

BC FINANCIAL SERVICES AUTHORITY

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

AND

IN THE MATTER OF

AMBER UNIQUE
(177616)

CONSENT ORDER

[This Order has been redacted before publication.]

RESPONDENT: Amber Unique, Trading Services Representative, Shewan Real Estate Ltd. (doing business as Royal LePage Wolstencroft)

DATE OF CONSENT ORDER: April 30, 2024

COUNSEL: Leslie W. Woo, Legal Counsel for the BC Financial Services Authority

PROCEEDINGS:

On April 30, 2024, 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 Amber Unique (A. Unique").

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by A. Unique.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that A. Unique committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("RESA"), pursuant to section 43 of the RESA the Superintendent orders that:

1. A. Unique pay a discipline penalty to BCFSA in the amount of \$15,000 within three (3) months from the date of this Order; and

2. A. Unique pay enforcement expenses to BCFSFA in the amount of \$1,800 within two (2) months from the date of this Order.

If A. Unique 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 30th day of April, 2024 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.

BC FINANCIAL SERVICES AUTHORITY

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

IN THE MATTER OF

**AMBER UNIQUE
(177616)**

CONSENT ORDER PROPOSAL BY AMBER UNIQUE

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Amber Unique ("Unique") 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, Unique, and the Superintendent have agreed upon the following facts:

1. Unique (177616) has been licensed as a trading services representative since 2017.
2. Unique was at all relevant times licensed as a trading services representative with Royal LePage - Wolstencroft.
3. On February 28, 2021, [Seller 1] and [Seller 2] (collectively, the "Sellers") entered into a Multiple Listing Contract (the "MLS Contract") with Royal LePage – Wolstencroft for the sale of their property located at [Property 1], Langley, BC (the "Property") with Unique as the designated agent.
4. The Property was recently acquired by the Sellers from the developer. The Property was new and had never been occupied.
5. On or about March 5, 2021, Unique completed the Multiple Listing Service Listing (the "MLS Listing") which indicated the following:
 - a. list price of \$575,000;
 - b. GST was included in the list price;
 - c. the Property was "brand new/never lived in"; and
 - d. the Property was "move-in ready and GST is paid" (the "GST Comment").
6. It was not the intention of the Sellers to include GST in the list price if GST was applicable to this transaction.
7. On or about March 7, 2021, prospective buyers (the "Buyers") viewed the Property with their real estate representative.

8. On March 7, 2021, Unique received a contract of purchase and sale (the "Offer") from the Buyers' real estate representative which contained the following terms:
 - a. purchase price of \$575,000;
 - b. subject removal deadline on or before March 16, 2021;
 - c. completion date of April 8, 2021; and
 - d. "The Seller warrants that GST in connection with this transaction has been paid." (the "GST Clause").
9. Following receipt of the Offer, Unique discussed the GST Clause with her manag[ing] broker. The managing broker advised Unique that GST may be payable again as the Property was brand-new and had never been occupied. The managing broker suggested a revision to the GST Clause which would make it clear that the Buyers would be responsible for any GST if it was applicable to this transaction.
10. Unique discussed the foregoing revision to the GST Clause with the Sellers. The Sellers declined the recommended revision and instructed Unique to cross out the GST Clause and insert, "The Seller warrants that they paid GST when they purchased the property from the developer" (the "Revised GST Clause").
11. In addition to the Revised GST Clause, the Sellers, through Unique, made changes to the deadline for the deposit, and the dates for completion and the adjustment date to March 29, 2021. All other terms and conditions of the Offer remained the same (the "Counteroffer").
12. Further, on March 7, 2021, Unique modified the Listing to remove the GST Comment. Unique did not advise the Buyer's real estate representative of the change to the MLS Listing.
13. The Buyers accepted the Counteroffer.
14. On March 16, 2021, the Buyers removed the subjects.
15. Following subject removal, the Buyers learned, through their lawyer, that:
 - a. GST was applicable to the transaction;
 - b. GST would be on top of the purchase price; and
 - c. they were responsible for paying the GST.
16. The GST applicable to the transaction was \$28,750.
17. The Buyers had to increase the amount of their mortgage in order to pay for the GST.
18. The Buyers, to date, have not commenced any litigation against Unique with respect to this transaction.
19. A Notice of Discipline Hearing was issued on November 2, 2023, and served on Unique.
20. Unique does not have a discipline history.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Amber Unique committed professional misconduct within the meaning of section 35(1)(a) of the RESA, when, in her capacity as the sellers' agent in March 2021 sale of the residential property located at [Property 1], Langley, BC (the "Property"), she:
 - a. indicated on the Multiple Listing Service listing for the Property (the "Listing") that the Goods and Services Tax ("GST") was included in the purchase price when she knew, or reasonably, ought to have known, that it was not, contrary to section 34 (formerly, section 3-5, *reasonable care and skill*), and section 41 (formerly, section 4-7, *false or misleading advertising prohibited*) of the Rules; and
 - b. failed to act honestly when she removed "GST is paid" from the Listing after receiving an offer on the Property and did not thereafter inform the agent representing the buyers of the change to the Listing, contrary to section 33 (formerly, section 3-4, *act honestly*) of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Amber Unique 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. Amber Unique pay a discipline penalty to BCFSA in the amount of \$15,000 within three (3) months from the date of this Order.
2. Amber Unique pay enforcement expenses to BCFSA in the amount of \$1,800.00 within two (2) months from the date of this Order.
3. If Amber Unique fails to comply with any of the terms of this Order, the Superintendent may suspend or cancel Amber Unique's licence without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Amber Unique 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. Amber Unique 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 has 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. Amber Unique 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. Amber Unique hereby waives their right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, Amber Unique will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Amber Unique from making full answer and defence to any civil or criminal proceeding(s).

6. The Proposal and its contents are made by Amber Unique 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 Amber Unique in any civil proceeding with respect to the matter.

"Original signed by Amber Unique"

Amber Unique

Dated 25 day of April, 2024