

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

RAJ BANGA
(150332)

CONSENT ORDER

RESPONDENT: Raj Banga, Representative, West Coast Realty Ltd. dba Sutton Group
– West Coast Realty

DATE OF REVIEW MEETING: December 10, 2019

DATE OF CONSENT ORDER: December 10, 2019

DISCIPLINE COMMITTEE: L. Hrycan

ALSO PRESENT: K. Mactaggart Wright, Legal Counsel for
the Real Estate Council
R. Banga, Respondent

PROCEEDINGS:

On December 10, 2019, the Discipline Committee (the “Committee”) resolved to accept the Consent Order Proposal (the “Proposal”) submitted by Raj Banga.

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

NOW THEREFORE, the Committee having made the findings proposed in the attached Proposal, and found that Raj Banga committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, and sections 3-3(a), (d), (i), and (j), 3-4, 4-7 and 5-13 of the Rules made under the RESA, pursuant to section 43 of the RESA the Committee orders that:

1. Raj Banga have his licence suspended for two (2) months;

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2. Raj Banga will not act as an unlicensed assistant during the time of his licence suspension;
 3. Raj Banga pay a discipline penalty to the Council in the amount of \$11,000 within three (3) months from the date of this Order;
 4. Raj Banga, 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; and
 5. Raj Banga pay enforcement expenses to the Council in the amount of \$1,000 within two (2) months from the date of this Order.

If Raj Banga 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 *Real Estate Services Act*.

Dated this 10th day of December, 2019 at the City of Vancouver, British Columbia.

ON BEHALF OF THE DISCIPLINE COMMITTEE

“Len Hrycan”

Len Hrycan
Discipline Committee

Attch.

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended**

AND

IN THE MATTER OF

**RAJ BANGA
(150332)**

CONSENT ORDER PROPOSAL BY RAJ BANGA

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Raj Banga ("Mr. Banga") to the Discipline Committee (the "Committee") of the Real Estate Council of BC (the "Council") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

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

1. Mr. Banga (150332) has been licensed as a representative for trading services since 2007, with about a nine-month gap in 2011-2012.
2. Mr. Banga was at all relevant times licensed as a representative for trading services with West Coast Realty Ltd. dba Sutton Group – West Coast Realty (the "Brokerage").
3. In November 2013, Mr. Banga incorporated Banga Construction Inc. (the "Builder") in British Columbia and became one of its directors and its sole officer as Chief Executive Officer and President.
4. In February 2014, the City of Nanaimo ("Nanaimo") issued a building permit for XXXX XXXXXX Crescent, Nanaimo, BC (the "Property"), a new home built by the Builder, a licensed residential builder.
5. On Nanaimo's building permit, it was noted the Property could not contain a secondary suite as per Nanaimo's Bylaw No. 4500 because the lot size did not meet the minimum requirement. Moreover, only one counter plug was allowed at the bar sink in the lower level of the Property.
6. The plans for the Property on file with Nanaimo did not include a stove in the lower level.
7. In July 2014, Nanaimo issued a certificate of occupancy, as a single-family dwelling, for the Property.
8. On January 10, 2017, Mr. Banga listed the Property for sale with his Brokerage. Mr. Banga was the owner (the "Seller"), and the designated listing agent/Seller's agent. Mr. Banga had previously listed the Property for sale on multiple occasions, including with one other licensee.

9. The January 2017 description of the Property on the Multiple Listing Service included the following:

“... Bottom floor has 1 bedroom with own private bathroom, laundry room, **kitchen**, a great rec room and has [sic] to accommodate in laws at lower level with own access. **It will help to reduce your mortgage payment.**” [emphasis added].

Although Mr. Banga states he intended to refer to potential in-law accommodation, a reasonable person reading this description would understand the lower level contained a kitchen and could understand that the Property contained a suite suitable to be rented as a mortgage helper.

10. On January 22, 2017, a couple (the “Buyers”) made an offer to purchase the Property in a Contract of Purchase and Sale that contemplated subject removal by January 24, 2017, and completion on March 22, 2017, which Mr. Banga accepted (the “Contract”).
11. Mr. Banga offered the Buyers, who were not independently represented by a licensee, a limited dual agency relationship in a Limited Dual Agency Agreement dated January 22, 2017.
12. Mr. Banga disclosed his interest in the Property as the Seller in a Disclosure of Interest in Trade Form dated January 22, 2017 and signed by the Buyers.
13. Mr. Banga was informed by the Buyers that they intended to live in the Property with their adult child and that child’s partner, and desired two kitchens.
14. Although Mr. Banga told the Buyers that the lower level accommodation in the Property was unauthorized, at no time did Mr. Banga disclose to the Buyers that any alterations had been made to the Property, such as the addition of the lower level stove, in conflict to or after the building or occupancy permits from Nanaimo and/or without any municipal permit.
15. A Property Disclosure Statement (“PDS”) was not provided to the Buyers or made part of the Contract.
16. On March 22, 2017, the transaction for the Property set out in the Contract completed and title was transferred to the Buyers.
17. Mr. Banga received a commission of \$16,400 on the sale of the Property, net of GST and fees, because no other real estate licensee was involved in the transaction.
18. A Notice of Discipline Hearing was issued on October 22, 2018 and served on Mr. Banga.
19. An Amended Notice of Discipline Hearing was issued on August 8, 2019 and served on Mr. Banga.
20. Mr. Banga has no prior discipline history.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the facts outlined herein, Mr. Banga proposes the following findings of misconduct be made by the Committee:

1. Mr. Banga committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (“RESA”) in January 2017. In particular, he:
 - a. published real estate advertising for the Property that he knew contained misleading information in that the Property’s lower level did not contain an authorized kitchen or cooking facility and/or was not suitable as a mortgage helper, contrary to section 4-7 [False or misleading advertising prohibited] of the rules made under the RESA (the “Rules”);
 - b. failed to disclose in writing or at all to the Buyers that the Property contained an unauthorized kitchen/stove, contrary to section 5-13 [Disclosure of latent defects] of the Rules;
 - c. failed to take reasonable steps to avoid, or to promptly and fully disclose, a conflict of interest when he acted as a limited dual agent for himself, the Seller, and the Buyers, without:
 - i. explaining to the Buyers his conflict as a principal/owner in the transaction could not be resolved by limited dual agency; and
 - ii. explaining to the Buyers that he had an additional conflict of interest as the Builder that could not be resolved by limited dual agency,contrary to sections 3-3(i) and 3-3(j) [Duties to clients] of the Rules;
 - d. failed to advise the Buyers to seek independent advice with respect to accepting agency from a Seller/Builder/Listing agent, contrary to section 3-3(d) [Duties to clients] of the Rules;
 - e. failed to act impartially between his own interests as the Seller, and the interests of the Buyer, when he did not include a condition in the Contract that required a PDS or other written disclosure of any alternations to the Property made in conflict to, after or without required municipal permits, contrary to section 3-3(a) [Duties to clients] of the Rules; and
 - f. failed to act with reasonable care and skill, when he engaged in the conduct described at (a)-(e), 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. Banga proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the Committee, pursuant to section 43 of the RESA:

1. Mr. Banga’s licence be suspended for two (2) months.
2. Mr. Banga be prohibited from acting as an unlicensed assistant during the licence suspension period.

3. Mr. Banga pay a discipline penalty to the Council in the amount of \$11,000 within three (3) months of the date of this Order.
4. Mr. Banga, 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.
5. Mr. Banga pay enforcement expenses to Council in the amount of \$1,000 within two (2) months from the date of this Order.
6. If Mr. Banga fails to comply with any of the terms of this Order, a discipline committee may suspend or cancel Mr. Banga's licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Banga 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 Committee; 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.
2. Mr. Banga 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.
3. Mr. Banga 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.
4. Mr. Banga hereby waives his right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Council, Mr. Banga will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Mr. Banga from making full answer and defence to any civil or criminal proceeding(s).
6. The Proposal and its contents are made by Mr. Banga 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. Banga in any civil proceeding with respect to the matter.

"Raj Banga"

RAJ BANGA

Dated 10th day of December, 2019