

CITATION: Gildart (Re), 2025 BCSRE 39

Date: 2025-02-28

File # 18-689

BC FINANCIAL SERVICES AUTHORITY

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended

AND

IN THE MATTER OF

JUDITH LINDA BOOD
(FORMER LICENCE NO. 172453)

AND

JUDY BOOD PERSONAL REAL ESTATE CORPORATION
(FORMER LICENCE NO. 172453PC)

AND

RICHARD ROBERT GILDART
(FORMER LICENCE NO. 176824)

CONSENT ORDER

[This Order has been redacted before publication.]

RESPONDENT: Richard Robert Gildart, currently unlicensed, while licensed with
Pemberton Holmes Ltd (Parksville)

DATE OF CONSENT February 28, 2025
ORDER:

COUNSEL: Simon Adams, Legal Counsel for the BC Financial Services Authority,

PROCEEDINGS:

On February 28, 2025, the Superintendent of Real Estate (the "Superintendent"), or the Superintendent's authorized delegate, of BC Financial Services Authority ("BCFSA") accepted the Consent Order Proposal (the "Proposal") submitted by Richard Robert Gildart.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Richard Robert Gildart.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Richard Robert Gildart committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (“RESA”) and sections 30(a), 30(h), and 34 of the *Real Estate Services Rules* (the “Rules”), pursuant to section 43 of the RESA the Superintendent orders that:

1. Richard Robert Gildart pay a discipline penalty to BCFSa in the amount of \$5,000 within three (3) months from the date of this Order.

If Richard Robert Gildart fails to comply with any term of this Order, the Superintendent may suspend or cancel their licence without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 28th day of February, 2025 at the City of Victoria, British Columbia.

Superintendent of the BC Financial Services Authority

“Original signed by Jonathan Vandall”

Jonathan Vandall
Delegate of the Superintendent of Real Estate
Province of British Columbia

Attch.

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(FORMER LICENCE NO. 172453PC)****AND****RICHARD ROBERT GILDART
(FORMER LICENCE NO. 176824)****CONSENT ORDER PROPOSAL BY RICHARD ROBERT GILDART****BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by Richard Robert Gildart ("Rick Gildart") to the Superintendent of Real Estate (the "Superintendent") of the BC Financial Services Authority ("BCFSA") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, Rick Gildart and the Superintendent have agreed upon the following facts:

1. Rick Gildart (176824) was first licensed on July 18, 2017, at Pemberton Holmes Ltd. (Parksville) as a representative in the trading services category and remained licensed there until November 25, 2021, when he terminated his licence for retirement.
2. At all relevant times, Rick Gildart was licensed at Pemberton Holmes Ltd. (Parksville).
3. Rick Gildart is the agent for the buyer, [Company 1], owned by [Buyer 1] (jointly, "the Buyer"), of the property located [Property 1], Deep Bay, BC, [redacted] (the "Property"). The Property is situated on the coast of Vancouver Island.
4. Judith Linda Bood and Judy Bood Personal Real Estate Corporation (collectively, "Judy Bood") is the agent for the seller, [Seller 1], who owned the Property.
5. On October 14, 2018, Rick Gildart submitted an offer on behalf of his client, the Buyer, for the Property for \$300,000.

6. Rick Gildart relied solely on the title search for the Property, and on [Seller 1]'s property disclosure statement dated July 5, 2018 (the "PDS") when performing his due diligence regarding the Property.
7. On the PDS, [Seller 1] had checked off "no" to the question, "Are you aware if the property, of any portion of the property, is designated or proposed for designation as a "heritage site" or of "heritage value" under the *Heritage Conservation Act* or under municipal legislation?"
8. In performing his due diligence, Rick Gildart did not consult with any other information sources regarding the Property, such as the local municipality, regional district, or contact the Archaeological Branch to determine whether the Property was on an archaeological site protected by the *Heritage Conservation Act* (the "HCA"). A property that is protected under the HCA is done to preserve the property and consequently alterations to the site cannot be made without proper permits issued by the Archaeological Branch.
9. Judy Bood did not disclose to Rick Gildart or the Buyer that the Property was on an archaeological site protected under the HCA.
10. On October 15, 2018, [Seller 1] accepted the offer for the Property.
11. On October 31, 2018, the Buyer completed and took possession of the Property.
12. When the transaction for the Property completed, Rick Gildart had been a licensed realtor for approximately one year, and usually worked out of Parksville, and occasionally fill in spots for the Bowser area.
13. On November 2, 2018, the Buyer commenced some clearing of trees and brush on the Property. On November 6, 2018, they received a phone call from the Archaeological Branch advising them that the Property is an archaeological site and therefore they must desist from any further work on the Property until they obtain the necessary permits.
14. On December 6, 2018, the Buyer received a report from [Company 1] ("[Company 1]"), an archaeological consulting company in Bowser, BC, that archaeological site [Site 1] is located on the Property and is protected by the HCA, which means that it cannot be altered without ministerial permissions.
15. In June 2021, the Buyer sold the Property for \$200,000 as they could not develop on the land as initially planned due to archeological site [Site 1] being located on the Property, sustaining a loss of approximately \$110,000 including costs.
16. When Rick Gildart was informed by the Buyer about the Property being an archaeological site, he did the following:
 - a. He made a data request with the BC Archeological website on November 17, 2018. In response to his request, they confirmed to him that the Property is located within the previously recorded archaeological site [Site 1].
 - b. He thereafter followed up with his client several times, to confirm the information he received and to also inquire about their progress with the Property.

- c. He made a complaint to the regulator, the Real Estate Council of BC (now BCFSa), about Judy Bood and her lack of disclosure about the archaeological site on the Property. He also provided documents and required information in the investigation of the complaint.
- d. He had numerous discussions with archaeologists at [Company 1] to discuss how to be better prepared for the archaeological sites in the future.
- e. He organized with [Company 1] to do a presentation on April 9, 2019, at Pemberton Holmes Ltd. (Parksville) for all the realtors at their office in Parksville, BC so they would all also be better informed of this issue.

17. Rick Gildart does not have a discipline history and is now retired and no longer residing in BC.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Rick Gildart proposes the following findings of misconduct be made by the Superintendent:

1. Rick Gildart committed professional misconduct within the meaning of section 35(1)(a) of the RESA when while acting as buyer's agent, he:
 - a. failed to use reasonable efforts to discover relevant facts respecting the Property, failed to act in the best interest of his client, and failed to act with reasonable care and skill when he only reviewed the Property's title and property disclosure statement before the transaction completed, and did not contact the area's local municipality, regional district or the Archaeology Branch for a data request or map request of the Property, causing his client to have to dispose of the Property at a significant loss, contrary to sections 30(h), 30(a), and 34 of the Rules (previously Rules, s 3-3(h), 3-3(a), and 3-4 respectively).

PROPOSED ORDERS

The above Proposed Findings of Misconduct is acknowledged by Rick Gildart to be of a serious nature which should attract a much higher sanction than the one being sought, however, based on the Facts herein, and especially considering the significant mitigating circumstances, Rick Gildart proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the Superintendent, pursuant to section 43 of the RESA:

1. Rick Gildart pay a discipline penalty to BCFSa in the amount of \$5,000 within three (3) months from the date of this Order.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Rick Gildart acknowledges and understands that the Superintendent may accept or reject the Proposal. If the Proposal is rejected by the Superintendent, the matter may be referred to a disciplinary hearing.
2. Rick Gildart acknowledges that they have been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of the Proposal to the Superintendent; and, that they have obtained independent legal advice or have chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.

3. Rick Gildart acknowledges and is aware that BCFSA will publish the Proposal and the Consent Order or summaries thereof on BCFSA's website, on CanLII, a website for legal research and in such other places and by such other means as BCFSA in its sole discretion deems appropriate.
4. Rick Gildart hereby waive their right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, Rick Gildart will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Judy Bood or Bood PREC from making full answer and defence to any civil or criminal proceeding(s).
6. Rick Gildart acknowledges and is aware that the Superintendent is not bound to accept any application for relicensing or renewal of their licence. Rick Gildart must always satisfy the Superintendent that they meet the requirements for a licence in section 10 of the RESA, and any Rules, regulations or other instruments made pursuant to the RESA.
7. The Proposal and its contents are made by Rick Gildart for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of Rick Gildart in any civil proceeding with respect to the matter.

"Original signed by Richard Gildart"

RICHARD ROBERT GILDART

Dated 27th day of February, 2025