

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

ROLAND JOHN KYM
(156492)

AND

ROLAND KYM PERSONAL REAL ESTATE CORPORATION
(156492PC)

CONSENT ORDER

RESPONDENTS: Roland Kym, Representative, RCJCPBSJ Realty Corporation dba Keller Williams Realty VanCentral
Roland Kym Personal Real Estate Corporation

DATE OF REVIEW MEETING: December 9, 2019

DATE OF CONSENT ORDER: December 9, 2019

CONSENT ORDER REVIEW COMMITTEE: Y. Amlani
B. Chisholm
R. Hanson

PROCEEDINGS:

On November 6, 2019, a Consent Order Proposal submitted by Roland John Kym ("Mr. Kym"), on his own behalf and on behalf of Roland Kym Personal Real Estate Corporation ("Kym PREC"), was considered by a Consent Order Review Committee ("CORC") but not accepted. On November 19, 2019, a revised Proposal acceptable to the CORC was submitted by Mr. Kym, on his own behalf and on behalf of Kym PREC (the "Proposal").

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Mr. Kym, on his own behalf and on behalf of Kym PREC.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and in particular having found that Mr. Kym and Kym PREC committed professional misconduct within the meaning

of section 35(1)(a) of the *Real Estate Services Act* ("RESA") and section 3-4 of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Mr. Kym and Kym PREC be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days of the date of this Order.
2. Mr. Kym, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education course as provided by the Sauder School of Business at the University of British Columbia in the time period as directed by the Council.
3. Mr. Kym and Kym PREC be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Mr. Kym and Kym PREC fail to comply with any term of this Order, the Council may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 9th day of December 2019, 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**

AND

IN THE MATTER OF

**ROLAND JOHN KYM
(156492)**

AND

ROLAND KYM PERSONAL REAL ESTATE CORPORATION (156429PC)

**CONSENT ORDER PROPOSAL BY ROLAND JOHN KYM and
ROLAND KYM PERSONAL REAL ESTATE CORPORATION**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Roland John Kym ("Mr. Kym") and Roland Kym Personal Real Estate Corporation ("Kym PREC") 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* (the "RESA").

For the purposes of the Proposal, Roland John Kym, Kym PREC and the Council have agreed upon the following facts:

1. Mr. Kym (156492) has been licensed continuously as a representative for trading services since 2009.
2. Mr. Kym became licensed as Kym PREC (156492PC) in 2013.
3. Mr. Kym was at all relevant times licensed as a representative for trading services with Keller Williams Realty VanCentral.
4. This matter involves a property located at #XXX-XXXX XXXXXXX Street in Vancouver (the "Property"). The Property is part of a Strata Corporation XXX#XXXX (the "Strata Corporation").
5. At all material times, the Property was owned by SS and MR (the "Sellers").
6. On May 18, 2016, the Strata Corporation held a Special General Meeting. The minutes from that SGM recorded that the owners approved a special levy in the amount of \$15,000 to have a building envelope review completed and fund urgently needed repairs.

7. On August 31, 2016, the Strata Corporation held its Annual General Meeting. The minutes from that AGM recorded that the Strata Council contracted with JRS Engineering to conduct a Building Envelope Condition Assessment which would be completed in September 2016 (the "JRS Report"). Specifically the minutes noted that:

This [the JRS Report] will better guide us to complete a long lasting repair of the East side of the building and prepare a plan for the remainder of the apartment and townhouse complex.

8. On September 30, 2016, JRS completed its Report of the building in which the Property was located. The JRS Report recommended a full building envelope remediation of the stucco cladding with estimated costs ranging from \$1,137,604 to \$1,587,572. The JRS Report was not disclosed to Strata Council on this date but at a later date.
9. On October 18, 2016, the Sellers entered into a Multiple Listing Contract for the Property with Keller Williams effective October 21, 2016. The listing price for the Property was \$399,000. The designated agent was Mr. Kym.
10. On October 18, 2016, the Sellers also completed a Property Disclosure Statement (the "PDS") which disclosed the following:

3H. Are you aware of damage due to wind, fire, or water? Yes

...

3J. Are you aware of leakage or unrepaired damage? Yes

...

DD. Are the following documents available?

...

All Minutes of Last 24 Months Including Council,
Special and AGM Minutes If available – from realtor

...

Engineer's Report and/or Building Envelope Assessment If available – from realtor

...

5. ADDITIONAL COMMENTS AND/OR EXPLANATIONS:

3H & 3J = Water leak was discovered on Balcony, and strata is investigating the leak.

11. On October 20, 2016, Mr. Kym ordered copies of the strata documents for the Property.

12. On October 21, 2016, Mr. Kym listed the Property and uploaded the PDS to the MLS system for buyers and their agents to review.
13. On October 23, 2016, JL made a request to view the Property with his client (the "Buyer").
14. On October 26, 2016, JL and the Buyer viewed the Property. As the Buyer was interested in the Property, JL requested the strata documents from Mr. Kym.
15. On October 27, 2016, Mr. Kym received the strata documents for the Property. He reviewed them on October 28, 2016.
16. On October 29, 2016, Mr. Kym bulk emailed the strata documents, including the JRS Report, to several agents who had expressed interest in the Property. Mr. Kym neglected to include JL on this email or otherwise send the strata documents to JL as JL had requested.
17. On October 29 and 30, 2016, Mr. Kym hosted two open houses at the Property. The Buyer attended on October 29 and viewed the Property a second time, this time without JL.
18. On October 30, 2016 the Buyer made a subject-free offer on the Property drafted by JL as her agent, which the Sellers accepted later that day (the "Contract"). The relevant details of the Contract were as follows:

Price: \$445,000

Deposit: \$20,000 within 36 hours of acceptance

Completion: November 30, 2016

Possession: December 1, 2016

19. The Council's Professional Standards Manual requires that a licensee must exercise reasonable care and skill in the performance of their duties, which, in the sale of strata properties, includes the obligation to ascertain and provide buyers with current information on matters which may affect the strata lot's value.
20. Mr. Kym intended to deliver the strata documents, including the JRS report to JL but neglected to do so. Upon receipt of the Buyer's over-asking price, subject-free offer, Mr. Kym did not take steps to confirm if the strata documents had been sent to, and received by, the Buyer's agent, to ensure that the Buyer had all information about the Property that the Sellers had instructed him to disclose to interested parties.
21. The Sellers received more than one offer on the Property and accepted the Buyer's over-asking price, subject-free offer as written.
22. On October 31, 2016, the Buyer paid the deposit to JL's brokerage in trust in accordance with the Contract.

23. On November 2, 2016, the Sellers sent an email to Mr. Kym notifying him that they had observed a notice for a Town Hall Meeting which was to take place on November 8, 2016, to discuss a Building Envelope Assessment Report and the implementation of a payment plan related to the Assessment Report. The notice also indicated that there would be a SGM on December 8, 2016. The Sellers indicated to Mr. Kym that they did not receive any email regarding this meeting.

24. On November 3, 2016, Mr. Kym forwarded the email from the Sellers to JL and stated:

Hello [JL],

Following is an email I received from my client yesterday about a meeting scheduled in December.

The seller has not received a notice from the strata but did see the following message posted about the December meeting.

We just wanted to inform your buyer in case she wishes to attend the meeting.

25. On November 7, 2016, the Sellers forwarded Mr. Kym an email from the Strata Manager, which included a copy of the notice for an "Apartment Information Session" and the first part of the JRS Report. The email indicated that the second part of the JRS would follow by email. Mr. Kym forwarded this first email to JL on November 9, 2016.

26. On November 9, 2016, JL requested the strata documents from Mr. Kym and Mr. Kym sent them to him later that day.

27. On November 10, 2016, JL informed Mr. Kym that because of the issues with the building envelope the Buyer did not intend on completing the Contract and she was requesting the return of the deposit. JL sent Mr. Kym a Release of Trust Funds and General Release signed by the Buyer.

28. On November 16, 2016, the Sellers, through their legal counsel, informed the Buyer that the Sellers were ready willing and able to complete the Contract but in the circumstances and to avoid litigation were willing to offer a price adjustment on the Property. This offer was open for acceptance until November 24, 2016 (the "Reduced Price Offer").

29. The Buyer did not accept the Reduced Price Offer.

30. The Buyer did not complete the Contract on November 30, 2016 and the deal collapsed.

31. On October 30, 2017, the Buyer commenced an action against JL's brokerage in Provincial Court for the amount of her deposit (the "Claim").

32. On September 24, 2018, the Court dismissed the Claim on the basis of the Buyer's default.

33. The Buyer's \$20,000 deposit on the Property remains in trust with JL's brokerage.

34. A Notice of Discipline Hearing was issued on March 13, 2019 and served on Mr. Kym and Kym PREC.
35. An Amended Notice of Discipline Hearing was issued on August 23, 2019 and served on Mr. Kym and Kym PREC.
36. Mr. Kym and Kym PREC have no prior discipline history with Council.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the facts outlined herein, Mr. Kym and Kym PREC propose the following findings of misconduct be made by the CORC:

1. Mr. Kym and Kym PREC committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that:

when acting as the listing agent in the sale of the Property in or about October and November 2016, Mr. Kym failed to provide strata minutes and an engineering report to the Buyer's agent upon request as well as failed to take steps to confirm that the strata minutes and engineering report had otherwise been sent to, and received by, the Buyer's agent to ensure that the Buyer had all information about the Property that the Sellers had instructed him to disclose to interested parties prior to his clients accepting a subject-free offer, contrary to section 3-4 (*duty to act honestly and with reasonable care and skill*) of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Kym and Kym PREC propose 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. Kym and Kym PREC be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days from the date of this Order.
2. Mr. Kym, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Sauder School of Business at the University of British Columbia in the time period as directed by the Council.
3. Mr. Kym and Kym PREC be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Order.
4. If Mr. Kym and Kym PREC fail to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Kym and Kym PREC's licence without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Kym and Kym PREC acknowledge and understand 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. Kym and Kym PREC acknowledge that they have 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 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. Mr. Kym and Kym PREC acknowledge and are 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. Kym and Kym PREC acknowledge and are 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. Kym and Kym PREC hereby waive their right to appeal pursuant to section 54 of the RESA.
6. If the Proposal is accepted and/or relied upon by the Council, Mr. Kym and Kym PREC will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Mr. Kym or Kym PREC from making full answer and defence to any civil or criminal proceeding(s).
7. The Proposal and its contents are made by Mr. Kym and Kym PREC 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. Kym and Kym PREC in any civil proceeding with respect to the matter.

"Roland John Kym"

**ROLAND JOHN KYM on his own behalf and on
behalf of ROLAND KYM PERSONAL REAL ESTATE
CORPORATION**

Dated 19th day of November, 2019