

THE REAL ESTATE COUNCIL OF BRITISH COLUMBIA
IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended

AND

IN THE MATTER OF
KLAUS DIETER VOGEL
128555

CONSENT ORDER

RESPONDENT: Klaus Dieter Vogel, representative, Royal
LePage 100 Mile Realty

DATE OF REVIEW MEETING: September 14, 2018

DATE OF CONSENT ORDER: October 10, 2018

CONSENT ORDER REVIEW COMMITTEE: R. Holmes, QC
E. Mignosa
J. Lynch

ALSO PRESENT: D. Avren, Director, Legal Services
G. Thiele, Acting Manager, Legal Services
L. Fong, Independent Legal Counsel
C. Davies, Legal Counsel for the Real
Estate Council

PROCEEDINGS:

On September 14, 2018, the Consent Order Proposal (the "COP") submitted by Klaus Dieter Vogel was considered by the Consent Order Review Committee (the "Committee"), but not accepted. On October 2, 2018, a revised COP acceptable to the Committee was submitted by Klaus Dieter Vogel.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Klaus Dieter Vogel.

NOW THEREFORE, the Committee having made the findings proposed in the attached COP, and in particular having found that Klaus Dieter Vogel committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Klaus Dieter Vogel be reprimanded;

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2. Klaus Dieter Vogel pay a discipline penalty to the Council in the amount of \$5,000 within ninety (90) days from the date of this Order;
 3. Klaus Dieter Vogel, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course, as provided by Sauder School of Business at the University of British Columbia in the time period as directed by the Council;
 4. Klaus Dieter Vogel, at his own expense, register for and successfully complete the Manufactured Homes: What REALTORS® Need to Know Course, as provided by Sauder School of Business at the University of British Columbia in the time period as directed by the Council; and
 5. Klaus Dieter Vogel pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Klaus Dieter Vogel 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 10th day of October, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“E. Mignosa”

E. Mignosa
Consent Order Review Committee

Atch.

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AND

**IN THE MATTER OF
KLAUS DIETER VOGEL
128555**

CONSENT ORDER PROPOSAL BY KLAUS DIETER VOGEL

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Klaus Dieter Vogel ("Mr. Vogel") to the Consent Order Review Committee ("CORC") of the Real Estate Council of British Columbia (the "Council") pursuant to section 41 of the *Real Estate Service Act* ("RESA").

For the purposes of the Proposal, Mr. Vogel and the Council have agreed upon the following facts:

1. Mr. Vogel has been licensed as a representative since 1997.
2. Mr. Vogel was at all relevant times licensed as a representative with 100 Mile Realty Ltd.
3. Mr. Vogel has been licensed to provide trading services since 1997.
4. This matter concerns Mr. Vogel's listing on two occasions of a manufactured home which failed to have a valid CSA sticker or silver label.
5. Pursuant to section 21 of the *Electrical Safety Regulation* of the *Safety Standards Act*, a licensee may not offer for sale a manufactured home that does not have a valid CSA sticker, or, in the case of an electrical alteration, a silver label. A person who fails to comply with the *Electrical Safety Regulation* may be issued a compliance order pursuant to section 38 of the *Safety Standards Act*, which, if not complied with, may lead to a monetary penalty imposed under section 40 of the *Safety Standards Act*.
6. In August 2013 Mr. Vogel was designated as the listing agent with respect to the listing for sale of a manufactured home located at XXXX Fawn Creek Rd., Horse Lake, BC (the "Property").
7. In the feature sheet, Mr. Vogel represented the Property as a manufactured home with CSA number CSA47XXXX.

8. Mr. Vogel states he assumed that the Property did not require a CSA approval sticker due to the nature of its building structure, and did not independently verify whether or not the Property had a CSA sticker or silver label.
9. With Mr. Vogel acting as limited dual agent, the Complainant entered into a contract of purchase and sale of the Property dated August 12, 2013. The transaction completed on September 5, 2013.
10. In February 2014, there were electrical upgrades done on the Property. There was no certification of work done, and no silver label issued.
11. Pursuant to a Multiple Listing Contract dated April 13, 2016, the Property was listed for sale with Mr. Vogel acting as the designated listing agent. The listing had an expiry date of July 31, 2016.
12. In the feature sheet, Mr. Vogel represented the Property as a manufactured home with CSA number CSA47XXXX.
13. At the time of listing, Mr. Vogel was aware there had been electrical upgrades on the Property in 2014, yet did not independently verify whether or not the Property had a valid CSA sticker or silver label, nor discuss with the seller the requirement of an inspection and certification by a licensed electrical contractor.
14. On July 20, 2016, an offer for purchase and sale was made on the Property by prospective buyers. The offer was subject to a number of conditions, and had a completion date of September 15, 2016.
15. On July 22, 2016, the Complainant accepted the offer.
16. For a variety of reasons, the buyers did not remove the subjects, and the deal collapsed in early August 2016. By this time, Mr. Vogel's listing of the Property had expired.
17. In or about late August 2016, while contemplating listing the Property for sale with a new licensee, the Complainant discovered that the Property did not have a valid CSA sticker or silver label.
18. On August 26, 2016, the Council received a complaint from the Complainant.
19. A Notice of Discipline Hearing was issued on May 23, 2018 and served on Mr. Vogel.
20. Mr. Vogel has no prior discipline with the Council.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the facts outlined herein, Mr. Vogel proposes the following findings of misconduct be made by the CORC:

1. Mr. Vogel committed professional misconduct within the meaning of section 35(1)(a) of the RESA:

- a. in 2013 when he acted as a limited dual agent for the purchase and sale of a manufactured home located at XXXX Fawn Creek Road, Norse Lake, BC and he failed to take steps to ascertain whether the property had a valid CSA approval sticker or silver label, as required by section 21 of the *Electrical Safety Regulation* of the *BC Safety Standards Act*, contrary to section 3-3(a) (best interests of the client) and section 3-4 (reasonable care and skill) of the Rules; and
- b. in 2016 when he acted as listing agent for the sale of a manufactured home located at XXXX Fawn Creek Road, Horse Lake, BC, and, knowing that the property had undergone electrical alterations:
 - i. he failed to take steps to ascertain whether the property had a valid CSA approval sticker or silver label, as required by section 21 of the *Electrical Safety Regulation* of the *BC Safety Standards Act* contrary to sections 3-3(a) (best interests of the client) and 3-4 (reasonable care and skill) of the Rules; and
 - ii. and he failed to disclose in writing that the property did not have a valid CSA sticker or silver label as required under s.21 of the *Electrical Safety Standard Regulation* of the *BC Safety Standards Act*, contrary to sections 5-8(1)(a) and 5-13(2) (disclosure of material latent defect) of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Vogel proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

1. Mr. Vogel be reprimanded.
2. Mr. Vogel pay a discipline penalty to the Council in the amount of \$5,000 within ninety (90) days of the date of this Order.
3. Mr. Vogel, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period directed by the Council.
4. Mr. Vogel, at his own expense, register for and successfully complete the Manufactured Homes: What REALTORS[®] Need to Know Course, as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period directed by the Council.
5. Mr. Vogel pay enforcement in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
6. If Mr. Vogel fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Vogel's licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Vogel acknowledges and understands that the Council may refer or decline to refer the Proposal to the CORC. If the Proposal is referred to the CORC, it may be accepted or rejected by the CORC. If the Proposal is rejected by the CORC, the matter may be referred to a disciplinary hearing.
2. Mr. Vogel acknowledges that he has 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 CORC; and, that he has 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. Mr. Vogel acknowledges and is aware that the Council will publish the Proposal and the Consent Order or summaries thereof in its Report from Council newsletter, on the Council’s website, on CanLII, a website for legal research and in such other places and by such other means as the Council in its sole discretion deems appropriate.
4. Mr. Vogel 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 any Consent Order made by the Council in relation to this matter.
5. Mr. Vogel hereby waives his right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Vogel 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 Mr. Vogel in any civil proceeding with respect to the matter.

“Klaus Dieter Vogel”

KLAUS DIETER VOGEL

Dated 2nd day of October, 2018

Signature of Klaus Dieter Vogel witnessed on the above date by

Jason Vogel

Witness Name *(Please Print)*

“Jason Vogel”

Witness Signature