrated...  
Unit 53 is showing some pretty bad water damage.  
By the way court date against [ID] is September 16<sup>th</sup>, 2008 @ 11:30  
it is a default hearing as he never replied.*

34. On August 13, 2008 at 1:17 p.m., RL replied. Her reply included the following question:

*Please also – I know nothing about this [ID] matter – can you please fill me in?*

35. Ms. Ramsay responded to RL’s e-mail on August 20, 2008, but she did not address the issue of ID.
36. On October 3, 2008 at 10:25 a.m., Ms. Ramsay sent an e-mail to the Strata Council:

*Here is an updated quote from [a different contract, CD] to do the caretakers suite this fall. I will need to follow up with [another company] on the updated electrical quote as [CD] does not include the electrical in his.*

37. On October 3, 2008 at 12:16 p.m., JK responded:

*What was the original quote?  
Do we have all approvals to proceed?  
If the quote is more than previous quote how much more is each unit required to fund?  
Is approval required from all unit holders if there is additional funding required?  
Is there any way to organize a conference call to discuss this?*

38. On October 30, 2008, Ms. Ramsay, JK, and RL had a conference call to discuss the Strata’s year-end financial statements. During the conference call, JK and RL questioned Ms. Ramsay about why approximately \$45,000 had been spent out of

the special levy fund for the Caretaker Suite. Ms. Ramsay made a passing statement about the Contractor. After further questioning, JK and RL learned, among other things, that the Brokerage had paid approximately \$45,000 to the Contractor but that no work had been completed on the Caretaker Suite.

39. On November 5, 2008, RL sent two e-mails to Ms. Ramsay and the other members of the Strata Council in which she asked for an explanation for the \$47,902.67 paid out for the Caretaker Suite.
40. On November 6, 2008, Ms. Ramsay responded that she and Mr. Miller were working on the information RL had requested but that right now she needed the Strata Council to focus on getting the AGM package in the mail.
41. On November 7, 2008, Ms. Ramsay forwarded a letter from Mr. Miller to the Strata Council in which he summarized his view of events relating to the Caretaker Suite. Mr. Miller denied that the Brokerage was liable for the fraud. Ms. Ramsay informed the Strata Council members that Mr. Miller was not available for a conference call until after November 12, 2008.
42. On November 13, 2008, the Strata obtained a Default Order in Small Claims Court against ID and the Contractor.
43. On November 25, 2008, Ms. Ramsay sent an e-mail to the other Strata Council members attaching the unsigned Contract. It provided that it was made on March 1, 2008 (with February 10, 2008 crossed out).
44. On November 29, 2008, the Strata held its AGM. RL chaired the meeting. Thirty-eight of 47 voters were present in person or by proxy. There was a discussion while Ms. Ramsay was absent of the payments to the Contractor and an allocation of \$5,000 for legal fees to seek recourse for the fraud.
45. On December 11, 2008, Ms. Ramsay circulated minutes from the November 29, 2008 AGM.
46. On February 23, 2009, newly retained legal counsel for the Strata wrote to the Brokerage.
47. On February 24, 2009, Mr. Miller responded on behalf of the Brokerage repeating many of the statements from his letter of November 6, 2008.
48. On March 21, 2009 the Strata held an SGM. RL chaired the meeting. Forty-six of 47 owners attended. The Strata President did not attend.
49. During the SGM, LP and his wife, TP, who own 29 units in the Strata, voted against terminating the Management Contract with the Brokerage. All other

owners voted in favour. LP and TP also voted against commencing legal action against the Brokerage. All other owners voted in favour.

50. On April 17, 2009, Ms. Ramsay circulated correspondence from LP to the Strata Council that called for an SGM.
  51. On April 23, 2009, Ms. Ramsay sent an e-mail to the Strata Council noting that there had been some “*minor changes*” to the package for the SGM, which was to be held on May 16, 2009, and that the package would go out the next day with minutes from the previous SGM.
  52. On April 24, 2009, Ms. Ramsay circulated an SGM Notice to all Strata owners. The SGM Notice included a new resolution for a special levy to cover the \$45,000 fraud by the Contractor.
  53. On May 12, 2009, the Strata Council held a meeting that was attended by all members of the Strata Council. The Strata Council voted unanimously to instruct its legal counsel to file a complaint with the Council against Ms. Ramsay, Mr. Miller, and the Brokerage.
  54. On May 15, 2009 at 10:19 a.m., the Strata’s legal counsel submitted a complaint against Ms. Ramsay, Mr. Miller, and the Brokerage to the Council.
  55. At the SGM on May 16, 2009, the Strata voted to remove the Strata Council members. On behalf of his 29 units, LP voted to remove the members of the Strata Council. Of the other owners present in person or by proxy, nine voted against the motion and two abstained.
  56. AT the SGM, LP was elected president, with his wife TP as secretary/treasurer, and FM as vice-president. LP and his wife suggested a contractor they had known for 25 years to complete construction of the Caretaker Suite.
  57. In the minutes for the SGM, there is a note that the previous Strata Council had said they had not seen a resolution for a special levy to pay the \$45,000 and further “[i]t was explained that the owner called the meeting and the owner picked the agenda it doesn’t require Council’s approval. Vote was called.”
  58. There is a note in the minutes for the May 16, 2009 meeting that “*all expenditure cheques should be signed by one council member as well as the management company, therefore requiring two signatures. This is a change of how it was done in the past*”.
- C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as set out above, and without making any admissions of liability, Mr. Miller is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
  - (a) Mr. Miller committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* in that he:
    - i. contravened section 3-3(1)(a) of the Council Rules in that on January 8, 2008, he permitted \$20,000 to be transferred from the Strata's CRF trust account to the Strata's operating fund trust account without obtaining the authorization of the Strata Council;
    - ii. contravened section 3-3(1)(a) of the Council Rules in that on January 16, 2008, he permitted a payment of \$20,000 to be made to the Contractor from the Strata's operating fund trust account without obtaining the authorization of the Strata Council;
    - iii. contravened section 3-3(1)(a) of the Council Rules in that on January 16, 2008, he permitted a payment of \$5,000 to be made to the Contractor from the Strata's operating fund trust account without obtaining the authorization of the Strata Council;
    - iv. contravened section 3-3(1)(a) of the Council Rules in that on February 18, 2008, he permitted \$20,000 to be transferred from the Strata's CRF trust account to the Strata's operating trust account without obtaining the authorization of the Strata Council;
    - v. contravened section 3-3(1)(a) of the Council Rules in that on February 25, 2008, he permitted a payment of \$20,000 to be made to YB from the Strata's operating fund trust account to satisfy a guarantee allegedly made by YB to the Contractor without obtaining the authorization of the Strata Council;
    - vi. contravened section 3-1(1) of the Council Rules in that he failed to be actively engaged in the management of the Brokerage, to ensure that the business of the Brokerage was carried out competently and in accordance with the Act, regulations, Rules and Bylaws, and to ensure that there was an adequate level of supervision for related associate brokers and representatives who perform duties on behalf of the Brokerage.
2. Mr. Miller hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.

3. Mr. Miller acknowledges that he has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Mr. Miller acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on the Council's website.
5. Mr. Miller acknowledges and is 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.

“Patrick Gilligan-Hackett”  
**Patrick Gilligan-Hackett, Legal Counsel**  
**Real Estate Council of British Columbia**

**As to Part B only (Agreed Statement of Facts)**

**Dated 20 day of June, 2011**

“Michael Scott Miller”  
**Michael Scott Miller**

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

**Dated 10 day of June, 2011**