

**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**  
**YUN KEUN (BRIAN) SONG**  
**(150491)**

**AND**

**BRIAN SONG PERSONAL REAL ESTATE CORPORATION**  
**(150491PC)**

**CONSENT ORDER**

RESPONDENTS: Yun Keun (Brian) Song, Representative, Crest Realty Ltd., while  
licensed with RE/MAX Crest Realty  
  
Brian Song Personal Real Estate Corporation

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  
M. Shirreff, Legal Counsel for the Real Estate Council of BC

**PROCEEDINGS:**

On September 18, 2019, the Consent Order Review Committee ("CORG") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Yun Keun (Brian) Song, on his own behalf and on behalf of Brian Song Personal Real Estate Corporation.

**WHEREAS** the Proposal, a copy of which is attached hereto, has been executed by Yun Keun (Brian) Song, on his own behalf and on behalf of Brian Song Personal Real Estate Corporation.

**NOW THEREFORE**, having made the findings proposed in the attached Proposal, and in particular having found that Yun Keun (Brian) Song and Brian Song Personal Real Estate Corporation 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 CORC orders that:

1. Yun Keun (Brian) Song and Brian Song Personal Real Estate Corporation jointly and severally pay a discipline penalty to the Council in the amount of \$2,500 within sixty (60) days from the date of this Order; and
2. Yun Keun (Brian) Song and Brian Song Personal Real Estate Corporation jointly and severally pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Yun Keun (Brian) Song and/or Brian Song Personal Real Estate Corporation 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 18<sup>th</sup> day of September, 2019, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"Elain Duvall"

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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**

**YUN KEUN (BRIAN) SONG  
(150491)**

**AND**

**BRIAN SONG PERSONAL REAL ESTATE CORPORATION  
(150491PC)**

**CONSENT ORDER PROPOSAL BY BRIAN YUN KEUN (BRIAN) SONG  
AND BRIAN SONG PERSONAL REAL ESTATE CORPORATION**

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**BACKGROUND AND FACTS**

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

1. Mr. Song (150491) has been continuously licensed with the Council as a representative for trading services since 2006. Mr. Song was also licensed as Song PREC (150491PC) during the material time.
2. Mr. Song and Song PREC were at all relevant times licensed as representatives for trading services with Re/Max Crest Realty.
3. This matter involves a property located at XXXX Ridgewood Drive, North Vancouver, BC (the "Property").
4. On April 29, 2011, Re/Max Crest Realty entered into a Multiple Listing Contract with JW and EW. RM was the licensee listed on the contract.
5. On May 2, 2011, RM created a Multiple Listing Service ("MLS") feature sheet for the Property. The feature sheet contained the following information: "New electrical, plumbing, water main, 220 amp service, drain tile, windows, interior/exterior paint, new landscaping". The renovation year was listed as 2010.

6. On or about May 2, 2011, RM created a document titled "Team Clarke Useful Information for Selling Realtors" with respect to the Property, which included the following information:
  - a. Under "Drainage", the form provided the option checkboxes of original, replaced, don't know or details/year. None of the checkboxes were checked, but next to details/year the form noted, "N, W, E side replaced 2008";
  - b. Under "Electrical", the checkbox for "replaced" was checked and next to details/year, the form noted "2009-2011";
  - c. Under "Plumbing", the checkbox for "replaced" was checked and next to details/year, the form noted "2009-2011; and
  - d. Under "Renovations", basement was handwritten with the year listed first as 2009, which was crossed out and replaced with 2010.
7. Mr. Song acted as the designated agent of BM who purchased the Property from JW and EW in June 2011.
8. On or about May 3, 2011, Mr. Song prepared a Contract of Purchase and Sale as the designated agent of BM. BM offered to Purchase the Property for \$989,000. The sale was subject to financing, inspection, title and Property Disclosure Statement. The subjects were to be removed May 11, 2011.
9. On June 28, 2011, the transaction completed and title to the Property was registered to BM.
10. Almost three years later, on May 2, 2014, a Multiple Listing Contract was entered into between BM and Re/Max Crest Realty to list the Property for \$1,088,000. Song PREC was the designated agent.
11. On May 5, 2014, BM provided a signed Property Disclosure Statement to Mr. Song with all of the questions crossed out and no information provided.
12. On May 6, 2014, Mr. Song created an MLS feature sheet which included the same comments as the May 2, 2011 MSL feature sheet prepared by RM. Specifically, the feature sheet included the following, "New electrical, plumbing, water main, 220 amp service, drain tile, windows". The renovation year was listed as 2010.
13. On July 6, 2014, the buyer, YK, and BM consented to a limited dual agency relationship with Song PREC.
14. On July 6, 2014, Mr. Song prepared a Contract of Purchase and Sale on behalf of the buyer YK. YK offered to purchase the Property for \$1,050,000. The contract was subject to inspection, title search and PDS. The subject removal date was July 11, 2014 and the deposit amount was \$50,000.
15. On July 9, 2014, Mr. Song forwarded the title, PDS and oil tank scanning results to YK.

16. On July 10, 2014, CL carried out a home inspection of the Property on behalf of YK. There were no drainage problems noted in the inspection report with respect to the Property.
17. On July 11, 2014, YK removed subject conditions and paid the deposit.
18. On July 30, 2014, the transaction completed and the title to the Property was registered to YK.
19. On or about the third week of August 2014, Vancouver experienced heavy rainfall and the basement of the Property flooded. A drainage expert hired by YK determined that that drain tile on the Property was the original tile from the construction of the Property in the 1960s and that the drainage out-pipe had never been connected to the municipal storm sewer system.
20. On April 1, 2015, RM emailed PW, the son of JW and EW, regarding the extent of the work that they had done to the Property prior to selling it in 2011.
21. On April 2, 2015, PW responded to RM's email as follows:

*As I remember, the house was lifted approximately 4' and all of the plumbing was torn out at that time and replaced. They completely re-laid new out flowing drainage for both sewage and new perimeter drainage. The house used to have a sump pump which I believe was worked around and removed. The electrical for upstairs was partially replaced and obviously everything in the basement suit is new. I am pretty sure we even had separate meters put in with a new service running to the house. And now that I think of it a new water main as well. I can't be quoted on this but this is what I generally remember.*

22. On April 14, 2015, YK filed a Notice of Claim in the Provincial Court of British Columbia (Small Claims Court) against Mr. Song, Crest Realty Ltd., and the home inspector CL. YK sought to recover \$25,296.00, which she claimed was her loss with respect to the water ingress in the basement of the Property due to the old drainage tiles and the fact that the drainage out-pipe had not been connected to the municipal storm sewer system.
23. On April 23, 2015, Mr. Song and Crest Realty Ltd. filed a reply to YK's claim, denying any and all liability with respect to the claim.
24. On November 17, 2016, YK made a complaint to the Council about Mr. Song.
25. On February 1, 2017, Mr. Song provided his response to the Council with respect to YK's complaint. He advised the following:

*To explain for description at MLS feature sheet states "New electrical, plumbing, water main, 220 amp service, drain tile....":*

- a. *I have received above information from previous sellers and seller's realtor (Rob Montgomerie in Team Clarke's team in Remax Crest Realty) at May 3, 2011.*
- b. *The previous sellers and seller's realtor said the house was lifted approximately 4' and all of the old plumbing was torn out at that time and replaced. They*

*completely re-laid new out flowing drainage for both sewage and new perimeter drainage. The house used to have a sump pump but it's removed. The electrical for upstairs was partially replaced and everything in the basement suit is new. They also put separate meters with a new service running to the house and it's a new water main as well.*

- c. To proof, I attached seller's repaired confirmation letter by email, the previous seller's realtor letter and the 2011 previous MLS feature sheet.*
- d. I explained to [YK] that all renovation was done by previous seller around 2010 and also notice of renovation year at 2010 in MLS feature sheet. I didn't say renovation is a brand new to [YK] and meant not old. [YK] already knew that all renovation year was around 2010 before she wrote an offer.*
- e. To know anything about renovation, I advised her to go to City hall and check it as well as do inspection before subject remove.*
- f. I and [YK] went together to city hall and check it for her concern. I got permit confirmation for plumbing, water service from City hall.*
- g. [YK] hired her inspector to check it [sic] the house. After that, she liked the house and removed all subject. (I got the inspector's confirmation for drain title [sic] by email and attached).*

26. In his response to Council set out at paragraph 25(b) above, Mr. Song advised that he relied on information obtained by RM from PW on April 2, 2015, which information Mr. Song did not have when he created the MLS feature sheet on May 6, 2014.

27. No permit was issued by the District of North Vancouver to replace the drain tile on the Property prior to the sale of the Property to BM in 2011 or prior to the sale to YK in 2014.

28. The drain tile on the Property was not replaced in 2008 or 2010 as was stated on the MLS feature sheet by RM in 2011 and Mr. Song again in 2014.

29. A Notice of Discipline Hearing was issued on March 27, 2019 and served on Mr. Song and Song PREC.

30. Mr. Song and Song PREC do not have any prior discipline history with Council.

#### **PROPOSED FINDINGS OF MISCONDUCT**

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

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

- a. when acting as the listing agent in the 2014 sale of the Property, they published advertising on the Multiple Listing Service® that stated that the Property contained new drain tiles when they knew, or ought to have known that was incorrect, contrary to sections 3-3(a) [act in best interest of the client], 3-4 [act with reasonable care and skill] and/or 4-7 [false or misleading advertising prohibited] of the Rules; and
- b. when acting as a limited dual agent for the seller and buyer of the Property in 2014, they failed to ascertain material facts concerning the Property, namely the age and/or condition of the drain tiles, contrary to sections 3-3(h) [obligation to discover relevant facts] and 3-4 [act with reasonable care and skill] of the Rules.

### **PROPOSED ORDERS**

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Song and Song 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. Song pays a fine in the amount of \$2,500 within sixty (60) days from the date of this Order.
2. Mr. Song and Song 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.
3. If Mr. Song or Song PREC fail to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Song PREC's licence without further notice to Mr. Song or Song PREC.

### **ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT**

1. Mr. Song and Song 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. Song and Song 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. Song and Song 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. Song and Song 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. Song and Song PREC each hereby waive their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Song and Song 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. Song and Song PREC in any civil proceeding with respect to the matter.

"Yun Keun (Brian) Song and on behalf  
of Song PREC"

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**Brian Yun Keun (Brian) Song on his own behalf  
and on behalf of Song PREC**

**Dated 6<sup>th</sup> day of August, 2019**