

THE REAL ESTATE COUNCIL OF BRITISH COLUMBIA
IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended

AND

IN THE MATTER OF

CRAIG STEVEN LAU
(175880)

CONSENT ORDER

RESPONDENT: Craig Steven Lau, trading representative, Westmar Realty Ltd. dba Macdonald Realty Westmar, while licensed with West Coast Realty Ltd. dba as Sutton Group – West Coast Realty

DATE OF CONSENT ORDER: May 20, 2021

CONSENT ORDER REVIEW COMMITTEE: S. Sidhu
C. Ludgate
B. Chisholm

COUNSEL: Gregory Cavouras, Legal Counsel for the Real Estate Council of BC
Wesley McMillan, Legal Counsel for Craig Steven Lau

PROCEEDINGS:

On February 23, 2021, a Consent Order Proposal submitted by Craig Steven Lau (“Mr. Lau”) was considered by the Consent Order Review Committee (“CORA”) but not accepted. On May 20, 2021, a revised proposal acceptable to the CORC was submitted by Mr. Lau (the “Proposal”).

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Mr. Lau.

NOW THEREFORE, having made findings as proposed in the attached Proposal, and having found that Mr. Lau committed professional misconduct within the meaning of section 35(1)(a), section 35(1)(c), and section 35(2) of the *Real Estate Services Act* (“RESA”) and section 3-4 of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Mr. Lau’s licence be suspended for six (6) months.
2. Mr. Lau be prohibited from acting as an unlicensed assistant during the license suspension period.

3. Mr. Lau pay a discipline penalty to the Council in the amount of \$5,000 within three (3) months of the date of this Order.
4. Mr. Lau pay an additional discipline penalty to the Council of \$11,268 (being the amount of the remuneration accepted (and retained) by Mr. Lau for the real estate services in respect of which the contraventions occurred, pursuant to section 43(2)(j) of the RESA) within three (3) months of the date of this Order.
5. Mr. Lau, at his own expense, register for and successfully complete the course: REIC2600 Ethics in Business Practice, offered by the Real Estate Institute of Canada, within the time period directed by the Council.
6. Mr. Lau's licence include a condition requiring enhanced supervision by a managing broker, as more particularly described in Schedule 1 to this Order, for a period of twelve (12) months following the end of the licence suspension period.
7. Mr. Lau pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Order.

If Mr. Lau fails to comply with any term of this Order, the Council may suspend or cancel his licence without further notice to him, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 20th day of May, 2021 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"SUKHMANDER SIDHU"

Sukh Sidhu
Consent Order Review Committee

Attch.

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c42 as amended**

AND

IN THE MATTER OF

**CRAIG STEVEN LAU
(175880)**

CONSENT ORDER PROPOSAL BY CRAIG STEVEN LAU

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Craig Steven Lau ("Mr. Lau") to the Consent Order Review Committee ("CORC") of the Real Estate Council of British Columbia (the "Council") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, Mr. Lau and the Council have agreed upon the following facts:

Background

1. Mr. Lau (175880) has been continuously licensed as a trading representative since 2016.
2. Mr. Lau was at all relevant times licensed as a trading representative with West Coast Realty Ltd. dba as Sutton Group- West Coast Realty (the "Brokerage").
3. This matter involves three real estate transactions, which occurred when Mr. Lau was relatively new to the real estate industry. Mr. Lau was approached by his cousin by marriage Axxxx Xxxxx ("Mr. Xxxxx"), another real estate licensee, who asked that he allow his name to be used as buyer's agent on three of Mr. Xxxxx's listings even though Mr. Xxxxx was to provide all real estate services to the buyers and to the sellers. In exchange for allowing Mr. Xxxxx to use his name, Mr. Lau would receive a portion of the buyer's commission and he would give Mr. Xxxxx the majority of the buyer's commission on each transaction. Mr. Lau agreed.

Wxxxxx Property

4. On January 6, 2017, Mr. Xxxxx entered into a Multiple Listing Agreement with HW, the owner of a property located at XX -XXXX Wxxxxx Crescent, Squamish, BC (the "Wxxxxx Property"). The listing agreement provided that the commission due to the listing brokerage would be \$6,000 plus a \$995 admin fee and the Goods and Services Tax ("GST") (\$7,344.75). The listing brokerage would give \$3,000 of the listing brokerage's commission to the cooperating brokerage.

5. On March 27, 2017, HW entered into a Contract of Purchase and Sale to sell the Wxxxxx Property to members of the B family for \$529,000. Mr. Lau was listed as the buyer's representative on the Contract of Purchase and Sale, but Mr. Xxxxx prepared the contract on behalf of the B family. Mr. Lau was not in fact acting for the buyers and did not provide any real estate services to them in connection with their purchase of the Wxxxxx Property. Rather, Mr. Xxxxx provided services to the seller, HW, and the buyers, the B family, with respect to this transaction.
6. On March 27, 2017, HW entered into a "Fee Agreement Seller Pays" agreement with Mr. Lau's Brokerage whereby HW agreed to pay to Mr. Lau's Brokerage a fee of 3.255% on the 1st \$100,000 plus 1.3% of the balance of the purchase price. Mr. Lau is listed as the designated agent of the B family with respect to their purchase of the Wxxxxx Property.
7. HW was unaware that Mr. Xxxxx was also acting for the B family. HW thought that Mr. Lau was representing the B family.
8. The B family believed that Mr. Xxxxx was acting for them with respect to their purchase of the Wxxxxx Property. They did not meet Mr. Lau or have any contact with him with respect to the deal.
9. On or about June 25, 2017, the B family attended at the Wxxxxx Property and asked HW for a set of keys so they could clean the property. During this meeting, the B Family and HW both advised that their respective agent was Mr. Xxxxx.
10. Mr. Lau provided the Contract of Purchase and Sale and the Fee Agreement to his Brokerage. The Brokerage was unaware that Mr. Lau had not actually provided real estate services with respect to the Wxxxxx Property. Mr. Lau's Brokerage paid his commission in accordance with these documents as though they were genuine.
11. The sale of the Wxxxxx Property closed on July 6, 2017. Mr. Lau received a selling commission of \$8,382 +GST with respect to the sale through his Brokerage. Mr. Xxxxx received commission of \$3,826 + GST through his brokerage.
12. On July 11, 2017, HW made a complaint to the Council about Mr. Lau and Mr. Xxxxx. Specifically, he complained that that Mr. Xxxxx had concealed his actions as a "dual broker both for the seller & buyer" and Mr. Xxxxx collected an "underground commission under [the] name of Steven Lau".
13. Subsequent to the closing, Mr. Lau represents that he gave Mr. Xxxxx \$6,800 of the commission he received from the sale of the Wxxxxx Property in cash. Net of GST, Mr. Lau retained \$1,582 from his role in the Wxxxxx Property transaction (until he made a refund of the overpaid commission to HW, referenced at paragraph 32 below).

Exxxxxxx Property

14. On April 18, 2017, Mr. Xxxxx entered into a Multiple Listing Agreement with LH to sell her property located at XXXX Exxxxxxx Crescent, Squamish, BC (the "Exxxxxxx Property"). The listing agreement provided that the commission due to the listing brokerage would be 1% of the final sale price plus a \$995 admin fee and GST. The commission due to the cooperating brokerage would be 0.5%.
15. On April 21, 2017, GS and LS entered into a Contract of Purchase and Sale with LH to purchase the Exxxxxxx Property for \$706,000. Mr. Lau was listed as the buyer's representative on the Contract of Purchase and Sale, but Mr. Xxxxx prepared the contract on behalf of GS and LS. Mr. Lau was not in fact acting for the buyers and did not provide any real estate services to them in connection with their purchase of the Exxxxxxx Property. Rather, Mr. Xxxxx provided services to both the seller, LH, and the buyers, GS and LS, with respect to this transaction.
16. On April 21, 2017, LH entered into a "Fee Agreement Seller Pays" with Mr. Lau's Brokerage whereby LH agreed to pay to Mr. Lau's Brokerage a commission of 3.255% on the 1st \$100,000 and 1.3% on the balance of the purchase price. Mr. Lau is listed as the designated agent of GS and LS with respect to their purchase of the Exxxxxxx Property.
17. GS and LS believed that Mr. Xxxxx was their representative with respect to their purchase of the Exxxxxxx Property. GS and LS did not meet Mr. Lau or have any contact with him with respect to the deal.
18. Mr. Lau provided the Contract of Purchase and Sale and the Fee Agreement to his Brokerage. The Brokerage was unaware that Mr. Lau had not actually provided real estate services with respect to the Exxxxxxx Property. Mr. Lau's Brokerage paid his commission in accordance with these documents as though they were genuine.
19. The sale of the Exxxxxxx Property closed on June 30, 2017. Mr. Lau received a selling commission of \$10,683 + GST through his Brokerage. Mr. Xxxxx received a commission of \$4,125 + GST through his brokerage.
20. Subsequent to the closing, Mr. Lau represents that he gave Mr. Xxxxx approximately \$9,080 of the commission he received from the sale of the Exxxxxxx Property in cash. Net of GST, Mr. Lau retained \$1,603 from his role in the Exxxxxxx Property transaction.

Wxxxxxx Property

21. On October 4, 2017, Mr. Xxxxx entered into a Multiple Listing Contract with JV and HV to list their property located at X - XXXXX Wxxxxxx Avenue, Squamish, BC (the "Wxxxxxx Property"). The listing agreement provided that the commission due to the listing brokerage was \$6,000 plus a \$995 admin fee plus GST. The commission due to the cooperating brokerage was a portion of the listing brokerage's commission being \$3,000.
22. On October 10, 2017, NS and RS entered into a Contract of Purchase and Sale to purchase the Wxxxxxx Property from JV and HV for \$561,000. Mr. Lau was listed as the buyers'

representative on the Contract of Purchase and Sale, but Mr. Xxxxx prepared the contract for NS and RS. Mr. Lau was not in fact acting for the buyers and with the exception of one telephone call to discuss the terms of the offer and sending them documents for signature that Mr. Xxxxx had prepared, Mr. Lau did not provide any real estate services to them with the respect to their purchase of the Wxxxxxx Property. Rather, Mr. Xxxxx provided real estate services to the buyers, NS and RS, and to the sellers, JV and HV, with respect to this transaction.

23. On October 10, 2017, JV and HV entered into a "Fee Agreement Seller Pays" with Mr. Lau's Brokerage whereby they agreed to pay to Mr. Lau's Brokerage a commission of 3.225% on the 1st \$100,000 and 1.5% on the remaining balance of the purchase price. Mr. Lau is listed as the designated agent of RS and NS with respect to their purchase of the Wxxxxxx Property.
24. Mr. Lau provided the Contract of Purchase and Sale and the Fee Agreement to his Brokerage. The Brokerage was unaware that Mr. Lau had not actually provided real estate services with respect to the Wxxxxxx Property. Mr. Lau's Brokerage paid his commission in accordance with these documents as though they were genuine.
25. The sale of the Wxxxxxx Property completed on November 29, 2017. Mr. Lau received a selling commission of \$9,665 + GST through his Brokerage. Mr. Xxxxx received commission of \$3,761.14 + GST through his brokerage.
26. Subsequent to the closing, Mr. Lau planned on keeping approximately \$2,500 of his commission and giving the rest to Mr. Xxxxx in cash. However, the transfer of cash to Mr. Xxxxx did not occur due to the Council's investigation. Net of GST, Mr. Lau retained \$9,665 from his role in the Wxxxxxx Property transaction.
27. NS and RS were unclear as to who their agent was with respect to their purchase of the Wxxxxxx Property, as they did not meet Mr. Lau.
28. The sellers, JV and HV, and the buyers, NS and RS, were not aware of the arrangement between Mr. Lau and Mr. Xxxxx to share the buyers' brokerage commission.

Investigation by Council

29. Mr. Lau does not have any prior discipline history with the Council.
30. Mr. Lau cooperated fully with the Council's investigation into these matters.
31. During the Council's investigation, HW submitted a claim to the Special Compensation Fund with respect to the excess commission paid for the sale of the Wxxxxxx Property as a result of the arrangement between Mr. Lau and Mr. Xxxxx. The excess commission was shared between Mr. Lau and Mr. Xxxxx.
32. After receiving notice of HW's claim, Mr. Lau refunded HW the entire amount of the excess commission (\$6,366.15) paid by HW on the Wxxxxxx Property transaction on his own without any contribution from Mr. Xxxxx.

33. In total, Mr. Lau has retained \$11,268 from his role on the Exxxxxxxx Property and the Wxxxxxx Property transactions.
34. A Notice of Discipline Hearing was issued on December 2, 2020 and served on Mr. Lau.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the facts outlined herein, Mr. Lau proposes the following findings of misconduct be made by the CORC:

1. Mr. Lau committed professional misconduct within the meaning of section 35(1)(a) [Misconduct by licensee: contravention of the RESA or the Rules] and/or section 35(1)(c) [Misconduct by licensee: wrongful taking or deceptive dealing] of the RESA as follows:
 - a. with respect to contracts of purchase and sale
 - dated March 27, 2017 for the Wxxxxxx Property;
 - dated April 21, 2017 for the Exxxxxxxx Property; and
 - dated October 10, 2017 for the Wxxxxxx Property(the "Contracts");
 - i. he entered into an arrangement with the agent for the sellers on each of the Contracts, Mr. Xxxxx, as set out in subparagraphs 1(a)(ii) to (iv) below, so that one or both of them could obtain remuneration to which they were not entitled, contrary to section 35(1)(c) [Misconduct by licensee: wrongful taking or deceptive dealing] of the RESA and/or section 3-4 [Duty to act honestly and with reasonable care and skill] of the rules made under the RESA (the "Rules");
 - ii. he allowed himself to be identified as the buyers' agent in the Contracts and related documents when in fact he did not provide real estate services to the buyers, thereby making an intentional misrepresentation of a material fact, contrary to section 35(1)(c) [Misconduct by licensee: wrongful taking or deceptive dealing] of the RESA and/or section 3-4 [Duty to act honestly and with reasonable care and skill] of the Rules;
 - iii. he caused his Brokerage to enter a Fee Agreement with each seller based on the false representation that he was the buyers' agent, and when he had agreed with Mr. Xxxxx that he would provide a portion of the remuneration he received in connection with the transaction to him, contrary to section 35(1)(c) [Misconduct by licensee: wrongful taking or deceptive dealing] of the RESA and/or section 3-4 [Duty to act honestly and with reasonable care and skill] of the Rules; and
 - iv. he provided the Contracts and Fee Agreements to his Brokerage when he knew that they were based upon the false representation that he was the buyers' agent, thereby causing his Brokerage to pay commissions as though those documents were genuine, contrary to section 35(1)(c) [Misconduct by licensee: wrongful taking or

deceptive dealing] of the RESA and/or section 35(2) [Misconduct by licensee: conduct unbecoming a licensee] of the RESA and/or section 3-4 [Duty to act honestly and with reasonable care and skill] of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Lau proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

1. Mr. Lau's licence be suspended for six (6) months.
2. Mr. Lau be prohibited from acting as an unlicensed assistant during the license suspension period.
3. Mr. Lau pay a discipline penalty to the Council in the amount of \$5,000 within three (3) months of the date of this Order.
4. Mr. Lau pay an additional discipline penalty to the Council of \$11,268 (being the amount of the remuneration accepted (and retained) by Mr. Lau for the real estate services in respect of which the contraventions occurred, pursuant to section 43(2)(j) of the RESA) within three (3) months of the date of this Order.
5. Mr. Lau, at his own expense, register for and successfully complete the course: REIC2600 Ethics in Business Practice, offered by the Real Estate Institute of Canada, within the time period directed by the Council.
6. Mr. Lau's licence include a condition requiring enhanced supervision by a managing broker, as more particularly described in Schedule 1 to this Order, for a period of twelve (12) months following the end of the licence suspension period.
7. Mr. Lau pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Order.
8. If Mr. Lau fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Lau's licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Lau acknowledges and understands that the Council may refer or decline to refer the Proposal to the CORC. If the Proposal is referred to the CORC, it may be accepted or rejected by the CORC. If the Proposal is rejected by the CORC, the matter may be referred to a disciplinary hearing.
2. Mr. Lau acknowledges that he has been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of the Proposal to the CORC; and, that he has obtained independent legal advice or has chosen not to do so, and

that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.

3. Mr. Lau acknowledges and is aware that the Council will publish the Proposal and the Consent Order or summaries thereof in its Report from Council newsletter, on the Council's website, on Canlll, a website for legal research and in such other places and by such other means as the Council in its sole discretion deems appropriate.
4. Mr. Lau acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the RESA, to appeal any decision of the Council, including any Consent Order made by the Council in relation to this matter.
5. Mr. Lau hereby waives their right to appeal pursuant to section 54 of the RESA.
6. If the Proposal is accepted and/or relied upon by the Council, Mr. Lau will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Mr. Lau from making full answer and defence to any civil or criminal proceeding(s).
7. The Proposal and its contents are made by Mr. Lau for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of Mr. Lau in any civil proceeding with respect to the matter.

" CRAIG STEVEN LAU"

Craig Steven Lau

Dated 4 day of May, 2021

SCHEDULE 1

Enhanced Supervision Conditions

- 1) Craig Steven Lau ("Mr. Lau")'s licence will be restricted to Westmar Realty Ltd. dba Macdonald Realty Westmar or another brokerage acceptable to the Council (the "Brokerage") for a period of twelve (12) months following completion of his licence suspension (the "Enhanced Supervision Period").
- 2) During the Enhanced Supervision Period, Mr. Lau must remain under the direct supervision of a managing broker of the Brokerage who is acceptable to the Council, and who has confirmed in writing to the Council that he has read these conditions, is aware of his duties under these conditions, and agrees to accept these duties (the "Managing Broker").
- 3) These conditions are in addition to Mr. Lau's and the Managing Broker's obligations under the Real Estate Services Act ("RESA"), and the Regulations, Rules and Bylaws made under the RESA (together, the "Legislation"). The Council and Mr. Lau have agreed upon these additional conditions of supervision. The Managing Broker may impose their own additional conditions to ensure that Mr. Lau meets his obligations under the Legislation.
- 4) Mr. Lau must keep the Managing Broker informed weekly, or more frequently as required, of the real estate services that he is providing and other real estate-related activities that he is engaging in by providing written status reports (the "Status Reports") to the Managing Broker that include, for each matter, as applicable:
 - a. the names of the principals and their agents;
 - b. the locations of the properties;
 - c. a description of services provided;
 - d. the status of the matter;
 - e. scheduled dates (e.g. closing dates and dates for waiver or satisfaction of conditions precedent);
 - f. funds paid and received; and
 - g. any other information relevant to the matter.
- 5) To ensure that Mr. Lau meets his obligations under these conditions and the Legislation, the Managing Broker must meet with Mr. Lau on a weekly basis, or more frequently as required, to discuss the following:
 - a. the most recent Status Report;
 - b. any practice issues identified by the Managing Broker or Mr. Lau;

- c. the appropriate course of action for addressing any identified practice issues and/or whether appropriate steps have been taken to address previously identified practice issues; and
 - d. confirm Mr. Lau's attendance at or completion of any educational or training opportunities recommended by the Managing Broker.
- 6) Mr. Lau must consult with the Managing Broker in advance of taking any action on matters in respect of which there are questions or concerns regarding compliance with the Legislation, other applicable legislation, or the Brokerage's policies and procedures.
- 7) In addition to providing the Brokerage with all records required under the Legislation, Mr. Lau must provide the Brokerage with all records created in connection with the provision of real estate services regardless of whether such records are associated with a specific transaction, including records of listing presentations, appraisals, competitive market analyses, correspondence, and referrals.
- 8) Mr. Lau must obtain the Managing Broker's approval before presenting documents prepared by Mr. Lau to principals or their agents for execution.
- 9) Mr. Lau must provide to the Managing Broker all documents signed by Mr. Lau's principals, and Managing Broker must review all such documents.
- 10) Within 30 days before the end of the Enhanced Supervision Period, or within 14 days after the Managing Broker ceases to be the Managing Broker, whichever is earlier, the Managing Broker must provide a final report (the "Report") to the Council confirming in relation to the Enhanced Supervision Period, or during the period in which Managing Broker acted as Managing Broker under these conditions, as applicable:
 - a. that Mr. Lau has provided real estate services under their direct supervision;
 - b. that Mr. Lau's activities have been carried out competently and in compliance with these conditions, the Legislation, all other applicable legislation (to the best of the Managing Broker's knowledge having made reasonable inquiries), and in accordance with Brokerage's policies and procedures, or alternatively, providing details of non-compliance;
 - c. that they have reviewed all transactions in which Mr. Lau has provided real estate services, and that all documents relevant to the transactions are contained in the appropriate deal file and kept at the Brokerage;
 - d. they have met with Mr. Lau on a weekly basis, or more frequently as required, to discuss the matters specified under these conditions; and
 - e. the number of real estate transactions that Mr. Lau has conducted and details regarding the principal(s), the agency offered, and any dealings with unrepresented parties.
- 11) The Managing Broker must immediately report to the Council anything of an adverse nature with respect to Mr. Lau's real estate services, including

- a. failure of Mr. Lau to observe these conditions, the requirements of the Legislation or all other applicable legislation; and
 - b. complaints received by the Brokerage, including the nature of the complaint, the parties involved, and how the complaint was resolved.
- 12) The Managing Broker must ensure that Mr. Lau and his licensed assistants, if any, receive adequate, appropriate and ongoing training with respect to their obligations under the Legislation and the Brokerage's policies and procedures.
- 13) If the Managing Broker is absent from the Brokerage:
 - a. for more than one week but less than one month, the Managing Broker may delegate their duties to another managing broker or an associate broker who confirms their agreement to accept the supervision duties under these conditions to the Council in writing; or
 - b. for more than one month, Mr. Lau must notify Council immediately and approval from the Council for a successor managing broker to supervise Mr. Lau must be sought as set out in paragraph 15 of these conditions.
- 14) If for any reason the Managing Broker is unable to perform any of the duties imposed herein, they must immediately advise Council.
- 15) If there is a change in the managing broker of the Brokerage, the former managing broker and Mr. Lau must immediately notify Council in writing. If Council determines that the successor managing broker is acceptable as a managing broker for the purposes of these conditions, they will be provided with a copy of these conditions and will be asked to confirm in writing to the Council that they have read these conditions, are aware of their duties under these conditions, and agree to accept these duties. If that managing broker fails to provide such confirmation within 14 days of becoming a managing broker at the Brokerage, they will be deemed to be unable or unwilling to perform the duties set out in these conditions.
- 16) An alleged breach of these conditions may result in action under section 43 of the RESA, further disciplinary action and/or any other permitted action under RESA or other applicable legislation.