

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

IN THE MATTER OF
MACDONALD REALTY OKANAGAN SOUTH LTD.

AND

JAMES ASHLEY HENRY

CONSENT ORDER

RESPONDENTS: James Ashley Henry, Managing
Broker, Macdonald Realty Okanagan
South Ltd.

Macdonald Realty Okanagan South
Ltd., Brokerage

DATE OF REVIEW MEETING: January 28, 2014

DATE OF CONSENT ORDER: February 6, 2014

CONSENT ORDER REVIEW COMMITTEE: M. Cowe
S. Lynch, Chair
R. Valouche

ALSO PRESENT: J. Moore, Legal Counsel
J. Worton, Legal Counsel for the Real
Estate Council

PROCEEDINGS:

On January 28, 2014 the Consent Order Review Committee (the "Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by James Ashley Henry and Macdonald Realty Okanagan South Ltd.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by James Ashley Henry, Macdonald Realty Okanagan South Ltd. and on behalf of the Council;

NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that James Ashley Henry and Macdonald Realty Okanagan South Ltd. have committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders:

1. Mr. Henry's managing broker's licence be suspended and he will not apply to be licensed as a managing broker for a period of four (4) years from the date of this Order ("Suspension Period"). Upon the completion of the Suspension Period, and prior to the Council accepting an application for re-licensing from Mr. Henry as a managing broker, Mr. Henry must successfully complete the Broker's Business Planning and Financial Management Licensing Course and Examination 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. During the Suspension Period, Mr. Henry is immediately eligible to be licensed as an associate broker or representative.
2. Mr. Henry pay all outstanding discipline penalties and enforcement expenses previously ordered by the Council, currently totaling \$2,300.00 to be paid in monthly installments of \$300.00 until Mr. Henry's licence renewal date of June 28, 2014. On June 28, 2014 the remaining outstanding amount of \$800.00 must be paid in full or Mr. Henry's licence will be suspended immediately until such payment has been made in full.
3. Macdonald Realty Okanagan South Ltd., including any branch offices, will wind up on or before February 15, 2014. If the Brokerage's Winding Up Report is not submitted, in a form satisfactory to the Council by February 15, 2014, the licence of Macdonald Realty and any branch offices will be cancelled immediately.
4. Mr. Henry and Macdonald Realty are jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount \$1,250.00 on or before Mr. Henry's licence renewal date which is on June 28, 2014.

If Mr. Henry and Macdonald Realty Okanagan South Ltd. fail to comply with any term of this Order, 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 6th day of February, 2014 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"S. Lynch"
S. Lynch, Chair
Consent Order Review Committee

File # 11-364, 11-414, 12-212, and 13-124

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

IN THE MATTER OF

**JAMES ASHLEY HENRY
(039681)**

AND

**MACDONALD REALTY OKANAGAN SOUTH LTD.
(X028734)**

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

The following agreement has been reached between, James Ashley Henry (“Mr. Henry”), Macdonald Realty Okanagan South (“Macdonald Realty”) and the Real Estate Council of British Columbia (the “Council”).

- A. Mr. Henry consents to an Order that his managing broker’s licence be suspended and he will not be licensed as a managing broker in any category of licensing for a period of four (4) years from the date of the Order herein (“Suspension Period”). Upon the completion of the Suspension Period, and prior to the Council accepting an application for re-licensing from Mr. Henry as a managing broker, Mr. Henry must successfully complete the Broker’s Business Planning and Financial Management Licensing Course and Examination 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. During the Suspension Period Mr. Henry is immediately eligible to be licensed as an associate broker or representative.
- B. Mr. Henry consents to an Order that all outstanding discipline penalties and enforcement expenses previously ordered by the Council, currently totaling \$2300.00, will be paid in monthly installments of \$300.00 until Mr. Henry’s licence renewal date of June 28, 2014. On June 28, 2014 the remaining outstanding amount of \$800.00 must be paid in full or Mr. Henry’s licence will be suspended immediately until such payment has been made in full.

- C. Macdonald Realty consents to an Order that Macdonald Realty, including any branch offices, will wind up on or before February 15, 2014. If the Brokerage's Winding Up Report is not submitted, in a form satisfactory to the Council, by February 15, 2014 the licence of Macdonald Realty and any branch offices will be cancelled immediately.
- D. Mr. Henry and Macdonald Realty further consent to an order to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,250.00 are to be paid on or before Mr. Henry's licence renewal date which is on June 28, 2014.
- E. As a basis for this Order, Mr. Henry and Macdonald Realty acknowledge and agree that the facts sets forth herein are correct:

Licensing Information

1. Macdonald Realty is licensed as a brokerage and has been since April 28, 2006. Macdonald Realty currently has eleven (11) licensees (including those in the branch office).
2. Macdonald Realty has one branch office, Macdonald Realty Okanagan South Ltd. (Olvr) which has two licensees.
3. At all relevant times Mr. Henry was licensed as a managing broker with Macdonald Realty.
4. Mr. Henry's licensing history is as follows:

<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>
2007/11/16	Present	Macdonald Realty Okanagan South Ltd. (X028734)	Managing Broker	Trading, Rental
2007/11/08	2007/11/15	*** Unlicensed ***		
2007/06/29	2007/11/07	Mountain Realty At Big White Ltd. (X027123)	Managing Broker	Trading, Rental, Strata
2006/09/26	2007/06/29	Mountain Realty At Big White Ltd. (X027123)	Managing Broker	Trading, Rental
2006/03/13	2006/09/26	Red Resort Properties Ltd. (X028679)	Managing Broker	Trading, Rental
2005/12/30	2006/03/13	Mountain Realty At Big White Ltd.	Managing	Trading,

		(X027123)	Broker	Rental, Strata
2000/06/29	2005/12/30	Mountain Realty At Big White Ltd. (X027123)	Managing Broker	Trading, Rental
1999/07/23	2000/06/29	Macdonald Realty, Kelowna, (1995) Ltd. dba Macdonald Realty Kelowna (X024618)	Associate Broker	Trading, Rental
1999/07/15	1999/07/22	*** Unlicensed ***		
1998/07/11	1999/07/14	554609 B.C. Ltd. dba Macdonald Realtors Mountain Resort Realty (X026378)	Managing Broker	Trading, Rental
1998/07/10	1998/07/10	*** Unlicensed ***		
1998/02/17	1998/07/09	554609 B.C. Ltd. (X026378)	Managing Broker	Trading, Rental
1994/02/08	1998/02/17	Horizon Realty Ltd. dba Coldwell Banker Horizon Realty (X021319)	Associate Broker	Trading, Rental
1993/11/15	1994/02/07	High West Realty Corporation (X022632)	Managing Broker	Trading, Rental
1993/05/19	1993/11/15	High West Realty Corporation (X022632)	Representative	Trading, Rental
1992/04/28	1993/05/19	Horizon Realty Ltd. dba Coldwell Banker Horizon Realty (X021319)	Representative	Trading, Rental
1988/07/11	1992/04/28	4 Seasons Realty Corp. (X013889)	Representative	Trading, Rental
1986/04/02	1988/07/10	*** Unlicensed ***		
1986/01/08	1986/04/01	Summer Realty (1985) Ltd. (X014673)	Representative	Trading, Rental
1982/05/03	1986/01/08	Carruthers & Meikle Ltd (X000549)	Representative	Trading, Rental

Secondary Licenses

039681-1

<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Licence</u>	<u>Licence</u>
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<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Level</u>	<u>Category</u>
2008/12/16	2013/06/12	British Columbia Strata Management Inc. (X029088)	Managing Broker	Trading, Rental, Strata
2008/12/05	2008/12/15	*** Unlicensed ***		
2008/03/07	2008/12/04	Macdonald Realty Okanagan South Ltd.(Mdwy) (X028982)	Managing Broker	Trading, Rental
039681-2				
<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Level</u>	<u>Category</u>
2011/09/12	2011/11/04	494888 B.C. Ltd. dba Strata Pro Property Management Services (X028609)	Managing Broker	Rental, Strata
2010/02/09	2011/09/12	Macdonald Realty Okanagan South Ltd. (Wstbrg) (X029031)	Managing Broker	Trading, Rental
039681-3				
<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Level</u>	<u>Category</u>
2011/09/12	2012/11/19	Mountain Strata Management Ltd. (X029058)	Managing Broker	Strata

2014 CanLII 11669 (BC REC)

Previous Discipline History

5. Mr. Henry's discipline history is as follows:

Henry, James Ashley	039681	242-05 RECBC Mountain Realty at Big White Ltd. (terminated)	May 10, 2006	Letter of Warning
	039681	235-06 RECBC (Acct. Rpt.) Mountain Realty at Big White Ltd. (terminated)	April 18, 2007	Reprimand to Brokerage and Henry and joint enforcement
	039681	09-464 RECBC (Acct. Rpt.) British Columbia Strata Management Inc.	March 7, 2011	Reprimand to Brokerage and Henry and joint enforcement
	039681	10-132 RECBC (Acct. Rpt.) Macdonald Realty Okanagan South Ltd.	March 7, 2011	Reprimand to Brokerage and Henry and joint enforcement

	039681	10-140 RECBC British Columbia Strata Management Inc. (service agreements)	October 29, 2012	Reprimand to Brokerage and Henry, Remedial Education and joint enforcement
	039681	11-057 RECBC (Acct. Rpt.) Macdonald Realty Okanagan South Ltd.	April 11, 2012	Reprimand to Brokerage and Henry, joint discipline penalty of \$1,000 and joint enforcement
	039681	11-294 RECBC (Acct. Rpt.) British Columbia Strata Management Inc.	April 11, 2012	Reprimand to Brokerage and Henry, joint discipline penalty of \$1,000 and joint enforcement
	039681	12-094 RECBC (Acct. Rpt.)	July 22, 2013	Reprimand to Brokerage and Henry, joint discipline penalty of \$2,500 and joint enforcement, an immediate audit of brokerage, brokerage to submit monthly banking reconciliations

2014 CanLII 11669 (BC REC)

6. Mr. Henry was also issued a letter of warning on May 10, 2006 cautioning him that as a managing broker he has an obligation to ensure that the brokerage has policies and procedures in place to ensure that all individuals engaged by the brokerage, to undertake real estate services, are duly licensed and the licence certificates are retained in the brokerage, available for public inspection.

7. Macdonald Realty's discipline history is as follows:

MacDonald Realty Okanagan South Ltd.	X028734	10-132 RECBC (Acct. Rpt)	March 7, 2011	Reprimand and joint enforcement with James Henry
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	X028734	11-057 RECBC (Acct. Rpt)	April 11, 2012	Reprimand, joint discipline penalty and joint enforcement with Henry
	X028734	12-094 RECBC (Acct. Rpt.)	July 22, 2013	Reprimand to Brokerage and Henry, joint discipline penalty of \$2,500 and joint enforcement, an immediate audit of brokerage, brokerage to submit monthly banking reconciliations

Background

8. In addition to being the managing broker at the Brokerage, Mr. Henry was also previously the managing broker of Mountain Strata Management Ltd. (“Mountain Strata”) and British Columbia Strata Management Inc. (“BC Strata”). Mr. Henry was the sole director of BC Strata and Mountain Strata, and is the current sole director of the Brokerage.
9. The Brokerage had an office and records inspection conducted on September 15, 2011 (the “2011 ORI”), and a subsequent office and records inspection was conducted on September 16, 17, and 18, 2013 (the “2013 ORI”). Both the 2011 ORI and the 2013 ORI revealed significant books and records deficiencies.
10. Mr. Henry states that he found himself in dire economic circumstances and because each of the three brokerages were required to submit full Accountant’s Report Filings, it was financially impossible for him to have his Accountant’s Report Filings completed in a timely manner. Mr. Henry decided to streamline his operations, and Mountain Strata wound up on November 21, 2012.
11. The 2013 ORI was ordered in accordance with the July 22, 2013 Decision of Council (*RE: James Ashley Henry and Macdonald Realty*), directing the Council to conduct an immediate audit of the Brokerage. The hearing was also in respect of BC Strata’s late accountants report filings and was adjourned in part, to allow BC Strata to wind up its operations, which it did on June 12, 2013.

12. Both Mountain Strata and BC Strata were wound up partially in order to alleviate the significant financial cost of operating three separate brokerages. Mr. Henry expected that by alleviating the financial stress his business endured, the Brokerage would be in a more positive financial position and be able to carry on the business.
13. However, the 2013 ORI revealed numerous books and records deficiencies, many of which were carried over from the 2011 ORI. In addition, on July 31, 2013 the Accountant's Report Filing for the Brokerage fiscal year ending March 31, 2013 was submitted to Council (the "2013 Accountant's Report"). The 2013 Accountant's Report noted numerous exceptions, and indicated that the Brokerage was not solvent as defined in section 7-8 of the Council Rules.

File 13-124

Failure to Respond

14. On May 21, 2013 the Council wrote to Mr. Henry requiring that he provide a response to the numerous exceptions set out in the 2013 Accountant's Report.
15. On August 30, 2013 the Council wrote to Mr. Henry and the Brokerage and again requested a written explanation for the exceptions outlined in the report, and required that he provide the Council with an explanation of how the Brokerage intended to discharge its current liabilities in the coming year.
16. Mr. Henry admits that he did not adequately respond to either the August 30, 2013 letter, nor to any follow-up requests by the Council, whether made by letter, email, or telephone.
17. On August 27, 2013, the Council wrote to Mr. Henry by email and requested that Mr. Henry provide specific documents to the Council prior to the 2013 ORI. Mr. Henry admits that he failed to provide all of the documents either before, during or after the inspection despite repeated requests by the Council to do so. Mr. Henry did provide a partial response to the 2013 ORI, providing the Council with some of the documents as required.
18. However, Mr. Henry's response was deficient in that he provided inappropriate documentation, did not provide requested documentation, and did not respond or fully address certain observations set out in the report. The Council wrote to Mr. Henry on November 15, 2013 outlining the deficiencies in his response.

19. In addition, after BC Strata submitted its Winding Up Report dated June 12, 2013, Mr. Henry did not provide the Council with the financial statements for the trust accounts that were disclosed in the report, although he was requested to do so.

Additional Findings in the 2013 ORIR

20. The 2013 ORIR made the following additional findings:
- the Brokerage's external accountant, for the purpose of preparing the 2013 Accountant's Report, was not provided with information regarding four accounts, including trust accounts, even though the accounts were active during the relevant period of time;
 - the Brokerage failed to maintain proper books, accounts and other records, including the proper maintenance of the Brokerage's trust, operating and general accounts, and including those for strata clients and including proper documentation regarding the wind up of BC Strata and the amalgamation of BC Strata with the Brokerage;
 - the Winding Up Reports of both Mountain Strata (submitted November 21, 2012) and BC Strata (June 13, 2012) failed to disclose all trust accounts operated by each of those brokerages.
 - the Council was not notified in writing of a change in financial institutions or locations of accounts maintained by either the Brokerage or BC Strata;
 - from September 24, 2013 until October 1, 2013 a website maintained by the Brokerage attributed numerous listings to a licensee that had not been licensed with the Brokerage since September 24, 2013;
 - Mr. Henry failed to review, date and initial the monthly reconciliations and the monthly trust asset and liability reconciliations for the Brokerage's trust and general accounts;
 - funds were deposited into incorrect accounts, resulting in trust funds being co-mingled with general funds;
 - improper accounting in the Brokerage's pooled rental trust account, caused a negative balance in the account of approximately \$1800.00 as at July 31, 2013, and the Brokerage failed to take immediate steps to eliminate the negative balance, and failed to notify the Council of the negative balance. The negative balance was discovered by the Council's auditor in reconstructing the accounts;
 - interest earned on the pooled rental trust account was not properly paid to the Real Estate Foundation, contrary to the *Residential Tenancy Act*;

- the signing authorities on accounts held by the Brokerage for strata clients did not reflect the instructions set out in the written services agreement for such clients; and
- the Brokerage provided strata management services to clients without either a written services agreement that was in compliance with the Council Rules, or a waiver for the need for a written services agreement.

Mr. Henry admits the above findings of the 2013 ORIR on behalf of the Brokerage and as managing broker.

21. Mr. Henry states that the negative balance of approximately \$1800.00 occurred as the funds were inadvertently recorded in the wrong ledger. Mr. Henry states that he rectified this as soon as it was brought to his attention.
22. Mr. Henry states that the interest on the pooled rental trust account was not paid properly to the Real Estate Foundation as a result of a banking error. However, his agreement with the financial institution had correctly instructed the financial institution as to how the interest was to be paid.

File 12-212

23. An office and records inspection conducted in October 2011 (the “BC Strata ORI”) revealed that BC Strata failed to ensure that it had current written services agreement with nine clients whose contracts had expired on the following dates: November 30, 2009, September 30, 2010 (2 contracts), May 31, 2010, October 31, 2010 (2 contracts), December 31, 2010 (2 contracts), and May 30, 2011. None of the clients had waived the requirement to have a written services agreement.
24. The BC Strata ORI further revealed that there was no written services agreement in place at all between BC Strata and one client, and there was no waiver by the client for the need for a written services agreement.
25. Following the BC Strata ORI, two other client’s written services agreements with BC Strata expired, and BC Strata and Mr. Henry did not ensure that a written services agreement was in place for those clients prior to their expiry.
26. Mr. Henry and BC Strata were requested to respond to the BC Strata ORI repeatedly by Council by email, phone, and letter. Although Mr. Henry did

contact the Council regarding these issues, he admits that he did not respond completely as requested by the Council. Mr. Henry ultimately provided the outstanding written services agreements to the Council beginning at the end of January 2013, approximately 18 months after the BC Strata ORI.

Files 11-364, 11-414

27. The 2011 ORI required Mr. Henry and the Brokerage to provide the Council with the following:
 - monthly bank reconciliations for August, September, and October 2011;
 - trust liability and asset reconciliations for each of August, and September; and
 - an explanation as to why three deposits were not placed in the appropriate trust account, but rather the Brokerage's general account;all by December 7, 2011.
28. Mr. Henry admits that he failed to respond to the Council as requested by December 7, 2011, and provided a partial response to the Council on January 12, 2012. On February 9, 2012 the Council wrote to Mr. Henry outlining all of the outstanding issues, and a follow-up letter was sent by the Council to Mr. Henry on March 2, 2012. Mr. Henry admits that he did not provide a full response to the Council and on April 11, 2012 the matter of failing to respond was forwarded to the Council's compliance department.
29. The matter remained on hold with the Council as Mr. Henry and the Brokerage attempted to alleviate the underlying office and records exceptions set out in the 2011 ORI.
30. Mr. Henry also admits that he failed to respond fully and completely to an office and records inspection report conducted by the Council on October 11, and October 12, 2011 of Mountain Strata. Primarily, the inspection revealed that Mountain Strata did not have updated written services agreements with many of its clients. Mr. Henry responded to the report by stating that he would have the written services agreements updated by February 2012. He explained that he intended to have the written services agreement signed when the owners (who did not reside in Canada) visited the properties between December, 2011 and February, 2012.
31. Mr. Henry admits that he was unable to provide the Council with updated written services agreements as requested. Ultimately, Mountain Strata wound down on November 19, 2012.

Other Considerations

32. In 2011, Mr. Henry acquired two additional brokerages from another licensee. Mr. Henry states that he became overwhelmed and unable to respond to Council inquiries as his business suffered a significant economic downturn. The new brokerages also required significant management resources.
 33. Due to financial circumstances, Mr. Henry states that he was required to reduce the hours of his book keeper, and ultimately had to terminate her employment, leaving him without the assistance he required to address the significant issues raised in the reports set out above.
 34. In addition, Mr. Henry had made an accounting software change, which he believes may have caused much of the discrepancies in report to Council auditors and his own external accountant.
 35. At the time of hearing held May 24, 2013, (James Ashley Henry and Macdonald Realty Okanagan South Ltd., July 22, 2013, Decision of Council) Mr. Henry was hopeful that he would be able to manage one brokerage (Macdonald Realty) and overcome the dire economic circumstances he currently operates in. However the subsequent Accountants Report and the 2013 ORI report revealed significant financial issues for the Brokerage.
 36. Mr. Henry is sorry he has been unable to address the issues brought to his attention in a manner completely satisfactory to the Council. Mr. Henry is devastated at this turn of events and is sorry that he has been unable to meet his obligations as a managing broker. He previously enjoyed success as a managing broker, and a brokerage owner, finds himself nearing retirement, and is greatly humbled by the current circumstances.
 37. There have been no public complaints against Mr. Henry or the Brokerage and there is no indication that any client funds are unaccounted for.
- F. Proposed Acceptance of Findings and Waiver in respect of files 11-414, 11-364, 12-212 and 13-124:
1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, James Ashley Henry and Macdonald Realty Okanagan South Ltd. are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
 - (a) Macdonald Realty Okanagan South Ltd. (the "Brokerage") committed professional misconduct within the meaning of section 35(1)(a)

RESA; and James Ashley Henry, as managing broker of the Brokerage committed professional misconduct within the meaning of section 35(1)(a), 35(1)(d), and 35(1)(e) of RESA by failing to meet his managing broker responsibilities within the meaning of section 6(2) of RESA, and by contravening sections 3-1(1), and 3-1(3) of the Council Rules in that:

- (i) Mr. Henry failed to provide and failed to ensure that the Brokerage provided information and documentation to the Council, for the purposes of conducting the Office and Records Inspection (the “ORI”), conducted on September 16, 17, and 18, 2013, despite being requested to do so by the Council contrary to sections 35(1)(e) and 37(4) of RESA and section 2-19 of the Council Rules;
- (ii) Mr. Henry failed to respond and failed to ensure that the Brokerage, and British Columbia Strata Management Inc. (“BC Strata”), and Mountain Strata Management Ltd. (“Mountain Strata”), as appropriate, responded to inquiries by the Council following Office and Records Inspection Reports conducted on September 15, 2011 and on October 11 and 12, 2011, contrary to sections 35(1)(e) and 37(4) of RESA and section 2-19 of the Council Rules;
- (iii) Mr. Henry failed respond and failed to ensure that the Brokerage responded to the August 30, 2013 letter from Council requesting the Brokerage explain the exceptions set out in the Brokerage’s 2013 Accountant’s Report and to outline its plans to discharge its current liabilities in the coming year; such that the Brokerage would become solvent as defined in section 7-8 of the Council Rules, contrary to section 37(4) of RESA and section 2-19 of the Council Rules;
- (iv) Mr. Henry failed to ensure that the Brokerage disclosed to the external accountant, for the purposes of preparing the Accountants Report Filings for the Brokerage fiscal year ended March 31, 2013 (the “Accountants Report”), four accounts held at the Bank of Montreal, even though the account ledgers of all such accounts indicated activity during the relevant period of time, contrary to section 7-7(4) of the Council Rules;
- (v) the Brokerage failed to maintain, and Mr. Henry failed to ensure that the Brokerage maintained proper books, accounts and other records, including each of the Brokerages operating, trust, pooled trust, commission trust, and general operating accounts; and Mr. Henry failed to ensure that BC Strata

maintained proper books and records relating to the wind up of BC Strata and/or the amalgamation of BC Strata with the Brokerage, contrary to section 25 of RESA and sections 7-4(3), 7-9(2), 7-9(6), 8-1, 8-2, and 8-3 of the Council Rules;

- (vi) the Brokerage improperly, and/or Mr. Henry failed to ensure the Brokerage properly, paid funds out of the pooled rental trust account, causing a negative balance of approximately \$1,800.00 in the pooled rental trust account as at July 31, 2013; failed to take immediate steps to eliminate the negative balance; and failed to notify the Council of the negative balance, contrary to section 30 of RESA and section 7-5 of the Council Rules;
- (vii) Mr. Henry failed to ensure that the Brokerage correctly deposited funds, into the proper Brokerage trust account and thereby co-mingled trust funds with general funds or other funds contrary to section 27 of RESA and section 7-9 of the Council Rules;
- (viii) Mr. Henry failed to ensure that the Brokerage notified the Council that the Brokerage would be maintaining trust accounts at two financial institutions, following the wind-up of BC Strata and/or the amalgamation of BC Strata with the Brokerage, contrary to section 2-22(f) of the Council Rules;
- (ix) the Brokerage provided, and/or Mr. Henry permitted the Brokerage to provide, strata management services without either a written services agreement that was in compliance with the Council Rules, or a waiver of such requirement, contrary to sections 5-1(1), 5-1(2), 5-1(4)(a), (e) and (g), and 5-1(5.1);
- (x) the Brokerage failed to act, and/or Mr. Henry failed to ensure that the Brokerage acted only in accordance with the lawful instruction of the Brokerage's clients and only within the scope of authority given by the Brokerage's clients, in that the Brokerages instructions pursuant to the written service agreements with clients differed from the Brokerage's practices in respect of the signing authorities on strata accounts held at various financial institutions, contrary to sections 3-3(1)(b) and 3-3(1)(c) of the Council Rules;
- (xi) the Brokerage provided real estate services, and/or Mr. Henry permitted the Brokerage to provide real estate services, through an individual that was not licensed in relation to the Brokerage, and published real estate advertising that contained a false or

misleading statement or misrepresentation concerning the provision of real estate services, when the Brokerage failed to remove numerous listings on a website maintained by the Brokerage that were attributed to a licensee that was no longer licensed with the Brokerage, contrary to section 7(5)(a) of RESA, and section 4-7 of the Council Rules;

- (xii) Mr. Henry permitted the Brokerage to cause a financial institution to pay interest on the pooled rental trust account to the Real Estate Foundation, when the interest on the funds should have accrued in the manner set out in the *Residential Tenancy Act*, contrary to section 29 of RESA;
- (xiii) Mr. Henry failed to ensure that BC Strata provided to the Council the financial statements for trust accounts as disclosed in BC Strata's Winding Up Report dated June 12, 2013 despite requests from Council to do so; and failed to ensure that Mountain Strata, and BC Strata disclosed all trust accounts operated by those brokerages, to the Council in their respective Winding-Up Reports dated November 21, 2012, and June 12, 2013 respectively, contrary to section 8-11 of the Council Rules, and section 4-11 of the Real Estate Services Act Bylaws;
- (xiv) Mr. Henry failed to review, date, and initial the monthly reconciliations and the monthly trust asset and liability reconciliations for the Brokerage's trust and general accounts, contrary to section 7-4(2) of the Council Rules;
- (xv) Mr. Henry failed to ensure that BC Strata had a current written services agreement, or waiver of such agreement, with various strata clients of BC Strata that were signed by the client and authorized by BC Strata, setting out all terms and conditions of the agreement, prior to commencing the provision of real estate services contrary to sections 5-1(1), 5-1(2) and 5-1(3) of the Council Rules; and
- (xvi) Mr. Henry failed to ensure that all contingency reserve and special levy trust accounts of BC Strata provided that the signatures of at least two of the individuals identified in section 7-9(6) of the Council Rules were required prior to withdrawing any funds from those accounts, contrary to section 7-9(6) of the Council Rules.

2. Mr. Henry and Macdonald Realty hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.

3. Mr. Henry and Macdonald Realty 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. Mr. Henry and Macdonald Realty acknowledge and are aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter and on the Council's website, and CanLii, a website for legal research.
5. Mr. Henry and Macdonald Realty 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.

"Joni R. Worton"
**Joni R. Worton, Legal Counsel
Real Estate Council of British Columbia**

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

Dated 16th day of January, 2014

"James Ashley Henry"
James Ashley Henry

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

Dated 15 day of January, 2014

"James Ashley Henry"
**James Ashley Henry on behalf of
Macdonald Realty Okanagan South Ltd.**

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

Dated 15 day of January, 2014