

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

**IN THE MATTER OF
KATHLEEN SHEILA KENDALL**

CONSENT ORDER

RESPONDENT: Kathleen Sheila Kendall, Managing
Broker, 0844146 B.C. Ltd. dba
Kendall Property Management

DATE OF REVIEW MEETING: April 10, 2015

DATE OF CONSENT ORDER: May 4, 2015

CONSENT ORDER REVIEW COMMITTEE: A. Ghouri
S. McGougan, Chair
J. Pearson
D. Rishel

ALSO PRESENT: R.O. Fawcett, Executive Officer
G. Thiele, Director, Legal Services
B. Woolley, Q.C., Legal Counsel for
the Real Estate Council

PROCEEDINGS:

On April 10, 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 Kathleen Sheila Kendall.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Kathleen Sheila Kendall 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 Kathleen Sheila Kendall committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that Kathleen Sheila Kendall:

1. be reprimanded; and

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2. 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 Kathleen Sheila Kendall fails to comply with any term of this Order, the Council may suspend or cancel her licence without further notice to her, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 4th day of May, 2015 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“S. McGougan”
S. McGougan, Chair
Consent Order Review Committee

Attch.

File #13-031

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

IN THE MATIER OF

**KATHLEEN SHEILA KENDALL
(140766)**

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

The following agreement has been reached between Kathleen Sheila Kendall (“Ms. Kendall”) and the Real Estate Council of British Columbia (the “Council”).

- A. Ms. Kendall hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (the “Act”) that she be reprimanded. Further, she 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. Ms. Kendall further consents to an Order that if she fails to comply with any of the terms of the Order set out above, the Council may suspend or cancel her licence without further notice to her pursuant to sections 43(3) and 43(4) of the Act.
- B. As a basis for this Order, Ms. Kendall acknowledges and agrees that the facts set forth herein are correct:
1. Ms. Kendall was at all relevant times licensed as a managing broker (rental, strata) for Kendall Property Management (“Kendall Management”).
 2. Ms. Kendall’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>
2009/02/10	Present	0844146 B.C. Ltd. (X029201)	Managing Broker	Rental, Strata
2008/11/09	2009/02/10	0749318 B.C. Ltd. (X028726)	Associate Broker	Rental, Strata
2008/03/20	2008/11/08	0749318 B.C. Ltd. (X028726)	Representative	Rental
2005/12/30	2008/03/19	Associated Property Management (2001) Ltd. (X025017)	Representative	Rental, Strata

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- | 2004/11/09 | 2005/12/30 | Associated Property Management (2001) Ltd. (X025017) | Representative | Rental |
|------------|------------|--|----------------|--------|
|------------|------------|--|----------------|--------|
3. On January 1, 2012 Kendall Management entered into a service agreement (the "Service Agreement") with Strata Corporation KAS 3XXX for the provision of strata management services and Use Plan Management for property situate at XXXX O.L. Road (the "Property").
 4. The Property is comprised of strata lots ("Strata Lots") and strata lots governed by a Use Plan (the "Use Plan Strata Lots").
 5. The Use Plan Strata Lots were subject to governance by the Use Plan Committee, in addition to governance by Strata Corporation KAS 3XXX and its Strata Council (the "Strata Council").
 6. Mr. Keen was the representative of Kendall Management who acted as the strata manager for both the Strata Lots and the strata lots to which the Use Plan applied (the "Use Plan Strata Lots").
 7. [...] ("OXXX") had been appointed by the Strata Council and by the Use Plan Committee as the short term rental manager for some of the Strata Lots and all of the Use Plan Strata Lots in the Property.
 8. The Strata Council and the Use Plan Committee allege that on April 18, 2013 they terminated the appointment of OXXX as the short term rental manager and provided notice of that termination to SK, the owner of OXXX, on April 18, 2013, although this matter remains subject to outstanding litigation.
 9. It appears that Mr. Keen and certain of the owners of Strata Lots, certain of the owners of Use Plan Strata Lots, and certain members of the Strata Council and Use Plan Committee, had disagreements as to the services to be provided under the Service Agreement, the provision of certain information including budgets, and management generally, but particularly in relation to the Use Plan Strata Lots and the provision of services by OXXX.
 10. Kendall Management terminated the Service Agreement effective May 31, 2013.
 11. After the termination of the Service Agreement Mr. Keen continued to provide certain services he believed were Use Plan services to owners of Use Plan Strata Lots in Strata Corporation KAS 3XXX. In particular, Mr. Keen advised all owners and residents that he was the Use Plan Manager, that he would be retaining the keys for the Concierge Unit at the Property and would continue to provide services of the Use Plan Manager. The keys for the Use Plan Strata Lots were available through the Concierge Unit, to which none of the owners of Strata Lots or Use Plan Strata Lots had direct key card access, but which could

be accessed when manned by OXXX or after hours by way of a 24 hour phone line manned by OXXX. Ms. Kendall took no steps to stop Mr. Keen.

12. After the termination of the Service Agreement and the termination of OXXX as the short term rental manager, Mr. Keen continued to hold out OXXX as the short term rental manager, to use their services, and advised the owners of Strata Lots and Use Plan Strata Lots that OXXX were the designated short term rental manager. Ms. Kendall took no steps to stop Mr. Keen.
 13. The Complainant, one of the owners in the Property, complained on an urgent basis in an email to Ms. Kendall on June 6, 2013 about the conduct of Mr. Keen.
 14. The Complainant has alleged that Ms. Kendall, in response to the Complainant, said she had no response.
 15. Ms. Kendall states that throughout Mr. Keen's employment with Kendall Management, Ms. Kendall maintained direct supervision of Mr. Keen. Ms. Kendall states that that at all times she responded to any inquiries from Strata KAS 3XXX within a reasonable time and says that upon receiving notice from Strata KAS 3XXX Ms. Kendall immediately advised Mr. Keen to return all client documents to Strata KAS 3XXX as requested and to cease acting in any capacity for Strata KAS 3XXX.
 16. Ms. Kendall has no disciplinary history as of March 11, 2015.
- 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, Ms. Kendall is prepared to accept the following findings if made against her by the Council's Consent Order Review Committee:
 - (a) That Ms. Kendall committed professional misconduct within the meaning of section 35(1)(a) of the Act in that:
 - (i) contrary to section 3-1(2) of the Council Rules, she failed to take reasonable steps to deal with improper conduct of a licensee, in that she failed to take reasonable steps to deal with Mr. Keen's conduct after receiving an email dated June 6, 2013 from the Complainant setting out certain concerns respecting Mr. Keen.
2. Ms. Kendall hereby waives her right to appeal pursuant to section 54 of the Act.
3. Ms. Kendall acknowledges that she has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.

4. Ms. Kendall acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council and on the Council's website.
5. Ms. Kendall acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the 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. The Agreed Statement of Facts and Proposed Acceptance of Findings cannot be used in any other proceeding of any kind.
7. This Agreed Statement of Facts and Proposed Acceptance of Findings may be signed in counterparts.

"Bruce Woolley, Q.C."

Bruce Woolley, Q.C.

Legal Counsel

Real Estate Council of British Columbia

As to Part B only (Agreed Statement of Facts)

Dated March 13, 2015

"Kathleen Sheila Kendall"

Kathleen Sheila Kendall

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

Dated March 13, 2015