



**IN THE MATTER OF THE REAL ESTATE SERVICES ACT**

**S.B.C. 2004, c. 42**

**- AND -**

**DARLENE KATIE BENTROTT**

**- AND -**

**DARLENE KATIE BENTROTT doing business as  
DARLENE'S PROPERTY MANAGEMENT SERVICE**

**- AND -**

**DARLENE KATIE BENTROTT doing business as  
EVENT ENTERPRISE**

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**DECISION ON PENALTY AND COSTS**

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**Before: Carolyn Rogers, Superintendent of Real Estate**

**Date: June 26, 2013**

**Place: Vancouver, British Columbia**

**Appearing: Michelle J. Alman, Counsel for the Staff**

**No one appearing for Darlene Katie Bentrott, Darlene's  
Property Management Service, or Event Enterprise**

**I. Purpose of the Hearing**

This hearing was brought before the Superintendent for the purpose of Staff's seeking orders against Darlene Katie Bentrott ("Bentrott"), and Bentrott dba Darlene's Property Management Service ("DPMS"), and Bentrott dba Event Enterprise ("EE") (collectively, "Bentrott and her entities") pursuant to sections 49(2)(a), (b), (c) and (d)(ii) of the *Real Estate Services Act* ("RESA").

**II. Chronology of Events**

- i. On September 8 and October 1, 2008, Staff received complaints alleging potential unlicensed real estate services being provided by Bentrott and DPMS.
- ii. On November 14, 2008 Staff spoke to Bentrott and advised her of the requirement to be licensed under RESA. At this time Bentrott advised Staff she had approximately ten clients that she was charging monthly fees for rental property management services, including negotiating leases, collecting rents and dealing with tenant issues. She advised Staff that she was unaware of the need to be licensed to provide these services.
- iii. On January 7, 2009 Bentrott contacted Staff and advised that she had ceased all of her rental property management services and was considering becoming licensed.
- iv. On January 13, 2009, staff sent Bentrott a letter confirming the conversation held on January 7, 2009 and subsequently closed the file.
- v. In 2010 Staff received further complaints alleging unlicensed real estate services by Bentrott and DPMS. A subsequent investigation was conducted and Staff contacted Bentrott again on November 9, 2010. In that contact Staff reminded Bentrott of the complaints investigated in 2008 and her assurances provided with respect to those complaints.
- vi. On November 12 and 27, 2010 Bentrott advised Staff that she was no longer providing rental property management services and was relocating to Alberta in the immediate future.

- vii. On December 17, 2010 Staff wrote to Bentrott once again confirming the assurances provided by her that she was not engaged in unlicensed real estate services. That letter was returned to our offices on January 21, 2012 stamped Moved/Unknown/Return to Sender.
- viii. On July 29, 2011, Staff received another complaint about Bentrott. This complainant alleged Bentrott was providing rental property management services to her and to thirty other property owners in the Kamloops area. Staff initiated an investigation.
- ix. On July 3, 2012, based on the results of Staff's investigation, I issued a Cease and Desist pursuant to section 51 of the RESA, against Bentrott and her entities ordering her to cease conducting real estate services, including rental property management services.
- x. On July 18, 2012, Bentrott was served personally with the Cease and Desist Order and the supporting investigation report as evidenced by an affidavit of service.
- xi. As evidenced by another affidavit of service, on May 24, 2013, Bentrott and her entities were personally served with a Notice of Hearing setting out the date, time and place of this hearing. Included with the Notice of Hearing was a copy of the Cease and Desist Order made by my office on July 3, 2012 against Bentrott and her entities and a copy of the Staff's Certificate of Costs of the investigation that led to the issuance of the Cease Order.
- xii. In the period of time between the service of the Cease Order and the Notice of Hearing, Bentrott and her entities did not seek to review of the Cease Order by the Superintendent nor did they bring an appeal from the Cease Order to the Financial Services Tribunal.
- xiii. On June 26, 2013 a Hearing was held before me for the purpose of Staff's seeking orders against Bentrott and her entities pursuant to sections 49(2)(a), (b), (c) and (d)(ii) of the *Real Estate Services Act* ("RESA"). Ms. Bentrott did not attend the Hearing nor did anyone attend representing her or her entities.

### **III. Orders Sought: Penalties and Costs**

As set out in the Notice of Hearing served to Bentrrott and her entities, I am being asked to make the following orders against Bentrrott and her entities based on the finding made in my order of July 3, 2012 that Bentrrott and her entities conducted unlicensed real estate services in the form of rental property management services:

- i. confirmation that Bentrrott and her entities contravened RESA as set out in the Cease Order;
- ii. that Bentrrott and her entities immediately cease all unlicensed real estate service activities until and unless they become licensed;
- iii. that Bentrrott and her entities, within 5 days of service upon her of the Superintendent's orders made at this hearing, deposit into the trust account of a licensed BC lawyer, notary public or real estate brokerage any monies held by Bentrrott and her entities from their unlicensed real estate service activities;
- iv. that Bentrrott and her entities pay an administrative penalty in the amount of \$6,000; and
- v. that Bentrrott and her entities pay \$4,000 for investigation costs.

### **IV. Relevant Legislative Authority, Principles and Precedents**

The RESA, sections 49(1) and 49(2)(c) and (d)(ii), provide the Superintendent broad discretion to make orders against an unlicensed individual who has carried out real estate service activities, including requiring such a person to pay a penalty of up to \$10,000 and recovery of enforcement expenses. This discretion does not require any orders to be made and the case law notes that orders should be reasonable and made after consideration of both the aggravating and mitigating factors in the case. The decision at hand is therefore primarily about arriving at a reasonable penalty, if any.

In arriving at my decision I reviewed the following decisions:

- *532871 B.C. Ltd. (c.o.b The Urban Well) v. BC (General Manager, Liquor Control and Licensing Branch*

- *600428 B.C. Ltd. (c.o.b. Tonic Bar) v. BC (General Manager, Liquor Control and Licensing Branch)*
- *Cartaway Resources Corp. (Re)*
- *Walker v. BC (Securities Commission)*

In doing so I arrived at the following principles to guide my decision:

- Orders and penalties should be both protective and preventative. They should be aimed first and foremost at achieving compliance and secondly at deterring repeat offences by the subject specifically, and more generally by others in the industry or considering entering the industry.
- Penalties must be reasonable and proportionate to the offence. Therefore the context surrounding the breach of the statute, including the nature of the conduct by the wrongdoers should be considered.

## **V. Other Considerations**

In their submissions, Staff included the following points which I found to be relevant to my decision:

- Ms. Bentrott and her entities repeatedly breached the requirements under the RESA over an extended period of time and despite having been warned multiple times;
- attempts by staff to work cooperatively with Ms. Bentrott and to escalate regulatory intervention gradually were met with dishonesty and deceitfulness;
- financial improprieties with customers were remedied by Ms. Bentrott only after investigations were commenced by Staff based on complaints received;
- Ms. Bentrott made efforts to evade identification during the investigation that led to the Cease Order and during the service of the Order as evidenced by the affidavit of service;
- As of the date of the Hearing Bentrott has so far failed to admit culpability or take responsibility for her actions.

Ms. Bentrrott did not take the opportunity to attend the Hearing or provide any written submissions to the process. Ms. Bentrrott and her entities have also chosen not to respond to any communication by Staff in any formal or substantive way other than through telephone conversation and email and only after being contacted by Staff. In the absence of any response from Ms. Bentrrott, I find that the facts as found in the Cease Order of July 3, 2012 and supporting evidence in this case to be undisputed.

As mitigating factors counsel for Staff advised that, in telephone conversation with Ms. Bentrrott, she received claims of physical disability, lack of financial resources as well as repeated claims of cessation of all unlicensed activities. In arriving at my decision I chose not to consider these claims as Ms. Bentrrott did not take the opportunity to present these facts or others in any formal way to the process and has not previously demonstrated honesty in dealing with staff.

The penalty proposed by Staff of \$6,000 is not the maximum penalty allowable under the Act, nor could it be considered a minimum penalty. The breaches committed by Ms. Bentrrott and her entities where not egregious and harm to the public was not extreme. The breaches were; however, repeated and worthy of sanction. I also considered that Ms. Bentrrott has so far not been deterred by warnings and so the penalty in this case needs to be sufficient to deter future breaches. Based on these factors I find the penalty proposed by Staff to be reasonable and proportional.

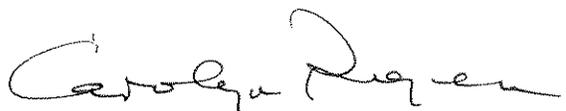
Staff also proposed an amount of \$4,000 for costs associated with enforcement expenses incurred. This amount is clearly supported by the certificate of costs supplied by staff and upon reviewing this certificate I found the proposed amount to be reasonable under and in compliance with section 44 of RESA.

**VI. Findings and Orders**

Based on the information presented to me by Counsel and Staff, my review of the RESA and my interpretation of the relevant principles and precedents to this decision, I hereby make the following findings and orders:

- a. the findings set out in the Cease Order of July 3, 2012 are uncontested and confirmed as proven;
- b. I order that Bentratt and her entities, within 5 days of service of this order, deposit into the trust account of a licensed BC lawyer, notary public or real estate brokerage any monies held by Bentratt and her entities from their unlicensed real estate service activities;
- c. I order that Bentratt and her entities, jointly and severally, pay an administrative penalty in the amount of \$6,000 pursuant to RESA section 49(2)(d)(ii); and
- d. I order that Bentratt and her entities, jointly and severally, pay \$4,000 for enforcement expenses pursuant to RESA sections 44 and 49(2)(c).

Dated at Vancouver, British Columbia this 22<sup>nd</sup> day of January, 2014.



Carolyn Rogers  
Superintendent of Real Estate  
Province of British Columbia