

IN THE MATTER OF THE REAL ESTATE SERVICES ACT

- AND -

JAY GORDON FITZPATRICK

ORDERS UNDER SECTIONS 51 AND 49 OF  
THE REAL ESTATE SERVICES ACT

UPON REVIEWING the submissions and exhibits contained in the Investigative Report prepared by the staff of the Superintendent of Real Estate ("the Staff"), I am of the opinion that:

1. On February 13, 2002, the Superintendent of Real Estate ("the Superintendent") received a complaint that Jay Gordon Fitzpatrick ("Fitzpatrick") was providing rental property management services without being licensed under the *Real Estate Services Act* ("the Act").
2. The office of the Superintendent investigated that complaint and found that Fitzpatrick was conducting property management activities contrary to the Act. On June 17, 2002, [REDACTED], an investigator with the Financial Institutions Commission ("FICOM"), sent a registered letter to Fitzpatrick confirming a conversation with Fitzpatrick in which he admitted conducting activities for which a license was required. In that conversation, Fitzpatrick assured [REDACTED] that he would cease conducting unlicensed activity. On the basis of that assurance, the file was closed.
3. On February 17, 2003, a subsequent complaint was filed with the office of the Superintendent alleging that Fitzpatrick was again conducting property management services for which a license was required. Fitzpatrick was not licensed at that time.
4. The office of the Superintendent investigated this second complaint. [REDACTED] [REDACTED], an investigator with FICOM, conducted the investigation. During the course of the investigation, Fitzpatrick showed several apartments to [REDACTED] that were for rent. On December 10, 2003, [REDACTED] sent a letter via registered mail to Fitzpatrick concerning his unlicensed property management activity. The letter referenced the June 17, 2002 warning letter from [REDACTED] and [REDACTED] subsequent investigation. The letter stated that any other information received by the office of the Superintendent indicating Fitzpatrick was continuing

to operate in an unlicensed capacity would be investigated with a view to prosecution.

5. On January 5, 2004, ██████ received a letter from Fitzpatrick which confirmed he had received ██████'s letter dated December 10, 2003. Fitzpatrick assured ██████ that he had applied for licensing under the *Act* and had found employment with a licensed real estate brokerage.
6. Fitzpatrick was licensed under the *Act* from December 30, 2003 to March 2, 2005. Fitzpatrick's license under the *Act* was terminated as of March 2, 2005.
7. On March 8, 2007, the office of the Superintendent received yet another complaint that Fitzpatrick was conducting unlicensed property management activity. Investigator ██████, another investigator with FICOM, was assigned to investigate this matter on March 23, 2007.
8. On May 3, 2007, ██████ attended ██████, Vancouver, the residential address of Fitzpatrick. The concierge at that apartment provided ██████ with a business card for Fitzpatrick, which contained: the name "PacificSky Properties LLC, A British Columbia Real Estate Company"; an e-mail address for Fitzpatrick; and contact information for a Montreal and Vancouver office. The address for the Vancouver office on the card was the same as Fitzpatrick's residence.
9. From June 7, 2007 to June 13, 2007, ██████ was in contact with Fitzpatrick through pretext email conversations enquiring about any apartment vacancies.
10. On June 13, 2007, ██████ made an appointment to view an apartment with Fitzpatrick. Fitzpatrick informed ██████ that the apartment was a two bedroom, two bathroom and den suite of approximately 1057 square feet. He told ██████ that the suite included one storage locker and one parking stall and would be priced at \$2,200.00/month. Fitzpatrick stated that the building was called ██████ and was located at ██████.
11. ██████ attended at that address and was met by Fitzpatrick. Upon entering the building, Fitzpatrick mentioned that he was working with ██████ of Rancho Management Services (B.C.) Ltd. ("Rancho"), a licensed real estate brokerage. Fitzpatrick then proceeded to show ██████ the apartment. While showing the suite, Fitzpatrick commented that he is often contacted by ██████ to conduct rental property management whenever ██████ has clients with suites to rent in the Coal Harbour area. He also began to discuss the rental terms for suite ██████ and explained that it would require a one year lease with payment of \$2,200.00/month. When ██████ queried Fitzpatrick about payment arrangements, Fitzpatrick noted that for his own clients he usually asks for payment through post-dated cheques. In this case, payment would be collected by direct withdrawals through Rancho and the security deposit would be the standard half

of one month's rent. He further stated that [REDACTED] pays him directly for services rendered.

12. Fitzpatrick then discussed the amenities of [REDACTED] advising it included a rooftop swimming pool, fitness centre and a theatre room. He then provided [REDACTED] with a rental application listing Rancho and [REDACTED]. Fitzpatrick told [REDACTED] that the rental application should be faxed to him instead of Rancho. This would allow him to review the document as he knew what [REDACTED] required to begin the rental process.
13. [REDACTED] and Fitzpatrick also began to discuss Fitzpatrick's business activities related to renting properties. Fitzpatrick confirmed he manages a significant amount of properties outside of his work with [REDACTED] and currently manages a number of properties in the Simon Fraser University area of Burnaby and also in downtown, Vancouver.
14. On June 25, 2007, [REDACTED] attended the Rancho office located at #701 – 1190 Hornby Street, Vancouver, British Columbia and met with [REDACTED] Managing Broker and supervisor of [REDACTED]. [REDACTED] explained he did not have any knowledge of a working relationship between [REDACTED] and Fitzpatrick and that this was the first time he had ever heard of Fitzpatrick. [REDACTED] also confirmed [REDACTED] had never been listed on Rancho's records to handle [REDACTED] property that was shown to [REDACTED] by Fitzpatrick. Furthermore, he had no explanation as to how Fitzpatrick would be in possession of additional keys and scan cards.
15. Subsequently, employees of the Council also attended the Rancho office to conduct their own audit/inspection based on information provided to them by [REDACTED]. During their inspection of [REDACTED] files, one was found containing links to Fitzpatrick. This file was for the property located at [REDACTED] Vancouver, British Columbia. The file contained several documents including:
  - (a) Invoices addressed to [REDACTED] stating costs payable to Jay Fitzpatrick;
  - (b) Invoice for services performed by Reliable Parts – Vancouver;
  - (c) Cheque from Rancho payable to Fitzpatrick in the amount of \$970.94;
  - (d) Bank document from TD Canada Trust;
  - (e) Fax document from Fitzpatrick to [REDACTED] regarding tenant's new forwarding address; and
  - (f) Letter from tenant [REDACTED] to terminate tenancy.

16. On June 28, 2007, [REDACTED] spoke to [REDACTED] currently a co-tenant at [REDACTED], Vancouver. [REDACTED] provided the following information to [REDACTED]
- (a) [REDACTED] had found this property through an advertisement in a newspaper;
  - (b) The phone number noted in the advertisement connected [REDACTED] with Fitzpatrick;
  - (c) Fitzpatrick arranged for [REDACTED] to view the suite and had them fill out a rental application;
  - (d) [REDACTED] had no idea this property was technically managed by someone else until a Rancho representative contacted him about requiring more information in the rental application;
  - (e) [REDACTED] took possession of the property on December 1, 2006;
  - (f) The first month's rent and security deposit was collected by Fitzpatrick;
  - (g) [REDACTED] remembered Fitzpatrick informing him that [REDACTED] gets him to do all the rental property management work in the Coal Harbour area, which is anywhere from 10-20 suites; and
  - (h) [REDACTED] contacted Rancho to notify them that he had caught Fitzpatrick in the suite several times without his or [REDACTED] permission and would now only deal with a Rancho representative.
17. On July 3, 2007, [REDACTED], Manager, Investigative Services at FICOM, conducted an interview with [REDACTED] and [REDACTED] at the Rancho office. In that interview, [REDACTED] stated the following:
- (a) He has had business dealings with Fitzpatrick for no more than the past two years;
  - (b) He used Fitzpatrick at least three times to provide rental property management services for two properties;
  - (c) Fitzpatrick would find tenants, show the unit for rent, hand out rental applications and have them completed. He would provide the completed application to [REDACTED] and prepare things for possession, such as handing over keys;
  - (d) Fitzpatrick was the one who primarily dealt with tenants;

- (e) [REDACTED] had never confirmed or verified that Fitzpatrick was licensed to provide rental property management services;
  - (f) [REDACTED] had been informed by Fitzpatrick that he manages anywhere from 50 to 70 units in downtown Vancouver that are not affiliated with Rancho;
  - (g) For the [REDACTED] unit and the current tenancy, [REDACTED] paid Fitzpatrick a third of one month's rent [REDACTED] for his services;
  - (h) Regarding the previous tenant in the [REDACTED] unit, Fitzpatrick was paid half of one month's rent sometime in November 2005;
  - (i) Fitzpatrick showed the unit to the first tenant in November 2005;
  - (j) Fitzpatrick was involved in the rental transaction of the [REDACTED] unit for [REDACTED];
  - (k) Fitzpatrick may have collected the damage deposit cheque for [REDACTED];
  - (l) [REDACTED] may have sent potential clients to Fitzpatrick when Rancho's portfolio could not provide what the tenant desired, but never received any sort of commission from Fitzpatrick for doing so; and
  - (m) [REDACTED] provided keys to Fitzpatrick so he could show the rental properties to prospective tenants.
18. From October 25, 2007 to November 2, 2007, [REDACTED] resumed email correspondence with Fitzpatrick. Fitzpatrick confirmed in an email and thereafter in a voicemail that he would have two units available for a one year lease starting on December 1, 2007.
18. 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) or the regulations from the requirement to be licensed under this Part in relation to the provision of those real estate services.
19. Section 1 of the *Act* defines "Real Estate Services" as:
- (a) rental property management services,
  - (b) strata management services, or
  - (c) trading services.

20. Section 1 of the *Act* defines "Rental Property Management Services" as meaning "any of the following services provided to or on behalf of an owner of rental real estate":

- (a) trading services in relation to the rental of real estate;
- (b) collecting rents or security deposits for the use of the real estate;
- (c) managing the real estate on behalf of the owner by
  - (i) making payments to third parties,
  - (ii) negotiating or entering into contracts,
  - (iii) supervising employees or contractors hired or engaged by the owner, or
  - (iv) managing landlord and tenant matters

but does not include an activity excluded by the regulation.

21. Section 1 of the *Act* defines "trading services" as meaning any of the following services 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 the 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 not include an activity excluded by regulation.

AND WHEREAS I find that:

1. Fitzpatrick is not licensed under the *Act* for the purpose of conducting real estate services within the Province of British Columbia. A license is required pursuant to Section 3 of the *Act* for a person to provide real estate services to or on behalf of another.

2. Fitzpatrick is engaging in conduct which falls within the definition of real estate services, specifically rental property management services, for which a license under the *Act* is required.

I THEREFORE CONSIDER that Fitzpatrick is conducting himself in a manner that would enable me to make an order under section 49 of the *Act*.

I FURTHER CONSIDER that the length of time that would be required to hold a hearing in order to make an order under section 49 of the *Act* would be detrimental to the public interest. A hearing would likely take months to prepare for and conduct. Fitzpatrick is conducting unlicensed activity without any supervision from a licensed person. He is conducting activity outside of the regulatory supervision provided by the *Act*. Fitzpatrick has been warned in the past to refrain from conducting unlicensed activity, but has persisted in doing so.

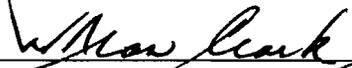
I THEREFORE order pursuant to sections 51(2) (a) and 49(2) (a) of the *Act*, that Jay Gordon Fitzpatrick:

**Cease and desist conducting, directly or indirectly, real estate services, including rental property management services, in British Columbia, effective immediately.**

TAKE NOTICE that a disciplinary hearing may be held respecting this matter pursuant to section 48 of the *Act*.

TAKE NOTICE that Jay Gordon Fitzpatrick may appeal this Order to the Financial Services Tribunal under section 54(1)(e) of the *Act*, or require a hearing before the Superintendent under sections 51(3) and 45(6) of the *Act*.

Dated at the  
City of Surrey,  
Province of British Columbia  
this 28<sup>th</sup> day of November, 2007.

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

TO:

[REDACTED]

Rancho Management Services (B.C.) Ltd.

[REDACTED]

Real Estate Council of British Columbia  
#900 - 750 West Pender Street  
Vancouver, British Columbia V6C 2T8