

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

**IN THE MATTER OF
ERNIE JOSEPH MONAGHAN**

CONSENT ORDER

RESPONDENT: Ernie Joseph Monaghan,
representative, 482258 B.C. Ltd. dba
Re/Max Commercial Realty

DATE OF REVIEW MEETING: June 19, 2013

DATE OF CONSENT ORDER: July 31, 2013

CONSENT ORDER REVIEW COMMITTEE: B. Binnie
M. Cowe, Chair
M. Leslie

ALSO PRESENT: R.O. Fawcett, Executive Officer
E. Wredenhagen, Director, Legal
Services
J. Moore, Legal Counsel for the Real
Estate Council

PROCEEDINGS:

On June 19, 2013 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by Ernie Joseph Monaghan as submitted. It is therefore ordered that Ernie Joseph Monaghan be reprimanded. Further, Ernie Joseph Monaghan is ordered to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 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 Ernie Joseph Monaghan 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. Ernie Joseph Monaghan be reprimanded as he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in his capacity as strata property manager for the property located at 1819 Pendrell Street, Vancouver, B.C. (the "Property") he contravened section 3-4 of the Council Rules when he failed to act with reasonable care and skill when he completed and issued to Ms. Novinska, a Form B Information Certificate for the Property, dated February 28, 2012, which Form B indicated a response of "No" to the question, "*Is the strata corporation party to any court proceedings or arbitration, and/or are there any judgments or orders against the strata corporation?*", when he knew or ought to have known that the strata corporation was a party in an action commenced on November 29, 2011 in the Supreme Court of British Columbia.
2. Ernie Joseph Monaghan is ordered to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within sixty (60) days from the date of this Order.

If Ernie Joseph Monaghan 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 31st day of July, 2013 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"Marshall Cowe"

M. Cowe, Chair
Consent Order Review Committee

Atch.

File #11-376

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

IN THE MATTER OF
ERNIE JOSEPH MONAGHAN
(157787)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Ernie Joseph Monaghan (“Mr. Monaghan”), and the Real Estate Council of British Columbia (the “Council”).

A. Mr. Monaghan hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded. Further, he agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within sixty (60) days from the date of the Order herein. Mr. Monaghan further consents to an Order that if he fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel his licence 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. Monaghan acknowledges and agrees that the facts set forth herein are correct:

1. Mr. Monaghan was at all relevant times licensed as a representative with 482258 B.C. Ltd. dba Re/Max Commercial Realty ("Re/Max").

2. Mr. Monaghan’s licensing history is as follows:

| <u>Start Date</u> | <u>End Date</u> | <u>Licensing History</u> | <u>Licence Level</u> | <u>Licence Category</u> |
|-------------------|-----------------|---|----------------------|-------------------------|
| 4/16/2010 | Present | 482258 B.C. Ltd. dba Re/Max Commercial Realty (X024595) | Representative | Strata |

3. Ms. Novinska was the owner of strata property located on Pendrell Street, Vancouver, BC.

4. Mr. Monaghan was the strata property manager.
5. On or about January 26, 2012, Ms. Novinska listed the property for sale.
6. On January 26, 2012, Ms. Novinska requested a Form B- Information Certificate (the “ Form B”) , the strata minutes from January 2010 to date, the strata by-laws and rules, the engineer’s report and the registered strata plan from Re/Max. She received all the requested documents except the Form B and the engineer’s report.
7. Ms. Novinska was contacted by a licensee, J.T. who advised Ms. Novinska that although his client was not interested in viewing the property, his client would nevertheless like to review the Form B and any strata minutes and other financial documents that were available. On February 1, 2012, Ms. Novinska sent J.T. the property disclosure statement, the strata by-laws and strata minutes for the year 2010, which she had downloaded from the Re/Max website. She advised J.T. that the Form B and the engineer’s report would be available shortly.
8. On or about February 13, 2012, Ms. Novinska was contacted by a licensee J.G. who advised Ms. Novinska that although his client was not interested in viewing the property, his client would nevertheless like to review the property disclosure statement, the strata by-laws, the Form B, and any strata minutes.
9. On February 14, 2012, Ms. Novinska sent J.G. the strata minutes for the year 2010, the property disclosure statement and the strata by-laws. Ms. Novinska advised J.G. that the strata minutes for 2011/2012 and the Form B would be available shortly.
10. On February 23, 2012, Ms. Novinska sent the January 2012 strata minutes and a Notice of Special General Meeting to J.G. Both documents provided details about a Supreme Court of British Columbia lawsuit in which the strata corporation was named as a party.
11. On February 26, 2012, J. G. sent an email to Ms. Novinska stating that he had noticed that the January 2012 strata minutes referred to a lawsuit. In response Ms. Novinska forwarded to J.G. a copy of a petition together with a letter from Mr. Monaghan addressed to all the residents, advising that the particulars of the lawsuit would be discussed at a special general meeting on March 7, 2012.
12. On February 28, 2012, Ms. Novinska received the Form B which had been completed and signed by Mr. Monaghan. Ms. Novinska noticed at that time that in response to the question – *“Is the strata corporation party to*

any court proceedings or arbitration, and/or are there any judgments or orders against the strata corporation? the answer 'No' had been checked off.

13. Ms. Novinska did not contact Mr. Monaghan to inquire about the 'No' response on the Form B. She instead forwarded the Form B to J.G. and advised J.G. to contact Re/Max about the 'No' response.
14. Ms. Novinska also received an email from Re/Max which attached 'Minutes 2010-2012.'
15. On March 6, 2012, Ms. Novinska forwarded the Re/Max email together with the Form B email to J.T. She believed that she also sent J.T. a copy of the petition.
16. Ms. Novinska was under the mistaken impression, as she did not view the attachment, that the Re/Max email contained the January 2012 strata minutes. However, this was not the case as the January 2012 strata minutes were not attached. Ms. Novinska did not become aware of this until sometime after April 2012.
17. Both J.T. and J.G. had been engaged by individuals, who were posing, by their own admission, as potential purchasers in a sting operation, in an effort to gain information about the strata corporation for other purposes.
18. Neither of the individuals ever viewed the property or presented an offer to Ms. Novinska.
19. Neither J.T. nor J.G. contacted Mr. Monaghan to inquire about the Form B.
20. In April 2012, the individuals complained to the Council about Ms. Novinska and Mr. Monaghan, alleging that they both had knowingly and fraudulently passed on false information to J.T. and J.G.
21. Ms. Novinska advised the Council that she did not act to deceive or mislead J.T., J.G. or their clients. She reasonably believed that despite what was disclosed on the Form B, they would have been able to ascertain from the strata minutes, petition and various other documents that she had sent them, that the strata corporation was involved in a lawsuit.
22. Mr. Monaghan advised the Council that he did not act to deceive or mislead Ms. Novinska, J.T., J.G. or their clients.
23. Mr. Monaghan accepted responsibility for his error and acknowledged that he should have been more attentive to the information that was provided on the Form B.

24. There was neither harm nor loss to any member of the public as a result of either Ms. Novinska's or Mr. Monaghan's actions.
25. Mr. Monaghan has no previous discipline history with 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, Ernie Joseph Monaghan is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
 - (a) Ernie Joseph Monaghan, while licensed with 482258 B.C. Ltd. dba Re/Max Commercial Realty committed professional misconduct within the meaning of section 35(1)(a) of RESA in his capacity as strata property manager for the property located at 1819 Pendrell Street, Vancouver, BC (the "property") in that he contravened section 3-4 of the Council Rules when he failed to act with reasonable care and skill, when he completed and issued to Ms. Novinska, a Form B-Information Certificate for the Property, dated February 28, 2012, which Form B indicated a response of "No" to the question, "*Is the strata corporation party to any court proceeding or arbitration, and/or are there any judgments or orders against the strata corporation?* ", when he knew or ought to have known that the strata corporation was a party in an action commenced on November 29, 2011 in the Supreme Court of British Columbia .
2. Mr. Monaghan hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Mr. Monaghan acknowledges that he has the right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Mr. Monaghan 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, and on CanLII, a website for legal research.
5. Mr. Monaghan 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.

"Janice L. Moore" _____
Janice L. Moore, Legal Counsel
Real Estate Council of British Columbia

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

Dated 6 day of June, 2013

"Ernie Joseph Monaghan" _____
Ernie Joseph Monaghan

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

Dated 6 day of June, 2013