

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

AND

IN THE MATTER OF

**STEVEN TSE
(148567)**

AND

STEVEN TSE PERSONAL REAL ESTATE CORPORATION (148567PC)

CONSENT ORDER

RESPONDENTS: Steven Tse, trading representative, Macdonald Realty Ltd.
Steven Tse Personal Real Estate Corporation

DATE OF REVIEW MEETING: April 20, 2021

DATE OF CONSENT ORDER: April 20, 2021

CONSENT ORDER REVIEW COMMITTEE: Y. Amlani (Chair)
B. Chisholm
R. Hanson

COUNSEL: Michael Shirreff and Jessie Meikle-Kahs, Legal Counsel for the Real Estate Council of BC
John Shields, Legal Counsel for the Respondents

PROCEEDINGS:

On April 20, 2021, the Consent Order Review Committee ("CORC") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Steven Tse, on his own behalf and on behalf of Steven Tse Personal Real Estate Corporation ("Tse PREC").

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Steven Tse, on his own behalf and on behalf of Tse PREC.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and in particular having found that Steven Tse and Tse PREC committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (“RESA”) and sections 3-4 and 4-7 of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Mr. Tse and Tse PREC be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$12,000 within three (3) months from the date of this Order.
2. Mr. Tse and Tse PREC be jointly and severally liable to pay an additional penalty to the Council in the amount of \$6,585 within three (3) months from the date of this Order pursuant to s. 43(2)(j) of the RESA.
3. Mr. Tse and Tse PREC be jointly and severally liable to pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Order.
4. If Mr. Tse and Tse PREC fail to comply with any of the terms of this Order, a discipline committee may suspend or cancel their licences without further notice to him.

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

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“YASIN AMLANI”

Yasin Amlani (Chair)
Consent Order Review Committee

Attch.

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CONSENT ORDER PROPOSAL BY STEVEN TSE AND STEVEN TSE PERSONAL REAL ESTATE CORPORATION

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Mr. Tse and Steven Tse Personal Real Estate Corporation ("Tse PREC") to the Consent Order Review Committee ("CORC") of the Real Estate Council of BC (the "Council") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

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

1. Mr. Tse (148567) has been licensed as a representative for trading services continuously since 2006.
2. Mr. Tse was at all times material to this matter licensed with Macdonald Realty Ltd. (X001949).
3. On or about March 27, 2017, Mr. Tse, listed for sale a residential property located at PS-XXXX West 40th Avenue, Vancouver, B.C. (the "Property"). The Property was a penthouse condominium unit in a five story walk-up building in the Kerrisdale neighbourhood of Vancouver. The Property had been constructed in the late 1970s.
4. Mr. Tse represented the seller of the Property.
5. The MLS feature sheet prepared by Mr. Tse described the Property as a "one bedroom", "two level loft" with a finished floor area of 792 square feet over two floors. Specifically, the MLS feature sheet stated as follows:

This chic one bedroom loft oozes with character & style. Light filled suite with vaulted 12' ceilings, skylights, and added spotlights...Completely redesigned featuring new kitchen & bath, lush carpets throughout and a beautiful spiral staircase with reclaimed barn wood!

6. The Reno year listed in the MLS feature sheet noted that renovations to the Property had occurred in 2016.
7. Mr. Tse also had the seller complete a property disclosure statement, which included the following statements by the seller:

3. BUILDING Respecting the Unit and Common Property

A. Has a final building inspection been approved or filed occupancy permit been obtained? -- Seller indicated "yes".

...

E. Are you aware of any additions or alterations made without a required permit; e.g., building, electrical, gas, etc.? - Seller answered "no".

8. Mr. Tse was aware when he prepared the MLS feature sheet and the advertising for the Property that it contained unauthorized square footage in the loft area and that the spiral staircase did not comply with the Building Code. Mr. Tse knew that the authorized square footage of the Property was 568 square feet, as reflected in the strata plan for the Property.
9. On March 28, 2017 Ms. SXXXX HXXXXX, an architect who was working with a group of eight owners in the strata corporation who were seeking approval for unauthorized spaces in their strata units emailed Mr. Tse to raise concerns about his listing for the Property. Ms. HXXXXX had been retained by a previous owner of the Property, but had not been retained by the seller, Mr. Tse's client. Ms. HXXXXX wrote to Mr. Tse as follows:

I am sorry that I have to advise you that there are some substantive errors in your listing: ML: RXXXXXXXX.

The building was developed by [a developer] who was notorious for making unpermitted changes directly after occupancy was granted, and there are several affected suites in the building, which were brought to the attention of the City a few years ago. I have been working with eight of the owners who have launched the approvals process, which has been ongoing for some time now.

The previous owner of this suite, PHS, was one of these clients until she rather suddenly sold her suite without completing the approvals process. I strongly suspect that she cut-and-run because I advised her that, in the case of her suite, her loft was extremely unlikely to ever be allowed by the City.

At best, the "loft" really an attic, might be allowed, with a fire-rated access hatch, as a storage space, but I do not feel confident of that outcome. It is more likely that the City will require that the space be entirely closed off to access. A spiral stair would never be allowed as the only access to a sleeping space.

It has definitely not been "redesigned with permits", as you mentioned in your listing. There is a development permit, but no building permit. As I said, my client sold without completing the process and as I also said, a building permit to keep the loft is unlikely to be issued.

Please advise your client, and prospective purchasers, of the illegality of that "loft" space. The suite is in fact only a studio, and not a 1BR.

(the "March 28, 2017 Email")

10. Ms. HXXXXX did not work for the City of Vancouver.
11. On March 28, 2017, Mr. Tse responded to Ms. HXXXXX and stated in part, "every effort will be made to disclose the unauthorized nature of the loft to any and all perspective buyers as this area is not contained within the registered strata plan".
12. On March 31, 2017, CXXXXXX PXXXXXX, the strata management brokerage sent an email to Mr. Tse attaching a February 13, 2013 letter from the City of Vancouver. That letter from the City of Vancouver indicated that the loft space in the Property had been constructed without a permit or approval (approximately half of the main floor square footage) and the loft area was accessed by an unapproved spiral staircase. CXXXXXX PXXXXXX advised Mr. Tse to ensure that any prospective purchasers knew that the City of Vancouver had required that the spiral staircase be removed because it was not to code.
13. On March 31, 2017, Mr. Tse responded by email to CXXXXXX PXXXXXX and stated:

Yes all prospective purchasers will be provided with a copy of the registered strata plan which references the legal size of the suite. I've had positive feedback for the spiral staircase for the showings thus far.
14. Mr. Tse did not revise the MLS listing for the Property after receiving either the March 28, 2017 Email or the February 13, 2013 letter from the City of Vancouver from CXXXXXX PXXXXXX that was emailed to him on March 31, 2017.
15. On April 15, 2017, Mr. Tse held an open house for the Property which was attended by potential purchasers, including the client of TB, a licensee at another brokerage. During the open house, the Property was staged as a one bedroom unit, with the bedroom being in the loft space above the main floor. Mr. Tse says that he verbally advised TB's client during the open house that the Property "was not a true one bedroom as that [the loft] use was not permitted, and that it was really a Studio."
16. On April 15, 2017, TB texted Mr. Tse and asked to be provided with information about the Property for her client who was interested in potentially making an offer to purchase the Property. Mr. Tse provided TB with a dropbox link to a collection of documents concerning the Property that he had put together. Included in the documents provided by Mr. Tse were:
 - A letter from the former owner dated February 20, 2013;

- A "Void Space Review" document that had been prepared in 2011 for the strata council, which indicated that the loft space in the Property was not authorized;
 - A collection of Strata minutes; and
 - The registered strata plan for the Property, which showed its authorized square footage as being only 568 square feet.
17. Mr. Tse told TB that she should pay particular attention to the Strata President's letter of February 2, 2015 and the Void Space review of February 22, 2011. The Strata President's letter contained the following relevant information regarding the Void Space Review:
- The City of Vancouver was not surprised that the as built structure was different from what they had approved.
 - There are other buildings that have unpermitted/ non-compliant spaces.
 - The Engineering Department was prepared to approve the void spaces with the caveat that the spiral staircases in some units would have to be modified in order to meet Code.
 - The Strata's legal counsel had been asked to opine on a process for resolving discrepancies in unit entitlement.
18. Mr. Tse did not provide TB with the March 28, 2017 Email.
19. On April 15, 2017, TB prepared a subject free offer on behalf of the buyer for the purchase of the property for \$585,000. The Contract of Purchase and Sale specifically stated:
- "Buyer is aware that the property contains unauthorized square footage, and is subject to ongoing discussion by the strata council seeking a resolution to amend the square footage and therefore insurance and strata fees for the property may increase at a future date."*
- "Buyer is aware that some aspects of the unauthorized square footage may not be to current city building codes, and that the buyer may, in the future, be required to modify these aspects"*
- "Buyer acknowledges having received and being satisfied with the Void Space Review dated February 23, 2012 and the President's Letter in the AGM dated February 2, 2015."*
- The Buyer & the Seller have been advised to seek independent legal and/or professional advice to this Contract of Purchase and Sale...."*
20. In addition to the foregoing the Contract of Purchase and Sale contained an acknowledgement that the buyer had been advised to have a professional home inspection but had declined.
21. The buyer did not make inquiries with the City of Vancouver regarding the unauthorized square footage in the Property before making the subject free offer.

14. Mr. Tse's client accepted the offer for \$585,000 on the same day it was made. The transaction completed and title changed to the buyer on June 19, 2017.
22. Shortly after the sale closed and the buyer took possession of the Property, the buyer was required by the City of Vancouver to remove the spiral staircase and completely close off access to the loft area of the Property. Since those changes were made, the Property has been a 568 square foot studio suite instead of a two level 792 square foot one bedroom suite.
23. On July 13, 2017, the buyer filed a complaint regarding Mr. Tse's failure to disclose the March 28, 2017 Email prior to her writing her offer for the Purchase of the Property. The complaint stated in part:

... Steven Tse was advised of the very high likelihood of the bedroom in [the Property] being declared inadmissible for approval by the City of Vancouver, and that most likely the space would have to be closed off entirely...

I have bought a unit, at \$585,500 described and marketed as a one bedroom, priced at a value for a one bedroom, when in fact, I will have to close off the bedroom entirely at my expense. This was critical information that was withheld from my realtor and therefore myself, that would have absolutely influenced my decision to buy this unit...
24. A Notice of Discipline Hearing was issued on September 13, 2019 and served on Mr. Tse.
25. Mr. Tse does not have a prior discipline history with the Council.

PROPOSED FINDINGS OF MISCONDUCT

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

Mr. Tse committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, in or around March and April 2017, while acting as the agent for the seller of the Property, he

1. published a MLS® listing for the Property which he knew, or reasonably ought to have known, contained a number of false or misleading statements, including that the Property:
 - a. was a "top floor, two level loft" when in fact it was a one level studio unit;
 - b. was a "one bedroom unit" as opposed to a studio unit; and
 - c. contained 792 square feet of finished floor space, when in fact the authorized square footage of the Property was only 568 square feet,

contrary to sections 3-4 (*act honestly with reasonable care and skill*) and 4-7 (*false or misleading advertising*) of the Rules;

2. did not disclose the March 28, 2017 Email to the buyer of the Property or her agent, which email indicated that the unauthorized square footage in the Property was not likely to be approved by the City of Vancouver, contrary to section 3-4 of the Rules (*act honestly and with reasonable care and skill*); and
3. did not amend or correct the MLS® listing after receiving the March 28, 2017 Email, contrary to section 3-4 of the Rules (*act honestly and with reasonable care and skill*).

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Tse 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. Tse and Tse PREC be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$12,000 within three (3) months from the date of this Order.
2. Mr. Tse and Tse PREC be jointly and severally liable to pay an additional penalty to the Council in the amount of \$6,585 within three (3) months from the date of this Order pursuant to s. 43(2)(j) of the RESA.
3. Mr. Tse and Tse PREC be jointly and severally liable to pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Order.
4. If Mr. Tse and Tse PREC fail to comply with any of the terms of this Order, a discipline committee may suspend or cancel their licences without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Tse and Tse PREC acknowledge and understand 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. Tse and Tse PREC acknowledge that they have 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 they have obtained independent legal advice or have 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. Tse and Tse PREC acknowledge and are 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 CanLII, 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. Tse and Tse PREC acknowledge and are 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. Tse and Tse PREC hereby waive 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. Tse will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Mr. Tse from making full answer and defence to any civil or criminal proceeding(s).
7. The Proposal and its contents are made by Mr. Tse and Tse PREC 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. Tse or Tse PREC in any civil proceeding with respect to the matter.

“STEVEN TSE”

Steven Tse

Dated 3 day of March, 2021