

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
FOR CHEUNG PHILIP LAU
(065341)

CONSENT ORDER

RESPONDENT: For Cheung Philip Lau, Trading Representative, Sutton Group-West Coast Realty. dba West Coast Realty Ltd.

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
K. Murray, Legal Counsel for the Respondent

PROCEEDINGS:

On January 21, 2020 the Consent Order Review Committee ("CORG") resolved to accept the Consent Order Proposal (the "Proposal") submitted by For Cheung Philip Lau ("Mr. Lau").

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

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Mr. Lau 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 (b), 3-3 (c), 3-4 , 5-4(b) 5-10, and 5-11 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 forty-five (45) days.
2. Mr. Lau be prohibited from acting as an unlicensed assistant during the licence suspension period.
3. Mr. Lau pay a discipline penalty to the Council in the amount of \$4,000 within three (3) months of the date of this Order.
4. Mr. Lau, at his own expense, register for and successfully complete the REIC2600 Ethics in Business Practice Course, offered by the Real Estate Institute of Canada, within the time period as directed by the Council.
5. Mr. Lau, at his 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.
6. Mr. Lau pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Consent 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 his, 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

**FOR CHEUNG PHILIP LAU
(065341)**

CONSENT ORDER PROPOSAL BY FOR CHEUNG PHILIP LAU

BACKGROUND AND FACTS

This Consent Order Proposal (the “Proposal”) is made by For Cheung Philip 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* (the “RESA”).

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

1. Mr. Lau (065341)’s licensing history is as follows:

Start Date	End Date	Brokerage	Level	Category
28/02/2017		West Coast Realty Ltd. (X029213)	Representative	Trading, Rental
25/02/2017	27/02/2017	*** Unlicensed ***	N/A	N/A
05/02/2009	24/02/2017	West Coast Realty Ltd. (X029213)	Representative	Trading, Rental
02/03/1999	05/02/2009	Par Excellence Management Inc. (X024987)	Representative	Trading, Rental
25/02/1999	02/03/1999	Royal Pacific Realty Corp. (X024262)	Representative	Trading, Rental
24/02/1999	24/02/1999	*** Unlicensed ***	N/A	N/A
24/02/1997	23/02/1999	Royal Pacific Realty Corp. (X024262)	Representative	Trading, Rental
20/02/1997	23/02/1997	*** Unlicensed ***	N/A	N/A
02/02/1996	19/02/1997	Royal Pacific Realty Corp. (X024262)	Representative	Trading, Rental
23/08/1989	02/02/1996	Keystone Realty Ltd. (X016344)	Representative	Trading, Rental
27/01/1988	23/08/1989	Dynam Realty Ltd. (X010562)	Representative	Trading, Rental

20/02/1987	26/01/1988	Royal LePage Real Estate Services Ltd.(Vanco) (X016199)	Representative	Trading, Rental
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2. Mr. Lau was at all relevant times licensed as a representative with Sutton Group – West Coast Realty (the “Brokerage”).
3. This matter arises from Mr. Lau’s actions during the time period 2011-2015 when acting as agent for the buyer (the “Complainant”), in the pre-sale purchase of XXX – Granville at 70th West Tower (the “Property”).
4. Prior to the purchase of the Property by the Complainant, Mr. Lau was a customer of the Complainant, who regularly provided hair salon services to Mr. Lau.
5. Sometime in 2011, while getting his hair cut by the Complainant, Mr. Lau introduced a condominium investment opportunity to the Complainant.
6. Mr. Lau advised the Complainant of the following regarding the investment:
 - a. it was a profitable investment; and
 - b. it had great pre-sale prices.
7. After this meeting, Mr. Lau has told the Council that he advised the Complainant that she could obtain a VIP price which was \$30,000 lower than what would be the market price. This VIP price was a limited time, early bird incentive if she purchased a unit in the pre-sale stage and before the development was complete.
8. The Complainant has told the Council that Mr. Lau advised her that she could obtain a \$30,000 rebate off the purchase price. She understood this rebate to be provided to her as an additional \$30,000 rebate off the agreed upon purchase price.
9. Mr. Lau provided the Complainant with the following information regarding the investment opportunity:
 - a. the approximate price for the unit;
 - b. that the Complainant could sell the unit or assign the contract for the unit before the completion date with the developer’s consent;
 - c. that Mr. Lau would represent the Complainant in the transaction and take care of all the paper-work as the Complainant’s understanding of written English was minimal and she required assistance; and
 - d. since he believed the investment would make a profit, he even purchased a unit in the same building.
10. Mr. Lau also provided the Complainant with information related to the reputation of the developer, the current market conditions and advised the Complainant that pre-sale contracts have been known to be assigned prior to completion for a profit.

11. On November 15, 2011, Mr. Lau provided the Complainant with a copy of a membership form from Westbank Development, a real estate development company. Mr. Lau advised the Complainant to sign and return the form to him so that she could receive the VIP price for the condominium development that he discussed with her previously.
12. On November 18, 2011, the Complainant completed the membership form and sent it back to Mr. Lau.
13. On December 1, 2011, the Complainant entered into a pre-sale contract of purchase and sale for the Property (the "Contract") with the XXXX Granville Partnership, listed as the vendor (the "Developer").
14. The Contract had the following relevant terms:
 - a. purchase price of \$654,000;
 - b. three deposits in the amounts of; \$65,400, \$32,700, and \$32,700;
 - c. the purchaser may not assign the Contract for a period of 12 months after the date of the Contract and thereafter only if the entire Deposit is paid in full, the assignee is the purchaser's spouse, parent, child, grandparent or grandchild and the vendor has provided written consent. There shall be a minimum of a \$500 administration fee payable to the vendor for any assignment, up to 1.5% of the greater of the purchase price or the assignment price paid by the assignee; and
 - d. the purchaser cannot advertise, solicit offers from the public or use the MLS with respect to assignment or resale before the completion date without the express written consent of the vendor.
15. Mr. Lau did not go through the terms of the Contract in detail with the Complainant prior to her execution.
16. Specifically, Mr. Lau admits that he did not adequately explain the restrictions on the Complainant's ability to assign the Contract before the closing date.
17. On the same day, along with the Contract, Mr. Lau provided an Acknowledgment of Purchaser's Agency and Commission (the "Agency Disclosure Form"), an Amended and Restated Disclosure Statement (the "Disclosure Statement") and a Receipt of Disclosure Statement (the "Receipt of Disclosure Statement") for the Complainant's signature.
18. The Agency Disclosure Form stated that Mr. PP ("Mr. P") of New Asia Realty Inc. ("New Asia") was the buyer's agent and not Mr. Lau.
19. The Disclosure Statement listed New Asia as the Developer's real estate agent.
20. Mr. Lau did not go through or explain in detail, the Agency Disclosure Form, the Disclosure Statement nor the Receipt of Disclosure Statement to the Complainant. Mr. Lau has informed the Council that per his understanding, he was not acting as the Complainant's agent at this time and so he did not go over the documents in any detail. Mr. Lau believed that Mr. P who was identified on the transaction documents as the purchaser's agent was responsible for reviewing the documents with the Complainant.

21. Mr. Lau drove the Complainant to New Asia's office to execute the Contract, the Agency Disclosure Form, the Disclosure Statement, and the Receipt of Disclosure Statement and he witnessed the Complainant's signatures all forms.
22. Mr. Lau was aware that the Complainant had difficulty understanding documents written in English as English was not her first language.
23. Mr. Lau failed to deliver a copy of the executed Contract and a Disclosure of Remuneration to the Brokerage. Mr. Lau has informed the Council that as per his understanding, he was not acting as the Complainant's agent at that time and so he did not deliver these documents to the Brokerage.
24. On February 12, 2012, Mr. Lau completed the FINTRAC Information Record for the Complainant.
25. On February 12, 2012, Mr. Lau also provided a Working with a Realtor form for the Complainant's signature which listed Mr. P as the Complainant's agent and not Mr. Lau. The form was also signed by Mr. P. At all material times, Mr. P was agent for the Developer.
26. The Complainant executed the Working with a Realtor form; again Mr. Lau did not adequately explain the form to the Complainant.
27. The Complainant has told the Council that she had never spoken to, nor heard of Mr. P when executing all documents relating to the purchase of the Property.
28. Mr. P has told the Council that he never acted as agent for the Complainant and never met the Complainant.
29. Mr. P has told the Council that on March 19, 2013, he realized that the Agency Disclosure Form prepared by the Developer and signed with the Contract on December 1, 2011 was incorrect and that on or about March 19, 2013, his brokerage sent a correction form and letter to Mr. Lau stating that Mr. P was agent for the Developer and not the Complainant and that the Complainant's agent was Mr. Lau (together, the "Agency Correction Notice").
30. Mr. Lau has told the Council that he never received the Agency Correction Notice.
31. The Complainant has told the Council that throughout all of her communications and meetings with Mr. Lau, his actions lead her to believe that Mr. Lau was acting as her agent in the purchase of the Property.
32. Upon reflection, Mr. Lau accepts that an implied agency relationship was created between himself and the Complainant.
33. On December 12, 2014, the Contract completed.

34. On completion, the Complainant inquired with Mr. Lau as to when she would receive the \$30,000 rebate on the purchase price.
35. Sometime after the completion of the Contract, Mr. Lau advised the Complainant that she had already received a \$30,000 discount by way of a reduction in the purchase price. The Complainant has told the Council this was the first time she made aware that she already received a \$30,000 discount and would not be receiving a further rebate.
36. On December 12, 2014, Mr. Lau listed the Property on the MLS for \$768,000 pursuant to a multiple listing agreement between his brokerage and the Complainant, dated December 12, 2014, indicating Mr. Lau as the designated agent, for a listing period of December 12, 2014 to January 30, 2015 (the "Multiple Listing Contract").
37. After completion, the Complainant asked Mr. Lau to help find a buyer for the Property. The Complainant has told the Council that on completion, she allowed Mr. Lau to keep a set of the Property's keys and fobs only in order that he could show the Property to potential buyers. She advised the Council that she did not want Mr. Lau to list the Property on the MLS as she was disappointed with Mr. Lau's services as her realtor regarding the pre-sale purchase of the Property.
38. Mr. Lau has told the Council that he understood from his discussions with Complainant that she wanted him to list and attempt to sell the Property. He says he was told to keep the keys and fobs so that he could show the Property to buyers and to proceed immediately with marketing the Property including holding open houses. He also told the Council he thought he was authorized to sign the listing documents on her behalf as she didn't want anything to do with the efforts to sell the Property.
39. Mr. Lau admits that he did not obtain written authorization to sign the Multiple Listing Contract from the Complainant.
40. The Complainant denies authorizing the listing of the Property by Mr. Lau.
41. The Complainant has advised the Council that Mr. Lau did not bring any satisfactory offers to her regarding the Property.
42. In or about January 2015, the Complainant contacted EZ ("Ms. Z") of Regent Park Realty Inc. to list the Property.
43. The Complainant told the Council that she learned from Ms. Z that the Property was already listed on the MLS by Mr. Lau.
44. The Complainant has advised the Council that this is the first time that she became aware that Mr. Lau had listed the Property without her authorization pursuant to the Multiple Listing Contract.

45. The Complainant contacted Mr. Lau and advised him that he did not have her consent or authorization to list the Property and demanded that he take down the listing immediately.
46. On January 27, 2015, the listing for the Property was terminated by an Unconditional Release submitted by Mr. Lau.
47. On January 28, 2015, the Complainant entered into a multiple listing contract with Regent Realty Inc. with Ms. Z as her designated agent, and she signed a Working with a Relator Form, indicating a client relationship with Ms. Z on the same date.
48. In or about May 2015, the Complainant began renting the Property out to a tenant.
49. On February 17, 2016, the Complainant made a complaint to the Council regarding the Property.
50. On March 3, 2016, Mr. Lau received a payment in the amount of \$7,324.80 from the Developer in respect of the Complainant's purchase of the Property. At no time did Mr. Lau disclose to the Complainant this remuneration.
51. The Property was later listed with another realtor, Karl Tsang on March 15, 2016.
52. On May 16, 2016, the Complainant sold the Property to a third party for \$760,000; \$106,000 more than the purchase price.
53. The Complainant has told the Council that as a result of not being able to assign the Contract before the completion date, as she had originally planned to do, the Complainant was forced to obtain an additional mortgage to complete the Contract and pay additional closing costs including GST, transfer tax, property and closing costs. However, she also collected rent from a tenant to assist her in covering expenses until she sold the Property in May 2016.
54. A Notice of Discipline Hearing was issued on March 25, 2019 and served on Mr. Lau.
55. An amended Notice of Discipline Hearing was issued on June 19, 2019 and served on Mr. Lau's legal counsel.
56. Mr. Lau has a discipline history with the Council as follows:
 - a. Mr. Lau entered a previous consent order with the Council dated December 15, 2006 and admitted to being negligent within the meaning of section 9.12 of Regulation 75/61 under the Act.
 - b. Specifically, Mr. Lau failed to ensure that the purchasers were aware that the subject property was a truncated lot and he failed to ascertain and advise the purchaser that structures on the property encroached onto neighbouring properties.

- c. As a condition of continued licensing, Mr. Lau was required to complete a disciplinary education assignment applicable to Chapter 2 (*Real Estate Services Act*) and Chapter 9 (Professional Ethics of Real Estate Trading Services Licensing Course) and attend the next courses: Professionalism it Pays! Be Safe or Be Sued, and Electronic Title Searching. He was also required to pay enforcement expenses in the amount of \$750 as a condition of continued licensing.

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) of the RESA in that he:
 - a. failed to disclose the nature of the representation he would be providing to the Complainant in contravention of Rule 5-10 (duty to disclose nature of representation) and Rule 3-4 (duty to act with reasonable care and skill);
 - b. failed to act in the best interests of his client, the Complainant, when he:
 - i. failed to explain the content of the Contract of Purchase and Sale, specifically the restrictions on assignment of the contract;
 - ii. failed to properly explain the \$30,000 price adjustment that was promised to the Complainant;
 - iii. failed to go through with the Complainant and explain all forms related to the Complainant's purchase of the Property in detail; and in contravention of Rule 3-3 (a) (duty to act in best interests of client) and Rule 3-4 (duty to act with reasonable care and skill);
 - c. created a multiple listing contract between his brokerage and the Complainant to list the Property without the Complainant's clear instructions and understanding and/or express authorization and used this contract to list the Property on the MLS in contravention of Rule 3-4 (duty to act with reasonable care and skill), Rule 3-3 (b) (duty to act in accordance with lawful instructions of the client) and Rule 3-3 (c) (duty to act within scope of authority);
 - d. failed to disclose to his client the source and amount of remuneration anticipated as a result of providing real estate services in contravention of Rule 5-11(duty to disclose source and amount of remuneration to client); and
 - e. failed to deliver a copy of the accepted Contract to his brokerage in contravention of Rule 5-4(b) (duty to deliver copy of accepted offer to related brokerage).

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:

7. Mr. Lau's licence be suspended for forty-five (45) days.
8. Mr. Lau be prohibited from acting as an unlicensed assistant during the licence suspension period.
9. Mr. Lau pay a discipline penalty to the Council in the amount of \$4,000 within three (3) months of the date of this Order.
10. Mr. Lau, at his own expense, register for and successfully complete the REIC2600 Ethics in Business Practice Course, offered by the Real Estate Institute of Canada, within the time period as directed by the Council.
11. Mr. Lau, at his 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.
12. Mr. Lau pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Consent Order.
13. 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 he is 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 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. 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 his right to appeal pursuant to section 54 of the RESA.
6. 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.

“For Cheung Philip Lau”

FOR CHEUNG PHILIP LAU

Dated 1st day of December, 2019