

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

**IN THE MATTER OF
KEVIN DONALD DUGUID**

CONSENT ORDER

RESPONDENT: Kevin Donald Duguid, Managing
Broker, 604 Real Estate Services Inc.

DATE OF REVIEW MEETING: October 20, 2015

DATE OF CONSENT ORDER: November 5, 2015

CONSENT ORDER REVIEW COMMITTEE: H. Exner
D. Fimrite
S. Ghose
M. Leslie, Chair
S. Lynch

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

PROCEEDINGS:

On October 20, 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 Kevin Donald Duguid.

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

1. be reprimanded; and

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2. pay enforcement expenses of this Consent Order to the Council in the amount \$1,500.00 and to reimburse the Strata Council in the amount of \$548.50 within sixty (60) days from the date of this Order.

If Kevin Donald Duguid 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 5th day of November, 2015 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.

File #14-171

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

**IN THE MATTER OF
KEVIN DONALD DUGUID
(123490)**

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

The following agreement has been reached between Kevin Donald Duguid (“Mr. Duguid”) and the Real Estate Council of British Columbia (the “Council”).

- A. Mr. Duguid hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (the “RESA”) that he be reprimanded. Further, he agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500 and to reimburse the Strata Council in the amount of \$548.50 within sixty (60) days from the date of the Order herein. Mr. Duguid 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 RESA.
- B. As a basis for this Order, Mr. Duguid acknowledges and agrees that the facts set forth herein are correct:
1. Mr. Duguid was at all relevant times licensed as a managing broker with 604 Real Estate Services Inc. (“604 Real Estate”).
 2. Mr. Duguid’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>
10/04/2006	Present	604 Real Estate Services Inc. (X023880)	Managing Broker	Trading, Rental, Strata
19/12/2005	09/04/2006	Ascent Real Estate Management Corporation (X012472)	Associate Broker	Trading, Rental, Strata
03/12/2005	18/12/2005	*** Unlicensed ***	N/A	N/A

11/10/2005	02/12/2005	Kevin Donald Duguid dba 604 Real Estate Services (123490)	Sole Proprietor	Trading, Rental, Strata
14/09/2005	10/10/2005	*** Unlicensed ***	N/A	N/A
03/03/2005	13/09/2005	Atira Property Management Inc. (X027745)	Managing Broker	Trading, Rental
08/09/2004	03/03/2005	Kevin Donald Duguid dba 604 Real Estate Services (123490)	Sole Proprietor	Trading, Rental
05/06/2004	07/09/2004	*** Unlicensed ***	N/A	N/A
19/06/2000	04/06/2004	AWM – Alliance Real Estate Group Ltd. (X026218)	Associate Broker	Trading, Rental
15/01/1999	19/06/2000	AWM – Alliance Real Estate Group Ltd. (X026218)	Representative	Trading, Rental
24/11/1998	14/01/1999	*** Unlicensed ***	N/A	N/A
22/04/1996	23/11/1998	Bayside Property Services Ltd. (X010545)	Representative	Trading, Rental

3. Mr. Duguid has been licensed as a property manager for 24 years and since 2006 he has been the principal of 604 Real Estate.
4. From 2007 until May 2014, 604 Real Estate had an Agency Agreement with The Owners of Strata Plan LMS 1182 “Grandview Manor” in Vancouver, British Columbia (“Strata”) to provide property management services. Part of 604 Real Estate’s services under the Agency Agreement required that they send an agent or representative to attend Strata council meetings who would also prepare and provide the minutes of such meetings.
5. A Strata council meeting was held on February 12, 2014 (“Meeting”). Mr. Duguid attended the Meeting in his role as the managing agent, together with Petra Antal, another licensee from 604 Real Estate.
6. At the Meeting, one of the agenda items discussed was whether to establish a preventative maintenance program. This had been an ongoing item at Strata Council meetings since December 2010.
7. The complainant, Ms. B., who was at that time the vice president of the Strata and present at the Meeting, stated to Council that the Strata council decided to postpone the preventative maintenance program until a later time.

8. Both Mr. Duguid and Ms. Antal state that the Strata council decided at the Meeting to engage a mechanical contractor to perform preventative maintenance inspections.
9. Mr. Duguid and Ms. Antal provided their handwritten notes from the Meeting which document instructions to engage a mechanical contractor.
10. At some point in time after the Meeting, Mr. Duguid drafted the minutes which stated the following with respect to the agenda item for the preventative maintenance program, *“Preventative Maintenance Program: A preventative maintenance schedule of the mechanical components of the complex has been deferred pending the depreciation report.”*
11. In the course of its investigations, Ms. B. stated to Council that the Strata minutes were posted on-line at a website maintained by 604 Real Estate and accessible to Strata council members through a secure account and password.
12. Mr. Duguid states that the Strata minutes do not accurately reflect what was discussed at the Meeting in relation to the preventative maintenance program and that he failed to notice the error before posting the minutes on the website.
13. On or about March 19, 2014, Ms. B. sent an email to Mr. Duguid stating that mechanical contractors had been seen at the Strata property that day for several hours and she inquired why they had been there and what they had been doing.
14. On or about March 20, 2014, Ms. Antal stated in a return email to Ms. B. that the mechanical contractors were at the Strata property carrying out preventative maintenance as requested by the Strata council at its Meeting.
15. On or about March 25, 2014, Ms. B. sent an email to Ms. Antal and Mr. Duguid stating that she had checked with the rest of the Strata council members who all confirmed that they had decided not to proceed with the preventative maintenance program at the Meeting. She referenced the Meeting minutes that confirmed the Strata council’s position which is reproduced in paragraph 9 above.
16. On March 25, 2014, Mr. Duguid stated in a return email to Ms. B. that his handwritten notes, as well as Ms. Antal’s handwritten notes from the Meeting reflected that the Strata council had approved the service contract with the mechanical contractors. He added that he would cancel the contract *“should council feel this was not their intentions [sic] at this time.”*
17. By email dated April 4, 2014, Ms. B. stated to Mr. Duguid, that the Strata Council had not approved any contract for a preventative maintenance program at the Meeting and accordingly it would not be financially responsible for any costs incurred for such a service contract.

18. An invoice dated March 31, 2014, in the amount of \$548.50 was prepared by the mechanical contractors for preventative maintenance services. Although the invoice was addressed to the Strata, it was sent to 604 Real Estate's address. The invoice had a handwritten note indicating it had been paid on April 2, 2014.
19. Ms. B. stated to Council that 604 Real Estate paid the maintenance contractor's invoice from Strata funds without the Strata's authorization.
20. Mr. Duguid has offered to reimburse the Strata for the amount of the mechanical contractor's invoice.
21. This is the first complaint against Mr. Duguid by the Strata. Mr. Duguid has no prior 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, Kevin Donald Duguid is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
 - (a) while licensed as the managing broker of 604 Real Estate Services, Inc., he committed professional misconduct within the meaning of section 35(1)(a) of the RESA in his management and dealings with the strata corporation of 1623 East 2nd Avenue, Vancouver, British Columbia, in that:
 - (i) contrary to section 3-4 of the Council Rules, he failed to accurately record the instructions of the Strata council in the meeting minutes; and
 - (ii) contrary to sections 30(1) and 30(2) of the RESA and 3-4 of the Council Rules, on or about April 2, 2014, he permitted a payment of \$548.50 to be made to a mechanical contractor from the Strata corporation's operating fund trust account when the payment was not authorized based on the Strata Meeting minutes.
2. Mr. Duguid hereby waives his right to appeal pursuant to section 54 of the RESA.
3. Mr. Duguid 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. Duguid 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. Duguid acknowledges and is 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.
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.

“Sabinder Sheina”

“Kevin Duguid”

**Sabinder Sheina, Legal Counsel
Real Estate Council of British Columbia**

Kevin Donald Duguid

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

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

Dated 6th day of October, 2015

Dated 5th day of October, 2015