

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

**KARAMVIR (KAM) PAWAR
(146796)**

AND

**KAM PAWAR PERSONAL REAL ESTATE CORPORATION
(146796PC)**

CONSENT ORDER

RESPONDENT:	Karamvir (Kam) Pawar, Representative, Performance Realty Ltd. dba RE/MAX Performance Realty, while licensed with Crest Westside Realty Ltd. dba RE/MAX Crest Realty Westside Kam Pawar Personal Real Estate Corporation
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 K. Mactaggart Wright, Legal Counsel for the Real Estate Council of BC

PROCEEDINGS:

On December 11, 2019, the Consent Order Review Committee ("CORC") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Karamvir (Kam) Pawar ("Mr. Pawar") on his own behalf and on behalf of Kam Pawar Personal Real Estate Corporation ("KP PREC").

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

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

1. Mr. Pawar and KP PREC have their licences suspended for twenty-one (21) days;
2. Mr. Pawar will not act as an unlicensed assistant during the time of his licence suspension;
3. Mr. Pawar and KP PREC jointly and severally pay a discipline penalty to the Council in the amount of \$5,000 within three (3) months from the date of this Order;
4. Mr. Pawar, at his own expense, register for and successfully complete:
 - a. the Electronic Title Searching course and
 - b. Ethics: Unlocking the REALTOR® Code course,both offered by the British Columbia Real Estate Association, in the time period as directed by the Council;
5. Mr. Pawar and KP PREC jointly and severally pay enforcement expenses to the Council in the amount of \$1,500 within two (2) months from the date of this Order.

If Mr. Pawar and/or KP PREC fails 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 11th 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.

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**KARAMVIR (KAM) PAWAR
(146796)**

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**KAM PAWAR PERSONAL REAL ESTATE CORPORATION
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**CONSENT ORDER PROPOSAL BY KARAMVIR (KAM) PAWAR AND
KAM PAWAR PERSONAL REAL ESTATE CORPORATION**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Karamvir (Kam) Pawar ("Mr. Pawar") and Kam Pawar Personal Real Estate Corporation ("KP PREC") 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. Pawar on his own behalf and on behalf of KP PREC, and the Council have agreed upon the following facts:

1. Mr. Pawar (146796) has been licensed as a representative for trading services since September 2005.
2. Mr. Pawar became licensed as KP PREC on June 17, 2015.
3. Mr. Pawar was at all relevant times licensed as a representative for trading services with Crest Westside Realty Ltd. doing business as RE/MAX Crest Realty Westside in Vancouver, British Columbia (the "Brokerage"). Mr. Pawar was licensed at one branch office (X024875) of the Brokerage between October 8, 2014 and June 17, 2015, and at another branch office (X028929) from June 17, 2015.
4. In June 2016, a Trustee with XXXXXXXXXX Inc., a licensed Insolvency Trustee Firm (the "Trustee") informed the Council that Mr. Pawar had acted in a transaction for the purchase and sale of a property located on XXXXX Street in Delta, British Columbia (the "Property"), which was negotiated without notice to or consent of the Trustee, even though the Trustee was registered on the title to the Property as an owner.

5. In mid May 2015, according to Mr. Pawar, he was knocking door to door at recently expired listings and met a resident of the Property (the "Half-Owner"). The Half-Owner declined to list the Property with Mr. Pawar but was open to considering serious offers for the purchase of the Property from Mr. Pawar's buyers.
6. Mr. Pawar returned to the Property with his clients (the "Buyers"). At that time, according to Mr. Pawar, the Half-Owner informed Mr. Pawar and the Buyers that he:
 - a. would consider an offer of purchase and sale for the Property of \$605,000, with a \$25,000 deposit (the "Deposit") paid directly to him alone as he was in financial distress;
 - b. was the owner of a half interest in the Property, and that his ex-spouse owned the other half interest in the Property. However, the Trustee would appear on the title for the Property in respect of his ex-spouse's interest; and
 - c. would not negotiate with the Buyers if Mr. Pawar contacted the Trustee. The Half-Owner represented that he retained a lawyer for his ex-spouse who would manage the Trustee.
7. Mr. Pawar states the Buyers instructed Mr. Pawar to proceed with making an offer to purchase the Property.
8. At this time, Mr. Pawar conducted a title search for the Property that confirmed its ownership by the Half-Owner as to a half interest, and by the Trustee as to a half interest, as "trustee of the estate of [...] [the Half-Owner's ex-spouse], a bankrupt".
9. Mr. Pawar did not ask the Half-Owner for the name of his ex-spouse's lawyer, or for any other confirmation of the Half-Owner's authority to sell the Property without involving the Trustee.
10. Mr. Pawar prepared offer for the Property in a Contract of Purchase and Sale dated May 30, 2015 with Mr. Pawar as designated agent for the Buyers, a price of \$605,000, the Deposit paid directly to the Half-Owner, and a completion date of September 2015, which was accepted by the Half-Owner on the same day (the "Putative Contract").
11. In addition to the Putative Contract, Mr. Pawar prepared an Exclusive Listing Contract dated May 30, 2015 between the Half-Owner and the Trustee, as sellers, and his Brokerage that designated Mr. Pawar as the designated agent of the sellers, and included a gross commission of \$20,000 (the "Listing Agreement"). The Listing Agreement had the potential to confuse the principals and the Brokerage since the Property was not being listed or marketed and Mr. Pawar was not offering any agency to the sellers. Mr. Pawar explains that he created the Listing Agreement, signed only by the Half-Owner, to "... protect my brokerage commission".
12. It was not necessary to prepare the Listing Agreement because Mr. Pawar also prepared a Seller's Fee Agreement (Buyer Represented Seller Not Represented) dated May 30, 2015 between the Half-Owner and the Trustee, as sellers, and his Brokerage that provided the sellers would pay the Brokerage \$20,000 (the "Fee Agreement"). The Fee Agreement was not signed by the Trustee.
13. Finally, Mr. Pawar prepared a Working With A Realtor Form dated May 30, 2015 signed by the Half-Owner setting out that he and Mr. Pawar only had a customer (not client) relationship (the

“WWAR Form”). Mr. Pawar did not ensure the Trustee was aware they were not offered any agency by Mr. Pawar in WWAR Form, or otherwise.

14. Although the Trustee was named as one of the sellers of the Property in each of the Putative Contract, Listing Agreement and Fee Agreement, the Trustee did not sign any of these documents. Mr. Pawar did not contact the Trustee or obtain additional information, as set out in paragraph 9.
15. Mr. Pawar knew that:
 - a. the Trustee had an ownership interest in the Property of the Trustee, based on the title search;
 - b. the Trustee acted for the estate of a bankrupt, based on the title search; and
 - c. the Half-Owner was in financial distress, based on information that Half-Owner provided.
16. Mr. Pawar did not know how much equity was in the Property, if any; or how much of the equity belonged to either the Half-Owner or to the Trustee.
17. By disregarding the interests of the Trustee in these circumstances and permitting the Buyers to pay the Deposit directly to the Half-Owner, Mr. Pawar placed the Trustee’s financial interests at risk. Although Mr. Pawar was not the agent for the Trustee or any seller, he had an obligation as a licensee to act honestly and with reasonable care and skill. It was not honest or reasonable in these circumstances to:
 - a. be reckless as to the interests of a seller he knew had no notice and had not consented to any part of a transaction for the purchase and sale of the Property;
 - b. prefer the interests of one owner/seller (the Half-Owner) over another he knew had no notice (the Trustee); and
 - c. create the Listing Agreement that gave a (potentially) misleading appearance of both sellers’ knowledge and consent, solely to preserve his own commission.
18. Mr. Pawar states he recommended that the Buyers obtain legal advice about purchasing a property from a trustee and making the Deposit directly to the Half-Owner.
19. The Council’s *Professional Standards Manual* recommends that licensees not draft any Contracts of Purchase and Sale where different legal and beneficial owners are involved. Beneficial owners are generally persons who have a trust interest in the property. Mr. Pawar did in fact make the Putative Contract subject to review by a lawyer for the Buyers.
20. However, Mr. Pawar failed to act in the Buyer’s best interests, with reasonable care and skill, or make reasonable efforts to discover relevant facts about the Property when the Contract did not:
 - a. require the Half-Owner to provide confirmation that he had the authority to sell the Property; or

- b. make payment of the Deposit conditional on such confirmation.
21. On June 1, 2015, the Buyers paid the Deposit to the Half-Owner.
 22. On June 2, 2015, the Buyers and the Half-Owner agreed to an Addendum to the Putative Contract which included that the sellers of the Property would provide clear title to the Property to the Buyers and "...pay any legal costs to discharge any financial charges and resolve the public trustee involvement in this sale...". The Public Guardian and Trustee of British Columbia was not involved in the transaction for the Property. The Trustee was listed in the Addendum as a seller but did not sign the Addendum.
 23. In September 2015, a lawyer involved in the transaction for the Property contacted the Trustee. The Trustee refused to proceed with the sale of the Property in the Putative Contract until they had conducted due diligence about the price, and until the principals consented to the addition of a subject clause to the Putative Contract that the Property was sold "as is, where is", and that the Trustee was not a party to any Property Disclosure Statement.
 24. The Buyers and the Half-Owner consented to the addition of the subject clause that the Trustee requested, and the sale of the Property completed on or about September 23, 2015.
 25. Neither the Buyers nor the Half-Owner complained to the Council about their transaction for the Property or about Mr. Pawar.
 26. Under section 10.9 of the *Real Estate Services Regulation*, a personal real estate corporation is subject to the same discipline proceedings and other regulatory enforcement as its controlling individual.
 27. A Notice of Discipline Hearing was issued on September 30, 2019 and served on Mr. Pawar on his own behalf and on behalf of KP PREC.
 28. Neither Mr. Pawar nor KP PREC has a discipline history with the Council.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Mr. Pawar and KP PREC committed professional misconduct within the meaning of section 35(1)(a) of the RESA while providing real estate services in 2015 for the Property in that they:
 - a. failed to take sufficient care to ensure they were dealing with either all the registered owners of the Property or a person who had the legal authority to sell the Property;
 - b. knew the Trustee was a registered owner of the Property and they prepared each of the Putative Contract, the Listing Agreement and the Fee Agreement without any notice to the Trustee and without requiring the Half-Owner to provide any confirmation that they had the authority to exclusively sell the Property;

- c. prepared the Listing Agreement to preserve their commission when those documents did not reflect, in the Listing Agreement, any actual agency offered to the sellers of the Property; and had the potential to confuse any party to a trade in the Property about representation and create defects in the Brokerage's records;
- d. preferred the interests of one known seller (the Half-Owner) to another (the Trustee) in the Putative Contract as to its terms, and in particular the Deposit, and with respect to providing any disclosure of not representing the seller(s) in trading services;
- e. failed to make payment of the Deposit, which was paid directly to the Half-Owner, conditional on evidence of the Half-Owner's authority to sell the Property and/or all the registered owners' consent to the Putative Contract,

all contrary to sections 3-3(a) and (h) [Duties to clients], and 3-4 [Duty to act honestly and with reasonable care and skill] of the rules made under the RESA.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Pawar and KP 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. Pawar and KP PREC's licences be suspended for 21 days.
2. Mr. Pawar be prohibited from acting as an unlicensed assistant during his licence suspension period.
3. Mr. Pawar and KP PREC be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000 within three (3) months from the date of this Order.
4. Mr. Pawar, at his own expense, register for and successfully complete:
 - a. the Electronic Title Searching course and
 - b. Ethics: Unlocking the REALTOR® Code course,

both offered by the British Columbia Real Estate Association, in the time period as directed by the Council.
5. Mr. Pawar and KP PREC be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500 within two (2) months from the date of this Order.
6. If Mr. Pawar and KP PREC fail to comply with any of the terms of this Order, a discipline committee may suspend or cancel their licences without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Pawar and KP 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. Pawar and KP 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 they have 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. Pawar and KP 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. Pawar and KP 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. Pawar and KP 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. Pawar and KP PREC will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Mr. Pawar or KP PREC from making full answer and defence to any civil or criminal proceeding(s).
7. The Proposal and its contents are made by Mr. Pawar and KP 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. Pawar and KP PREC in any civil proceeding with respect to the matter.

"Karamvir (Kam) Pawar"

**KARAMVIR (KAM) PAWAR on his own behalf and
on behalf of KAM PAWAR PERSONAL REAL
ESTATE CORPORATION**

Dated 1st day of October, 2019