

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

PUI (KEN) CHUN CHAN
(149349)

CONSENT ORDER

RESPONDENT: Pui (Ken) Chun Chan, representative, Crest Realty Ltd. dba
RE/MAX Crest Realty, while licensed with M V P Realty Ltd. dba
RE/MAX Metro Realty Ltd.

DATE OF REVIEW MEETING: May 29, 2019

DATE OF CONSENT ORDER: May 29, 2019

CONSENT ORDER REVIEW
COMMITTEE: Sandra Heath
Yasin Amlani
Magdaline (Maggie) Chan

ALSO PRESENT: D. Avren, Director, Legal Services
A. Bjornson, Legal Counsel for
the Real Estate Council

PROCEEDINGS:

On May 29, 2019, the Consent Order Review Committee (“CORC”) resolved to accept the Consent Order Proposal (the “Proposal”) submitted by Pui (Ken) Chun Chan.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Pui (Ken) Chun Chan.

NOW THEREFORE, the CORC having made the findings proposed in the attached Proposal, and found that Pui (Ken) Chun Chan committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Pui (Ken) Chun Chan be reprimanded;

2. Pui (Ken) Chun Chan pay a discipline penalty to the Council in the amount of \$1,500 within ninety (90) days from the date of this Order;
3. Pui (Ken) Chun Chan, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course, as provided by Sauder School of Business at the University of British Columbia in the time period as directed by the Council; and
4. Pui (Ken) Chun Chan pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Pui (Ken) Chun Chan 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 29th day of May, 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*
S.B.C. 2004, c. 42 as amended**

AND

IN THE MATTER OF

PUI (KEN) CHUN CHAN (149349)

CONSENT ORDER PROPOSAL BY KEN CHAN

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Ken Chan 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, Mr. Chan and the Council have agreed upon the following facts:

1. Mr. Chan (149349) has been licensed as a representative since 2006.
2. Mr. Chan was at all relevant times licensed as a representative with MVP Realty dba RE/MAX Metro Realty Ltd. (the "Brokerage").
3. On May 7, 2015 Mr. Chan listed a residential property on Carson Street, in Burnaby, BC (the "Property") for sale.
4. The Property is an "owner-built" home according to the New Homes Registry on the BC Housing website.
5. Under the *Homeowner Protection Act* the owner builder or any subsequent owner is required to provide a disclosure notice known as an Owner Builder Disclosure Notice ("OBDN") to any potential buyers within the first 10 years after occupancy. The OBDN must be provided prior to entering into a purchase and sale agreement. It informs potential buyers that the home was built under an "Owner Builder Authorization" issued by the Homeowner Protection Office ("HPO"), when the 10-year period started, and if there is a voluntary policy of home warranty insurance in place.
6. The first occupancy date of the Property was May 5, 2014. The property was listed within the 10 year period and the seller was required to provide an OBDN to prospective purchasers.
7. On July 6, 2015 WL, on behalf of a prospective buyer, presented an offer, with subject conditions, on the Property with a completion date of December 2, 2015. The offer did not contain a clause or subject condition that expressly dealt with an OBDN.

8. On July 7, 2015 the sellers accepted the offer without adding a clause dealing with an OBDN. The sellers did not provide an OBDN to the buyer prior to accepting the offer, although the sellers advised Mr. Chan that they had an OBDN in their possession and would provide it to him on a later date.
9. On July 15, 2015 the buyer removed the offer's subject conditions.
10. On August 28, 2015 the Council informed GC, managing broker of the Brokerage, that the Property had been listed for sale despite being non-compliant with the HPA.
11. On December 1, 2015 the HPO issued an OBDN for the Property, which was provided to the buyer the same day.
12. On December 2, 2015 the transaction completed.
13. A Notice of Discipline Hearing was issued on December 13, 2018 and served on Mr. Chan.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Mr. Chan proposes the following findings of misconduct be made by the CORC:

1. Mr. Chan committed professional misconduct within the meaning of section 35(1)(a) of RESA when acting as the listing agent of the Property in that he failed to act with reasonable care and skill when he did not ensure that a disclosure notice was provided to a person making an offer to purchase the Property as required by s. 21(2) of the HPA, contrary to s. 3-4 of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Chan 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. Mr. Chan be reprimanded.
2. Mr. Chan pay a discipline penalty to the Council in the amount of \$1,500 within ninety (90) days of the date of this Order.
3. Mr. Chan, at his own expense, register for and successfully complete the Real Estate 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.
4. Mr. Chan pay enforcement costs in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.

5. If Mr. Chan fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Chan's licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Chan 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. Mr. Chan 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 CORC; 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.
3. Mr. Chan 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. Mr. Chan 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. Mr. Chan hereby waives his right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Chan 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. Chan in any civil proceeding with respect to the matter.

"K. Chan"

PUI (KEN) CHUN CHAN

Dated 6th day of May, 2019

Signature of Mr. Chan witnessed on the above date by

Witness Name *(Please Print)*

Witness Signature