

IN THE MATTER OF THE REAL ESTATE SERVICES ACT

- AND -

FLY ON THE WALL ACCOMMODATION SERVICES

-AND-

ISAAC ADAM GYSEMANS

**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:

1. On March 25, 2008, the office of the Superintendent of Real Estate (the "Superintendent") received an email complaint alleging that Fly On The Wall Accommodation Services ("FOTWAS") and Isaac Adam Gysemans ("Gysemans") were providing rental property management services in British Columbia, without being licensed under the *Real Estate Services Act* ("RESA").
2. FOTWAS is a sole proprietorship, registered in the Province of British Columbia on September 18, 2003, under registration number 03-035567. The proprietor of FOTWAS is registered as Isaac Adam Gysemans ("Gysemans").
3. The Real Estate Council of British Columbia confirmed that neither FOTWAS nor Gysemans are licensed to provide real estate services in the Province of British Columbia.
4. Section 1 of *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;

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

Requirement for licence to provide real estate services

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 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.

6. On April 10, 2008, a member of the Staff reviewed the FOTWAS website (www.flyonthewallservices.com), which included the following information:

(a) FOTWAS advertised services for both rental home seekers and investment property owners.

(b) FOTWAS provided the following contact information:

#117 – 1027 Davie Street
Vancouver, BC

Tel: 604.727.9040
Toll free: 1.866.648.0513
Fax: 604.616.2667

Email: info@flyonthewallservices.com

(c) FOTWAS' website, on its "Home Seekers", "Specific Search and Alerts", and "Relocation" pages, advertised the following services to potential renters, at various prices (depending on the service):

(i) "[FOTWAS] offers personalized 1-on1 services that provide our clients with valuable guidance and insight into the local area rental market..."

(ii) "Stop wasting time calling and viewing properties that are unsuitable. Our seasoned expertise allow [sic] us to quickly match client profiles with available properties..."

(iii) "Even if you are in town and you decide to go it alone, you have to ask yourself: 'Am I paying too much?' With our valuable 1-on-1 consulting services, our clients often end up securing a property that is well below market value..."

(iv) "Have a [FOTWAS] consultant notify you of current and/or upcoming vacancies that match your specific requirements...Along with providing detailed listing information, we often allow our clients to preview buildings exteriors & interiors by sending them digital photographs".

(v) "Opt for [FOTWAS] Digital Relocation Services and take advantage of both Specific Search Services and Digital Viewing Services. We'll even provide landlords and managers with important documents that are often required when renting from afar."

- (vi) "If your busy schedule does not suit making timely viewing appointments for rental property, [FOTWAS] can digitally preview the property for you...We'll also provide you with helpful floor plan measurements and invaluable insight into the neighbourhood, building, owner, and property itself."
 - (v) "...Tour Based Relocation Services allows our clients to get a feel for different neighbourhoods while touring properties of high interest."
- (d) FOTWAS' website, on its "Owners & Agents" page, contained a subheading, "Tenant Matching Services", as well as a "breakdown of what Tenant Matching Services can do for you." This breakdown included the following:
- Advertising consultation and set up
 - Screen all calls and emails from tenant prospects
 - Advise owner of progress and tenant prospects
 - In consultation with the owner, process applications, credit check ratings and references for prospects
 - Preparing tenancy agreement according to RTA standards...
 - If applicable prepare Form K for strata submission and provide new tenant with strata by-laws
 - Collect post-dated cheques or arrange for direct deposit into owners bank account
 - Make arrangements for move-in with building manager/care taker or owner
7. On April 17, 2008, Staff placed a pretext call to Gysemans, pretending to seek information on rental properties. During that call, Gysemans advised Staff as follows:
- (a) He provides digital as well as tour-based accommodation services to prospective clients.
 - (b) He attends viewings of rental apartments on behalf of prospective tenants which he records digitally into a video format, and which he then provides, together with still photos and floor plan measurements, to his clients.
 - (c) He advises prospective tenants on the appropriate prices for rental properties (i.e. whether they are below, at, or above market value).
 - (c) He is sometimes hired by landlords to rent out their property.

- (d) He sometimes prepares rental documentation on behalf of landlords.
 - (e) He charges 50% of one month's rent for relocation services, and a flat fee of \$239 plus GST for viewing services.
8. On May 12, 2008, Staff contacted Gysemans, without pretext, to discuss the nature of the services he, and FOTWAS, offered. During that conversation, Gysemans advised as follows:
- (a) He provides information services only.
 - (b) His clients use him as a resource for the rental market.
 - (c) He provides advice with respect to the rental market.
 - (d) He views properties on his clients' behalf.
 - (e) He has been paid by landlords in the past.
9. On May 20, 2008, Staff reviewed the FOTWAS website again. The "Owners & Agents" page had been changed to remove the subheading "Tenant Matching Services", although all other parts of the website remained the same.
10. I agree with Staff that scheduling of witnesses, counsel and the hearing officer would likely result in a six month delay in the ability to hold a hearing into this matter.
11. The length of time required to hold a hearing will likely result in the continued non-compliance of *RESA* by FOTWAS and Gysemans.

AND WHEREAS I find that:

- 1. FOTWAS and Gysemans are not licensed under *RESA* for the purpose of conducting 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. FOTWAS and Gysemans engage in conduct which falls within the definition of real estate services, specifically rental property management services, for which a license under *RESA* is required.

I AM THEREFORE OF THE OPINION that FOTWAS and Gysemans are conducting themselves in a manner that would enable me to make an order under section 49 of *RESA*.

I AM FURTHER OF THE OPINION 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 public interest. A hearing will likely take at least six months to prepare for and conduct. FOTWAS and Gysemans are conducting unlicensed activity without any supervision from a licensed person, outside of the regulatory supervision provided by *RESA*.

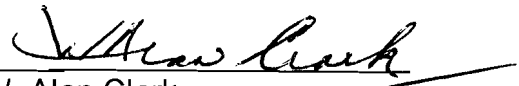
I AM FURTHER OF THE OPINION that it is in the public interest to make a summary order under section 51 of *RESA* so that the public is protected against further non-compliance with *RESA*.

I THEREFORE MAKE the following Order pursuant to sections 51 and 49(2)(a) of *RESA* that FLY ON THE WALL ACCOMMODATION SERVICES and ISAAC ADAM GYSEMANS:

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

TAKE NOTICE that FLY ON THE WALL ACCOMMODATION SERVICES and ISAAC ADAM GYSEMANS 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 45(6) and 51(3) of *RESA*.

Dated at the City of Surrey, in the
Province of British Columbia
this 21st day of May, 2008.



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

TO: Isaac Adam Gysemans

[REDACTED]
Vancouver, BC
V6B 6P6

Fly On The Wall Accommodation Services
#117 – 1027 Davie Street
Vancouver, BC
V6E 4L2

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