

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
FRANCES HIU PING CHOW
(118273)

CONSENT ORDER

RESPONDENT: Frances Hiu Ping Chow, Representative,
Selmak Realty Limited

DATE OF REVIEW MEETING: September 18, 2019

DATE OF CONSENT ORDER: September 18, 2019

CONSENT ORDER REVIEW COMMITTEE: E. Duvall, Chair
M. Chan
M. Walker

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

PROCEEDINGS:

On September 18, 2019, the Consent Order Review Committee ("COCR") resolved to accept the Consent Order Proposal (the "Proposal") submitted by France Hiu Ping Chow.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by France Hiu Ping Chow.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that France Hiu Ping Chow committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("RESA"), pursuant to section 43 of the RESA the COCR orders that:

1. France Hiu Ping Chow pay a discipline penalty to the Council in the amount of \$3,500 within three (3) months from the date of this Order;

2. France Hiu Ping Chow, at her own expense, register for and successfully complete the *Homeowner Protection Act: Protect Your Sellers and Yourself* course, offered by the Real Estate Board of Greater Vancouver in the time period as directed by the Council; and
3. France Hiu Ping Chow pay enforcement expenses to the Council in the amount of \$1,500 within two (2) months from the date of this Order.

If France Hiu Ping Chow fails to comply with any term of this Order, the Council may suspend or cancel her licence without further notice to her, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 18th day of September 2019, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Elain Duvall”

Elain Duvall, Chair
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

FRANCES HIU PING CHOW (118273)

CONSENT ORDER PROPOSAL BY FRANCES HIU PING CHOW

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Frances Hui Ping Chow ("Ms. Chow") 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* ("RESA").

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

1. Ms. Chow has been continuously licensed as a representative in trading and rental property management services since 1995.
2. Ms. Chow was at all relevant times licensed as a representative with Selmak Realty Limited.
3. On or about February 4, 2015, Ms. Chow listed for sale a residential property located at XXXXX Caithcart Road in Richmond, BC (the "Property"). The Property was owned by Y.R and F.Y. (the "Seller").
4. The Property had been built in 2009 by an owner-builder and sold to the Seller in 2010.
5. The BC Housing New Homes Registry (the "Registry") is an online resource that allows one to obtain information about the status of a new home or a new home under construction, in particular, whether a new home, or new home under construction, has a home warranty insurance policy; whether it was built by a licensed residential builder; and whether conditions have been met that would allow an owner-builder to sell the home. It also notes that if the home did not have home warranty insurance, it may have been built under an Owner-Builder Authorization.
6. The BC *Homeowner Protection Act* ("HPA") provides that the owner-builder or any subsequent owner of an owner-built home must:
 - a. provide an Owner-Builder Disclosure Notice ("OBDN") to any potential buyer within the first 10 years after initial occupancy;
 - b. be provided to a potential purchaser prior to entering into a contract of purchase and sale and state:

- i. that the home was built under an Owner Builder Authorization issued by the Homeowner Protection Office (“HPO”);
 - ii. when the 10-year period started; and
 - iii. whether there is a voluntary policy of home warranty insurance in place.
7. On or about February 4, 2015, the Seller completed a Property Disclosure Statement (“PDS”) for the Property, and provided the following responses:
 - a. *“Yes”, in answer to the question, “Were these Premises constructed by an ‘owner builder’ as defined in the Homeowner Protection Act, with construction commencing, or a building permit applied for, after July 1, 1999?”*

If the answer was “Yes”, the Seller was prompted to attach an OBDN. No OBDN was attached to the PDS.
 - b. *“No”, in answer to the question, “Are these Premises covered by home warranty insurance under the Homeowner Protection Act?”*
8. Ms. Chow did not make inquiries of, or seek further information from, the Seller (or elsewhere), in response to the answers that they had provided in the PDS (as set out in paragraph 7 herein).
9. Ms. Chow did not advise the Seller to seek independent professional advice with respect to their obligations under the HPA and the conditions that must be met for selling the Property.
10. On or about July 28, 2015, the Seller and a buyer entered into a contract of purchase and sale for the Property.
11. The sale of the Property completed on August 18, 2015, without incident.
12. On or about July 17, 2016, the Council received information from a third party, that the Property was originally an owner-built home, and according to a current search of the Registry, the Seller had not met the requisite conditions under the HPA and had not been permitted to offer the Property for sale.
13. Further investigation by the Council’s compliance officer revealed that:
 - a. the owner-builder had not provided an OBDN to the Seller; and
 - b. the Seller had not provided an OBDN to the buyer.
14. To date, the Seller has not provided an OBDN to the buyer.
15. No harm resulted to the buyer, the Seller or any member of the public.
16. Neither the buyer nor the Seller complained to the Council.
17. Ms. Chow does not have a discipline history with the Council.

18. A Notice of Discipline Hearing was issued on March 5, 2019 and served on Ms. Chow.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Ms. Chow committed professional misconduct within the meaning of section 35(1)(a) of the RESA, when in her capacity as the listing agent in the 2015 sale of the Property, a new home built by an owner-builder, she failed to establish that the seller had complied with the provisions of the HPA, when:
 - a. prior to listing the Property for sale, she did not confirm that the seller had obtained a BC Housing OBDN, that stated whether the Property was built under an Owner Builder Authorization and whether the Property was covered by a policy of home warranty insurance; and
 - b. prior to an offer being made for the Property, she did not ensure that the seller had, as they were required to do so under section 21(2) of the HPA, provided the buyer with the OBDN; contrary to sections 3-3(a) [best interest of the client], and 3-4 [reasonable care and skill] of the Rules; and
 - c. she failed to advise the seller to seek independent professional advice with respect to her obligations under the HPA and the conditions that must be met for selling the Property, contrary to section 3-3(d) of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Ms. Chow 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. Chow pay a discipline penalty to the Council in the amount of \$3,500 within three (3) months from the date of this Order.
2. Ms. Chow, at her own expense, register for and successfully complete the *Homeowner Protection Act: Protect Your Sellers and Yourself* Course, offered by the Real Estate Board of Greater Vancouver, in the time period as directed by the Council.
3. Ms. Chow pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Order.
4. If Ms. Chow fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Ms. Chow's licence without further notice to her.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

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

"Frances Hiu Ping Chow"

FRANCES HIU PING CHOW

Dated 18th day of August, 2019