

**BC FINANCIAL SERVICES AUTHORITY**

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

**AND**

**IN THE MATTER OF**

**DEANNA MICHELLE MCMILLAN  
(174643)**

**CONSENT ORDER**

**[This Order has been redacted before publication.]**

RESPONDENT: DEANNA MICHELLE MCMILLAN

DATE OF CONSENT ORDER: September 15, 2022

**PROCEEDINGS:**

On September 15, 2022, the Superintendent of Real Estate (the "Superintendent") of the BC Financial Services Authority ("BCFSA") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Deanna Michelle McMillan ("Ms. McMillan").

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

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

1. Ms. McMillan pay a discipline penalty to BCFSA in the amount of \$25,000 within two (2) months from the date of this Order.
2. Ms. McMillan pay an additional discipline penalty to BCFSA of \$1,050 (being the amount of the remuneration accepted by Ms. McMillan for the real estate services in respect of which the contraventions occurred, pursuant to section 43(2)(j) of the RESA) within two (2) months of the date of this Order.
3. Ms. McMillan, at her own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Sauder School of Business at the University of British Columbia in the time period as directed by BCFSA.
4. Ms. McMillan pay enforcement expenses to BCFSA in the amount of \$1,500 within two (2) months from the date of this Order.

5. If Ms. McMillan fails to comply with any of the terms of this Order, BCFSa may suspend or cancel Ms. McMillan's license without further notice to her.

An amount ordered to be paid under section 43 of the RESA is a debt owing to the BCFSa and may be recovered as such.

Dated this 15<sup>th</sup> day of September 2022 at the City of Victoria, British Columbia.

BC FINANCIAL SERVICES AUTHORITY

"JONATHAN VANDALL"

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

**BC FINANCIAL SERVICES AUTHORITY**

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

**AND**

**IN THE MATTER OF**

**DEANNA MICHELLE MCMILLAN  
(174643)**

**CONSENT ORDER PROPOSAL BY DEANNA MICHELLE MCMILLAN**

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**BACKGROUND AND FACTS**

This Consent Order Proposal (the “Proposal”) is made by Deanna Michelle McMillan (“Ms. McMillan”) 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, Ms. McMillan and the Superintendent have agreed upon the following facts:

1. Ms. McMillan (174643) has been licensed as a representative for trading services since July 2016.
2. Ms. McMillan was at all relevant times licensed as a representative with [Brokerage 1] (the “Brokerage”).
3. In October 2018, Ms. McMillan became involved, purportedly as the designated agent for the purchasers (the “Buyers”), in a transaction for the purchase of a property in Coombs, British Columbia (the “Property”).
4. Another licensee at the Brokerage (the “First Licensee”) was the listing agent for the Property/ designated agent for the three sellers of the Property and had a personal interest in the trade through an ownership share of the Property.
5. This matter arises as a result of BCFSA’s investigation, following the Brokerage’s surrender of the First Licensee’s license to BCFSA.
6. On or about October 17, 2018, Ms. McMillan and the First Licensee attended a sales meeting at the Brokerage wherein they described a possible sale of the Property to the Buyers. The Buyers were a couple of senior citizens (one person in their 70s, and another person in their 80s). At that sales meeting, First Licensee was asked to provide independent representation to the Buyers given the First Licensee’s conflicts of interest with the Buyers in his role as the listing agent for the Property and as a part-owner of the Property. The managing broker of the

Brokerage recommended to the First Licensee that they should avoid dealing with the Buyers as unrepresented parties in the circumstances and that the Buyers should have an agent acting solely on their behalf.

7. Ms. McMillan agreed to represent the Buyers in the transaction, in consideration of a \$1,000 referral fee-like payment or honorarium. The First Licensee would keep most of the commission on the transaction.
8. Ms. McMillan demonstrated incompetence; failed to act honestly and with reasonable care and skill or in the best interests of her clients the Buyers when she allowed herself to be described as the designated agent for the Buyers in the accepted contract of purchase and sale for the Property dated October 22, 2018 (the "Contract") in which the Buyers agreed to purchase the Property, and related transaction documents, when she offered no or no meaningful agency or representation to the Buyers.
9. Ms. McMillan was briefly introduced to the Buyers at the Brokerages' office on or about October 22, 2018, when the Buyers were to meet with the First Licensee and sign the "subject-free" Contract. By reason of the interference of the First Licensee, Ms. McMillan did not exchange contact information with the Buyers; did not meet with the Buyers without the First Licensee; and was not present at the meeting where the Buyers obtained the Contract from the First Licensee and signed it.
10. Ms. McMillan was not involved in drafting the Contract or any related transaction documents, although she says she did review these.
11. In addition to the Contract, on or about October 22, 2018, the Buyers were provided with disclosure documents prepared by the First Licensee dated October 19, 2018, and pursuant to the Real Estate Rules made under the RESA (the "Rules"):
  - a. a *Disclosure of Interest in Trade Form* required by section 5-9 [Disclosure of interest in trade] of the Rules as the First Licensee was an owner/ seller of the Property;
  - b. a *Disclosure of Representation in Trading Services Form* required by section 5-10 [Disclosure of representation in trading services] of the Rules which set out that Ms. McMillan offered agency to the Buyers; and
  - c. a *Disclosure of Remuneration Form* required by section 5-11 [Disclosure of remuneration] of the Rules which set out a commission of "7% on the first \$100,000 and 3% on the balance of the purchase price" payable to the Brokerage on a purchase transaction for the Property.
12. The Disclosure of Interest in Trade Form was required to be provided by the First Licensee who had an interest in the Property being sold, and not by Ms. McMillan. Nonetheless, Ms. McMillan made no reasonable enquiries about the form. The form did not include information about the First Licensee's relationship to one of the sellers/ owners, a British Columbia company of which the First Licensee was the sole director and officer, or which company was the licensee's "associate" under the Rules. The form did provide an associate would receive \$1000. The \$1000

was not intended to be paid to First Licensee's British Columbia company/ associate, but to Ms. McMillan.

13. The Disclosure of Representation in Trading Services Form ("DORT") indicated that the Buyers were informed by Ms. McMillan of the risks to unrepresented persons in a real estate transaction as required by section 5-10.1 [Disclosure of risks to unrepresented parties] of the Rules. This statement was misleading as Ms. McMillan had not met or spoken to the Buyers as of October 19, 2018 (the date of that form) or at any time thereafter. Ms. McMillan, at the direction of the First Licensee, nonetheless signed the DORT.
14. The Disclosure of Remuneration Form included the commission payable to the Brokerage and did not provide any breakdown between the amounts Ms. McMillan or the First Licensee would receive, as set out in section 5-11(3) [Disclosure of Remuneration] of the Rules, and despite the language in the form setting out that the commission was "in relation to real estate services provided to you or on your behalf..."
15. Relevant portions of the Contract included:
  - a. a purchase price of \$730,000 (below the listing price of \$770,000);
  - b. a deposit of \$35,000 (the "Deposit");
  - c. a completion date of February 1, 2019;
  - d. an acknowledgment that each of the sellers and the Buyers were advised to seek legal advice on the Contract; and
  - e. no "subject" clause(s) respecting either financing being made available to the Buyers, or the Buyers successfully selling their existing home/ property in Parksville, British Columbia.
16. Ms. McMillan's under-representation or purported representation of the Buyers was not in the best interest of the Buyers in particular because the risks of making a subject-free offer were not identified to the Buyers at all or clearly. The Buyers were relying on selling their existing home (the "Existing Property") in order to complete the transaction in the Contract. The Buyers were on a fixed retirement income and could not readily obtain bridge financing or go back to work should they be unable to sell their Existing Property in a timely way. The Buyers were at risk of losing their Deposit, and could not afford to do so, if unable to complete the transaction in the Contract.
17. It was a reasonable option at all material times for Ms. McMillan to withdraw agency/ release the Buyers as clients if she identified they were refusing her agency or that the First Licensee was obstructing her agency.
18. Ms. McMillan conveys that she considered the First Licensee a mentor to her, as they were significantly more senior as a licensee than her. Ms. McMillan now expresses insight that she cannot allow her relationship with another licensee to affect her duties to her clients.
19. A Notice of Discipline Hearing was issued on June 2, 2022, and it was served on Ms. McMillan.

20. Ms. McMillan has no prior discipline history with BCFSA.

### **PROPOSED FINDINGS OF MISCONDUCT**

For the sole purposes of the Proposal and based on the facts outlined herein, Ms. McMillan proposes the following findings of misconduct be made by the Superintendent:

1. Ms. McMillan committed professional misconduct within the meaning of sections 35(1)(a) and (d) [Misconduct by licensee] of the RESA while purportedly acting as the designated agent of the Buyers in their purchase of the Property in or about October 2018 in that she:
  - a. Demonstrated incompetence by allowing herself to appear as a designated agent for the Buyers when she met briefly with the Buyers, despite the fact that she did not provide representation or under-represented the interests of the Buyers; and
  - b. Failed to act in the best interests of the Buyers; or to act honestly and with reasonable care and skill when she allowed herself to be described as the designated agent for the Buyers in the Contract and related transaction documents, when she offered no or no meaningful agency or representation to the Buyers, contrary to sections 3-3(a) [Duties to clients] and 3-4 [Duty to act honestly and with reasonable care and skill] of the Rules.

### **PROPOSED ORDERS**

Based on the facts herein and the Proposed Findings of Misconduct, Ms. McMillan 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:

6. Ms. McMillan pay a discipline penalty to BCFSA in the amount of \$25,000 within two (2) months from the date of the signed Consent Order.
7. Ms. McMillan pay an additional discipline penalty to BCFSA of \$1,050 (being the amount of the remuneration accepted by Ms. McMillan for the real estate services in respect of which the contraventions occurred, pursuant to section 43(2)(j) of the RESA) within two (2) months of the signed Consent Order.
8. Ms. McMillan, at her own expense, register for and successfully complete REIC2600 Ethics in Business Practice course, as provided by the Real Estate Institute of Canada in the time period as directed by BCFSA.
9. Ms. McMillan pay enforcement expenses to BCFSA in the amount of \$1,500 within two (2) months of the signed Consent Order.
10. If Ms. McMillan fails to comply with any of the terms of the signed Consent Order, BCFSA may suspend or cancel Ms. McMillan's license without further notice to her.

## **ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT**

1. Ms. McMillan 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. Ms. McMillan acknowledges that she 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 Superintendent; and, that she has obtained independent legal advice or has chosen not to do so, and that she is making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Ms. McMillan 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. Ms. McMillan hereby waives her right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, Ms. McMillan will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Ms. McMillan from making full answer and defence to any civil or criminal proceeding(s).
6. The Proposal and its contents are made by Ms. McMillan 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 Ms. McMillan in any civil proceeding with respect to the matter.

"DEANNA MCMILLAN"

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**DEANNA MICHELLE MCMILLAN**

**Dated 9<sup>th</sup> day of September, 2022**