

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

OAKWYN PROPERTY MANAGEMENT LTD.
(X030710)

AND

ARLENE CHRISTINA CHIANG
(152620)

AND

ARLENE CHIANG PERSONAL REAL ESTATE CORPORATION
(152620PC)

CONSENT ORDER

RESPONDENT: Oakwyn Property Management Ltd., Brokerage

Arlene Christina Chiang, Managing Broker, Oakwyn Property
Management Ltd.

Arlene Chiang Personal Real Estate Corporation

DATE OF CONSENT ORDER: July 2, 2019

CONSENT ORDER REVIEW COMMITTEE: S. Heath
Y. Amlani
M. Chan

PROCEEDINGS:

On May 29, 2019, a Consent Order Proposal (the "Proposal") submitted by Arlene Christina Chiang, on her own behalf and on behalf of Arlene Chiang Personal Real Estate Corporation and Oakwyn Property Management Ltd., was considered by the Consent Order Review Committee ("CORC") but not accepted. On June 26, 2019 a revised Proposal acceptable to the CORC was

submitted by Arlene Christina Chiang, on her own behalf and on behalf of Arlene Chiang Personal Real Estate Corporation and Oakwyn Property Management Ltd.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Arlene Christina Chiang, on her own behalf and on behalf of Arlene Chiang Personal Real Estate Corporation and Oakwyn Property Management Ltd.

NOW THEREFORE, the CORC having made the findings proposed in the attached COP, and having found that Arlene Christina Chiang, Arlene Chiang Personal Real Estate Corporation, and Oakwyn Property Management Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("RESA"), orders that:

1. Arlene Christina Chiang, Arlene Chiang Personal Real Estate Corporation, and Oakwyn Property Management Ltd. be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$20,000 within ninety (90) days from the date of this Order;
2. Arlene Christina Chiang, Arlene Chiang Personal Real Estate Corporation, and Oakwyn Property Management Ltd. 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. Oakwyn Property Management Ltd. undergo, at its own expense, an audit by the Council, within six (6) months from the date of this Order, to confirm the brokerage's and Arlene Christina Chiang's compliance with the RESA and the Real Estate Rules; and
4. Arlene Christina Chiang, at her own expense, register for and successfully complete the Broker's Remedial Education Course, as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia in the time period directed by the Council.

If Arlene Christina Chiang, Arlene Chiang Personal Real Estate Corporation, or Oakwyn Property Management Ltd. 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 *Real Estate Services Act*.

Dated this 2nd day of July 2019, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"S. Heath"

Sandra Heath
Consent Order Review Committee

Attch.

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

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**OAKWYN PROPERTY MANAGEMENT LTD.
(X030710)**

AND

**ARLENE CHRISTINA CHIANG
(152620)**

AND

**ARLENE CHIANG PERSONAL REAL ESTATE CORPORATION
(152620PC)**

**CONSENT ORDER PROPOSAL OF OAKWYN PROPERTY MANAGEMENT LTD., ARLENE CHRISTINA
CHIANG and ARLENE CHIANG PERSONAL REAL ESTATE CORPORATION**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Oakwyn Property Management Ltd. ("Oakwyn Property Management"), Arlene Christina Chiang ("Ms. Chiang") on her own behalf and on behalf of and Arlene Chiang Personal Real Estate Corporation ("AC 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* ("RESA").

For the purposes of the Proposal, Oakwyn Property Management, Ms. Chiang, AC PREC and the Council have agreed upon the following facts:

1. Ms. Chiang has been licensed since 2008, and is currently licensed to provide trading, rental and strata property management services.
2. AC PREC (formerly Arlene Uy Personal Real Estate Corporation), has been licensed since 2009.
3. Ms. Chiang has been licensed as a managing broker since 2013, and has three secondary licences for affiliated (Oakwyn) brokerage offices, all of which she is a director and an owner.
4. Ms. Chiang was at all relevant times licensed as the managing broker with Oakwyn Property Management.
5. Oakwyn Property Management has been licensed since January 2013, at which time it was only providing rental and strata property management services.

6. In July 2018, the brokerage upgraded its licence to include the provision of trading services.
7. Between June 28 and June 30, 2017, the Council conducted an inspection of the brokerage's books and records (the "2017 Audit"). (The brokerage had previously been audited in July 2013, shortly after it was licensed.)
8. At the time of the 2017 Audit, the brokerage was only providing rental property management services.
9. The audit revealed that the brokerage had failed to prepare and maintain proper books and records for the current year (2017), and in particular, identified the following deficiencies:
 - a. the source documentation provided for the auditor's review did not include a sufficient description or reference to confirm which rental properties the trust deposits related to;
 - b. the documentation provided for review did not include monthly bank reconciliations for the individual and pooled rental property management trust accounts, rental security deposit trust account and general operating account; and
 - c. the brokerage did not have any general ledgers for either the trust or general accounts available.
10. In August 2017, the auditor provided Ms. Chiang with a summary of the audit in the form of an office and records inspection report (the "ORIR"), and requested that she provide responses to the audit findings, and the following documents to the Council, by September 2017:
 - a. copies of the monthly bank reconciliations for the rental property management trust account, rental security deposit trust account, and the general operating account;
 - b. copies of the trust liability listings for the rental property management and rental security deposit trust accounts;
 - c. copies of the trust liability reconciliations; and
 - d. copies of the monthly general ledgers trust accounts, and the general operating account.
11. Between September and November 2017, the audit staff sent correspondence to Ms. Chiang, requesting that the brokerage respond to the ORIR and provide the Council with the requisite documents.
12. In December 2017, Ms. Chiang advised the audit staff that the brokerage was unable to provide the Council with the information and documents, and requested an extension until February 15, 2018, to do so. The Council granted an extension until January 5, 2018.
13. On January 5, 2018, Ms. Chiang provided the auditor with a security deposit trust liability listing, but did not provide the requested bank reconciliations for the rental property trust and general account.

14. On January 10, 2018, the brokerage's chief financial officer (the "CFO") advised the auditor that the brokerage was currently working on the details of the rental trust and general accounts and would provide the necessary documents to the Council shortly.
15. Throughout March and April 2018, in response to the audit staff inquiries, the CFO advised that the brokerage was still working on the documents to be provided to the Council.
16. On May 30, 31 and June 1, 2018, a re-inspection of the brokerage was conducted as a follow-up to the 2017 Audit, and to determine if the brokerage bank accounts were being reconciled in a timely manner and appropriate format. The auditor noted at the time that several of the other deficiencies identified during the 2017 Audit had been resolved to the Council's satisfaction.
17. Throughout June 2018, the auditor continued to request that the brokerage provide the outstanding monthly bank statements and reconciliations.
18. On June 29, 2018, the auditor received the security deposit listings, and after reviewing those documents, determined that the information provided was insufficient.
19. On July 18, 2018, Ms. Chiang attended a meeting with the auditor and the Director of Audit and Accounting, during which an action plan was developed that required the brokerage to provide the following documents to the Council, by August 3, 2018:
 - a. copies of the monthly bank reconciliations for the rental property management trust account, rental security deposit trust account and the general operating account for each individual month from May 2017 through to June 2018;
 - b. copies of the trust liability listings for the rental property management and rental security deposit trust accounts that identifies all month end individual client ledger balances/amounts being held for clients at month end from May 2017 through to June 2018;
 - c. copies of the trust liability reconciliation that agrees the trust liability listing to the adjusted bank/trust general ledger balance at each individual month end; and
 - d. copies of the monthly general ledgers for both trust accounts and the general operating account from May 2017 through to June 2018.
20. On August 7, 2018, after reviewing documents that were provided by the brokerage, the auditor noted that there was a negative balance in the pooled rental trust account, in the amount of \$29,369.79, and a negative balance in the security deposit trust account in the amount of \$50.00.
21. The auditor also noted that it did not appear that the brokerage had taken steps to eliminate the negative balances, nor notify the Council about the negative balances, as was required under the Real Estate Rules (the "Rules").

22. The brokerage was advised to take immediate action to address the negative balances, and to ensure that there were internal controls in place to prevent a re-occurrence.
23. The auditor determined that no trust money was missing, and the negative balances had resulted from accounting errors.
24. In August 2018, the brokerage was still unable to provide the Council with the remainder of the outstanding documents, and as a consequence, the matter was referred to the legal department.
25. A Notice of Discipline Hearing was issued on September 26, 2018, and served on Ms. Chiang, AC PREC and Oakwyn Property Management.
26. Between August and November 2018, the auditor worked closely with Ms. Chiang, the CFO and other brokerage staff to support the brokerage into compliance, and continued to receive and review brokerage documents.
27. In November 2018, the auditor concluded that:
 - a. monthly bank reconciliations, ledgers and trust liability reconciliations for the rental property management trust and security deposit trust for the month ended September 30, 2018 were acceptable to the Council;
 - b. there were no overall trust shortages or negative balances in individual trust ledgers; and
 - c. Ms. Chiang had internal controls in place to minimize errors going forward.
28. The audit department closed its file with respect to this matter.
29. No complaint was received by the Council in relation to this matter.
30. No harm resulted to any client of the brokerage or any member of the public in relation to this matter.
31. Ms. Chiang provided the Council with the following background information:
 - a. In 2013, the brokerage had 10 clients and by 2015, the number of clients had increased to 68. During this period the brokerage used an outside accounting firm to generate the bookkeeping and to ensure compliance with the legislation.
 - b. In February 2015, the brokerage purchased rental property management software, to assist with the growing portfolio of the brokerage, as well as to bring bookkeeping in-house for cost and efficiency reasons.
 - c. In November 2016, the brokerage hired a CFO to manage and oversee the accounts for all of the Oakwyn brokerages.

- d. In December 2016, there was a significant staff change in the office manager position at the brokerage, and in mid-2017 one of its bookkeepers had to take an unexpected medical leave, which resulted in the brokerage falling behind with its bookkeeping. During this time, Ms. Chiang gave birth to her second child.
 - e. As result of the changes in staff and medical absences, the brokerage was not able to fully implement the bookkeeping into the new software program system. To assist with the transition into the new system, the brokerage hired a third-party consultant. The consultant was not able to fulfill its contract, and the transition to the new software system was not fully implemented.
 - f. Following the audit and the subsequent requests from the Council for further information, Ms. Chiang determined that the best course of action moving forward was to recreate all of the brokerage records to ensure that everything was accounted for, and that the brokerage was in compliance with the RESA and the Rules.
 - g. Ms. Chiang decided to hire past employees of the brokerage who had knowledge of the brokerage's clients and circumstances; this took additional time to schedule and coordinate.
 - h. In September 2018, the brokerage hired a new accountant with over 25 years of property management experience to:
 - i. assist with Oakwyn Property Management's records;
 - ii. implement new systems and policies, including checks and balances to insure proper monthly bookkeeping, so that deadlines and filing requirements were met; and
 - iii. select new accounting software that was more integrated with the brokerage's business.
32. Ms. Chiang acknowledged that the above-noted circumstances were not excuses for the state of the brokerage's bookkeeping, and regretted her mismanagement of the situation.
33. Ms. Chiang acknowledged that she did not respond as promptly as she should have to the requests of the Council following the June 2017 audit. In retrospect, she realized that she should have apportioned more of her time and attention to this matter.
34. Ms. Chiang understands and appreciates that as managing broker she plays a critical role in the operation of a brokerage ; in particular, to ensure that it carries out the duties imposed by the legislation, and that there is appropriate management, oversight and control the brokerage's books and records. To that end, she has for the last three years sat as a member of the Real Estate Board of Greater Vancouver's Professional Conduct Committee which has provided her within greater insight and knowledge regarding her duties and obligations as a managing broker.
35. Oakwyn Property Management does not have a discipline history with the Council.
36. Ms. Chiang and AC PREC have a discipline history with the Council as follows.

PREVIOUS DISCIPLINE HISTORY

37. On June 11, 2018, Ms. Chiang and AC PREC entered into a consent order with the Council with respect to two complaints.
38. Ms. Chiang admitted that she had committed professional misconduct within the meaning of section 35(1)(a) of the RESA, when in 2009:
- a. in her capacity as the seller's agent in the sale of property located at 2XX-9XX West 10th Avenue, Vancouver, BC, she failed to take sufficient steps to ensure she was dealing with either the registered owner of the Property or a person who, despite not being the registered owner of the property, had the legal authority to sell the Property contrary to section 3-4 of the Rules; and
 - b. in connection with the rental of a residential property located at 2XX – 9XX West 8th Avenue, Vancouver BC (the "Rental Property"), she:
 - i. providing real estate services in relation to the Rental Property, being more particularly rental property management services, when she was not licensed to do contrary to section 3(1)(a) of the RESA;
 - ii. provided real estate services, being more particularly rental property management services, other than on behalf of the brokerage to which she was then licensed, contrary to section 7(3)(a) of the RESA; and
 - iii. accepted remuneration in relation to the provision of real estate services, being the rental property management services, from a person, being the registered owner of the Rental Property, other than the brokerage to which she was then licensed, contrary to section 7(3)(b) of the RESA.
39. As a result of the contraventions, Ms. Chiang and AC PREC were each reprimanded and ordered to jointly and severally pay a discipline penalty to the Council in the amount of \$7,500 within ninety (90) days from the date of the Order and pay enforcement expenses to the Council in the amount \$1,500 within sixty (60) days from the date of the Order.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purpose of the Proposal and based on the Facts outlined herein, Oakwyn Property Management, Ms. Chiang and AC PREC propose the following findings of misconduct be made by the CORC:

1. Oakwyn Property Management committed professional misconduct within the meaning of section 35(1)(a) of the RESA, when it:
 - a. failed to prepare and maintain proper books and records for the year 2017, as identified during the Council's inspection of the brokerage's books and records in June 2017 (the "2017 Audit"), and in particular:

- i. copies of the monthly bank reconciliations for the rental property management trust account, rental security deposit trust account, and the general operating account;
- ii. copies of the trust liability listings for the rental property management and rental security deposit trust accounts;
- iii. copies of the trust liability reconciliations; and
- iv. copies of the monthly general ledgers trust accounts, and the general operating account;

contrary to section 25 of the RESA, and sections 8-1 and 8-2 of the Rules; and

b. failed:

- i. to take immediate steps to eliminate:
 - A. the negative balances with respect to 34 rental property trust accounts (for a total of \$29,369.79); and
 - B. a negative balance with respect to the security deposit trust account (in the amount of \$50.00);
- and
- ii. to notify the Council about the negative balance(s) no later than 10 days after the day on which the negative balance(s) arose,

contrary to sections 7-5(2) and 7-5(3)(b) of the Rules.

2. Ms. Chiang, in her capacity as the managing broker for Oakwyn Property Management, committed professional misconduct within the meaning of section 35(1)(a) of the RESA, when she failed to:

- a. ensure that the brokerage prepared and maintained monthly bank and trust liability reconciliations, trust liability listings, and monthly general ledgers as set out in paragraph 1(a); and
- b. promptly, if at all, respond to the Council's repeated requests following the 2017 Audit between August 2017 and August 2018, for the brokerage to provide the Council with:
 - i. copies of the monthly bank reconciliations for the rental property management trust account rental security deposit trust account and the general operating account for each individual month from May 2017 through to June 2018;
 - ii. copies of the trust liability listings for the rental property management and rental security deposit trust accounts from May 2017 through to June 2018.

- iii. copies of the trust liability reconciliations from May 2017 through to June 2018, and;
- iv. copies of the monthly general ledgers trust accounts and the general operating account from May 2017 through to June 2018,

contrary to sections 3-1(1)(a) and(b), 3-1(3)(a) and (b), and 2-19 of the Rules, and section 6(2)(b) of the RESA [managing broker responsibilities].

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Ms. Chiang, AC PREC and Oakwyn Management 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. Ms. Chiang, AC PREC and Oakwyn Property Management be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$20,000 within ninety (90) days from the date of this Order.
2. Ms. Chiang, AC PREC and Oakwyn Property Management 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. Oakwyn Property Management undergo, at its own expense, an audit by the Council, within six (6) months from the date of this Order, to confirm the brokerage's and Ms. Chiang's compliance with the RESA and the Rules.
4. Ms. Chiang, at her own expense, register for and successfully complete the Broker's 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.
5. If either Ms. Chiang and AC PREC or Oakwyn Property Management fails to comply with any of the terms of the Order set out above, a Discipline Committee may suspend or cancel their licences without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Chiang, AC PREC and Oakwyn Property Management 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. Ms. Chiang, AC PREC and Oakwyn Property Management have been advised of and understand their right to obtain independent legal advice regarding the disciplinary process, including with respect to the execution and submission of the Proposal.
3. Ms. Chiang, AC PREC and Oakwyn Property Management 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. Ms. Chiang, AC PREC and Oakwyn Property Management 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. Ms. Chiang, AC PREC and Oakwyn Property Management hereby waive their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Ms. Chiang, AC PREC and Oakwyn Property Management 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. Chiang, AC PREC and Oakwyn Property Management in any civil proceeding with respect to the matter.

"A Chiang"

**Arlene Chiang on behalf of herself and
Arlene Chiang Personal Real Estate
Corporation**

Dated _26_ day of _June_, 2019

"A. Chiang"

**Oakwyn Property Management Ltd. by its
Authorized Signatory**

Dated _26_ day of _June_, 2019