

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

IN THE MATTER OF
TIMOTHY NICHOLAS DYKES
AND
DAVIN MANAGEMENT LTD.

CONSENT ORDER

RESPONDENTS: Timothy Nicholas Dykes, Managing
Broker, Davin Management Ltd.

Davin Management Ltd., Brokerage

DATE OF REVIEW MEETING: September 15, 2015

DATE OF CONSENT ORDER: October 1, 2015

CONSENT ORDER REVIEW COMMITTEE: H. Exner
S. Ghose, Chair
D. Peerless

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

PROCEEDINGS:

On September 15, 2015 the Consent Order Review Committee (the "Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Timothy Nicholas Dykes and Davin Management Ltd.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Timothy Nicholas Dykes, Davin Management 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 Timothy Nicholas Dykes and Davin Management Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Timothy Nicholas Dykes be reprimanded;
2. Timothy Nicholas Dykes pay a discipline penalty to the Council in the amount of \$3,500.00 within ninety (90) days of the date of this Order;
3. Davin Management Ltd. be reprimanded;
4. Davin Management Ltd. pay a discipline penalty to the Council in the amount of \$3,000.00 within ninety (90) days of the date of this Order; and
5. Timothy Nicholas Dykes and Davin Management Ltd. be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount \$1,250.00 within sixty (60) days from the date of this Order.

If Timothy Nicholas Dykes and Davin Management 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 1st day of October, 2015 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"S. Ghose"

S. Ghose, Chair
Consent Order Review Committee

Attch.

File #12-410
File #12-514
File #13-183

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

**IN THE MATTER OF
TIMOTHY NICHOLAS DYKES**

(085872)

AND

**DAVIN MANAGEMENT LTD.
(X027150)**

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

The following agreement has been reached among Timothy Nicholas Dykes (“Mr. Dykes”), Davin Management Ltd. (“Davin Management”), and the Real Estate Council of British Columbia (the “Council”).

- A. Mr. Dykes hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (“RESA”) that he be reprimanded and pay a discipline penalty to the Council in the amount of \$3,500.00 within ninety (90) days of the date of this Order herein.
- B. Mr. Dykes agrees to be jointly and severally liable with Davin Management 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 herein.
- C. Mr. Dykes consents to an Order that if he fails to comply with any of the terms of the Order made out against him and set out above in paragraphs A and B, a Discipline Hearing Committee may suspend or cancel his license without further notice to him pursuant to section 43(3) and 43(4) of the RESA.
- D. Davin Management hereby consents to an Order to be made pursuant to sections 41 and 43 of the RESA that it be reprimanded and pay a discipline penalty to the Council in the amount of \$3,000.00 within ninety (90) days of the date of this Order herein.
- E. Davin Management agrees to be jointly and severally liable with Mr. Dykes 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 herein.
- F. Davin Management consents to an Order that if it fails to comply with any of the terms of the Order made out against it and set out above in paragraphs D and E, a Discipline Hearing Committee may suspend or cancel its license without further notice to it pursuant to section 43(3) and 43(4) of the RESA.
- G. As a basis for the Order, Davin Management acknowledges and agrees that the following facts set forth herein are correct:

1. Davin Management was at all relevant times licensed as a brokerage.
2. Davin Management'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>
2005/12/23	Present	Davin Management Ltd. (X027150)	Brokerage	Trading, Rental, Strata
2001/02/12	2005/12/23	Davin Management Ltd. (X027150)	Brokerage	Trading, Rental

H. As a basis for the Order, Mr. Dykes acknowledges and agrees that the following facts set forth herein are correct:

1. Mr. Dykes was at all relevant times licensed as the managing broker of Davin Management and was the managing broker in charge of strata management matters.
2. Mr. Dyke'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>
2005/12/23	Present	Davin Management Ltd. (X027150)	Managing Broker	Trading, Rental, Strata
2001/10/29	2005/12/23	Davin Management Ltd. (X027150)	Managing Broker	Trading, Rental
2001/05/14	2001/10/29	West Coast Realty Ltd. (Sur24) dba Sutton Group- West Coast Realty (Sur24) (X027362)	Associate Broker	Trading, Rental
1995/10/30	2001/05/14	White Rock Realty Ltd. dba Sutton Group - White Rock Realty	Associate Broker	Trading, Rental

(X018605)				
1995/01/01	1995/10/30	Countrywide Colony Realty Ltd. (X024515)	Associate Broker	Trading, Rental
1993/05/07	1995/01/01	Countrywide Lakeview Realty Ltd. (Whrk) (X012361)	Associate Broker	Trading, Rental
1990/11/19	1993/05/07	Countrywide Lakeview Realty Ltd. (Whrk) (X012361)	Representative	Trading, Rental
1990/10/16	1990/11/18	*** Unlicensed ***		
1990/08/23	1990/10/15	White Rock Management Corp. dba Realty World - White Rock Agencies (X021300)	Representative	Trading, Rental
1990/02/16	23/08/1990	Mcquistin Realty Ltd. dba Realty World - Mcquistin (X010762)	Representative	Trading, Rental

2015 CanLII 79279 (BC REC)

3. Neither Mr. Dykes nor Davin Management have a discipline history with the Council.

I. File 12-410 - Facts

1. In November 2010, Robert Wheeler (“Mr. Wheeler”) a representative at Davin Management was contacted by Mr. H. of H. Homes the owner-developer of a strata development (“BCSXXXX”) and asked to prepare a budget, and provide strata management services for the strata corporation once it became registered.
2. Mr. Wheeler stated to Council that he provided Mr. H. with a written service agreement and asked that it be executed and returned to him. Sometime later

he realized that he had not received the service agreement back from Mr. H., so he sent another copy to him.

3. Mr. Wheeler made several attempts to secure the services agreement, but was not able to. Nevertheless, he was confident that he would eventually receive it, as Davin Management had previously worked with Mr. H. on 12 other strata developments, and the brokerage had never experienced any problems.
4. In April 2011, acting on the instructions of Mr. H., Davin Management entered into landscaping, garbage removal, and insurance contracts on behalf of BCSXXX
5. From June 2011 until February 2012, Mr. Wheeler acted as the strata property manager and would receive instructions directly from Mr. H.
6. Davin Management charged a management fee of \$493.92 which was deducted monthly from BCSXXXX's trust account.
7. In February 2012, the newly elected president of the strata council requested a copy of the services agreement. Mr. Wheeler provided him with a copy of a services agreement that had been signed by Mr. Wheeler on behalf of Davin Management, but not by Mr. H.
8. On February 27, 2012, Davin Management served notice to the strata council that, effective March 31, 2012, it was terminating its property management services to BSCXXXX.
9. On March 1, 2012 Davin Management withdrew \$4,751.04 from BSCXXXX's trust account. The withdrawal was noted in the client general ledger as an expense for management fees. No further description or explanation for the charge was noted. On March 30, 2012, Davin Management provided an invoice to the strata council for this management fee.
10. In April 2012, BCSXXXX hired another brokerage to provide it with strata management services. The brokerage requested a copy of the services agreement Davin Management had entered into with BCSXXXX. The brokerage was provided with the same services agreement previously provided to the president of the strata council.
11. In May 2012, the brokerage was provided with an accounting from Davin Management that stated that the withdrawal on March 1, 2012 was for a March 12, 2012 management fee of \$1365.00, 12% HST, and retroactive management fee increase for the period September 1, 2011 until February 2012 for each of the 3 phases in the development.

12. Mr. Wheeler stated that it had come to his attention after Phase 3 of the development had been completed, that Davin Management had not been charging a correct management fee.
13. Mr. H. verbally authorized the increase in management fees as well as the payment out of trust to Davin Management for retroactive management fees.
14. Mr. Wheeler stated to the Council that the strata council had requested that the retroactive management fees be returned to it. He had advised strata council that Davin Management had obtained the consent of Mr. H. to proceed as it did. Mr. Wheeler stated that he heard nothing further from the strata council, and assumed that the matter was resolved.
15. Mr. Wheeler stated to the Council that the brokerage never received an executed service agreement back from Mr. H., and the only copy of a services agreement the brokerage had on file was the one Mr. Wheeler had only signed.
16. Mr. Dykes stated to Council that the brokerage was authorized to act on behalf of BSCXXXX, despite the lack of a written services agreement. Mr. Dykes acknowledged that the brokerage never received a copy of the executed agreement from Mr. H., but stated it was more a result of an oversight than from an intention on anyone's part to never obtain one.

J. File 12-514 - Facts

1. On October 1, 2004, Davin Management entered into a strata management service agreement with the Owners, Strata Plan BCSXXX ("BCSXXX"). The agreement provided that Davin Management would receive a strata management fee in the amount of \$720.00 per month.
2. Each fiscal year BCSXXX's budget, including any proposed increases to the management fee, was approved at the annual general meeting of shareholders ("AGM"). The minutes of the AGM stated that the increase to the management fee would be effective on June 1 of that year.
3. From October 2004 to February 2013, Davin Management increased its management fee in accordance with the amount approved at each year's AGM.
4. Mr. Dykes stated to Council that Davin Management had provided the strata council with amended services agreements to reflect the yearly increase in management fees, and to authorize the brokerage to withdraw the new management fee from trust.
5. Mr. Dykes provided the Council with correspondence between Davin Management and Mr. H., a former member of the strata council, in which he confirmed that the increase in management fees for successive years was

discussed and approved by the strata council. Mr. H. was unable to confirm that any amended service agreements were provided to the strata council to sign.

6. Mr. Dykes acknowledged that it appeared from his review of the brokerage file that no amended service agreements were executed by BCSXXX.

K. File 13-183 - Facts

1. In August 1998, Davin Management entered into an agreement with the Owners, Strata Plan LMS XXXX (the "Strata Corporation") to provide strata management services.
2. From October 29, 2001 until the present, Mr. Dykes was acting as Managing Broker of Davin Management Ltd. ("Davin Management") and was responsible for providing strata management services to 14XXX - 100th Avenue, Surrey, B.C. on behalf of the Strata Corporation.
3. On September 6, 2012, the Strata Corporation passed a Special Resolution to terminate the strata management services agreement with Davin Management.
4. On September 10, 2012, the Strata Corporation provided Davin Management with 90 days' notice of termination of services. The Strata Corporation advised Davin Management that during the notice period, full service was expected from Davin Management until December 31, 2012. However, an immediate separation of strata management services from Davin Management was requested.
5. On September 10, 2012, the Strata Corporation hired Premier Strata Services to take over strata management services for Davin Management.
6. After receiving notice of termination of services, Davin Management continued to operate Westminster Savings Account #XXXXXXXXXX (the "Savings Account") on behalf of the Strata Corporation.
7. On October 1, 2012, Davin Management representative, Mr. Robert Wheeler withdrew three months of strata management fees from Westminster Savings Account #XXXXXXXXXX without first obtaining the written consent of the Strata Corporation that the fees could be withdrawn from the account.

L. File 12-410 Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Davin Management Ltd. is prepared to accept the following findings if made against it by the Council's Consent Order Review Committee. Davin Management Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that it:
 - (a) failed to ensure that a written strata management service agreement had been executed by Strata Corporation BCSXXXX ("BCSXXXX") before the brokerage provided strata management services, charged a management fee, and entered into contracts on behalf of BCSXXXX, contrary to section 5-1 and 5-3 of the council rules; and
 - (b) withdrew management fees from trust without having a written strata management service agreement executed by BCSXXXX authorising the brokerage to do so, contrary to section 30(1) or RESA and section 3-3(c) of the Council Rules;

2. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Timothy Nicholas Dykes, in his capacity as managing broker of Davin Management Ltd. is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee. Timothy Nicholas Dykes committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that he:
 - (a) failed to ensure that the business of the brokerage was carried out competently and in accordance with RESA, regulations, rules and bylaws, contrary to section 6(2) of RESA and section 3-1 of the Council Rules in that he:
 - (i) failed to act with reasonable care and skill by allowing the brokerage to provide strata management services, charge management fees and enter into contracts on behalf of BCSXXXX without first ensuring a property management agreement was in place contrary to 3-4, 5-1, and 5-3 of the Council Rules; and
 - (ii) permitted the brokerage to withdraw management fees from trust without first ensuring that a strata management service agreement had been executed authorizing the brokerage to do so, contrary to section 30(1) of the RESA and 3-3(c) of the Council Rules.

M. File 12-514 Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Davin Management Ltd. is prepared to accept the following findings if made against it by the Council's Consent Order Review Committee. Davin Management Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that it:
 - (a) failed to ensure that the strata management service agreement it had entered into with BCSXXX was amended to reflect the 2004 to 2013 increases in its management fees, and then duly signed by BCSXXX, contrary to section 5-1(6) of the Council Rules; and
 - (b) from 2004 to 2013, withdrew increased management fees from trust without having the proper authorisation of, and/or instructions from, BCSXXX, contrary to section 30(1) or RESA and section 3-3(c) of the Council Rules.

2. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Timothy Nicholas Dykes, in his capacity as managing broker of Davin Management Ltd. is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee. Timothy Nicholas Dykes committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that he:
 - (a) failed to ensure that the business of the brokerage was carried out competently and in accordance with the Act, regulations, rules and bylaws, contrary to section 6(2) of RESA and section 3-1(1) of the Council Rules in that he:
 - (i) failed to act with reasonable care and skill and ensure that the strata management service agreement between Davin Management Ltd. and BCSXXX was amended to reflect the 2004 to 2013 increases in management fees, contrary to sections 3-4 and 5-1(6) of the Council Rules; and
 - (ii) from 2004 to 2013 permitted the brokerage to withdraw increased management fees from trust without first ensuring the proper authorisation and/or instruction from BCSXXX was in place, contrary to section 30(1) of RESA and 3-3(c) of the Council Rules.

N. File 13-183 Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Davin Management Ltd. is prepared to accept the following findings if made against it by the Council's Consent Order Review Committee Davin Management committed professional misconduct within the meaning of section 35(1)(a) of the RESA, in relation to a strata management

service agreement between Davin Management Ltd. and the Strata Corporation in that:

- (a) in contravention of sections 3-1(b) and 5-1(4) of Council's Rules, Davin Management failed to ensure that the business of the brokerage was carried out competently and in accordance with the RESA, Regulations and Council's Rules, specifically:
 - (i) in contravention of section 5-1(5.1) of the Council Rules, the service agreement failed to include whether Davin Management would be holding one or more of the contingency reserve fund money, operating fund money, special levy amount and other amounts;
 - (ii) in contravention of section 5-1(5.1)(a.1) of the Council Rules, the service agreement failed to specify the section of the *Strata Property Act* in which the agreement may be terminated;
 - (iii) in contravention of section 5-1(5.1)(b) of the Council Rules, the service agreement failed to stipulate any authority under section 30(1)(g) of the RESA [withdrawals from trust accounts] for Davin Management to transfer amounts between trust accounts; and
 - (iv) in contravention of sections 5-1(5.1)(c)(d)(e) and (f) of the Council Rules, the service agreement failed to specify authority when acting on behalf of the Strata Corporation to enter into contracts, sign cheques, invest funds, provide accounting statements, record keeping and the use and disclosure of information respecting the Strata Corporation; and
- (b) in contravention of sections 3-1(b) and 8-6(4)(b) of the Council Rules, Davin Management failed to provide the records for the Strata Corporation to the new management company within four week following the termination notice being given by the Strata Corporation.

2. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Timothy Nicholas Dykes, in his capacity as managing broker of Davin Management Ltd. is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee. Timothy Nicholas Dykes committed professional misconduct within the meaning of section 35(1)(a) of the RESA, in relation to a strata management service agreement between Davin Management Ltd. and the Strata Corporation in that:

- (a) while acting as Managing Broker for Davin Management, in contravention of section 31(1) of the RESA, Mr. Dykes permitted Davin

Management to withdraw three months of management fees; for the months of October, November and December 2012, prior to the remuneration being properly authorized by the Strata Corporation;

- (b) in contravention of sections 3-1(b) and 5-1(4) of Council's Rules, Mr. Dykes failed to ensure that the business of the brokerage was carried out competently and in accordance with the RESA, Regulations and Council's Rules, specifically:
 - (i) in contravention of section 5-1(5.1) of the Council Rules, the service agreement failed to include whether Davin Management would be holding one or more of the contingency reserve fund money, operating fund money, special levy amount and other amounts;
 - (ii) in contravention of section 5-1(5.1)(a.1) of the Council Rules, the service agreement failed to specify the section of the *Strata Property Act* in which the agreement may be terminated;
 - (iii) in contravention of section 5-1(5.1)(b) of the Council Rules, the service agreement failed to stipulate any authority under section 30(1)(g) of the RESA [withdrawals from trust accounts] for Davin Management to transfer amounts between trust accounts; and
 - (iv) in contravention of sections 5-1(5.1)(c)(d)(e) and (f) of the Council Rules, the service agreement failed to specify authority when acting on behalf of the Strata Corporation to enter into contracts, sign cheques, invest funds, provide accounting statements, record keeping and the use and disclosure of information respecting the Strata Corporation; and
 - (c) in contravention of sections 3-1(b) and 8-6(4)(b) of the Council Rules, Mr. Dykes failed to provide the records for the Strata Corporation to the new management company within four week following the termination notice being given by the Strata Corporation.
3. Mr. Dykes and Davin Management hereby waive their right to appeal pursuant to section 54 of the RESA.
 4. Mr. Dykes and Davin Management acknowledge that they have a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
 5. Mr. Dykes and Davin Management acknowledge and are 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.

6. Mr. Dykes and Davin Management acknowledge and are aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the RESA, to appeal any decision of the Council, including this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.
7. 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 Parts G, H, I, J and K only (Agreed
Statement of Facts)**

Dated 4 day of September, 2015

"Timothy Nicholas Dykes"

Timothy Nicholas Dykes

**As to Parts A, B, C, H, I, J, K, L, M, and N
(proposed penalty, Agreed Statement of
Facts, Proposed Acceptance of Findings and
Waiver)**

Dated 4 day of September, 2015

"Timothy Nicholas Dykes"

**Timothy Nicholas Dykes on behalf of
Davin Management Ltd.**

**As to Parts D, E, F, G, I, J, K, L, M and N
(proposed penalty, Agreed Statement of
Facts, Proposed Acceptance of Findings and
Waiver)**

Dated 4 day of September, 2015