



**IN THE MATTER OF THE REAL ESTATE SERVICES ACT  
S.B.C. 2004, c. 42**

**- AND -**

**GUY ALEXANDER SCOTT**

**-AND-**

**KELOWNA GOLF SKI & BORGATA LODGE LTD.**

**-AND-**

**CHRIS LEWIS**

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

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

**Background**

1. Kelowna Golf Sky & Borgata Lodge Ltd. ("KGSB") was incorporated in British Columbia on July 2, 2004. KGSB's registered and records office is located at 204 – 3185 Via Centrale, Kelowna, BC. Guy Alexander Scott ("Scott") is the sole director and officer of KGSB.
2. Chris Lewis ("Lewis") is employed by Scott and KGSB.
3. The Real Estate Council of British Columbia has confirmed that neither KGSB, nor Scott nor Lewis is licensed to provide real estate services in the Province of British Columbia.

**Complaint history**

4. In November 2006, Staff received a complaint in which it was alleged that Scott was providing rental property management services without being licensed to do so, contrary to the provisions of the *Real Estate Services Act*, SBC 2004, c.42 ("*RESA*") (the "First Complaint"). In the course of the subsequent investigation of the First Complaint, Scott advised Staff that he managed both short term vacation rentals (for which licensing under *RESA* was not required) and long term rentals (for which licensing is required) for owners of strata lots in a complex known as Borgata Lodge, located at [REDACTED] Kelowna ("Borgata Lodge").
5. In April 2007, Scott received a warning letter from Staff, on the understanding that he would stop advertising his services as a rental property manager and that he would cease providing such services in respect of long term rentals unless and until he became licensed under *RESA* to do so.
6. In May 2007, Staff received a second complaint which indicated that Scott was continuing to provide rental property management services without being licensed to do so (the "Second Complaint").
7. An investigation ensued, and Scott was charged with the offence of providing real estate services when no licensed to do so. Scott pleaded guilty to one count, and on October 30, 2008, was sentenced to a \$500 fine. In his sentencing submissions, Scott's defence counsel advised the Court that Scott was no longer engaged in long-term rentals, but rather was limiting himself to short-term (nightly) rentals, for which he had a business license.
8. In October 2009, the Office of the Superintendent of Real Estate received a third complaint that Scott was providing rental property management services without being licensed to do so (the "Third Complaint"). The complainant owned a strata lot at Borgata Lodge, and had retained Scott as her rental property manager. The complainant advised that in the summer months her unit was usually rented on a short term basis, but during the winter months it was rented for longer periods of up to 8 months. The complainant also indicated that Scott advertised using the website [www.borgatalodge.com](http://www.borgatalodge.com).
9. In June 2011, the file was assigned to a contract investigator, Bill Ard ("Ard") for investigation.

**Applicable Legislation**

10. Section 1 of the *RESA* provides the following definitions:

**“providing”**, in relation to real estate services, includes

- (a) offering to provide such services,
- (b) holding oneself out as a person who provides such services, or
- (c) soliciting for the purposes of the provision of such services;

**"real estate"** means

- (a) real property,
- (b) regardless of whether it is or is not an interest in real property, a cooperative interest, shared interest in land or time share interest, as these are defined in the *Real Estate Development Marketing Act*, and
- (c) a right in relation to real property that is defined by regulation to be real estate,

but does not include a right in relation to real property that is excluded by regulation;

**"real estate services"** means

- (a) rental property management services,
- (b) strata management services, or
- (c) trading services;

**“remuneration”** includes any form of remuneration, including a commission, fee, gain or reward, whether the remuneration is received, or is to be received, directly or indirectly;

**"rental property management services"** means 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 the 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 regulation;

**“rental real estate”** means real estate that is or is intended to be rented or leased;

**“trading services”** means 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;

11. Section 3(1) of *RESA* states:

- 3(1) 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) of the regulations from the requirement to be licensed under this Part in relation to the provision of those real estate services.

### Investigation

#### Scott's contact information

12. As Ard's investigation unfolded, he determined (largely through his pretext calls and email to Scott) that Scott's contact information was as follows:

Email: [info@borgatalodge.net](mailto:info@borgatalodge.net)

Phone numbers: 250 491-0881 and 250 491-9822

#### Internet advertising

13. In the course of the investigation of the First Complaint, Scott admitted that he advertised his services on a number of websites including the following:

- (a) [www.borgatalodge.net](http://www.borgatalodge.net);
- (b) [www.borgatalodge.com](http://www.borgatalodge.com);
- (c) [www.guysvacationrentals.netfirms.com](http://www.guysvacationrentals.netfirms.com); and
- (d) [www.kelownagolfski.com](http://www.kelownagolfski.com).

14. On August 4, September 20 and September 25, 2011, Ard reviewed the website at [www.borgatalodge.net](http://www.borgatalodge.net). Below is a summary of some of the information which he found there:

- (a) The heading on the first page of this website reads "Kelowna Vacation Holiday Condo Hotel Rental Accommodations."
- (b) The first page included a link labelled "Relocating?". That link, when clicked, led to another page with the following heading: "Kelowna Relocation Accommodations – Borgata Lodge." This page included the following:

- (i) "The Borgata Lodge provides Kelowna Relocation Accommodations & rentals to suit a variety of needs.

Are you relocating to Kelowna or the Okanagan Valley?

Home renovation?

Need a place for 1-6 months?...

We host to [sic] many families, couples and individuals that plan on moving to Kelowna and need relocation accommodations while they shop for a new home or vacation property..."

- (ii) Those interested in "relocation accommodations" were asked to email [info@borgatalodge.net](mailto:info@borgatalodge.net) or call 1 866 655-0657 or 250 491-0881.

15. On August 4 and September 20, 2011, Ard reviewed the website at [www.borgatalodge.com](http://www.borgatalodge.com). Below is a summary of some of the information which he found there:

- (a) The heading on the first page of this website reads "Kelowna BC Vacation Rentals."

- (b) The main page of the website includes the following text:

"Our Condo Rentals offer extended stay rentals for 4-8 months Sept to April for a contracted time period. Super rates available & utilities included.

Relocating to Kelowna? We often host families or couples while they shop for a new home or decide what part of our beautiful city would be best suited to them."

- (c) The main page of the website contains a link to "Kelowna Relocation". When clicked, it redirects the reader to "Kelowna Relocation Accommodations – Borgata Lodge" as set out at paragraph 14(b) above.

- (d) Contact information provided on this website is as follows:

Email: [info@borgatalodge.net](mailto:info@borgatalodge.net)

Telephone: 866-655-0657

250-491-0881

16. On August 4 and September 20, 2011, Ard reviewed the website at [www.guysvacationrentals.netfirms.com](http://www.guysvacationrentals.netfirms.com). Below is a summary of some of the information which he found there:
- (a) The heading on the first page of this website reads "Welcome to GVR Vacation Holiday Rentals Kelowna BC."
  - (b) When he reviewed the site on August 4, 2011, Ard saw a link labelled "long term rentals". When he clicked on that link, he was directed to a page which advertised long term fall and winter rentals of units at Borgata Lodge and Pointe of View at Quail Ridge, located at [REDACTED] in Kelowna ("Pointe at Quail"), as well as long term rentals of three Kelowna houses. Interested parties were asked to email [info@borgatalodge.net](mailto:info@borgatalodge.net) or call 250 491 0881 or 1 866 655 0657. By September 20, 2011, this link had been removed.
17. On September 20, 22, 23 and 25, 2011, Ard reviewed the website at [www.kelownagolfski.com](http://www.kelownagolfski.com). Below is a summary of some of the information which he found there:
- (a) When he reviewed the website on September 20, 2011, Ard found a link to [www.kelownagolfski.com/houses.htm](http://www.kelownagolfski.com/houses.htm) which in turn linked to [www.kelownagolfski.co/pinnacle.htm](http://www.kelownagolfski.co/pinnacle.htm), where long term rentals for university students were advertised as follows:

"Looking for Accommodations Lodging for the winter or UBCO school term?  
Sept to end of April or May? Give us a ring we have some great deals starting at \$1500 a month, contract direct with each owner...

Close proximity to the University of British Columbia Okanagan UBCO. Sept to May we host corporate clients, clients renovating needing a few months, UBCO related accommodations, students, faculty, relocation & contract term clients, [sic]

Great fall, winter, spring extended stay rates. Daily/Weekly rental are a specialty in Spring & Summer."

Interested parties were directed to call 866 491-9822 or 250 491-9822.
  - (b) On September 20, 2011 Ard noted the following long term rentals were being advertised, through use of various links on [www.kelownagolfski.com](http://www.kelownagolfski.com), with interested parties being asked to call 1 866 491- 9822, 250 491-9822 and/or 250 491-0881:

(i) "Lakefront Vacation Home Rental" for which "long term [rental] available from Oct-May call for quote".

(ii) "Bellasera Tuscan Villas & Piazza"

"2 Bedroom Condo Town House Vacation Rentals, Lodging and Accommodations

Monthly & Extended Stays, scroll down to see photos and information"

Also included was a table of rental costs, depending on the time of year. Prices quoted represented monthly rent for stays of 1-3 months, and for "4 months plus stay."

(iii) "Martin Lofts, [REDACTED] Kelowna BC"

"1 & 2 Bedroom Condo Luxury Furnished Monthly Rentals

Relocation & Extended stay Executive Business Accommodations."

(iv) 2 bedroom, furnished condo at Pointe at Quail.

"Building a new home? Just moved to Kelowna? Relocating?

Wanting to check things out for 6 months before purchasing?

Suitable for relocation, families or businesses needing quality furnished accommodations for a few months.

Rates dependent on, season, size, duration of rental & application. \$1500 - \$3500 per month..."

#### Pretext calls and email

18. On August 9, 2011, Ard made a pretext phone call to 250 491-0881 and spoke with Scott. Ard was posing as a prospective owner of a unit in Borgata Lodge, who wanted a property manager to manage the property in his absence. In that conversation, Scott advised as follows:

(a) Scott collects rent from tenants and remits the rental share to the owner. In winter, Scott's fee is 12.5% of the monthly rent. In summer, Scott's fee is higher. Generally, in summer, Scott's fee is 40% of the rental revenue,

although, if a renter takes a unit for an entire month, Scott's fee would be 30% of the rental revenue instead of 40%.

- (b) Scott takes care of housekeeping, including carpet cleaning.
  - (c) Scott determines the rental rates for daily rentals in the summer months.
  - (d) The market for long term rental is stronger than it was three years ago.
  - (e) Scott was currently renting out Unit # [REDACTED] in Borgata Lodge from September 6<sup>th</sup> to the end of April 2012.
  - (f) Winter rentals were usually to students at UBC Okanagan.
  - (g) Because Borgata Lodge is licensed as a hotel, if tenants are noisy or a nuisance, he can evict them immediately without complying with the "Landlord and Tenant Act."
  - (h) Scott also has town homes for rent at Las Verona Beach near the Mission Hill winery.
  - (i) Scott would not provide Ard with a copy of the rental contract, as he does not give it out to third parties.
19. On August 8<sup>th</sup> and 29<sup>th</sup>, 2011, Ard, using the pretext name, "Craig Duncan", exchanged a series of emails with Scott at [info@borgatalodge.net](mailto:info@borgatalodge.net). Ard posed as a prospective long term tenant, looking for rental properties for a minimum 4-month stay commencing October 1, 2011. In his initial pretext email of August 8, 2011, he also indicated that he "might consider a one year lease." Below is a summary of some of the exchanges they had:
- (a) On August 9, 2011, Scott wrote Ard back, asking whether Ard "would consider staying at a lakefront resort type property." In that email, he wrote "Chris Lewis handles the property and works in our office...I copied him on this email."
  - (b) On August 9, 2011, Scott indicated that the owner of a piece of lakefront property was interested, and that the rate was "2k per month" with all utilities included. He then forwarded an internet link to the house ([REDACTED]). Ard determined that the address of the house is [REDACTED], Kelowna (the "Lakeshore Property"), and that it is owned by [REDACTED] and [REDACTED].

- (c) On August 9, 2011, Ard wrote Scott about the Lakeshore Property, asking whether a month to month lease was a possibility and whether he would be renting directly from the owner.
  - (d) Also on August 9, 2011, Ard had an email exchange with Lewis, who had returned Ard's call. When asked if he had any rental units available October 1, 2011, Lewis replied "we just have Barona Beach and then the units you would have discussed with Guy."
  - (e) On August 10, 2011, Scott wrote back saying that the owner of the Lakeshore Property required a 4 month minimum commitment.
  - (f) On August 10, 2011, Ard asked whether he could enter a 4 month lease with an offer to extend.
  - (g) On August 10, 2011, Scott responded saying that the owner (who wanted Scott to handle things until the "booking takes place") would allow for an extension to the end of June only. In other words, a term of 9 months.
  - (h) Ard asked Scott if there were any options other than the Lakeshore Property. On August 11, 2011, Scott wrote Ard offering a 1 bedroom penthouse at Borgata Lodge for \$1200 a month. In his email he said that "the owner of that suite will want a minimum 6 month rental." On August 12, 2011, however, he wrote to say that the suite had been rented.
  - (i) On August 25, 2011, Scott wrote Ard to say that he "had a cancellation and now have a loft suite for Sept. 1". He indicated that he had run an advertisement and had already had three interested callers. On August 29, 2011, Scott wrote Ard to say that this suite had also been rented.
20. On August 30, 2011, Ard, still posing as "Craig Duncan", met Scott at his office at Borgata Lodge. At this meeting, Scott offered two different units to Ard:
- (a) Unit [REDACTED] at Pointe at Quail; and
  - (b) Unit [REDACTED] at Borgata Lodge (which he indicated he could not show to Ard as he did not have confirmation from the owner that he would be managing the unit).
21. While he was unable to show Unit [REDACTED] at Borgata Lodge to Ard, he did show Ard Unit [REDACTED], which he said was similar, which was currently vacant, and which he was managing. He also showed Ard Unit [REDACTED] at Pointe at Quail.
22. Scott told Ard that if Ard wanted to rent one of the units, Ard would need to provide Scott with his credit card information. The first month's rent, and the

damage deposit, would then be charged to his card. Ard would have to sign a rental contract and provide post-dated cheques for the full rental term.

23. On August 31, 2011, Ard indicated that neither suite he had been shown on August 30<sup>th</sup> was suitable. Scott wrote back asking if Ard would be interested "in staying over on the west side" as they had townhomes available at Barona Beach. He wrote "Chris Lewis (250 491-9822) the fellow in our office handles them..."

Interviews of owners and tenants

*Unit [REDACTED] – Pointe at Quail*

24. On September 14, 2011, Ard interviewed [REDACTED] ("M [REDACTED]"). M [REDACTED] and his wife had rented Unit [REDACTED] at Pointe at Quail (" [REDACTED] Pointe at Quail") for a 4-month period, from May 1<sup>st</sup> to August 31<sup>st</sup>, 2010. [REDACTED] Pointe at Quail has been owned by [REDACTED] and [REDACTED] W [REDACTED] since 2007. Below is a summary of what Ard learned:

- (a) M [REDACTED] provided Ard with the contract he signed on April 29, 2010. The contract required M [REDACTED] to include the name of a reference, and also included the following terms:

"Pointe at Quail Rental Contract Suite [REDACTED]

Kelowna Golf Ski & Borgata Lodge Ltd. [sic]

...

...the client agree to rent furnished Suite # [REDACTED]..Pointe at Quail from May 1, 2010 to Aug 31 as a contracted period of time...Rate \$1400 per month...

Client will provide post dated cheques dated the first day of every month, July 1 & Aug 1 made out to Kelowna Golf Ski & Borgata Lodge Ltd. Initial check for first month + damage deposit due at time of signing the contract.

...

Suite [REDACTED] is currently listed for sale...

The Tenant agrees to provide the Realtors with access to the Suite upon 24 Hours verbal notice from the Realtor

...

In the event of sale of the Suite, the Owner agrees to provide 90 Days written notice to the Tenant to vacate the Suite..."

- (b) At the end of the 4- month tenancy, Scott refunded M [REDACTED] only half of the damage deposit. This was paid to M [REDACTED] by way of a cheque dated September 15, 2010, drawn on KGSB's account.
- (c) Scott refused to refund the full amount of the damage deposit, ostensibly because the condo was not left sufficiently clean and because the strata corporation might levy fines in respect of M [REDACTED]'s dog.
- (d) M [REDACTED] referred Scott to the provisions of the Residential Tenancy Act (the "RTA"). Scott indicated that the provisions of the RTA did not apply.
- (e) M [REDACTED] and his wife then submitted a complaint to the Residential Tenancy Branch in order to obtain the balance of the damage deposit.
- (f) In response to the complaint, Scott submitted a written submission in his defence, which included the following:

"the complaint is with our Hotel Business, any disputes fall under the 'innkeepers/hotel act."

Contract clearly states business is a "hotel business". It's at the top of the contract and has our business number.

M [REDACTED]'s are referred to as a Guest / Client in all parts of contract..."

- (g) On January 11, 2011, following a hearing convened by conference call, which Scott did not attend, V. Hedrich of the Residential Tenancy Branch granted a monetary order in favour of M [REDACTED] and his wife due to Scott's breach of section 38 of the RTA. V. Hedrich noted that Scott (described in the written decision as the "landlord"), who did not appear, had supplied written submissions in advance of the hearing, but these were not considered as they failed to comply with the Residential Tenancy Branch Rules of Procedure.

25. On November 24, 2011, Ard spoke to [REDACTED] W [REDACTED] one of the owners of Unit [REDACTED] Pointe at Quail. She advised Ard as follows:

- (a) She and her husband have been using Scott's services for 3 or 4 years.
- (b) They only rent their condo out during the summer months, and only for a minimum period of 30 days (as required by the strata corporation).

- (c) In 2011, [REDACTED] Pointe at Quail was rented for a period of 3 months to a single tenant, but she does not recall who the tenant was.
- (d) Scott collects payments from the tenants, deducts his commission, and then forwards the balance.
- (e) She and her husband did not have a written agreement with Scott.

*Unit [REDACTED] – Pointe at Quail*

- 26. On September 19, 2011, Ard spoke with [REDACTED] ("D [REDACTED]" who, with his wife, had agreed to rent Unit [REDACTED] – Pointe at Quail (" [REDACTED] Pointe at Quail") for an 11-month period, from July 1, 2011 to May 31, 2012. [REDACTED] W [REDACTED] and [REDACTED] W [REDACTED] have been the registered owners of [REDACTED] Pointe at Quail since June 2010.
- 27. Below is a summary of what Ard learned, both from the conversation he had with D [REDACTED] and from documents D [REDACTED] then provided to him:
  - (a) In March 2011, D [REDACTED] and his wife decided to move from Ontario to live in Kelowna. They searched the internet for accommodations and found an advertisement on kijiji for a unit for rent being advertised by Scott.
  - (b) On March 20, 2011, D [REDACTED] and his wife responded, by email, to the advertisement on kijiji, indicating that they were looking for a 6-12 month lease.
  - (c) On March 21, 2011, they received an email response from Lewis which read as follows:

"We have 2 bedroom condos available at the Borgata Lodge, Pinnacle Point and Bella Sera...available from \$1500 per month including utilities, internet etc although this is normally based on a one year rental..."
  - (d) On March 22, 2011, D [REDACTED]'s wife, N [REDACTED] ("N. D [REDACTED]") wrote Lewis to clarify what they were looking for. In her email, she added that "we are also looking to negotiate a lease so that it comes up in the Spring or Fall, so we could be looking at a 14 month lease or more."
  - (e) On March 22, 2011, Lewis wrote back with some options, including a unit at Pointe at Quail. In his email, Lewis wrote:

"All these units are typically rented short term May – Sept for around \$249-\$399 per night so as you would expect are well equipped with everything

you are likely to need. The only thing we do for long term rentals is remove the linens which hopefully will pose you no problems."

- (f) D [REDACTED] and his wife agreed to rent the [REDACTED] Pointe at Quail from July 1, 2011 to May 31, 2012.
- (g) On March 23, 2011, Scott sent a contract to D [REDACTED] by email, which D [REDACTED] then completed and faxed back to Scott. Scott processed a charge to their credit card.
- (h) When D [REDACTED] and his wife arrived, they asked Scott if he would perform a "walk through" with them. Scott responded that he did not have time and that the suite was in good condition.
- (i) Shortly after arriving, D [REDACTED] provided Scott with post dated cheques for the remaining 10 months of the rental period. Those cheques were made payable to KGSB.
- (j) During their tenancy, D [REDACTED] asked Scott if they could hang their own pictures on the walls and was told that they could, although the walls could not be painted.
- (k) D [REDACTED] felt that the nature of the tenancy was no different from if he was renting a house. He did not feel that Scott had the right to enter [REDACTED] Pointe at Quail without notice.
- (l) Near the end of August, D [REDACTED] and his wife told Scott that they were unhappy with the unit and wanted out. Scott said that he would try to find another renter, but until he did, they would have to pay for the duration of the contract term. In addition, Scott advised that they would have to pay a \$1400 "rebooking fee" in the event another renter was located.
- (m) On September 14, 2011, Scott spoke with N. D [REDACTED] by phone and told her that he was under investigation by a private investigator representing the Financial Institutions Commission of BC ("FICOM"), and that they should not cooperate with that investigation.
- (n) On September 16, 2011, D [REDACTED] met with Scott at his office at the Borgata Lodge. D [REDACTED] reiterated that he wanted out of the contract. Scott told D [REDACTED] that he wanted to rewrite the contract, using a different form. Scott ultimately agreed to termination of the existing contract, as of September 30<sup>th</sup>, 2011. He also agreed to waive the rebooking fee.

28. D [REDACTED] provided Ard with a copy of the contract. It includes the following terms:

- (a) "I the client agree to rent furnished Suite # [REDACTED]...Pointe at Quail from July 1, 2011 to May 31, 2012 as a contracted period of time via Hotel Business, Kelowna Golf Sky & Borgata Lodge ltd Hotel Business."
- (b) "Rate \$1500 per month to include all utilities, existing linens, cable tv, internet and 1 underground parking stall..."
- (c) "Damage deposit of \$750 to be returned within 15 days of departure pending satisfactory inspection."
- (d) "**Client agrees that any disputes will fall under the Innkeepers/Hotel act.** Client agrees to abide by the rules of Pointe at Quail Strata... If client wishes to leave early, client is responsible for the entire contract. We will do our best to re book the suite. A rebooking fee of \$1400 will be charged if we are successful."
- (e) The bottom of the contract required D [REDACTED] to provide the name and contact information for a reference.

29. On September 23, 2011, Ard spoke with [REDACTED] W [REDACTED], one of the registered owners of [REDACTED] Pointe at Quail, who advised as follows:

- (a) He did not believe he had a written agreement with Scott or KGSB.
- (b) Scott finds tenants for the unit and those tenants then pay the rent directly to Scott. Scott deducts his fee, and remits the balance to the Whites.
- (c) He and his brother only ever have long term renters in their units.

*Unit [REDACTED] – Borgata Lodge*

30. [REDACTED] ("M [REDACTED]") has been the registered owner of Unit [REDACTED] at Borgata Lodge (" [REDACTED] Borgata") since June 2005.

31. M [REDACTED] was interviewed by investigator Rod Clemons ("Clemons") on February 2, 2011 and again by Ard on September 22, 2011. In addition, she provided some documents to Ard relating to the lease of [REDACTED] Borgata. Below is a summary of the information obtained through these interviews:

- (a) She first met Scott when she purchased [REDACTED] Borgata in 2005. Scott approached her and, after ascertaining that she was not planning to live at [REDACTED] Borgata, offered to act as her property manager. In this capacity, he would advertise [REDACTED] Borgata on his website; find tenants for the summer; and find long term renters for the winter.

- (b) She never had a written agreement with Scott. This was a "handshake" deal pursuant to which he would charge 40% of the rental income from the summer months, and in the winter months, for long term renters, he would only charge 10%.
  - (c) The tenants would pay the rent directly to Scott's company, KGSB. Scott would keep his share and then remit the balance, by cheque drawn from KGSB's account, to M [REDACTED]
  - (d) She knew of at least two occasions when Scott entered into year-long leases on her behalf. The rest of the time, Scott would enter into long-term leases with students during the scholastic year, and short term leases over the summer months.
  - (e) M [REDACTED] had the right to approve or disapprove who the long term tenant would be over the winter months before Scott would sign a lease with them.
  - (f) In M [REDACTED]'s discussions with Scott about the long-term winter rentals, he would refer to entering into a "lease" with M [REDACTED]'s "tenants".
  - (g) With long term renters, she had access to the unit, but only on 24 hours' notice, as she understood that to be a requirement of the "tenant agreement."
  - (h) Scott would enter into the leases with the students, in the name of KGSB.
  - (i) M [REDACTED] never received copies of the leases Scott/KGSB entered into.
  - (j) Where the long-term winter leases were concerned, she understood from Scott that if the tenant terminated the lease early, their damage deposit would be forfeited, as well as one month's rent. M [REDACTED] did not know that Scott/KGSB entered agreements which stipulated that those terminating the lease early would be responsible for the full amount payable under the lease, as well as a rebooking fee.
  - (k) When she discovered that Scott was not a licensed property manager, she confronted him. His response was that he did not need a property manager's license, as he had a hotel license.
32. M [REDACTED] provided Ard with some documents she had relating to her dealings with Scott, KGSB and Lewis. These included the following:
- (a) On September 25, 2009, she received an email from Lewis confirming that they had someone moving into [REDACTED] Borgata from the weekend of

September 26, 2009 to the weekend of February 28, 2010 (i.e. 5 months). This email refers to the person moving into the unit as "your tenant."

- (b) On September 25, 2009, Lewis wrote a second email to M [REDACTED], in response to her question about possibly finding a yearly rental instead. Lewis response reads, in part:

"No one came along looking for a year and the last thing we wanted was an empty suite for the whole winter until things pick up.

This tenant – assuming he confirms later today which seems likely – originally wanted until June 30<sup>th</sup> and says he will probably still want that date but only wanted to commit to end Feb at the moment.

We still have a couple of loft units empty so if someone comes along who requires a year we can move him from yours into one of those and put the yearly tenant into [REDACTED].

- (c) M [REDACTED] had copies of the monthly statements Scott would send to her, showing the rental income from [REDACTED] Borgata, deductions for the management fee, deductions for any maintenance or repair expenses, and the balance payable to M [REDACTED].
- (d) On October 16, 2009, M [REDACTED] wrote Scott and Lewis, terminating their services.

#### Review of rental contracts

33. Over the years, Scott has produced different versions of the contracts he uses with long-term renters.
34. During the investigation of the First Complaint, Scott produced two different contracts, depending on whether the tenancy was short term or long term. The long term tenant was asked to sign a "Contract of Occupancy" which included the following terms:
- (a) The "renter" agrees to pay rent on a monthly basis, on the first of the month, with an initial payment of a damage deposit, first and last month's rent being required.
- (b) Any disputes would be governed by the Innkeepers Act.
- (c) "Client agrees to stay the duration of the contract. If client decides to leave early client is responsible for the entire contract."

- (d) "Client agrees to supply own linens, bedding & towels."
  - (e) "Client" is responsible for cleaning the suite upon departure.
  - (f) The name of a reference must be provided.
35. On September 14, 2011, Scott provided Ard with a copy of the current form of long term rental contract for Unit [REDACTED] – Borgata Lodge ("[REDACTED] Borgata"). This form of contract, which Scott indicated he had begun using in the past month, includes the following terms:
- (a) Under the terms of the contract, the "guest" agrees to "rent" [REDACTED] Borgata from September 8, 2011 to April 27, 2012 "as a contracted period of time."
  - (b) The price was not given as a monthly amount. Rather, it was described as "323, nights Daily Rate \$41.37 per night. All utilities, cable tv, gas fireplace, AC, hotel underground parking & wireless internet included."
  - (c) "Initial charge on credit card \$1800 Sept + damage deposit..."
  - (d) "Client will provide post dated cheques dated the first day of every month for \$1200 made out to [KGSB]."
  - (e) "Client shall indemnify & save harmless the owner or rental company from any liability claim or personal injury claim of any of the client/s [sic] or guests during the rental period."
  - (f) "It is agreed any disputes shall be governed by the Innkeeper/Hotel laws. Parties agree that **Residential Tenancy Act... DOES NOT** apply to the parties or this agreement."
  - (g) "Client is responsible for cleaning the suite at departures..."
  - (h) The name of a reference is required.
  - (i) While GST is applicable to the processing fee for NSF cheques and carpet cleaning, neither it, nor HST appear to apply to the rental costs.

Interview of Scott

36. On September 14, 2011, Ard interviewed Scott. At that interview, Scott advised as follows:

- (a) Scott insisted that the provisions of *RESA* did not apply to his business for the following reasons:
- (i) all of the rentals are considered hotel rooms.
  - (ii) The purpose of Borgata Lodge is for vacation and travel accommodation. Borgata Lodge is zoned for and licensed as a hotel.
  - (iii) Scott referred to his office at Borgata Lodge as the "front desk", which he indicated was significant in showing that the building was a hotel. Scott did admit, however, that his office is only open weekdays, from 9:30 to 4:30, although there is a 24-hour number guests can use in case of emergency.
  - (iv) The contracts he has with tenants permits Scott to evict them, without notice, for excessive noise, breach of the strata rules or for causing damage to the units.
  - (v) Units in Borgata Lodge are rented on a nightly basis. He pointed out that this is set out explicitly in the current version of the contract he uses.
  - (vi) Scott has the right to inspect the units at any time, but he generally gives occupants 24 hours' notice.
  - (vii) The contract specifies that the *RTA* does not apply.
  - (viii) If a tenant is unhappy with their suite, he does his best to find them another one.
  - (ix) Scott has acquired a right to all of the suites that he manages from the owners. He characterized this right as a license to occupy the suites which he then grants to the tenants.

### Licenses and Zoning

37. On August 10, 2011, Ard confirmed with the City of Kelowna Bylaw Licensing department that KGSB had a hotel license which was only applicable to Borgata Lodge. When asked to provide proof that he had been remitting HST and/or the Additional Municipal Hotel Room Tax for "hotel rooms" which he says he rented, Scott failed to do so.
38. On September 27, 2011, Ard contacted Consumer Protection BC and was advised that hotel operators are exempt from being licensed as travel

accommodation providers. Providers of short term vacation rentals (i.e. not hotel operators) do need to be licensed as travel accommodation providers under the *Business Practices and Consumer Protection Act, Travel Industry Regulation*. Ard was advised that neither Scott nor KGSB are licensed as travel accommodation providers in the Province of British Columbia.

39. Borgata Lodge is zoned for hotel use (although not exclusively so). That said, Borgata Lodge does not have the appearance of an ordinary hotel: there are mailboxes for residents, and main entrance doors are secure, requiring access by use of key cards.
40. Pointe at Quail is not zoned for hotel use. A covenant registered on title identifies the principal use of the land as being for: apartment housing; congregate housing; group homes; major and stacked row housing. Secondary uses do not include use as a hotel.

AND WHEREAS I find that:

1. Neither Scott, nor Lewis, nor KGSB is licensed under *RESA* to provide real estate services within the province of British Columbia. A license is required pursuant to Section 3 of *RESA* for a person to provide real estate services to or on behalf of another.
2. "Real estate services" under *RESA* includes rental property management services.
3. Scott, Lewis and KGSB are actively engaged in providing rental property management services, to or on behalf of others, for or in expectation of remuneration. I note, in particular, the following:
  - (a) Scott has been previously warned about the requirements of *RESA* and has twice indicated that he would restrict his business to short term vacation rentals only. The last representation he made in this regard was in Court, to a judge, through his lawyer, in 2008. At that time, his counsel advised the Court that Scott would limit himself to short-term (nightly) rentals only.
  - (b) In spite of the foregoing, Scott, Lewis and KGSB have continued to provide rental property management services for long term tenancies, for which licensing under *RESA* is required. Examples include the following:
    - (i) Several websites linked to Scott advertise properties for rent to university students for the academic year, being a period of some 8 months. This is consistent with the information provided to Ard

when he posed as a prospective property owner, wanting to know about long term rental possibilities for his unit.

- (ii) Scott was prepared to rent a unit to Ard, who was posing as a potential tenant, for a period of nine months. One of the properties Scott proposed to rent to Ard was a lakefront house.
  - (iii) Scott and KGSB had entered into an 11-month lease with D [REDACTED] and his wife, which would have ended in May 2012, except that D [REDACTED] terminated the lease at the end of September, 2011. Prior to taking the unit at Pointe at Quail, D [REDACTED] and his wife received an email from Lewis who indicated he had condos available at Borgata Lodge, Pinnacle Point and Bella Serra which are "normally based on a one year rental."
  - (iv) M [REDACTED] who had retained Scott as her rental property manager until October 2009, confirmed that her unit was occupied by long term tenants (i.e. yearlong leases) on at least two occasions. In addition, a 2009 email exchange she had with Lewis indicated that he was looking for a tenant, for a year-long tenancy, for her.
- (c) The services provided by Scott, Lewis and KGSB include advertising long term rentals, finding tenants, and collecting rent money. The rent money is deposited into KGSB's account, the management fee deducted, and the balance remitted to the owner(s).
- (d) The provision of rental property management services for long term leases has not been restricted to Borgata Lodge which is zoned for hotel use. I note in particular:
- (i) In September 2011, [www.kelwonagolfski.com](http://www.kelwonagolfski.com) advertised long term, relocation and extended stay rentals in a lakefront home, as well as in Bellasera Tuscan Villas & Piazza, Martin Lofts and Pointe at Quail.
  - (ii) Lewis offered to lease Ard a unit at Barona Beach on a long term basis.
  - (iii) M [REDACTED] and D [REDACTED] both leased units in Pointe at Quail, not Borgata Lodge.
- (e) It is irrelevant whether or not Borgata Lodge is zoned, in part, as a hotel or whether the most recent form of agreements with tenants are worded to avoid language commonly associated with leases. The salient point is whether or not, at the end of the day, the tenant is getting a license to

occupy or a lease. The evidence collected suggests to me that the long term arrangements managed by Scott, KGSB and Lewis, fall into the latter category for these reasons:

- (i) The current version of the agreement used by Scott and KGSB for long term rentals (see [REDACTED] Borgata which is subject to an 8-month term) calculates the nightly cost to the "guest" for the term of the contract. However, it goes on to require the "guest" to provide post dated cheques for a set amount (in this case, \$1200), dated the first day of each month, to be made out to KGSB. The "Guest" is also required to provide a \$600 damage deposit. The monthly fee does not appear to be subject to GST or HST.
- (ii) The "guest" is still responsible for all cleaning upon departure.
- (iii) The "guest" is responsible for the full term of the agreement. Early termination is not permitted.
- (iv) Evidence suggests that long term guests have exclusive possession of the rental property and can expect 24 hours' notice before Scott, or the owner, enter their suite.
- (v) D [REDACTED] who was a recent tenant, was told he was free to hang his own pictures on the walls, although he was not allowed to paint. D [REDACTED] was of the impression that his arrangement was no different from any other form of tenancy and that nobody was entitled to enter the unit he had rented without proper notice.
- (vi) M [REDACTED], an owner who had retained Scott and KGSB until late 2009, was also of the view that long term renters were tenants and that neither she nor Scott had a right to enter the premises without the notice required under applicable residential tenancy legislation.
- (f) Contrary to Scott's assertion, there is no evidence which suggests that Scott obtains a license to occupy from the owners of the units he manages which he, in turn, assigns to tenants. I note, in particular, that none of the owners with whom investigators spoke have ever had a written agreement with Scott.
- (g) The Residential Tenancy Branch showed no hesitation in assuming jurisdiction over M [REDACTED]'s dispute with Scott. That tenancy was described in the hearing officer's decision as a "fixed-term tenancy [which] began on May 1, 2010 and ended on August 31, 2010." The terms of M [REDACTED]'s tenancy are not substantially different from the current version of the long-term rental contract being used by Scott, Lewis and KGSB. The major differences are the current use of the word "guest" as opposed to "client"

and the provision of the nightly rental cost, in addition to the monthly amount owing.

4. Neither Scott, nor Lewis, nor KGSB, is exempted from the requirement to be licensed by subsection 3(3) of the *RESA*, nor are either exempted from the requirement to be licensed by the *Real Estate Services Regulation*.
5. Scott, Lewis and KGSB are engaging in real estate services for which a license under *RESA* is required, although neither has the required license.

I THEREFORE CONSIDER that Scott, Lewis and KGSB are conducting themselves in a manner that would enable me to make an order under section 49 of *RESA*.

I AGREE with Staff that a hearing would require approximately seven witnesses and would take approximately seven days to complete, and could not be held until September or October 2012, due to scheduling of parties, witnesses, counsel and the hearing officer.

I FIND that the length of time that would be required to hold a hearing in order to make an order under section 49 of *RESA* would be detrimental to the due administration of *RESA* given that it would likely result in further non-compliance with the provisions of *RESA*. Of particular concern is the past history of complaints, warnings, and guilty plea entered by Scott in October 2008. In spite of that history, Scott and KGSB have continued to offer the same services which resulted in the earlier regulatory action. Continued non-compliance would harm the reputation of the British Columbia real estate industry and would be detrimental to the public interest.

I AM FURTHER OF THE OPINION that it is in the public interest to make a summary order under section 51 of *RESA* so that the public is protected against further non-compliance with *RESA*.

I THEREFORE ORDER pursuant to sections 51(2) (a) and 49(2) (a) of *RESA* as follows:

1. That Scott, Lewis and KGSB cease and desist conducting, directly or indirectly, real estate services, including rental property management services, in British Columbia, effective immediately, unless and until they become licensed to do so under the provisions of the *Real Estate Services Act*.

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

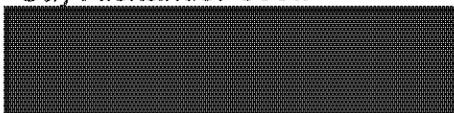
Dated at the  
City of Vancouver,  
Province of British Columbia  
this 13<sup>th</sup> day of April, 2012.



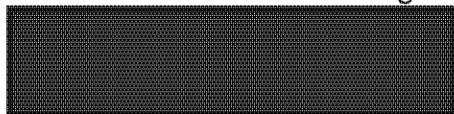
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Carolyn Rogers  
Superintendent of Real Estate  
Province of British Columbia

TO: Guy Alexander Scott



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