



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

-AND-

STREAMLINE PROPERTIES INC.

-AND-

MICHAEL JEROME KNIGHT

**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 (the "Staff"), I am of the opinion that:

Background

1. Streamline Properties Inc. ("Streamline") was incorporated in British Columbia on June 22, 2001. Streamline's registered and records office is located at 200 – 5611 Cooney Road, Richmond. Jeffrey K. Wiegel ("Wiegel") is the sole director and officer of Streamline.
2. Local 1661 Building Inc. ("Local 1661") was incorporated in British Columbia on August 21, 2007. Local 1661's registered and records office is located at 200 – 5611 Cooney Road, Richmond. Wiegel is the sole director and officer of Local 1661.

3. Michael Jerome Knight ("Knight") is Streamline's general manager.
4. The Real Estate Council of British Columbia has confirmed that neither Streamline nor Knight is, nor has either ever been, licensed to provide real estate services in the Province of British Columbia.

Consent Order of June 12, 2006

5. In 2006, Knight was the subject of regulatory action taken by the Superintendent under the provisions of the *Real Estate Services Act*, S.B.C. 2004, c. 42 (the "Act").
6. Specifically, and following an investigation, on June 12, 2006, Knight agreed to the terms of a consent order, issued by the Superintendent of Real Estate (the "Consent Order").
7. Pursuant to the Consent Order, Knight acknowledged certain facts as correct, including the following:
 - (a) Knight was a shareholder in Active Mountain Resort Inc. ("Active Mountain"), the developer of property located in Merritt, BC.
 - (b) Knight, who was not licensed under the Act, provided real estate services on behalf of Active Mountain, contrary to section 3(1) the Act.
8. One of the terms Knight agreed to under the Consent Order was that he would "cease providing real estate services to or on behalf of another, including but not limited to [Active Mountain]..."

The Local

9. Local 1661 is the named developer of a development located at 1661 East 2nd Avenue, Vancouver, British Columbia, known as The Local (the "Development"). Local 1661 is the owner of the property on which the Development is located.
10. On June 2, 2010, Local 1661 filed a disclosure statement in respect of the Development (the "Disclosure Statement"), pursuant to the provisions of the *Real Estate Development Marketing Act* ("REDMA"). According to the Disclosure Statement, Local 1661 is the sole developer of the Development.

11. Streamline is described on its website (www.streamlinegroup.ca) as "a Vancouver based developer specializing in the creation of boutique, environmentally friendly buildings using structured private investments." The Development is advertised as one of Streamline's current projects.
12. On March 30, 2011, Scott Wallace ("Wallace"), a member of Staff, reviewed Streamline's website at www.streamlinegroup.ca, where Knight is described as being Streamline's general manager.
13. Under pretext, Wallace contacted Streamline through the website, requesting additional information about development properties which were being advertised, including the Development.
14. On April 27, 2011, Knight contacted Wallace by telephone, advising, in part, as follows:
 - (a) "...We are developers, but in the last few years we've been collecting sites at the lower end of the marketplace..."
 - (b) "Our Commercial Drive East 2nd Avenue project has a floor plan that we've been working on over a number of years. And it's sort of a one, one bedroom around 540 square feet. And it has a storage, a storage room in it and it works quite well for...functioning space. And then about 640 gets you a sort of a one and den or a small two bedroom."
 - (c) "The way our company's, yeah the way our company's actually run, sort of put together, is that each project requires a significant amount of capital. And what we do as a company is we use our capital to tie up a piece of property and go through and get permits and all of that sort of done. And at the point when we're ready to sort of move forward and have a really good idea what it is we're doing, we basically ask whether it's financial advisers or, or people that have expressed an interest. And what we in essence do is allow people to lend the development company for that project money for the purpose of securing an option to receive a discount on the, on the purchase price of a unit. So what is, what's different is with a real estate transaction you would be basically making a deposit where those funds are placed in a real estate company's trust account for a year and a bit, whereas this is participating with the developer. So it's actually it is a loan to the company basically, and it's secured by an option on a unit at a reduced price. So you're, most of the investors we deal with don't ever intend keeping the unit."
 - (d) "...I'll send you sort of more of a package on the, on The Local project, the, and that would give you sort of a little bit more we'll call it involved

information and you'll see the, the budget structure and the floor plans and, and, I think it's just an example of, of what, what we do from the, from a little bit more detailed side. And also I'll put the financial numbers with it so you can see, see why we're doing it."

15. Between April 28, 2011 and May 13, 2011, Wallace exchanged a series of emails with Knight about the Development. Knight's signature block described him as "General Manager, Streamline Properties Inc.", and was sent from the following email address: Michael@streamlinegroup.ca. Some of the information and documentation provided by Knight in these exchanges included the following:

- (a) On April 28, 2011, Knight emailed six attachments relating to the Development, including a price sheet, feature sheet, and floor plans.
- (b) On May 4, 2011, in response to a request for additional information about units available at the Development, Knight wrote as follows:

"The top floor units have fairly firm agreements on them, and are definitely harder for me to attempt to replace a deal on.

...

The strata fess [sic] are in the \$200/mo range for most of the units, and as an example unit #102 is \$183.75. The equipment in the building is actually very low maintenance and creates efficiencies on a long term basis, as it requires very little maintenance and the durability is significantly greater than many conventional products used...

There are two colour schemes that we have been composing, which run on a darker brown or lighter brown theme...but the renderings give you a version of the darker approach and we know that a lighter version will be a cooler palette for the cabinetry mainly...

For an investment loan of \$100,000 into the development we could price the units for you to take at completion at #102 \$315,000, #106 \$355,000, #303 \$377,500. If greater than the \$100,000 loan amount, I can apply a further discount based on an effective 12% rate of return on the amount...

...

In regards to the upper floor units, I will look into what may be moveable there at this time, and the main thing is that these are presently held by people with larger amounts of capital which would need to be replaced..."

16. On May 18, 2011, Wallace met with Knight at Streamline's office in Vancouver to further discuss the Development. At that time, Knight advised Wallace as follows:
- (a) Wiegel was Knight's partner.
 - (b) Wiegel was the sole director and shareholder of Local 1661.
 - (c) Local 1661 was the developer of the Development and was incorporated solely for that purpose.
 - (d) Rather than undertake pre-sales, which banks typically require before agreeing to a construction loan, they had decided to borrow 50% of the money needed to develop the property from 11 private investors (representing half of the 22 units which comprise the Development).
 - (e) There are two types of sales: "pure sales" and sale by way of "promissory note."
 - (f) With "pure sales" a purchaser, who would receive a disclosure statement, contracts to buy a unit at a set amount. This option was not available in May 2011 as the disclosure statement was being updated.
 - (g) Where there is a sale by way of "promissory note", the investor lends money to the developer, in exchange for which the investor obtains a right to a specific unit at a pre-set wholesale cost. The parties sign a "founders agreement", explaining the loan's purpose, and clarifying that the loan is secured by the promissory note and the investor's right to a unit. In addition, a contract of purchase and sale for the unit is signed. If the investor wishes to keep the unit he can. However, if they wish to take their money out of the project, they enter into an assignment of the contract of purchase and sale, allowing Local 1661 to sell the unit.
 - (h) When asked specifically about investing \$100,000 to obtain unit #303, Knight advised that with a \$100,000 loan to Local 1661, he could secure his interest in the unit for the wholesale price of \$377,500. The term of the loan would be one year, with a "guaranteed" return of 12%.
 - (i) Knight provided Wallace with an information package which included feature sheets, a price list, a copy of the Disclosure Statement, and the following:
 - i. Blank Promissory Note identifying Local 1661 as the recipient of the loan, to be signed by Jeffrey Wiegel on behalf of Local 1661.
 - ii. Blank Local 1661 Founders Agreement, which appears to contemplate a signature by the lender only, and which indicates that

the investor is loaning money to Local 1661. The bottom of the second page, however, reads: "Developer: Streamline Properties Inc." The terms of the Founders Agreement include the following:

"The Company I wish to provide a loan to the company namely Local 1661 Building Inc...The company was established for the sole purpose to develop the lands at 1661 East 2nd Avenue, Vancouver, BC into a building containing 22 residential units. The company has received a Development Permit from the City of Vancouver...

...

Option to Acquire a Unit I will be entering into a purchase agreement for a specific unit in the development as offered by the project's Disclosure Statement dated May 28, 2010. I will also execute and [sic] Assignment Agreement in respect of this unit for the Development company to enter into third party sales to the public at a price not less than stipulated. The Assignment amount will be paid to the Lender upon the completion of the sale of the unit."

- iii. Blank Offer to Purchase and Agreement of Purchase and Sale which identifies Local 1661 as the vendor, which includes the following term:

"I/WE THE ABOVE PURCHASER(S) HEREBY OFFER(S) to purchase Strata Lot ____ (the "Strata Lot") as more specifically described in the draft strata plan (the "Draft Plan") attached as an exhibit to the Disclosure Statement...and also described as Suite ____, 1661 East Second Avenue, Vancouver, BC, at the purchase price and on the terms and conditions set out in this Purchase Agreement."

- iv. Blank Assignment of Agreement of Purchase and Sale which identifies Local 1661 as the vendor.

- v. 7-page promotional booklet for Streamline and the Development. In that promotional booklet, Streamline is described as "a Vancouver, BC based developer specializing in the creation of boutique environmentally friendly buildings..." With respect to the Development, the promotional booklet includes the following:

- "Streamline assembled the property..."

- "The company completed the initial phase of development with the recent approval of the Development Permit by the City of Vancouver..."
 - "The developer has filed Disclosure Statement [sic] and has been generating interest through an initial marketing program with The Key project marketing group..."
 - Features of the Development were set out in detail, and readers were invited to contact Jeff Wiegel, President Streamline Group for more information.
17. On June 3, 2011, after conducting a search of BC Court Services Online, Wallace obtained copies of pleadings filed by J. [REDACTED] E. [REDACTED] against Local 1661 and Streamline. In the Notice of Civil Claim filed February 25, 2011, E. [REDACTED] alleges that both Streamline and Local 1661 are developers of the Development. In the Response to Civil Claim filed April 7, 2011, Local 1661 and Streamline admit this fact.
18. On June 7, 2011, Wallace obtained a copy of the formal development approval letter sent by the City of Vancouver in respect of the Development. That letter was addressed to Knight at Streamline.

Applicable legislation

19. Section 1 of the Act 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 purpose 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;

"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;

20. Section 3(1) of the *Act* states as follows:

"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) or the regulations from the requirement to be licensed under this Part in relation to the provision of those real estate services."

21. Section 2.5 of the *Real Estate Services Regulation* (the "*Regulation*") states as follows:

"2.5(1) An individual is exempt from the requirement to be licensed under Part 2 of the *Act* in respect of trading services if all the following apply:

- (a) the trading services are provided with respect to a development unit, as defined in the *Real Estate Development Marketing Act*;
 - (b) the trading services are provided to or on behalf of one or more developers, as defined in the *Real Estate Development Marketing Act*, of that development unit;
 - (c) the individual is the employee of
 - (i) one or more of the developers referred to in paragraph (b), or
 - (ii) a holding corporation of one or more of those developers.
 - (d) the individual is not providing real estate services to or on behalf of any person other than
 - (i) one or more of the developers referred to in paragraph (b),
 - (ii) a holding corporation of one or more of those developers, or
 - (iii) another developer, as defined in the *Real Estate Development Marketing Act*, that is a subsidiary of a holding corporation referred to in subparagraph (ii);
 - (e) the individual discloses to each principal, other than one referred to in paragraph (d),
 - (i) that the individual is not licensed under the *Real Estate Services Act*,
 - (ii) who the individual is employed by, and
 - (iii) that the individual is acting on behalf of one or more developers referred to in paragraph (b), or a holding corporation of one or more of those developers, and not on behalf of the principal.
- (2) The disclosure referred to in subsection (1)(e) must
- (a) be made promptly but in any case before any agreement for the acquisition or disposition or disposition of the real estate is entered into, and
 - (b) be in writing and separate from
 - (i) any agreement for the acquisition or disposition of the real estate, and
 - (ii) any disclosure statement required under the *Real Estate Development Marketing Act*.
- (3) The following apply for the purposes of this section:
- (a) a corporation is a subsidiary of another corporation if it is controlled by that other corporation;
 - (b) a corporation is controlled by another corporation if shares held by that other corporation are sufficient to elect or appoint a majority of the directors of the first corporation;

(c) a corporation is the holding corporation of a corporation that is its subsidiary.

22. Section 1 of *REDMA* defines "developer" as follows:

"developer' means a person who, directly or indirectly, owns, leases or has a right to acquire or dispose of development property;"

AND WHEREAS I find that:

1. Neither Streamline nor Knight is licensed under the *Act* to provide 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. Real estate services under the *Act* includes trading services. By making representations about the price and features of the units in the Development, and offering them for sale, Knight and Streamline are providing real estate services for which a license is required unless an exemption applies.
3. Neither Streamline nor Knight is exempted from the requirement to be licensed by subsection 3(3) of the *Act*, nor are they exempted from the requirement to be licensed by operation of the *Regulation*.
4. Specifically, while Streamline is occasionally identified as being a developer of the Development, I note the following:
 - (a) Streamline is not included as a developer on the Disclosure Statement. Rather, the sole developer identified is Local 1661. If Streamline were a developer, as that term is defined under *REDMA*, then it should have been identified as such in the Disclosure Statement.
 - (b) Local 1661 is the owner of the property upon which the Development is located.
 - (c) Local 1661 is the only signatory, from the development side, to all of the various forms of agreement provided to Staff, including: the draft Promissory Note; Offer to Purchase and Agreement of Purchase and Sale; and Assignment of Agreement of Purchase and Sale.
 - (d) Knight advised Wallace that the developer of the Development was Local 1661 which was incorporated solely for that purpose.

5. On balance, and based on the evidence before me, it appears that Local 1661 is the sole developer of the Development. Knight has never identified himself as being an employee of Local 1661, nor is that conclusion supported by the evidence before me: all correspondence and contact with Knight, as recounted by Wallace, occurred through Streamline alone. Consequently, Knight is not "an employee of one or more developers". Thus, the exemption found in section 2.5 of the *Regulation*, as it applies to a developer's employees, does not apply to Knight or Streamline.
6. Further, Knight advised Wallace that the *sole* shareholder of Local 1661 was Wiegel. Consequently, Streamline is not a holding company of Local 1661, as that term is defined in s.2.5(3) of the *Regulation*. Consequently, Knight and Streamline do not fall under the exemption found in s.2.5 of the *Regulation* as it applies to the employees of a developer's holding company.
7. Streamline and Knight are engaging in real estate services for which a license under the *Act* is required, although neither of them have the required license.

I THEREFORE CONSIDER THAT Knight and Streamline are conducting themselves in a manner that would enable me to make an order under section 49 of the *Act*.

I AGREE with Staff that a hearing would require approximately four witnesses and would take approximately one week to complete, and could not be held for at least three months 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 the *Act* would be detrimental to the due administration of the *Act* given that it would likely result in further non-compliance with the provisions of the *Act*. This is of particular concern given that units are being offered for sale in the Development. Of further concern is that Knight has been the subject of regulatory action for an identical breach in the past, and agreed to cease providing real estate services. Continued non-compliance would harm the reputation of the British Columbia real estate industry and would be detrimental to the public interest.

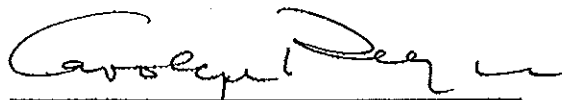
I AM FURTHER OF THE OPINION that it is in the public interest to make a summary order under section 51 of the *Act* so that the public is protected against further non-compliance with the *Act*.

I THEREFORE ORDER, pursuant to sections 51(2)(a) and 49(2)(a) of the *Act*, that Knight and Streamline:

Cease and desist conducting, directly or indirectly, real estate services in British Columbia, effective immediately, unless and until they become licensed to do so under the provisions of the *Act*.

TAKE NOTICE that Knight and Streamline 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, in the Province of British Columbia this ^{9th} day of August, 2011.



Carolyn Rogers
Superintendent of Real Estate
Province of British Columbia

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Michael Jerome Knight

