

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
CHERYL CHIH YU KANG
(150023)

CONSENT ORDER

RESPONDENT: Cheryl Chih Yu Kang, Representative
Sutton Group-West Coast Realty

DATE OF REVIEW MEETING: November 6, 2019

DATE OF CONSENT ORDER: November 6, 2019

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

ALSO PRESENT: E. Seeley, Chief Executive Officer
D. Avren, Vice President, Legal Services and Compliance
M. Sull, Legal Counsel for the Real Estate Council of BC

PROCEEDINGS:

On November 6, 2019, the Consent Order Review Committee (“CORC”) resolved to accept the Consent Order Proposal (the “Proposal”) submitted by Cheryl Chih Yu Kang, on her own behalf.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Cheryl Chih Yu Kang, on her own behalf.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Cheryl Chih Yu Kang committed professional misconduct within the meaning of sections 3(1), 7(3) and 35(1)(a) of the *Real Estate Services Act* (“RESA”), pursuant to section 43 of the RESA the CORC orders that:

1. Cheryl Chih Yu Kang pay a discipline penalty to the Council in the amount of \$7,500 within ninety (90) days from the date of this Order.
2. Cheryl Chih Yu Kang, at her 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. Cheryl Chih Yu Kang pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Cheryl Chih Yu Kang fails to comply with any terms of this Order, the Council may suspend or cancel Cheryl Chih Yu Kang's license without further notice to her, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 6th day of November 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*
S.B.C. 2004, c. 42 as amended**

AND

IN THE MATTER OF

**CHERYL CHIH YU KANG
(1500023)**

CONSENT ORDER PROPOSAL BY CHERYL CHIH YU KANG

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Ms. Cheryl Chih Yu Kang ("Ms. Kang") 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 Service Act* ("RESA").

For the purposes of the Proposal, Ms. Kang and the Council have agreed upon the following facts:

1. Ms. Kang has been licensed as a representative for trading services since 2006.
2. Ms. Kang was at all relevant times licensed as a trading representative with Sutton Group - West Coast Realty (the "Brokerage").
3. At all material times Ms. Kang was not licensed to conduct rental property management services.
4. On or about March 25, 2010, YFT (the "Landlord") purchased property located at XXXX Millstream Road, West Vancouver, B.C. (the "Property").
5. The Landlord is a personal friend of Ms. Kang and does not reside in Canada. Ms. Kang and another friend, CF ("Ms. F"), assisted the Landlord with the management and rental of the Property.
6. The Landlord paid Ms. Kang and Ms. F some monies to assist her with the management and rental of the Property.
7. On June 9, 2014, Ms. Kang sent an email to DA (the "Complainant") providing her with a signed copy of the Tenancy Agreement for rental of the Property, and inquiring when was as a convenient time for "*us to do the walk through inspection report on your move in day.*" Ms. Kang included the Brokerage information on the signature line of the email.

8. The Complainant responded that *“we could do the inspection on Wednesday June any time or Saturday June 14 about 7:00 p.m.”*
9. On June 14, 2014, a Condition Inspection Report (the “Inspection Report”) was completed at the Property with Ms. Kang and the Complainant both present. Ms. Kang is listed as the Tenant’s Agent on the Inspection Report and the Brokerage’s address was provided as the Landlord’s Address for Service.
10. The same day (June 14, 2014), a hand written furniture inventory list was prepared by Ms. Kang and signed by the Complainant.
11. On June 24, 2014, Ms. Kang sent an email to the Complainant, providing a copy of the Tenancy Agreement and the Inspection Report. Ms. Kang included the Brokerage contact information on the signature line of her email.
12. The Complainant entered into a one year lease for the Property in or around June 2014.
13. On August 19, 2014, Ms. Kang re-sent the Tenancy Agreement and Inspection Report to the Complainant. Ms. Kang included the Brokerage’s contact information on the signature line of her email.
14. On April 16, 2015, Ms. F sent an email to the Complainant advising that the Tenancy Agreement for the Property was extended “for another year starting June 2015 to 15 May 2016” with a rental increase of \$80 with a total monthly rent of \$3,660.00. The email was copied to Ms. Kang and signed “C and CK” and included the Brokerage’s contact information on the signature line of the email.
15. On June 15, 2016, the Complainant entered into a Tenancy Agreement with the Landlord effective June 15, 2016 to June 14, 2017. Rent was payable in the amount of \$3766 with a security deposit of \$1790 and furniture deposit of \$2000. The Landlord’s address for service is listed as the Brokerage’s address and the Landlord’s “other phone number” is listed as Ms. Kang’s cell number (XXX-XXX-XXXX).
16. The Complainant provided Ms. Kang with post-dated cheques for the period of June 1, 2016 to December 1, 2016, made payable to the Landlord.

Tree Issues:

17. On October 23, 2016, the Complainant sent an email to Ms. Kang asking her to follow up regarding safety concerns she had expressed to Ms. Kang in relation to trees surrounding the Property.
18. On October 24, 2016, the Complainant sent another email to Ms. Kang advising her that she should verify a tree was located on City land and if not, Ms. Kang should speak with the neighbor and then the City, requesting that the tree be removed due to hazardous and safety concerns.
19. On October 24, 2016, Ms. Kang responded by email:

“It is very obvious that the tree is not on city’s property and you can see the tree is over on the neighbor side. Again, this is out of the landlord’s

control and the neighbour next door has no obligation to cut the tree. If you really have the safety concern then you may seek for other houses with not many trees around and I will be willing to negotiating (sic) to terminate the current lease for you”.

20. On October 26, 2016, the Complainant sent an email to Ms. Kang in regards to safety concerns with the tree as well as other concerns with the safety of a sink garburator in the Property. In her email, the Complainant stated:

“I am very surprised by your lack of professionalism and the way you handle customer issues ...it appears to me that you strongly prefer for us to evacuate the rental property before the contract expires as you have suggested in your text message...I would reserve the right to contact the Real Estate Board of Greater Vancouver, and Real Estate Council of BC, advising them about your misconduct in dealing with the above issues as a realtor who rented me the property”.

21. On the same date Ms. Kang responded by email:

“Pls understand that I have to report all the issues to the landlord and need to get the landlord’s approval to go ahead for the fixing. We have scheduled the immediate fixing for the two front entrance lights on October 25, 2016 and have the contractor to inspect the kitchen sink garburator as per your request. I have already passed all the contractor’s comment and quotation to the landlord and waiting for her instruction. Once she told (sic) me to go ahead then we will schedule the earliest appointment for you.”

22. On October 28, 2016, the Complainant sent a further email to Ms. Kang in regards to the tree safety and asked for the name of her managing broker for the rental division.

Toilet Issues

23. On November 14, 2016, the Complainant sent an email to Ms. Kang raising concerns about the replacement of a toilet seat at the Property and again asked for Ms. Kang’s managing broker’s contact information. The Complainant stated that she would be reporting Ms. Kang’s conduct to the Real Estate Council of B.C.
24. On November 19, 2016, the Complainant sent an email to Ms. Kang about a toilet seat problem and asked for her to arrange for a plumber to stop by to repair it.
25. On November 21, 2016, the Complainant sent an email to Ms. Kang again following up on the repair to the toilet and again asking her to arrange to send a plumber.
26. On November 25, 2016, the Complainant sent another email to Ms. Kang in regards to the toilet. She wrote: *“you have been introduced to us as the rental agent and you do have responsibility to take care of these issues”.*
27. On December 4, 2016, the Complainant sent a further email to Ms. Kang in regards to the toilet and stated as follows:

“Please provide us with the landlord’s information as we would like to send her an email out of courtesy before we take this to the next level. At the end as a tenant we do have the right to have the landlord’s contact information.”

28. On January 1, 2017, Mr. EC (“Mr. C”) of Noble & Associates, a licensed property management firm, commenced providing rental property management for the Property, after being introduced to the Landlord through Ms. Kang.
29. Ms. Kang provided Mr. C with copies of the Tenancy Agreement, the Inspection Report, the furniture inventory list and the Complainant’s post-dated rent cheques.
30. On June 27, 2017, Ms. Kang provided a statement to Council’s investigators denying that she provided real estate services to the Landlord or that she was in charge of rent collection or any monetary transaction. Ms. Kang claimed that she assisted the Landlord who was a friend of hers who lives overseas and who was hoping to have trustworthy people looking after the rental of the Property.
31. A Notice of Discipline Hearing was issued on June 28, 2019 and served on Ms. Kang.
32. Ms. Kang has no prior discipline history with Council.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the facts outlined herein, Ms.Kang proposes the following findings of misconduct be made by the CORC:

Ms.Kang committed professional misconduct within the meaning of section 35(1)(a) of the RESA, in that in her capacity as a trading representative for the Brokerage she:

1. provided rental property management services, when not licensed to do so, for the owner of the Property when she:
 - a. assisted the Landlord with the management and rental of the Property;
 - b. received remuneration from the Landlord;
 - c. provided the Complainant with a signed copy of the Tenancy Agreement for rental of the Property;
 - d. completed an Inspection Report for the Property;
 - e. prepared a handwritten furniture inventory list for the Property;
 - f. provided the Complainant with an extended Tenancy Agreement for the Property and accepted post-dated cheques from the Complainant for rental of the Property;
 - g. dealt with the Complainant regarding the removal of trees on the Property; and

- h. dealt with the Complainant regarding plumbing issues with the Property,

contrary to section 3(1) of the RESA [must not provide real estate services to or on behalf of another unless licensed to do so]; and

2. provided rental property management services as set out in paragraphs 1(a) to (g) above, separate and apart from the Brokerage, contrary to section 7(3) of the RESA [must not provide real estate services other than on behalf of the brokerage in relation to which she is licensed].

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Ms.Kang 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. Ms.Kang pay a discipline penalty to the Council in the amount of \$7,500.00 within ninety (90) days of the date of this Order.
2. Ms.Kang, at her own expense, register for and successfully complete the 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.
3. Ms.Kang pay enforcement expenses to Council in the amount of \$1,500.00 within sixty (60) days from the date of this Consent Order.
4. If Ms.Kang fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Ms.Kang's licence without further notice to her.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms.Kang 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. Ms.Kang acknowledges that she 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 she has obtained independent legal advice or has chosen not to do so, and that she is making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Ms.Kang 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. Ms.Kang 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. Ms.Kang hereby waives her right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Ms.Kang 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 Ms.Kang in any civil proceeding with respect to the matter.

"Cheryl Chih Yu Kang"

CHERYL CHIH YU KANG

Dated 13th day of August 2019