

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  
OMAX REALTY LTD. DBA COLDWELL BANKER UNIVERSE REALTY  
(X029063)

CONSENT ORDER

RESPONDENT: OMAX Realty Ltd. dba Coldwell Banker Universe Realty

DATE OF CONSENT ORDER: 18 September 2020

CONSENT ORDER REVIEW COMMITTEE: Y. Amlani  
R. Hanson  
N. Nicholson

COUNSEL: Kyle A. Ferguson, Legal Counsel for the Real Estate Council of British Columbia

PROCEEDINGS:

On 18 September 2020, the Consent Order Review Committee (“CORC”) resolved to accept the Consent Order Proposal (the “Proposal”) submitted by OMAX Realty Ltd. dba Coldwell Banker Universe Realty (X029063) (“OMAX Realty”).

**WHEREAS** the Proposal, a copy of which is attached hereto, has been executed by Jagmohan Singh Bhandari, authorized signatory for OMAX Realty.

**NOW THEREFORE**, having made the findings proposed in the attached Proposal, and found that OMAX Realty committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (“RESA”) and sections 8-1, 8-2(c), and 8-3(b) of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. OMAX Realty shall pay a discipline penalty to the Council in the amount of \$10,000, which shall be paid in accordance with the following schedule:
  - a. OMAX Realty shall pay \$5,000 to the Council within two (2) months from the date of this Order;

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- b. OMAX Realty shall pay \$2,500 to the Council within four (4) months from the date of this Order; and
    - c. OMAX Realty shall pay \$2,500 to the Council within six (6) months from the date of this Order;
  2. OMAX Realty shall pay enforcement expenses to the Council in the amount of \$1,500 within two (2) months from the date of this Order.
  3. OMAX Realty, shall undergo, at its own expense, an audit by the Council, within six (6) months from the date of this Order, to confirm the OMAX Realty's compliance with the RESA and the Rules made under RESA.

If OMAX Realty fails to comply with any term of this Order, the Council may suspend or cancel OMAX Realty's licence without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 18 day of September 2020 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"Yasin Amlani"

Yasin Amlani  
Consent Order Review Committee

Attch.

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

**IN THE MATTER OF**

**OMAX REALTY LTD. DBA COLDWELL BANKER UNIVERSE REALTY  
(X029063)**

**CONSENT ORDER PROPOSAL BY OMAX REALTY LTD. DBA COLDWELL BANKER UNIVERSE REALTY**

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**BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by OMAX Realty Ltd. dba Coldwell Banker Universe Realty (the "Brokerage") 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, the Brokerage and the Council have agreed upon the following facts:

1. The Brokerage (X029063) has been licensed since 2008 and is licensed to provide trading and rental property management services. Since around December 2017, the Brokerage's primary activities consisted of trading services.
2. From July 31, 2017 to January 10, 2019, Dxxxx Fxxxxx (xxx798) was licensed as the sole managing broker of the Brokerage.
3. On January 10, 2019, Jagmohan Singh Bhandari (119085) became licensed as the sole managing broker of the Brokerage.
4. While the change in managing brokers was not processed until January 10, 2019, Ms. Fxxxxxx says that in December 2018 she provided more than two weeks' notice to the Brokerage that she would no longer be acting as the managing broker. Ms. Fxxxxxx says that on December 28, 2018, she left the office keys at her desk and advised Mr. Bhandari that the prefilled paperwork required to change the managing broker was on her desk and should be submitted to the Council immediately.
5. In addition to the change in managing brokers in January 2019, the Brokerage's bookkeeper also changed in January 2019.
6. Between February 6 and February 8, 2019, the Council conducted an inspection of the Brokerage's books and records (the "2019 Audit"). An inspection of the Brokerage's books and records in 2017 identified a number of books and records issues, and as a result the 2019 Audit was scheduled.

7. The 2019 Audit revealed that the Brokerage had failed to prepare and maintain proper books and records for the current year (2019), and identified, among other things, the following deficiencies:
  - a. a trust liability listing was not prepared for the December 2018 trust reconciliation;
  - b. the May 2018 to December 2018 reconciliations of banking statements for the brokerage trust account recorded four “miscellaneous outstanding transactions”, which should not have been recorded:

Outstanding balance to OMAX	August 31, 2013	(\$2,111.19)
1201xxxx re Sxxx Error	July 31, 2016	(\$10,203.38)
Adjustment	July 31, 2016	(\$4,781.04)
Adjustment “previ” issues cleared	August 31, 2016	\$15,094.92

- c. the May 2018 to December 2018 reconciliations of banking statements for the commission trust account recorded the following five “miscellaneous outstanding transactions”, which should not have been recorded:

Rev/d by error	September 22, 2015	(\$10,203.38)
DIFF OF US DOLLARS	October 13, 2015	(\$348.48)
Mar 24 Dep not in LW	March 25, 2016	(\$2,909.28)
Chq 8xxx incorr amt-sb 664.59	June 17, 2016	\$9,538.79
Chq 008xxx cleared in July	July 7, 2016	(\$11,301.41)

- d. the general bank account was not reconciled between May 2018 and December 2018.

8. The Council’s auditor determined that there were no trust shortages.
9. In June 2019, the Council’s auditor provided the Brokerage with a summary of the audit in the form of an office and records inspection report (the “ORIR”) and requested responses to the audit findings.
10. On August 15, 2019, the Brokerage provide its responses to the ORIR, which addressed many of the issues identified in the ORIR, although the reconciliations provided still contained the incorrect “miscellaneous outstanding transactions” identified in the ORIR.
11. On September 12, 2019, the Brokerage provided the Council with reconciliations as of July 31, 2019 that still contained the incorrect “miscellaneous outstanding transactions” identified in the ORIR.
12. On Oct 2, 2019, the Council advised the Brokerage that it must take immediate steps to obtain software support from Lone Wolfe Technologies and provide a copy of the brokerage trust and commission trust account reconciliations no later than December 5, 2019.
13. On December 4, 2019, the Brokerage provided the Council with reconciliations that had addressed the incorrect “miscellaneous outstanding transactions” in the reconciliations that were identified in the ORIR.

14. On December 6, 2019, the Council's audit department closed its file with respect to this matter.
15. No complaint was received by the Council in relation to this matter.
16. No harm resulted to any client of the brokerage or any member of the public in relation to this matter.
17. A Notice of Discipline Hearing was issued on March 31, 2020 and served on the Brokerage.
18. The Brokerage has previous discipline history with the Council.

#### **PRIOR DISCIPLINE**

##### **File # 14-039:**

19. On January 17, 2017, the Brokerage entered into a Consent Order with the Council.
20. The Brokerage admitted that it committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, contrary to section 25 of the RESA and sections 8-1(1) and (2) and 8-2 of the Rules, it failed to:
  - a) prepare and maintain financial records in accordance with the RESA and the Rules, in that three unidentified amounts were recorded in the brokerage commission trust ledger;
  - b) prepare a detailed breakdown of the trust liability listing for the commission trust account for the months February 2013 through to September, 2013; and
  - c) reconcile the trust and commission trust accounts for the months of May 2014 through to August 2014.
21. As a result of its contraventions the Brokerage agreed to:
  - a) be reprimanded;
  - b) pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order;
  - c) fully comply with the trust accounting and financial records requirements in the RESA and the Rules made under the RESA and provide training and supervision to its accounting staff to ensure compliance; and
  - d) undergo an audit, at its own expense, by the Council, within six (6) months from the date of this Order to confirm compliance with the accounting and training and supervision requirements of this Order.

22. On April 4, 2019, the Brokerage entered into a Consent Order with the Council.
23. The Brokerage admitted that it committed professional misconduct within the meaning of section 35(1)(a) of the RESA, and acted contrary to sections 25 and 30(1)(g) of the RESA, when:
- a) between February and March 2016, in relation to property located at xxx Okanagan Road, in Kelowna, BC, it:
    - i. without a proper recording of the transaction, permitted the transfer of client trust funds from the Brokerage's trust account to its general account without the specific client authorization; and
    - ii. allowed the client's trust account to be charged back in the amount of \$514.40 for work performed on behalf of and paid for by an unlicensed third party unrelated to the Brokerage.
  - b) on or about April 7, 2016, in relation to two rental properties that were managed by the Brokerage, it permitted the transfer of \$700.00 and \$850.00 respectively from the Brokerage's security deposit trust account into the Brokerage's trust account without the knowledge or authorization of the client.
24. As a result of its contraventions the Brokerage agreed to:
- a) be reprimanded;
  - b) pay a discipline penalty to the Council in the amount of \$3,500 within ninety (90) days from the date of this Order; and
  - c) pay enforcement expenses to the Council in the amount \$1,500 within sixty (60) days from the date of this Order.

**PROPOSED FINDINGS OF MISCONDUCT**

For the sole purpose of the Proposal and based on the Facts outlined herein, the Brokerage proposes the following findings of misconduct be made by the CORC:

1. The Brokerage committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, as identified during the Council's inspection of the brokerage's books and records in February 2019, it failed to:
  - a. prepare a trust liability listing for the brokerage trust account for December 2018 in a timely fashion and within 5 weeks of the end of the month;

- b. accurately prepare the May 2018 to December 2018 reconciliations of banking statements for the brokerage trust account, such that the reconciliations of banking statements for May 2018 to December 2018 recorded four “miscellaneous outstanding transactions” which should not have been recorded;
- c. accurately prepare the May 2018 to December 2018 reconciliations of banking statements for the commission trust account, such that the reconciliations of banking statements for May 2018 to December 2018 recorded five “miscellaneous outstanding transactions”, which should not have been recorded; and
- d. reconcile the general bank account between May 2018 and December 2018,

contrary to sections 8-1 [prepare and retain financial records], 8-2(c) [prepare and retain monthly reconciliations of banking statements] and 8-3(b) [prepare a monthly trust liability and asset reconciliation] of the Rules.

### **PROPOSED ORDERS**

Based on the Facts herein and the Proposed Findings of Misconduct, the Brokerage 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. OMAX Realty Ltd. dba Coldwell Banker Universe Realty shall:

4. Pay a discipline penalty to the Council in the amount of \$10,000 which shall be paid in accordance with the following schedule:
  - a. OMAX Realty Ltd. dba Coldwell Banker Universe Realty shall pay \$5,000 to the Council within two (2) months from the date of this Order;
  - b. OMAX Realty Ltd. dba Coldwell Banker Universe Realty shall pay \$2,500 to the Council within four (4) months from the date of this Order; and
  - c. OMAX Realty Ltd. dba Coldwell Banker Universe Realty shall pay \$2,500 to the Council within six (6) months from the date of this Order;
5. Pay enforcement expenses to the Council in the amount of \$1,500 within two (2) months from the date of this Order.
6. Undergo, at its own expense, an audit by the Council, within six (6) months from the date of this Order, to confirm the Brokerage’s compliance with the RESA and the Rules.
7. If the Brokerage fails to comply with any of the terms of the Order set out above, a discipline committee may suspend or cancel their licence without further notice to them.

## **ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT**

1. The Brokerage 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. The Brokerage acknowledges that it 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 it has 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. The Brokerage 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. The Brokerage 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. The Brokerage 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, the Brokerage will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict the Brokerage from making full answer and defence to any civil or criminal proceeding(s).
7. The Proposal and its contents are made by the Brokerage 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 the Brokerage in any civil proceeding with respect to the matter.

"Jagmohan Singh Bhandari"

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**Jagmohan Singh Bhandari, Authorized Signatory  
for OMAX Realty Ltd. dba Coldwell Banker  
Universe Realty  
Dated 26 day of Aug, 2020**