

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

**IN THE MATTER OF
MICHAEL ANTHONY BERTRAND
(000528)**

CONSENT ORDER

RESPONDENT: Michael Anthony Bertrand, Managing
Broker, Kerrisdale Realty Limited dba
Prudential United Realty, now known as
Royal LePage Westside

DATE OF REVIEW MEETING: April 11, 2016

DATE OF CONSENT ORDER: April 20, 2016

CONSENT ORDER REVIEW COMMITTEE: D. Fimrite
M. Leslie - Chair
S. McGougan
E. Mignosa

ALSO PRESENT: P. Gilligan-Hackett, Legal Counsel for the
Real Estate Council

PROCEEDINGS:

On April 11, 2016 the Consent Order Review Committee (the "Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Michael Anthony Bertrand.

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

1. be reprimanded;

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2. pay a discipline penalty to the Council in the amount of \$2,000.00 within ninety (90) days of the date of this Order;
 3. at his own expense, register for and successfully complete the Broker's Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period as directed by the Council; and
 4. pay enforcement expenses to the Council in the amount of \$1,250.00 within sixty (60) days of the date of this Order.

If Michael Anthony Bertrand fails to comply with any term of this Order, 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 20th day of April, 2016 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"M. Leslie"

M. Leslie, Chair
Consent Order Review Committee

Attch.

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

IN THE MATTER OF
MICHAEL ANTHONY BERTRAND
(00528)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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

A. Michael Anthony Bertrand 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; that he pay a discipline penalty to the Council in the amount of \$2,000.00 within ninety (90) days of the date of the Order herein; that he, at his own expense, register for and successfully complete the Broker’s Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period as directed by the Council. 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. Bertrand 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. Bertrand acknowledges and agrees that the facts set forth herein are correct:

1. Mr. Bertrand was at all relevant times licenced as a Managing Broker at Kerrisdale Realty Limited doing business as Prudential United Realty now known as Royal LePage Westside (“Prudential”).

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

2005/12/13 to present	Kerrisdale Realty Limited	Managing Broker, Trading, Rental, Strata
2001/07/10 to 2005/12/13	Kerrisdale Realty Limited	Managing Broker, Trading, Rental

2001/06/30 to 2001/07/09	Unlicensed	
1991/10/10 to 2001/06/29	Kerrisdale Realty Limited	Managing Broker, Trading, Rental
1989/05/18 to 1991/10/09	Sasamat Realty Ltd.	Managing Broker, Trading, Rental
1987/06/30 to 1989/05/18	Sasamat Realty Ltd.	Associate Broker, Trading, Rental
1832/05/06 to 1987/06/29	Sasamat Realty Ltd.	Associate Broker, Trading, Rental
1980/02/29 to 1982/0/06	Sasamat Realty & Insurance	Associate Broker, Trading, Rental
1979/06/30 to 1980/02/19	C.T.A. Realty Ltd.	Associate Broker, Trading, Rental
1978/03/31 to 1979/06/30	C.T.A. Realty Ltd.	Managing Broker, Trading, Rental
1977/08/15 to 1978/03/31	The Canada Trust Company	Representative, Trading, Rental
1977/01/28 to 1977/08/12	City Savings & Trust Co.	Representative, Trading, Rental
1977/01/19 to 1977/01/31	Professional Realty Corporation Ltd.	Representative, Trading, Rental
1976/09/02 to 1977/01/10	Macaulay Nicolls Mainland & Co. Ltd.	Representative, Trading, Rental
1976/03/01 to 1976/08/26	Knowlton Realty Ltd.	Representative, Trading, Rental
Secondary License		
2008-05/29 to present	Kerrisdale Realty Limited	Managing Broker, Trading, Rental, Strata

3. Prudential was party to an Agency Agreement with a strata corporation on Comox Street in Vancouver, BC (“Agency Agreement”). The Agency Agreement was dated for reference October 1, 2007.
4. In December, 2012, the Strata held a Special General Meeting (“SGM”) at which the owners present voted to terminate the Agency Agreement (“Resolution”). At that time, Prudential had provided strata management services to the Strata for approximately 18 years.
5. In early January, 2013, Mark Joseph Epstein (“Mr. Epstein”), a licensee at Prudential who had been appointed the Strata’s property manager, informed Mr. Bertrand that he believed the SGM had been invalidly held because the Strata had not complied with the notice requirements of the *Strata Property Act*, S.B.C. 1998, c. 43 (“*Strata Property Act*”).
6. Prudential sought legal advice about the validity of the SGM and the Resolution and regarding communications it had received in early January 2013 individuals associated with the Strata.
7. In a without-prejudice letter to the Strata dated January 16, 2013, counsel for Prudential (“Counsel”) wrote that: he acted for Prudential; the SGM had been improperly held; and Prudential had been “seriously libeled” by communications from individuals associated with the Strata.
8. On January 24, 2013, Counsel wrote a further without-prejudice letter to the Strata reiterating Prudential’s position that the Resolution was invalid and that Prudential had been “maliciously maligned” by individuals associated with the Strata.
9. By invoice dated February 5, 2013 (“Invoice”), Counsel issued his account of \$1,586.82. He addressed the Invoice to Prudential.
10. On February 8, 2013, Prudential paid the Invoice out of funds it held in trust for the Strata.
11. Mr. Epstein initialed the Invoice to approve its payment from the Strata’s funds.
12. Prudential did not have authorization from the Strata to pay the Invoice from the Strata’s funds.
13. On March 5, 2013, a licensee (“Licensee”) at the successor brokerage to Prudential (“Successor Brokerage”) acknowledged receiving certain Strata documents from Prudential.
14. By letter to Mr. Epstein dated May 3, 2013, the Licensee protested the payment of the Invoice from Strata trust funds without the Strata’s authorization and demanded reimbursement from Prudential. He also noted that he had only received two months of financial statements from Prudential. With the Licensee’s letter, he enclosed an article from a Report from Council dated December 2012,

“Obligations When Strata Management Brokerage Receives Notice to Terminate Service Agreement.” The article includes the following:

Delivery of records

If requested, the Council Rules require the brokerage to provide the following records to a former strata corporation client, or if the strata corporation engages another brokerage, to that brokerage, by the later of the date that is 4 weeks following the date of termination or the date that is 2 weeks following the date of the request:

- banking records relating to account transactions of all trust accounts held on behalf of the strata corporation, including bank statements and cancelled cheques;
- other source documents confirming deposits or withdrawals;
- a record showing amounts received and disbursed, the reason for the receipt or disbursement, and any unexpended balance;
- monthly reconciliations of banking statements of all trust accounts held on behalf of the strata corporation; and
- unless they have already been provided, invoices for expenditures incurred on behalf of the strata.

Additionally, the *Strata Property Act* (SPA) also contains provisions regarding the return of a strata corporation’s records when a strata management contract ends (SPA section 37 and Regulation 4.3)....

15. By letter dated May 9, 2013, Mr. Epstein responded to the Licensee that Prudential had sought legal advice because the Strata did not give legal notice to terminate the Agency Agreement. Mr. Epstein declined on behalf of Prudential to forward payment for the Invoice. He relied on section 3(g) of the Agency Agreement as entitling Prudential to pay the Invoice without authorization from the Strata:

3. THE STRATA CORPORATION AGREES from and after the Effective Date:

* * * *

(g) To save the Agent harmless from and against all claims, damages, costs and liabilities incurred in connection with the services provided to the Strata Corporation and, without limiting the foregoing, to indemnify the Agent from all claims, damages, costs and liabilities whatsoever incurred by the Agent arising out of any acts or omissions of the Agent and to protect the Agent against all such claims, damages, costs and liabilities in the same manner and to the same extent as the Strata Corporation....

Mr. Epstein further wrote that because Prudential had submitted financial statements to the Strata on a monthly basis and they had been approved by the Strata's council, financial statements would be available from the Strata's treasurer. He did not enclose additional financial statements.

16. The Agency Agreement includes the following additional provisions:

4. THE AGENT AGREES from and after the Effective Date:

(f) To keep full and detailed records of the transactions of the Strata Corporation and to retain the records required to be maintained by the Strata Property Act and its Regulations for such periods as are require[d];

* * * *

(j) To keep full and accurate records of the transactions of the Strata Corporation and to retain the records required to be maintained under section 35 of the Strata Property Act (except any documents under section 35 of the Strata Property Act not provided to the Agent by the Strata Corporation) for the time periods required under the Strata Property Act, its regulations and RESA;

(k) To... return all records upon termination of this Agreement in accordance with the Strata Property Act and RESA....

17. The *Strata Property Act*, section 35 provides in part as follows:

Strata corporation records

35 (1) The strata corporation must prepare all of the following records:

* * * *

(d) books of account showing money received and spent and the reason for the receipt or expenditure;

* * * *

(2) The strata corporation must retain copies of all of the following:

(a) the records referred to in subsection (1);

* * * *

(i) the budget and financial statement for the current year and for previous years;

(3) Records referred to in this section must be retained by the strata corporation for the periods set out in the regulations.

18. Section 37 of the *Strata Property Act* provides as follows:

Strata manager to return records

37 (1) If a strata management contract ends, the person providing the strata management services must, within 4 weeks, give the strata corporation any records referred to in section 35 that are in the person's possession or control.

(2) A person who fails to comply with subsection (1) must pay to the strata corporation an amount calculated according to the regulations.

19. By letter dated May 16, 2013, the Licensee wrote to Mr. Bertrand. In the Licensee's letter, he wrote that the Invoice related to legal advice sought by Prudential regarding the termination of the Agency Agreement and that the legal advice was not for the benefit of the Strata. He also wrote that the Strata had only received two months of financial records and noted that the Council Rules require a former brokerage to provide more than two months of such records.
20. By further letter dated June 13, 2013, the Licensee wrote to Mr. Bertrand reiterating that he required the last six years of financial records in order to effectively manage the Strata. He enclosed a copy of sections 35-37 of the *Strata Property Act*. The Licensee also reiterated his demand that Prudential reimburse the Strata for the Invoice.
21. By letter dated June 24, 2013, Mr. Bertrand responded that "the legal expense had been incurred... because management had to obtain legal advice since the Strata... did not give legal notice to terminate the Agency Agreement and the Agreement, section 3(g) the Strata... saves [Prudential] from any costs incurred". He also wrote that the financial statements had been provided to the Strata on a monthly basis with monthly statements since Prudential had started managing the Strata. Mr. Bertrand declined to either reimburse the Strata for the Invoice or to send additional financial statements.
22. Prudential has subsequently reimbursed the Strata for the Invoice.
23. Prudential has paid \$1,000.00 to the Strata in accordance with section 37(2) of the *Strata Property Act* and section 4.3 of the *Strata Property Regulation*, B.C. Reg. 43/2000.
24. On September 13, 2013, the Council received a complaint against Prudential from the Strata.

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25. Mr. Bertrand does not have a 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, Michael Anthony Bertrand is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
- (a) Mr. Bertrand committed professional misconduct within the meaning of section 35(1)(a) of RESA while acting as the Managing Broker of Prudential and in connection with the termination of the Agency Agreement in that:
- (i) contrary to sections 30(1) and 35(1)(c) of RESA, he caused or permitted Prudential to take monies from the Strata's trust account by paying or causing the Invoice to be paid when such fees were incurred by Prudential to obtain legal advice for its benefit in connection with the Strata's termination of the Agency Agreement and the payment was not authorized by the Strata;
 - (ii) contrary to section 3-4 of the Council Rules, he failed to act with reasonable care and skill by causing or permitting Prudential to fail to deliver to the Successor Brokerage after repeated requests all of the records listed in section 35 of the *Strata Property Act* which were within Prudential's possession or control despite the requirement of section 37(1) of the *Strata Property Act*;
 - (iii) contrary to section 3-1(1)(b) of the Council Rules, he failed to ensure that Prudential's business was carried out competently and in accordance with RESA and the Council Rules by causing or permitting Prudential to withdraw monies held in trust for the Strata without authorization and for Prudential's benefit;
 - (iv) contrary to section 3-1(1)(b) of the Council Rules, he failed to ensure that Prudential's business was carried out competently and in accordance with RESA and the Council Rules by causing or permitting Prudential, despite repeated requests, not to deliver to the Successor Brokerage, all of the Strata's records which were required to be delivered under section 35 of the *Strata Property Act* or Rule 8-7.1(2) of the Council Rules or both and which were in Prudential's possession or control;
 - (v) contrary to section 8-7.1(3)(a) of the Council Rules, he failed, despite repeated requests, to ensure that Prudential provided the Successor Brokerage with the records described in section 8-2 of the Council

Rules within the time permitted by section 8-7.1(4) of the Council Rules; and

(vi) contrary to section 3-1(1)(c) of the Council Rules, he failed to ensure that there was an adequate level of supervision for Mr. Epstein, the representative who performed duties on behalf of Prudential in connection with the Agency Agreement, by causing or permitting Mr. Epstein to allow or to assist Prudential to contravene RESA or the Council Rules or both in the manner particularized herein.

2. Mr. Bertrand hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Mr. Bertrand 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. Bertrand 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. Bertrand 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

"Michael Antony Bertrand"
Michael Anthony Bertrand

As to Part B only (Agreed Statement of Facts)

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

Dated 16 day of March, 2016

Dated 23 day of July, 2015