

IN THE MATTER OF THE REAL ESTATE SERVICES ACT

- AND -

**IN THE MATTER OF FULTON & COMPANY, LAWYERS,
AND
MAUREEN HODSON**

ORDER UNDER SECTIONS 51 AND 49

Upon reviewing the report and supporting documents submitted by staff and finding that the observations of staff are reliable, I am of the opinion that:

1. Fulton & Company ("Fulton") is a law firm situated at 248 – 2 Avenue, Kamloops, British Columbia, with four branch offices in 100-Mile House, Ashcroft, Merritt, and Clinton, British Columbia.
2. Staff has received a number of complaints relating to Fulton's activities in the real estate industry dating back to February of 2002. Initially, those complaints revolved around lawyer Nick Weiser ("Weiser") and an unlicensed individual, William Harold Dexter. At this time Weiser was relying on the exemption provided pursuant to Section 2(1)(f) of the Real Estate Act, which stated that:

"This Part does not apply to a Barrister or Solicitor whose name is inscribed on the rolls of Barristers or Solicitors in British Columbia, or to a person employed by him or her in respect of a transaction in the course of his or her practice."

3. Subsequently, discussions took place between the Law Society of British Columbia ("Law Society") and the British Columbia Real Estate Association ("BCREA") which resulted in an agreement between the two organizations permitting lawyers to engage in real estate activities as defined by the Real Estate Act (the "Agreement"). The Agreement is set out in the Law Society of British Columbia's Benchers Bulletin of March/April 2004, (the "Bulletin") which states:

"Accordingly when a lawyer is engaged in the sale of real property, the lawyer may take instructions from the client or provide advice to the client on buying and selling real estate, the Listing Agreement, the Property

Management Contract, or the Contract of Purchase and Sale. Only lawyers will be permitted to present, accept or negotiate offers, or Contracts of Purchase and Sale for clients. Any advertising with respect to real estate sales must be in the name of the lawyer or law firm.”

4. The Bulletin further deals with the issue of lawyer’s staff in stating:

“Under the lawyer’s supervision, employees will be entitled to draft documents and correspondence for approval by the lawyer for presentation to the client, (as in other areas of practice) arrange for maintenance and repairs of real property under the lawyer’s care and control, attend at a property with a prospective purchaser to open the home (but not to conduct an open house) act as security during the viewing of a home and provide prepared information packages.”

5. This matter was further dealt with in the Lawyer’s Professional Conduct Handbook - Rules 10 to 12.
6. Based on the Agreement between the Law Society and the BCREA, no action was taken by this office with respect to Fulton and/or Weiser.
7. Maureen Hodson (“Hodson”) is an individual residing in Clinton, British Columbia, who is neither a practicing lawyer nor licensed under the recently enacted Real Estate Services Act (the “Act”).
8. Section 1 of the Act defines “real estate services” as:
- (a) rental property management,
 - (b) strata management services, or
 - (c) trading services;

and, as provided by the Act “trading services” means any of the following provided to or on behalf of a party to a trade in real estate:

- (a) advising on the appropriate price for the real estate,
- (b) making representations about real estate,
- (c) finding the real estate for a party to acquire,
- (d) finding a party to acquire the real estate,
- (e) showing the real estate,

- (f) negotiating the price of the real estate or the terms of the trade in real estate,
 - (g) presenting offers to dispose of or acquire the real estate,
 - (h) receiving deposit money paid in respect of the real estate,
- but does include an activity excluded by regulation.

9. Section 3(1) of the Act states:

“A person must not provide real estate services to or on behalf of another, for or in expectation of remuneration, unless the person is,

- (a) licensed under this Part to provide those real estate services, or
- (b) exempted by subsection (3) the regulations from the requirement to be licensed under this Part in relation to the provision of those real estate services.”

10. Section 3(3) states:

“In addition to any exemption provided by regulation, the following are exempt from the requirement to be licensed under this Part:

- (f) a practising lawyer as defined in Section 1 of the Legal Profession Act, in respect to real estate services provided in the course or the person’s practice.”

- 11. In January 2005, staff received a new complaint relating to unlicensed real estate activity in the Clinton area by Hodson, who appeared to be working under the Fulton name but was neither a practicing lawyer nor licensed under the Act.
- 12. Accompanying this complaint was a copy of a photograph of a sign which stated, “Fulton & Company, lawyers, for sale, Maureen Hodson, 259 459-7968, www.fultonco.com, Lawyers Business Property Network”.
- 13. This office retains investigators from the Financial Institutions Commission to investigate matters under the Act.
- 14. Based on this complaint, Investigator Colin Parcher (“the Investigator”) of the Financial Institutions Commission contacted Weiser who advised that:
 - (a) He was in the process of having all signs changed into his name in order to comply with the position as laid out in the Bulletin.

- (b) Hodson was an employee of Fulton, and offered to produce pay stubs and T-4 slips as evidence of this.
 - (c) Hodson would only be performing duties as permitted of an unlicensed assistant.
- 15. Based on this conversation, a letter was sent to Weiser, dated March 7, 2005, confirming the information received by the Investigator on March 4, 2005.
- 16. On February 13, 2006, information was again received by the Real Estate Council of British Columbia ("the Council") which was forwarded to staff that Hodson was continuing to act in a manner that would require licensing pursuant to the Act.
- 17. In support of this complaint, an agreement dated January 30, 2006, between [REDACTED] as the client and Fulton & Company as the firm, was received. This six-page agreement is a listing for the Jones property showing a transaction fee of \$5,000. It includes a Schedule "A" and a Schedule "B", identifying the property at [REDACTED], British Columbia, with a sale price of \$109,500. The agreement is signed by [REDACTED], and Hodson. There is no signature on behalf of Fulton.
- 18. Additionally, a four-page handwritten document dated February 6, 2006, addressed to Hodson, Assistant to Weiser, cancelling the contract between Fulton and the [REDACTED] was received. The document was also signed by [REDACTED].
- 19. It further sets out that the [REDACTED] only met with an assistant when entering into the contract and no one explained the contract to them. They state that they did not read the contract before signing it in the assistant's presence.
- 20. Information continued to come to the Superintendent's office which alleged Hodson was continuing to engage in activities contrary to those permitted by the Law Society and which would require her to be licensed pursuant to the Act.
- 21. On June 5, 2006, the Investigator attended the Clinton area and checked for homes listed by Fulton. Two properties were located – one appeared to be a vacant lot on Carson Street with a small outbuilding. The other was a house at 1513 Engman Lane, Clinton, British Columbia. Both properties displayed a Fulton sign with the sole contact person being Hodson, telephone 250 459-7968.
- 22. As well, the Investigator noted that there was a real estate display board in front of the Integris Credit Union located on Highway 97, Clinton. The board held 18 property listings with a Fulton sign, with Hodson listed as "Real Estate Assistant to Mr. Nick Weiser, Member, Lawyers Business and Property Network".

23. At that time, the Investigator asked a male driver if there was a real estate office in Clinton, and was given directions to a red building in the south end of town.
24. On attendance at this building, the Investigator noted a sign to the left of the door which said "Fulton & Company", and a display board to the right of the door which held 11 properties for sale. In addition, a number of properties were displayed in the centre window of the building. As well, there was an "open" sign in the centre of the building. Interestingly, the Fulton web site indicates this office is only open on Tuesdays from 9:00 A.M. to 11:00 A.M.
25. On entering the Fulton office, the Investigator noticed a reception/seating area with an office to the left. It also appeared there was another office, though not visible, to the right. The office to the left was occupied by a woman who was later confirmed to be Hodson.
26. On speaking to this woman the Investigator used pretext information that he was seeking property for his brother who was preparing to locate to the Cache Creek area, but wanted to live in Clinton. Hodson advised the Investigator, "I have sold most of my listings and only have three places left". The Investigator then raised the issue of the Engman Lane property, and Hodson advised, "I've already sold that one. They're going really quick these days". Hodson then identified three listings still available – one on Fir Street, one on Pear Lake Road, and a mobile home south of Clinton. Hodson then took the Investigator outside to the display board and pointed out those three properties.
27. Further inquiries by the Investigator determined that the Pear Lake property was a log home approximately 18 kilometres west of Clinton, the mobile home was approximately three kilometres south of town, and the Fir Street property was in town. The Investigator advised the Pear Lake property was too far out of town, and requested to see the other properties.
28. Hodson stated the Pear Lake property was a rental so 24 hours notice was required, the owners of the mobile home were working, but it may be possible to view the Fir Street property. Hodson then made a telephone call to a person she referred to as "Dave", and arranged for a viewing of the Fir Street property with the caveat that this would not include the room used as an office by the vendor's wife.
29. Hodson then led the Investigator to the property located at 409 Fir Street. Prior to entering the home, Hodson pointed out features such as the back yard and fruit trees. Entry was then made through the right rear door where Hodson pointed out additional features such as wood floors and the stand alone wood burning stove. Hodson then showed the Investigator through the entire house identifying the various rooms, their size, and other attributes of the house including a possible self-contained in-law suite downstairs. The Investigator took several photographs of the interior and exterior of the home during this viewing.

30. On several occasions, the Investigator asked Hodson about taxes, the existing mortgage and its assumability, and the room sizes, none of which she was able to answer except for guesses or the excuse, "I'm not sure."
31. The Investigator then followed Hodson back to her office where a copy of the picture and specifications of the property were requested. After several unsuccessful attempts on her computer, Hodson went outside to the display board and removed this property's photo from the board.
32. When the Investigator and Hodson arrived back at her office, there was a British Columbia Forestry Service vehicle bearing vehicle [REDACTED], licence plate [REDACTED] in front of the building, and a man with dark hair and a beard waiting in front. This man followed Hodson and the Investigator into the office and waited in the reception area.
33. The Investigator then departed the office and took several photographs of the office and another property across the street with a Fulton "for sale" sign showing Hodson as the sole contact person.
34. The Investigator then returned to the office where Hodson and the man, now accompanied by a woman, were looking at a lot plan on Hodson's desk and discussing a property. The Investigator recognized this as the vacant property he had noted on Carson Street. While in the office, the man asked Hodson about municipal taxes to which she responded; however, her answer was not clearly heard by the Investigator.
35. The Investigator then requested a business card which was provided. This card identified Hodson as a Real Estate Assistant, telephone 1-877-385-8665. Hodson then wrote her home/office telephone number on the back of the card.
36. The Investigator then exited the office and observed Hodson and the man and woman leave the office. Again, Hodson left in her vehicle while the man and woman followed in the Forestry Service truck. They drove directly to the Carson Street location where the Investigator observed them for approximately 20 minutes walking around the property.
37. During his time in Clinton, the Investigator noted that none of the signage, with the exception of the Integris Credit Union billboard, made any mention of Weiser; nor did any of the signs have a telephone number for the Kamloops office of Fulton, only the number 250 459-7968 which was the number provided by Hodson as her home number. In the Investigator's opinion, the only work being done in the office was real estate business.

38. On June 7, 2006, the Investigator checked two properties which had been identified through an internet search as being for sale by Fulton in the Kamloops area. One was a house at 1160 Bentley Place, Kamloops, displaying a Weiser sign with "sold" across it. The other was a vacant property at 560/562 Tranquille Road, Kamloops, also displaying a Weiser sign. Both properties displayed the telephone number of 250 372-5732.
39. A call made to this number by the Investigator resulted in a voice mail message which stated, "You have reached the office of Fulton & Company Property Sales". As well, the Fulton office was located in downtown Kamloops.
40. Inquiries by the Investigator determined that the above-noted Forestry Service vehicle was driven by [REDACTED] and [REDACTED], both Ministry of Forests employees out of Prince George, British Columbia.
41. Initial contact with [REDACTED] and [REDACTED] by the Investigator confirmed they were, in fact, the individuals dealing with Hodson, and they had understood Hodson to be a real estate salesperson in [REDACTED] negotiations for the vacant lots.
42. On June 28, 2006, the Investigator interviewed [REDACTED] and [REDACTED] at their office in Prince George, and the interviews were recorded. I have reviewed the transcripts of these interviews. They outlined their dealings with Hodson as follows:
 - (a) Hodson provided information to [REDACTED] regarding the property without hesitation, including what the taxes were.
 - (b) Hodson took [REDACTED] to the property and showed the property to him while providing information relating to the property as well as information relating to the adjacent property that she stated she had sold.
 - (c) Hodson agreed to present a verbal offer from [REDACTED] to the owners of the property.
 - (d) To this date [REDACTED] has not had any response from Hodson.
 - (e) [REDACTED] has not followed up on his offer due to his knowledge of the ongoing investigation.
43. On July 30, 2006, a search of the Fulton web site by the Investigator was conducted and a number of properties for sale were identified.
44. On July 31, 2006, the Investigator called the Fulton & Company office from a Kamloops pay phone and asked if Mr. Weiser would be in tomorrow and was advised yes. No name or message was left at this time.

45. Attendance was then made by the Investigator to the Clinton area on July 31, 2006, where listings on the Fulton web site were located and photographed. These consisted of the properties at 1404 Carson Street, 1419 & 1421 Carson Street, 865 Pear Lake Road, 1608 (possible error on web site) Cariboo Highway, 1301 Bell Street, 409 Fir Street, as well as the sold property at 208 Foster Avenue, and the former [REDACTED] property at 309 Foster Avenue.
46. The Investigator checked the 84 Teal Road property as well but no "for sale" sign was found. It was however found to be on the credit union display board maintained by Fulton and marked as "Sold".
47. The Investigator then attended 100-Mile House where he interviewed [REDACTED] [REDACTED] the former owners of [REDACTED] Clinton. The [REDACTED] provided information verbally and supplied copies of documents relating to their dealings with Hodson. Never at any time did they deal with Weiser or anyone else from Fulton.
48. These documents included a copy of their "Lawyer's Business and Property Network Retainer Agreement" with Schedules "A" and "B", and two letters they had written to Hodson and Fulton. These letters were dated February 6, 2006, and February 8, 2006. As well, the [REDACTED] provided a one-page printout of properties for sale by Fulton, including theirs, with Hodson as the sole contact person.
49. The Investigator then located and photographed the townhouse complex at 565 South Birch Avenue, 100-Mile House. No "for sale" sign was posted on this property.
50. On August 1, 2006, the Investigator attended the Fulton office in Kamloops at approximately 11:00 AM and inquiries were made if Weiser was in. The receptionist stated, "Yes" and asked for a name, which was provided. She then looked at an appointment calendar and stated that Weiser was in the Clinton office that morning and the 100-Mile House office that afternoon. She then provided the telephone numbers of 250 459-7114 for Clinton and 250 395-2725 for 100-Mile House.
51. In the afternoon of August 1, 2006, the Investigator attempted to contact Weiser at the 100-Mile House office. When the number provided was called, the telephone was answered in the Kamloops office. When this was questioned, the response was that the telephone was call forwarded as Weiser was meeting with clients and could not answer the telephone. A specific message was then left for Weiser to call the Investigator, advising he was from the office of the Superintendent of Real Estate, Financial Institutions Commission ("FICOM").
52. A second attempt to call the office in 100-Mile House was made approximately one hour later, however; as with the initial call it was answered in Kamloops.

53. On this occasion the receptionist was asked by the Investigator if she had a method of reaching Weiser to which she responded, "No," but offered to put the Investigator through to Weiser's secretary. On speaking to the secretary, she was asked if she could reach Weiser or call his cellular telephone. She advised she had no way to reach Weiser and cellular telephones did not work in 100-Mile House. The Investigator noted to the secretary that cellular telephones did in fact work in the 100 Mile House area.
54. At 3:39 P.M. that day, Weiser contacted the Investigator at which time he was advised that this was a follow-up of FICOM's correspondence of March 7, 2005 and that the Investigator was checking on the activities of Hodson in the Clinton area.
55. Weiser advised Hodson was a full-time employee and was "T-4'ed". She was classified as a Realty Assistant, and in that capacity was permitted to introduce clients to properties and hand out pre-printed flyers on his behalf.
56. The Investigator asked Weiser if Hodson was engaged only in the activities as outlined in the Benchers Bulletin, to which he replied, "Yes, we know we are being watched very closely, and the real estate agents are all up in arms so we're keeping everything by the book".
57. The Investigator then clarified with Weiser that Hodson was only taking prospective purchasers to a home, unlocking the door, and handing them a pre-printed flyer, not showing them the home. Weiser again responded, "Yes."
58. As per the telephone conversation of March 3, 2005, during which Weiser advised that all signs relating to property for sale would have the company name and not that of Hodson, the Investigator asked if all the signs now displayed only the company. Weiser advised they were changing all signs to reflect the limited partnership, which was required.
59. A search of the web site for the "Lawyers Business & Property Network," www.thenetwork.ca, identified Weiser as a founding member.
60. Additionally this web site contained a 6 page article by Weiser that is entitled "A Presentation for Lawyers".
61. Page three of this article contains a section clearly outlining what a "real estate marketing assistant" is permitted to do.
62. On August 15, 2006, the Investigator spoke to [REDACTED] a licensed real estate representative with Royal LePage Crossroads Realty ("Royal LePage") in Ashcroft was spoken to with regards to her dealings with Hodson.

63. [REDACTED] advised that she had a property at [REDACTED], Clinton, British Columbia listed for sale. The owners for this property were [REDACTED].
64. [REDACTED] had received a fax from Fulton on August 9, 2005, requesting to show the property. [REDACTED] attempted to contact Hodson, as requested in the fax, to set up this showing, however she was not able to contact her.
65. [REDACTED] was then contacted by [REDACTED] of ReMax, Ashcroft to show the [REDACTED] home. As a result, [REDACTED] contacted the [REDACTED] on August 13, 2005 to advise them of two showings, the Fulton one and the ReMax one. On Sunday August 14, 2005, the [REDACTED] called her back and advised that Hodson had presented and negotiated a contract to purchase the home.
66. The [REDACTED] advised her that they had questioned Hodson on the fact that their real estate representative was not party to this and Hodson assured them that she (Hodson) had the authority to present an offer without [REDACTED] present.
67. [REDACTED] further advised that she had difficulty obtaining a copy of the contract to purchase from Hodson or Fulton and to date has not received a readable copy. Additionally, she could not get Hodson or Weiser to provide her a confirmation of the removal of the subject to condition.
68. [REDACTED] then advised that it was the position of her office and the Real Estate Board that Weiser was not due any of the commission from this sale. However, due to the fact that he had the deposit in his trust account, he would not release the funds until he was given a share of the commission.
69. [REDACTED] then forwarded a copy of the Multiple Listing Contract, the Contract of Purchase and Sale, with all faxes from Fulton, and her summary of events to the Investigator.
70. [REDACTED] advised the Investigator that Weiser acted as legal counsel for both buyers and sellers on this deal.
71. [REDACTED] the Managing Broker for Royal LePage, confirmed that Weiser would not release the commission funds until a split had been arranged, which Webster reluctantly agreed to though he was of the opinion that Weiser was not entitled to them.
72. The [REDACTED] were spoken to by the Investigator and confirmed that Hodson brought the purchasers to the house and that no lawyer from Fulton was present. [REDACTED] stated he was present as Hodson did not know a lot about his home so he answered the questions of the purchasers.

73. ██████████ also stated that it was Hodson who prepared and presented the contract of purchase and sale, and that Hodson did say that ██████████ did not need to be present for the offer to be presented.
74. Hodson did advise them that she had to take the contract to Weiser to finalize it.
75. A review of the Contract of Purchase and Sale shows that the document was prepared by Sam Dabner, a junior lawyer in the Fulton office, with a May 2005 call date.
76. Webster advised that Weiser was away at the time this deal was completed.
77. Based on the foregoing evidence gathered during the course of this investigation, it can be concluded that:
- (a) Fulton is utilizing a Realty Assistant in a capacity that does not conform with Section 3(3)(f) of the Act or with the guidelines as agreed to between the Real Estate Association of British Columbia and the Law Society of British Columbia.
 - (b) Hodson is providing real estate services for or in expectation of remuneration as an employee of Fulton by signing up listings of properties for sale, showing properties for sale to potential purchasers, discussing specific material facts of a property with potential purchasers, and advertising properties for sale in her name and as the sole contact person with respect to that property.
78. Furthermore, Fulton and Weiser are permitting a person who is not a licensed real estate representative, or a practising lawyer, to engage in activities prohibited by law.

I AM OF THE OPINION that the length of time required for the hearing would be prejudicial to the public interest, since the unlicensed conduct is ongoing and a hearing would not take place in time to correct these violations.

I CONSIDER IT in the public interest to make an order under Sections 51 and 49 of the Real Estate Services Act, ordering Fulton & Company to immediately cease utilizing an unlicensed person, or person not exempt from licensing, to conduct real estate services.

I CONSIDER IT in the public interest to make an order under Sections 51 and 49 of the Real Estate Services Act, ordering Maureen Hodson to immediately cease conducting real estate services.

JAKE NOTICE that Fulton & Company and Maureen Hodson each may, under Section 54(1)(e) of the Real Estate Services Act, appeal this Order to the Financial Services Tribunal, and/or require a hearing before the Superintendent of Real Estate under Sections 51(3) and 45(5)(b).

Dated at the
City of Surrey,
Province of British Columbia
this 23rd day of August, 2006.



W. Alan Clark
Superintendent of Real Estate
Province of British Columbia

TO: Fulton & Company, Lawyers
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