

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
ZHONG (SUSAN) ZHANG
(168438)

CONSENT ORDER

RESPONDENT: Zhong (Susan) Zhang, Representative, Luxmore Group Realty Ltd. dba Luxmore Realty, while licensed with Black Diamond Realty Inc. dba Keller Williams Black Diamond Realty

DATE OF CONSENT ORDER: January 6, 2021

CONSENT ORDER REVIEW COMMITTEE: S. Heath
S. Sidhu
C. Ludgate

COUNSEL: Kristine Mactaggart Wright, Legal Counsel for the Real Estate Council of BC
Eli Zbar, Legal Counsel for the Respondent

PROCEEDINGS:

On January 6, 2021, the Consent Order Review Committee ("CORC") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Zhong (Susan) Zhang ("Ms. Zhang").

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

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Ms. Zhang committed professional misconduct within the meaning of section 35(1)(a) and 7(3)(b) of the *Real Estate Services Act* ("RESA"), pursuant to section 43 of the RESA the CORC orders that:

1. Ms. Zhang pay a discipline penalty to the Council in the amount of \$4,000 within three (3) months from the date of this Order;
2. Ms. Zhang, at her own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Real Estate Division,

Sauder School of Business at the University of British Columbia in the time period as directed by the Council; and

3. Ms. Zhang pay enforcement expenses to the Council in the amount of \$1,500 within two (2) months from the date of this Order.

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

Dated this 6th day of January, 2021 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Sandra Heath”

Sandra Heath
Consent Order Review Committee

Attch.

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

AND

IN THE MATTER OF

**ZHONG (SUSAN) ZHANG
(168438)**

CONSENT ORDER PROPOSAL BY ZHONG (SUSAN) ZHANG

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Zhong (Susan) Zhang ("Ms. Zhang") 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, Ms. Zhang and the Council have agreed upon the following facts:

1. Ms. Zhang has been licensed as a representative for trading services since 2014.
2. Ms. Zhang was at all relevant times licensed as a representative with Black Diamond Realty Inc. dba Keller Williams Black Diamond Realty (the "Brokerage").
3. On or about April 12, 2016, the seller (the "Assignor") of a (pre-sale/ to be constructed) strata residential property located at XXXX – XXX XXXX XXX Avenue in Surrey, British Columbia (the "Property"), entered into a Multiple Listing Contract for the Property with the Brokerage. The designated agent was Ms. Zhang. The Assignor resided in China.
4. On May 15, 2016, the Assignor entered into an assignment of contract of purchase and sale for the Property (the "Contract").
5. Pursuant to the Contract, the buyer (the "Assignee") agreed to take over the Assignor's obligations under their original 2013 contract of purchase and sale for the Property, and to pay the Assignor the amount of \$67,495.00 (the "Assignment Amount") through the Assignee's agent's related brokerage (the "Stakeholder"). Included in the Contract was the authorization for the Stakeholder to release the Assignment Amount to the Assignor, once paid in full.
6. The Contract was subject to financing, which subject condition was removed by the Assignee.
7. On or about July 5, 2016, in accordance with the terms of the Contract, the Stakeholder released the balance of the Assignment Amount to the Assignor (less the commission owing to the Assignee's agent at the Stakeholder, but including the commission owed to Ms. Zhang at the Brokerage).

8. On July 8, 2016, Ms. Zhang advised her managing broker that the Assignor was not able to wire the commission funds owed to her, to the Brokerage's trust accounts. She asked if the Assignor could transfer the funds to her directly, after which she would deposit the funds into the Brokerage's trust account. Her managing broker told Ms. Zhang that the Assignor was only permitted to wire funds to the Brokerage's trust accounts.
9. On July 11, 2016, the Assignor sent an authorization letter to Ms. Zhang, wherein he authorized Ms. Zhang to act on his behalf when receiving or releasing the commission funds via her personal bank account. The Assignor stated in this letter that due to China's foreign currency regulations and restrictions, the branch of his bank located in Nanjing had rejected his request to wire funds to the Brokerage's trust accounts. He further stated that his branch did not provide the service of issuing a certified cheque, and that the only way known to him to get the commission funds to the Brokerage was through a deposit into an individual's personal bank account.
10. Ms. Zhang updated her Managing Broker about the Assignor's efforts. On July 11, 2016, the managing broker repeated to her by email that she could not accept the Assignor's funds into her personal bank account.
11. Nonetheless, on July 11, 2016, at the request of the Assignor, Ms. Zhang provided him with her personal bank account information.
12. On July 12, 2016, the Assignor wired \$8,778.51 (an amount corresponding to the \$8,857.05 earned in commission by Ms. Zhang in relation to the Contract, less bank fees) into Ms. Zhang's personal bank account.
13. On July 13, 2016, Ms. Zhang deposited \$8,778.51 into the Brokerage's trust account.
14. On July 14, 2016, her managing broker reported Ms. Zhang's conduct to the Council.
15. The transaction set out in the Contract completed.
16. Ms. Zhang was forthcoming in the Council's investigation and acknowledged to the Council staff that she ought not to have allowed the Assignor to deposit funds into her personal bank. She stated that it was not her intention to hide anything or any money in this matter, and that she had believed she was acting in her client the Assignor's best interest to resolve the issue prior to the commission owing becoming a bad debt.
17. An (amended) Notice of Discipline Hearing was issued on April 6, 2020 and served on Ms. Zhang.
18. Ms. Zhang has no previous discipline history.

PROPOSED FINDINGS OF MISCONDUCT

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

Ms. Zhang committed professional misconduct within the meaning of section 35(1)(a) of the RESA, in her capacity as the listing agent for the 2016 sale/ assignment of the Property, when she:

1. received commission funds in the amount \$8,778.51 from the seller/ Assignor by way of a direct deposit into her personal bank account, contrary to section 7(3)(b) of the RESA [Relationships between brokerages and other licensees].

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Ms. Zhang 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. Ms. Zhang pay a discipline penalty to the Council in the amount of \$4,000 within three (3) months from the date of this Order.
2. Ms. Zhang, at her own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council.
3. Ms. Zhang pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Order.
4. If Ms. Zhang fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Ms. Zhang's licence without further notice to her.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Zhang 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. Ms. Zhang acknowledges that she 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 she has obtained independent legal advice or has chosen not to do so, and that she is making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Ms. Zhang 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 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. Ms. Zhang 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. Ms. Zhang hereby waives her right to appeal pursuant to section 54 of the RESA.
6. If the Proposal is accepted and/or relied upon by the Council, Ms. Zhang will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Ms. Zhang from making full answer and defence to any civil or criminal proceeding(s).
7. The Proposal and its contents are made by Ms. Zhang 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 Ms. Zhang in any civil proceeding with respect to the matter.

“ZHONG (SUSAN) ZHANG”

ZHONG (SUSAN) ZHANG

Dated 08 day of Dec, **2020**