

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

LI XU
(156017)

CONSENT ORDER

RESPONDENT: Li Xu, Trading Representative, Homeland Realty dba Local Venture Corp

DATE OF REVIEW MEETING: January 21, 2020

DATE OF CONSENT ORDER: January 21, 2020

CONSENT ORDER REVIEW COMMITTEE: Y. Amlani
R. Hanson
S. Sidhu

ALSO PRESENT: E. Duvall, Chair
E. Seeley, Chief Executive Officer
D. Avren, Vice President, Legal Services and Compliance
M. Kalan, Legal Counsel for the Real Estate Council of BC

PROCEEDINGS:

On January 21, 2020 the Consent Order Review Committee ("CORC") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Li Xu ("Ms. Xu").

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

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Ms. Xu committed professional misconduct within the meaning of section 35(1)(a) of the *Real*

Estate Services Act (“RESA”) and sections 3-3(a), 3-3(d), 3-3 (h), and 3-4 of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Ms. Xu’s licence be suspended for 14 days.
2. Ms. Xu be prohibited from acting as an unlicensed assistant during the licence suspension period.
3. Ms. Xu pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days of the date of this Order
4. Ms. Xu, 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 within the time period directed by the Council.
5. Ms. Xu pay enforcement expenses to Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Ms. Xu 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 21 day of January 2020 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Sukhmander Sidhu”

Sukhmander Sidhu
Consent Order Review Committee

Attch.

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

AND

IN THE MATTER OF

**LI XU
156017**

CONSENT ORDER PROPOSAL BY LI XU

BACKGROUND AND FACTS

This Consent Order Proposal (the Proposal) is made by Li Xu (“Ms. Xu”) 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, and the Council have agreed upon the following facts:

1. Ms. Xu (156017) has been licensed as a representative since 2008.
2. Ms. Xu was at all relevant times licensed as a representative with Local Venture Corp.
3. This matter arises from Ms. Xu’s role as the complainants’ agent in the purchase of XXXXX Bromfield Place, Richmond, B.C. (the “Property”). The sellers of the Property were represented by a separate agent, Mr. C (“Mr. C”).
4. On July 24, 2015 the sellers received a letter from the City of Richmond (the “City”), indicating that the City’s inspection of the Property found contraventions of the City’s zoning and building bylaws. The City provided notice to the sellers to arrange removal of an illegal suite and to restore the building to its original plans by October 26, 2015.
5. On December 7, 2015, the sellers entered into a Multiple Listing Contract for the sale of the Property for a list price of \$1,150,000, with Mr. C as their designated agent.
6. On December 13, 2015, the complainants viewed the Property.
7. On December 14, 2015, the complainants entered into an agreement of purchase and sale to purchase the Property for \$1,310,000, with payment of a \$45,000 deposit within 24 hours of acceptance and a completion date of February 24, 2016 (the “Offer”).

8. The Offer was a subject free offer.
9. At the time the offer was made, the real estate market was very competitive. As such, the offer was subject- free and made shortly after the complainants viewed the Property. Ms. Xu acknowledges that due to the rushed nature of the offer, she did not perform her usual standard of due diligence regarding the Property.
10. Ms. Xu advised her clients on the risks of entering into a subject-free offer but failed to advise them to seek independent professional advice on the subject free offer.
11. The complainants were not provided with a completed property disclosure statement at the time of making the Offer, and Ms. Xu failed to advise the complainants of the risks associated with making a subject-free offer without first reviewing a completed property disclosure statement.
12. The complainants' offer was accepted by the sellers on December 15, 2015 (the "Contract").
13. On January 14, 2016, Mr. C provided a completed Property Disclosure Statement (the "PDS") to Ms. Xu. The PDS disclosed that the sellers were aware of additions or alterations made to the Property without the required permits and final inspection.
14. On January 15, 2016, the complainants received the PDS from Ms. Xu.
15. Upon receipt of the PDS, Ms. Xu did not advise the complainants to seek independent professional advice on the sellers' disclosure that the Property contained unauthorized alterations and additions that were made without the appropriate permits, nor did Ms. Xu seek any further information regarding the outstanding permits from the City of Richmond.
16. Ms. Xu advised the Council that upon receipt of the PDS she did make attempts to contact Mr. C regarding the indication that there were additions or alterations made to the Property without the required permits and final inspection to no avail. Ms. Xu also advised that she reviewed the PDS with the complainants.
17. On February 16, 2016, the sellers sent an email to Mr. C instructing him to inform the complainants that as per the PDS, the sellers were working on obtaining the permit to have the alterations to the rear deck of the Property authorized by the City. The sellers advised that the application for the permit would not be completed by the completion date, so the sellers would leave the necessary paperwork for the permit at the Property for the complainants (the "February 16 Email").
18. Mr. C forwarded the February 16 Email to Mr. Xu on the same day. Ms. Xu advised the Council that it was upon receipt of the February 16 Email that she first became aware

that the Property was not in compliance with zoning and building regulations of the City of Richmond.

19. Ms. Xu forwarded a copy of the February 16, 2016 email to the complainants. Ms. Xu advised the Council that upon receipt of the February 16, 2016 email, Ms. Xu spoke with the complainants and the complainants decided to complete the Contract and finish the outstanding permit process themselves.
20. After receipt of the February 16, 2016 email, Mr. Xu failed to advise the complainants to seek independent professional advise regarding the unauthorized additions, nor did Ms. Xu make any further inquiries from the City of Richmond regarding the unauthorized additions.
21. On February 24, 2016, the sale of the Property completed.
22. On March 6, 2016, the complainants informed Ms. Xu that they had found documents at the Property between the sellers and the City and had just discovered that the in-law suite was an unauthorized addition and had been illegally rented out by the sellers.
23. On March 8, 2016, Ms. Xu sent an email to Mr. C advising that the complainants had discovered documents between the sellers and the City at the Property, including a site visit notice dated February 23, 2016 (the "Site Visit Notice"). Ms. Xu asked Mr. C the following:
 - a. if the complainants needed to do anything further regarding the permit for the rear deck;
 - b. if there was a permit issued for the in-law suite; and
 - c. whether the Site Visit Notice was for the renovations and if so, whether the complainants needed to book re-inspection.
24. Ms. Xu did not receive a reply to the March 8, 2016 email from Mr. C.
25. On March 23, 2016, the complainants received a letter from the City stating that they had been working with the previous owners to gain compliance with the City's zoning and building bylaws in respect of alterations made to the Property (the "City Notice"). The City advised that the Property had: more than the number of permitted dwelling units; additions and alternations; and encroachments into the rear yard setback. The complainants were advised they had until June 25, 2016 to arrange compliance.
26. On April 14, 2016, Mr. Xu sent an email to Mr. C asking him to have the sellers contact the City to allow the complainants to continue with the original application to the City for the rear deck permit.
27. On April 17, 2019, the sellers advised Mr. C that the City advised them that the application had been closed and was not transferable from owner to owner.

28. On April 17, 2016, Mr. C responded to Ms. Xu advising that the seller would advise the City to release the required paperwork to the complainants and that copies of the paperwork for the deck permit had been left at the Property.
29. In or about April 2016, the Complainants discovered that the sellers' application for the rear deck addition with the City was closed and the Complainants began the application process themselves.
30. Since the sale of the Property, the complainants have been dealing with the City Notice without the assistance of the sellers. Ms. Xu has been assisting the complainants in obtaining the appropriate permits from the City of Richmond, including but not limited to assisting them in finding appropriate professionals and attending a hearing at the City of Richmond with the complainants.
31. A Notice of Discipline Hearing was issued on September 18, 2019 and served on Ms. Xu.
32. Ms. Xu has no prior discipline history with the Council.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the facts outlined herein, [Licensee] proposes the following findings of misconduct be made by the CORC:

1. [Licensee] committed professional misconduct within the meaning of section 35(1)(a) of the RESA when acting as buyers' agent in the purchase and sale of a property located at XXXXX Bromfield Place, Richmond, B.C. she:
 - a. failed to advise the complainants to obtain independent professional advice on matters outside of her expertise including:
 - i. prior to preparing a subject-free offer to purchase the property;
 - ii. regarding the risks associated with making a subject-free offer without being provided with a completed Property Disclosure Statement;
 - iii. upon receipt of a completed Property Disclosure Statement that disclosed that the property was not in compliance with applicable City zoning and building bylaws; and
 - iv. upon receipt of the February 16 Email indicating that the permit for a rear deck addition would not be obtained by the completion date

contrary to section 3-3(d) of the Rules (duty to advise client to seek professional advice on matters outside the expertise of the licensee), and section 3-3(a) of the Rules (duty to act in best interests of your client);

- b. failed to make reasonable efforts to discover relevant facts respecting the Property, contrary to section 3-3(h) of the Rules (duty to use reasonable efforts to discover relevant facts respecting any real estate the client is considering acquiring) and section 3-4 of the Rules (duty to act honestly and with reasonable care and skill).

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, [Licensee] 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. Xu's licence be suspended for 14 days.
2. Ms. Xu be prohibited from acting as an unlicensed assistant during the licence suspension period.
3. Ms. Xu pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days of the date of this Order
4. [Licensee], at their 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 within the time period directed by the Council.
5. [Licensee] pay enforcement expenses to Council in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
6. If [Licensee] fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel [Licensee]'s licence without further notice to her.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. [Licensee] 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. [Licensee] 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 they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.

3. [Licensee] 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. [Licensee] 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. [Licensee] hereby waives their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by [Licensee] 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 [Licensee] in any civil proceeding with respect to the matter.

"Li Xu"

Li Xu

Dated 7 day of October, 2019