

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  
YU-HSIANG (LESTER) LIN  
(141745)

CONSENT ORDER

RESPONDENT: Yu-Hsiang (Lester) Lin, currently unlicensed,  
while licensed as a Representative with  
Burnaby Investments Ltd. dba Lester Lin Realty

DATE OF REVIEW MEETING: December 11, 2019

DATE OF CONSENT ORDER: December 11, 2019

CONSENT ORDER REVIEW COMMITTEE: Y. Amlani  
R. Hanson  
K. Ameyaw

ALSO PRESENT: E. Seeley, Chief Executive Officer  
D. Avren, Vice President, Legal Services and  
Compliance  
J. Moore, Legal Counsel for  
the Real Estate Council of BC  
W. Ryan, Legal Counsel for  
the Respondent

PROCEEDINGS:

On December 11, 2019, the Consent Order Review Committee ("CORG") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Yu-Hsiang (Lester) Lin ("Mr. Lin").

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

**NOW THEREFORE**, having made the findings proposed in the attached Proposal, and found that Mr. Lin committed professional misconduct within the meaning of sections 35(1)(a) and (f) and 43(3) and (4) of the *Real Estate Services Act* ("RESA"), pursuant to section 43 of the RESA the CORC orders that:

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1. Mr. Lin have his licence cancelled forthwith;
  2. Mr. Lin be prohibited from applying for a licence for 4.5 years from the date of the Cancellation Order, that being December 17, 2015. For clarity, Mr. Lin is prohibited from applying for a licence until June 18, 2020;
  3. Mr. Lin will not act as an unlicensed assistant, until such a time that a relicensing application has been approved by the Council;
  4. Mr. Lin will be required to meet the terms of the Suspension Order prior to relicensing; and
  5. Mr. Lin pay enforcement expenses to the Council in the amount of \$1,500 within two (2) months from the date of this Order.

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

Dated this 11<sup>th</sup> day of December, 2019 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Yasin Amlani”

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Yasin Amlani

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**

**YU-HSIANG (LESTER) LIN  
(141745)  
(Terminated)**

**CONSENT ORDER PROPOSAL BY YU-HSIANG (LESTER) LIN**

**BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by Yu-Hsiang (Lester) Lin ("Mr. Lin") to the Consent Order Review Committee (the "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, Mr. Lin and the Council have agreed upon the following facts:

1. Mr. Lin (141745) was licensed as a representative in 2008.
2. Mr. Lin's licensing history is as follows:

<b>Start Date</b>	<b>End Date</b>	<b>Licensing History</b>	<b>License Level</b>	<b>License Category</b>
9/22/2015	12/17/2015	Burnaby Investments Ltd. (X031972)	Representative	Trading
2/1/2012	9/22/2015	City Realty Ltd. (X027906)	Representative	Trading
7/29/2008	2/1/2012	Multiple Realty Ltd. (X011195)	Representative	Trading

3. Mr. Lin's licence was suspended on September 23, 2015 and thereafter cancelled on December 17, 2015, for reasons set out below.

**PROCEEDINGS HISTORY**

***A. The Suspension Order***

4. On August 17, 2015, a discipline committee of the Council accepted a Consent Order Proposal submitted by Mr. Lin which provided that Mr. Lin:
  - a. be suspended for one year;

- b. pay a discipline penalty in the amount of \$10,000;
- c. successfully complete the Real Estate Services Remedial Education Course in the time period as directed by the Council;
- d. successfully complete the accelerated Residential Trading Services Applied Practice Course within the time period as directed by the Council;
- e. upon reinstatement of his licence, be subject to enhanced supervisory conditions on his licence; and
- f. pay enforcement expenses in the amount of \$1,250;

(the "[Suspension Order](#)").

- 5. The Suspension Order expressly set out that on Mr. Lin's failure to comply with any terms of the Suspension Order, the Council may suspend or cancel his licence without further notice to him pursuant to sections 43(3) and 43(4) of the RESA.
- 6. The Council communicated the terms of the Suspension Order to Mr. Lin by way of a letter dated August 18, 2015 setting out the dates of the imminent suspension, which was to commence on September 23, 2015, and outlining the steps required for compliance with the Suspension Order. The letter also enclosed a document entitled "Procedure to be Followed in Case of Licence Suspension/Cancellation", which listed activities considered prohibited during the period of suspension (the "Prohibition List").
- 7. The Prohibition List stated, inter alia, that the licensee must not:
  - a. host open houses or solicit sellers, buyers, landlords or tenants in any manner; and
  - b. communicate with consumers about any real estate transaction or service agreement.
- 8. Lester Lin Realty was licensed as a brokerage on September 18, 2015.
- 9. Mr. Lin's licence was transferred to Lester Lin Realty on September 22, 2015 (one day prior to the Suspension Order).

#### **B. The Open House**

- 10. On December 12, 2015, Mr. Lin was present at an open house in Burnaby (the "Open House") with SL, another licensee of Lester Lin Realty. The Open House was advertised by SL.
- 11. BT, a Compliance Officer of the Council, attended the Open House and posed as an interested buyer. Mr. Lin greeted BT near the main entrance of the property and advised "*we just ran out of feature sheets*".
- 12. BT walked toward the upper floor of the property. Mr. Lin followed BT and then spoke to SL, who advised BT that she could not give her a feature sheet as she only had one left.

13. BT asked SL about the assessment on the property. SL said she needed to check and asked Mr. Lin if he remembered the assessment. Mr. Lin shook his head.
14. BT then proceeded to view the three bedrooms upstairs and Mr. Lin followed.
15. BT asked Mr. Lin about the existing rental income for the bedrooms. Mr. Lin stated that he was not sure, and the details needed to be confirmed with the landlord, but he thought it was \$500 or \$600 per room.
16. BT asked if the tenants were likely to stay, with Mr. Lin answering that he thought they will likely want to stay, and she requested that he contact the landlord to confirm those details, at which time he responded "Good, good".
17. BT then rejoined SL and asked about the rental income and was told that the rents were approximately \$1,600 to \$1,700, the parents of the owner lived downstairs and the assessment value was approximately \$1,000,000. BT then returned downstairs and had another conversation with Mr. Lin, at which time Mr. Lin advised her that the first bedroom rented for \$550, the second for \$550 and the third for \$700, which would amount to \$1,800 in total.
18. Mr. Lin advised BT that two people sitting in the recreation room were the parents of the owner, and that she could convert the recreation room to a two-bedroom rental income suite.
19. BT stated that another licensee walked into the property and asked Mr. Lin if he was an agent, but he did not answer. Another person asked Mr. Lin if he was a Realtor® but without speaking, Mr. Lin pointed his finger toward the upstairs where SL was situated.
20. BT asked Mr. Lin about the size of the recreation room, and Mr. Lin answered "600 square feet". At that point, three prospective buyers walked into the recreation room and asked Mr. Lin about the occupants of the property. Mr. Lin answered that the parents of the owner lived downstairs and three students were renting upstairs.
21. BT asked Mr. Lin if she could take photos of the property. Mr. Lin answered in the affirmative and BT proceeded to move around the house taking photos.
22. BT also stated that she heard Mr. Lin speaking to three prospective buyers about the rental potential of the property in Chinese (which language she understands). BT also saw Mr. Lin moving through part of the property with prospective buyers.

### ***C. The Cancellation Order***

23. Based on the evidence from the Open House and evidence relating to other activities that Mr. Lin had engaged in while his licence was suspended, and on the strength of the language in section 43(4) of the RESA, a discipline committee of the Council issued an order dated December 17, 2015 cancelling Mr. Lin's licence (the "[Cancellation Order](#)").
24. This hearing was conducted on an ex parte basis, without notice to Mr. Lin.

**D. Mr. Lin's Appeal to the Financial Services Tribunal**

25. Mr. Lin retained legal counsel and sought to vary or rescind the Cancellation Order pursuant to section 43(5) of the RESA. Ultimately, Mr. Lin decided to pursue an appeal to the Financial Services Tribunal ("FST"), raising several grounds of appeal including alleged lack of jurisdiction, procedural fairness relating to the Council's investigation and the *ex parte* nature of its process under section 43(3) of the RESA and reasonableness.
26. Three interlocutory motions were filed in the FST appeal:
  - a. An unopposed motion by Mr. Lin seeking an extension of time to file a notice of appeal, which was granted on November 3, 2016;
  - b. An unopposed motion by Mr. Lin seeking to adduce new evidence on the appeal, which was granted on December 9, 2016;
  - c. A contentious motion by the Council to lift the statutory stay of the Cancellation Order arising from section 55(2) of the RESA, which was granted on February 7, 2017.
27. In the spring of 2017, the Council and Mr. Lin exchanged and filed extensive written submissions with respect to the appeal.
28. On July 27, 2017, the FST issued a decision in respect of the appeal (the "[FST Decision](#)").
29. Following an extensive analysis on findings of fact and liability and on the proper remedy that should follow, the FST determined that the matter should be remitted back to a discipline committee of the Council for reconsideration solely on the question of sanction and the delivery of adequate reasons. The FST further directed that the issue of penalty be determined on consideration of limited evidence from the Open House only, as set out in paragraphs 10 to 22 above. The FST determined that other activities that Mr. Lin had been engaged in did not amount to the performance of real estate services while suspended. (A summary of limited evidence accepted by FST is found in paragraphs 75 and 76 of the FST Decision).
30. A Notice of Discipline Hearing was issued on April 6, 2018, and served on Mr. Lin through his legal counsel, scheduling a hearing to be held on May 7, 2018 to determine the appropriate penalty for his breach of a the Suspension Order based on the evidence accepted by and the findings of fact and liability in the FST Decision.

**FST'S FINDINGS OF MISCONDUCT**

For the sole purposes of the Proposal and based on the FST's findings of fact and liability, Mr. Lin agrees that he breached the Suspension Order while his licence was suspended, by engaging in activities at the Open House which amounted to the provision of real estate services within the meaning of the RESA.

**PROPOSED ORDERS**

Based on the FST's findings of misconduct, Mr. Lin 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. Lin's licence be cancelled forthwith;
2. Mr. Lin be prohibited from applying for a licence for 4.5 years from the date of the Cancellation Order, that being December 17, 2015. For clarity, Mr. Lin is prohibited from applying for a licence until June 18, 2020.
3. Mr. Lin be prohibited from acting as an unlicensed assistant, until such a time that a relicensing application has been approved by the Council.
4. Mr. Lin will be required to meet the terms of the Suspension Order prior to relicensing.
5. Mr. Lin will be required to pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Order.
6. If Mr. Lin fails to comply with any of the terms of this Order, a discipline committee may suspend or cancel Mr. Lin's licence without further notice to him.

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

1. Mr. Lin 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. Lin 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. Lin 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. Lin 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. Lin hereby waives his right to appeal pursuant to section 54 of the RESA.
6. If the Proposal is accepted and/or relied upon by the Council, Mr. Lin will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Mr. Lin from making full answer and defence to any civil or criminal proceeding(s).
7. Mr. Lin acknowledges and is aware that the Council is not bound to accept any application for relicensing or renewal of his licence. Mr. Lin must always satisfy the Council that he meets the requirements for a licence in section 10 of the RESA, and any Rules, regulations, bylaws or other instruments made pursuant to the RESA.

8. The Proposal and its contents are made by Mr. Lin 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. Lin in any civil proceeding with respect to the matter.

“Yu-Hsiang (Lester) Lin”

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**YU-HSIANG (LESTER) LIN**

**Dated 12<sup>th</sup> day of November, 2019**