

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

YAN (ISABEL) WEN
(151814)

CONSENT ORDER

RESPONDENT: Yan (Isabel) Wen, Representative, Regent Park
Fairchild Realty Inc.

DATE OF CONSENT ORDER: April 4, 2019

CONSENT ORDER REVIEW COMMITTEE: S. Heath
Y. Amlani
M. Leslie
E. Mignosa

PROCEEDINGS:

WHEREAS on January 30, 2019, a Consent Order Proposal (a "Proposal") was submitted to a Consent Order Review Committee (the "Committee") by Yan (Isabel) Wen but was not accepted by that Committee.

WHEREAS Yan (Isabel) Wen has submitted an amended Proposal.

WHEREAS the amended Proposal, a copy of which is attached hereto, has been executed by Yan (Isabel) Wen.

NOW THEREFORE, the Committee having made the findings proposed in the attached Proposal, and in particular having found that Yan (Isabel) Wen committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (the "RESA"), orders that:

1. Yan (Isabel) Wen have her licence suspended for two-hundred and seventy (270) days;
2. Yan (Isabel) Wen will not act as an unlicensed assistant during the time of her licence suspension;
3. Yan (Isabel) Wen pay a discipline penalty to the Council in the amount of \$7,500 within ninety (90) days from the date of this Order;

4. Yan (Isabel) Wen at her own expense, register for and successfully complete the course: REIC2600 Ethics in Business Practice, offered by the Real Estate Institute of Canada, within the time period as directed by the Council;
5. Yan (Isabel) Wen's licence shall include a condition requiring enhanced supervision by a managing broker for a period of not less than twelve (12) months following the end of her suspension period, as more particularly described in Schedule 1 to this Order; and
6. Yan (Isabel) Wen pay enforcement expenses to the Council in the amount \$1,500 within sixty (60) days from the date of this Order.

If Yan (Isabel) Wen 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 4th day of April, 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.

SCHEDULE 1

- 1) Yan (Isabel) Wen's licence will be restricted to Regent Park Fairchild Realty Inc., or another brokerage acceptable to Council (the "Brokerage"), for a period of not less than one (1) year following completion of her licence suspension.
- 2) Yan (Isabel) Wen will be subject to enhanced supervision by her managing broker, as set out in these conditions, for a period of not less than one (1) year following completion of her licence suspension (the "Enhanced Supervision Period").
- 3) Yan (Isabel) Wen must remain under the direct supervision of Rita Ming-Yuk Li, the managing broker of the Brokerage, or a successor managing broker acceptable to the Council (the "Managing Broker"), during the Enhanced Supervision Period.
- 4) Yan (Isabel) Wen must keep the Managing Broker informed on a timely basis of the real estate services that she is providing and other activities she is engaging in and must consult with the Managing Broker in advance of taking any action regarding any questions or concerns she may have regarding compliance with the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation and the Brokerage's policies and procedures.
- 5) Yan (Isabel) Wen must report all her transactions to the Brokerage promptly, and ensure that no such transactions are conducted outside the Brokerage.
- 6) Yan (Isabel) Wen must ensure that all documents relevant to each transaction are provided to the Brokerage and contained in the deal file, including the contract of purchase and sale, all offers received for the listing, assignment agreements, addendums, trade records sheets, disclosure statements, releases and other pertinent information.
- 7) The Managing Broker must provide quarterly reports to the Council confirming:
 - a. that Yan (Isabel) Wen's real estate services have been conducted under their direct supervision;
 - b. that Yan (Isabel) Wen's activities have been carried out competently and in compliance with the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation, and in accordance with Brokerage's policies and procedures;
 - c. that they have reviewed all documents signed by Yan (Isabel) Wen's clients and that all documents relevant to the transaction have been provided to the client and are contained in the trade records file; and
 - d. the number of real estate transactions that Yan (Isabel) Wen has conducted and details regarding the client(s), the agency offered; and any customer relationships.
- 8) The Report will be reviewed by the Chair of the Council, who will determine if the requirement for enhanced supervision for the period set by Council has been met, and if

not, will so advise the Managing Broker and Yan (Isabel) Wen and Yan (Isabel) Wen may elect to:

- a. continue with enhanced supervision until the Chair of the Council is satisfied by further evidence that the required period and purpose of enhanced supervision has been met; or
 - b. have her licence suspended until a further order is made by the Council under section 43(4) or (5) of the RESA.
- 9) The Managing Broker must immediately report to the Council anything of an adverse nature with respect to Yan (Isabel) Wen's real estate services, including failure on her part to observe the requirements of the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation, complaints received by the Brokerage, the nature of the complaint and the parties, and how it was resolved.
- 10) The Managing Broker must ensure that Yan (Isabel) Wen and her unlicensed or licensed assistants, if any, receive adequate, appropriate and ongoing training with respect to their obligations under the RESA, Regulations, Bylaws, and Rules, and in accordance with the Brokerage's policies and procedures.
- 11) The Managing Broker must be provided with a copy of these conditions and, prior to the commencement of the Enhanced Supervision Period, must confirm in writing to the Council that they have read these conditions, are aware of their duties under these conditions, and agree to accept those duties. Any acceptable successor managing broker will also be provided with a copy of these conditions and must provide the same confirmation within 14 days of assuming the Managing Broker's duties.
- 12) If for any reason the Managing Broker is unable to perform any of the duties imposed herein, they must immediately advise Council of this inability.
- 13) If the Managing Broker is unable or unwilling to perform any of these duties and/or fails to meet their obligations under these conditions, Yan (Isabel) Wen's licence is suspended and will remain suspended until all conditions herein are met or a further order is made by Council under section 43(4) or (5) of the RESA. Any suspension of Yan (Isabel) Wen's licence under this paragraph does not limit the Council's ability to take further disciplinary action for breach of the conditions or of the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation.

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended**

AND

IN THE MATTER OF

**YAN (ISABEL) WEN
(151814)**

CONSENT ORDER PROPOSAL BY YAN (ISABEL) WEN

BACKGROUND AND FACTS

This Consent Order Proposal ("Proposal") is made by Yan (Isabel) Wen ("Ms. Wen") to the Consent Order Review Committee ("CORC") of the Real Estate Council of British Columbia ("Council") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, Ms. Wen and the Council have agreed on the following facts:

1. Ms. Wen has been licensed as a Representative, Trading since May, 2007.
2. Mr. Wen was at all relevant times licensed as a Representative, Trading with Regent Park Fairchild Realty Inc.
3. On February 11, 2016, the Council received a complaint ("Complaint") from an individual ("Complainant") about the conduct of Ms. Wen. The Complainant, who was from China, was the buyer of a rural residential/commercial property located on Yale Road, near Chilliwack, British Columbia ("Property").
4. Ms. Wen acted as the Complainant's agent during the purchase and sale of the Property.
5. On or about March 8, 2015, the Complainant signed a conditional offer ("Offer") to purchase the Property. The Offer led to a negotiation which, in turn, resulted in an accepted Offer to purchase the property for \$1,248,000.00 ("Contract"). In the Contract, the removal date for the conditions was March 31, 2015, and the completion date was October 8, 2015. The Contract required the Complainant to pay a non-refundable deposit of \$80,000 within 24 hours after the removal of the conditions.
6. The Complainant returned to China soon after March 8, 2015.
7. On March 31, 2015, Ms. Wen prepared two addenda to the Contract. The first addendum removed the conditions. The second addendum changed the completion date to

December 21, 2015, and provided for the \$80,000 deposit to be received within 48 hours of the conditions being removed.

8. On April 2, 2015, Ms. Wen received a wire transfer from the Complainant to her personal bank account for \$49,962.50.
9. On April 7, 2015, Ms. Wen received two wire transfers, one for \$100 and the other for \$29,962.50, from the Complainant to her personal bank account.
10. On April 8, 2015, Ms. Wen purchased two bank drafts from her personal account, one for \$60,007.50 and one for \$20,007.50. On the same date, Ms. Wen prepared a Receipt of Funds form indicating that the \$80,000 deposit had been received by way of a bank draft.
11. On April 10, 2015, Ms. Wen's managing broker sent a Notice of Late Deposit Monies to the sellers' ("Sellers") brokerage to advise the deposit had not been received in accordance with the Contract and had been delivered to Ms. Wen's related brokerage on April 8, 2015.
12. On or about December 16, 2015, the Complainant returned to Vancouver to sign the documents required to complete the purchase and sale of the Property. However, during the course of the closing, the Complainant refused to sign the documents.
13. On March 21, 2016, the parties to the Contract signed a Collapse of Sale and Release of Deposit form. \$50,000 of the deposit was paid to the sellers and \$30,000 of the deposit was paid to the Complainant.
14. The Complaint included the following allegations:

Ms. Wen had revised and signed the Contract and subject removal on the Complainant's behalf without the Complainant's written authorization. The Complainant included a letter she had sent to Ms. Wen's related brokerage which provided additional information including a complaint that Ms. Wen had failed to explain the deposit would be paid when the subject clauses were removed.
15. The Council investigated the Complaint. Ms. Wen provided the following information to the Council in her response to the investigation.
16. The Complainant was introduced to Ms. Wen by TPS, a person who was assisting the Complainant and her husband, GCL, to immigrate to Canada under the then existing Provincial Nominee Program ("PNP"). Ms. Wen says that she prepared the Offer in the Complainant's name under the direction of GCL and TPS, but GCL signed the Contract after advising Ms. Wen that he had power of attorney for the Complainant. The Council subsequently obtained a copy of the Power of Attorney, which was dated February 24, 2015.
17. Ms. Wen told GCL there would likely be changes to the Offer during negotiations and that she needed to email or fax the Offer to him to approve the changes. Ms. Wen says GCL was flying back to China "the next day" and told her that emails and faxes were very inconvenient for him. Ms. Wen says GCL told her he trusted her and "begged" her to sign

every change on the Contract and to help him to do everything related to buying the Property. Ms. Wen says she always telephoned the Complainant and GCL to obtain their consent to any changes to the Contract.

18. On an unknown date, Ms. Wen re-typed and signed pages 5 and 6 of the Contract because they “did not look good” after many changes had been made to these pages.
19. GCL agreed to remove the conditions on March 31, 2015. Doing so triggered the Complainant’s obligation to provide the \$80,000 deposit. Ms. Wen obtained the wire transfer instruction sheet from her related brokerage and emailed it to TPS.
20. Ms. Wen’s interactions with GCL, TPS, and TPS’s wife in connection with the payment of the deposit required under the Contract were as follows **[all *sic* with the exception of the text in square brackets]**:

[GCL] agreed to remove subject on March 31, 2015. He needed to pay \$80,000 Canadian dollar deposit to my company’s trust account. I got wire payment instruction sheet from my office on March 31, 2015 and emailed [TPS] in the same day. Because the bank request the sender must be the buyer herself base on the FINTREAC rules, however, [the Complainant] has to use other people’s name to wire the deposit form China to Canada. Beside wire transfer, my office only accepted bank draft. [GCL] and [TPS] suggested to wire the money to my Canada account. I told them that I was not allow to do so. I suggested [GCL] wire money to [TPS’s wife], [L’s], Canada account and [L] wrote the bank draft to my company. But [TPS’s wife], [L], said [TPS] was doing the immigrant work for [GCL]. She could not accept such money in her account. There was no way to go. It looked like wire to my account was the only way. [GCL] and [TPS] beg me to help them again. I told them that this was my first time to do it and if Revenue Canada or FINTREC known it I would face big trouble but I also said that the money was easy to explain where it came from and where it went to.

21. The Complainant and GCL arrived in Vancouver on December 16, 2015, to complete the purchase of the Property.
22. Ms. Wen says that on December 21, 2015, after the Complainant went to TD Bank to get the down payment on the Property, she drove the Complainant and GCL to the lawyer’s office to sign closing documents and that the following events occurred at the lawyer’s office. The lawyer advised the sale of the Property could not complete until December 24, 2015. GCL got angry and started to yell at the lawyer. GCL refused to give the lawyer the down payment and refused to pay the legal fees. Ms. Wen paid the legal fees of \$3,198.52 in order for the lawyer to continue with the completion.
23. Ms. Wen says that on December 24, 2015, she received a call from GCL advising her that the Complainant and GCL had decided not to complete because GCL had contacted several immigration consultants. Since July 1, 2015 the PNP program had significantly changed the selection requirements. It appeared the Complainant’s chance to be selected under the revised PNP program was not as certain as her chance to be selected under the former PNP program.

24. Ms. Wen says that GCL advised her he would be happy if the Sellers returned \$20,000 of the deposit and that on January 9, 2016, she took TPS and GCL to visit the Sellers to try to get the deposit back. GCL asked for \$60,000 back. The Sellers refused. GCL also offered to buy the Property for \$1,340,000. The Sellers refused. Eventually an agreement was made that the Sellers would keep \$50,000 of the deposit and the Complainant would get \$30,000.
25. On March 4, 2016, Ms. Wen delivered a Collapse of Sale and Release of Deposit form to the brokerage but it was signed by GCL. Ms. Wen's managing brokers instructed Ms. Wen to get the form signed by the Complainant.
26. On March 21, 2016, the brokerage received a Collapse of Sale and Release of Deposit form signed by all of the parties to the Contract and the brokerage issued a cheque for \$50,000 to the Sellers and a cheque for \$30,000 to the Complainant.
27. The Council issued and served a Notice of Disciplinary Hearing dated April 3, 2018, on Ms. Wen.
28. Ms. Wen does not have a prior disciplinary record.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined above, Ms. Wen proposes the following findings of misconduct be made by the CORC.

1. Yan (Isabel) Wen committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("RESA") in that while she was acting as the agent for the buyer ("Buyer") in connection with the purchase and sale of a property located at XXXXX Yale Road, near Chilliwack, BC ("Property") by way of a contract of purchase and sale dated March 8, 2015 ("Contract"), she:
 - a) failed to act honestly and with reasonable care and skill when she signed certain parts of the Contract on behalf of the Buyer without first receiving the Buyer's authorization in writing to do so as is required by section 5-3(1) of the Rules, contrary to section 3-4 of the Rules;
 - b) failed to exclude the operation of sections 27(1) and 27(2) of the RESA by obtaining the agreement referred to in section 27(4) of the RESA before she received the Buyer's deposit monies in her personal bank account by wire transfer, contrary to section 27 of the RESA;
 - c) failed to promptly deliver to her brokerage all money received from a principal in relation to real estate services when she received the Buyer's deposit monies in her personal bank account by wire transfer and then failed to deliver those monies to her brokerage, contrary to section 27(1)(a) of the RESA;
 - d) failed to keep her managing broker informed of the real estate services being provided and the other activities being performed by her on behalf of the brokerage when she failed to notify her managing broker that she was signing replacement pages in the

contract without the required authorization in writing from the Buyer and that she had received the Buyer's deposit monies in her personal account by wire transfer without transferring them promptly to the Brokerage, contrary to section 3-2(2)(a) of the Rules; and

- e) failed to immediately notify her managing broker that a deposit referred to in section 3-1(4) of the Rules had not been received in the required manner when she received the Buyer's deposit monies in her personal account by wire transfer without transferring them to the brokerage, contrary to section 3-2(2)(b) of the Rules.
2. Yan (Isabel) Wen engaged in conduct unbecoming within the meaning of section 35(2) of the RESA in that on or around March 31, 2015 while she was acting as the agent for the Buyer in connection with the purchase and sale of the Property by way of the Contract, she knowingly assisted the Buyer to avoid the application of the rules and requirements established by the Financial Transactions and Reports Analysis Centre of Canada by allowing the Buyer to transfer money directly to her personal bank account in Canada and when she knew or believed the Buyer would make the transfer using a name other than her own name.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Ms. Wen 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. Yan (Isabel) Wen's licence be suspended for two-hundred and seventy (270) days;
2. Yan (Isabel) Wen be prohibited from acting as an unlicensed assistant during the period when her licence is suspended;
3. Yan (Isabel) Wen pay a discipline penalty to the Council in the amount of \$7,500.00 within the time period to be directed by the Council;
4. Yan (Isabel) Wen, at her own expense, register for and successfully complete the REIC2600 Ethics in Business Practice course, offered by the Real Estate Institute of Canada, within the time period to be directed by the Council;
5. Yan (Isabel) Wen's licence include a condition requiring enhanced supervision by a managing broker for a period of not less than twelve (12) months following the end of her suspension period, as more particularly described in Schedule 1 to this Order; and
6. Yan (Isabel) Wen pay enforcement expenses in the amount of \$1,500.00 within sixty (60) days from the date of this Order.

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

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Wen 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. Wen has been advised of and understands her right to obtain independent legal advice regarding the disciplinary process, including with respect to the execution and submission of the Proposal.
3. Ms. Wen 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. Wen 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. Wen hereby waives her right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Ms. Wen 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. Wen in any civil proceeding with respect to the matter.

"Y. Wen"

Yan (Isabel) Wen

Dated 21, day of February, 2019

SCHEDULE 1

- 1) Yan (Isabel) Wen's licence will be restricted to Regent Park Fairchild Realty Inc., or another brokerage acceptable to Council (the "Brokerage"), for a period of not less than one (1) year following completion of her licence suspension.
- 2) Yan (Isabel) Wen will be subject to enhanced supervision by her managing broker, as set out in these conditions, for a period of not less than one (1) year following completion of her licence suspension (the "Enhanced Supervision Period").
- 3) Yan (Isabel) Wen must remain under the direct supervision of Rita Ming-Yuk Li, the managing broker of the Brokerage, or a successor managing broker acceptable to the Council (the "Managing Broker"), during the Enhanced Supervision Period.
- 4) Yan (Isabel) Wen must keep the Managing Broker informed on a timely basis of the real estate services that she is providing and other activities she is engaging in and must consult with the Managing Broker in advance of taking any action regarding any questions or concerns she may have regarding compliance with the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation and the Brokerage's policies and procedures.
- 5) Yan (Isabel) Wen must report all her transactions to the Brokerage promptly, and ensure that no such transactions are conducted outside the Brokerage.
- 6) Yan (Isabel) Wen must ensure that all documents relevant to each transaction are provided to the Brokerage and contained in the deal file, including the contract of purchase and sale, all offers received for the listing, assignment agreements, addendums, trade records sheets, disclosure statements, releases and other pertinent information.
- 7) The Managing Broker must provide quarterly reports to the Council confirming:
 - a. that Yan (Isabel) Wen's real estate services have been conducted under their direct supervision;
 - b. that Yan (Isabel) Wen's activities have been carried out competently and in compliance with the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation, and in accordance with Brokerage's policies and procedures;
 - c. that they have reviewed all documents signed by Yan (Isabel) Wen's clients and that all documents relevant to the transaction have been provided to the client and are contained in the trade records file; and
 - d. the number of real estate transactions that Yan (Isabel) Wen has conducted and details regarding the client(s), the agency offered; and any customer relationships.

- 8) The Report will be reviewed by the Chair of the Council, who will determine if the requirement for enhanced supervision for the period set by Council has been met, and if not, will so advise the Managing Broker and Yan (Isabel) Wen and Yan (Isabel) Wen may elect to:
 - a. continue with enhanced supervision until the Chair of the Council is satisfied by further evidence that the required period and purpose of enhanced supervision has been met; or
 - b. have her licence suspended until a further order is made by the Council under section 43(4) or (5) of the RESA.
- 9) The Managing Broker must immediately report to the Council anything of an adverse nature with respect to Yan (Isabel) Wen's real estate services, including failure on her part to observe the requirements of the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation, complaints received by the Brokerage, the nature of the complaint and the parties, and how it was resolved.
- 10) The Managing Broker must ensure that Yan (Isabel) Wen and her unlicensed or licensed assistants, if any, receive adequate, appropriate and ongoing training with respect to their obligations under the RESA, Regulations, Bylaws, and Rules, and in accordance with the Brokerage's policies and procedures.
- 11) The Managing Broker must be provided with a copy of these conditions and, prior to the commencement of the Enhanced Supervision Period, must confirm in writing to the Council that they have read these conditions, are aware of their duties under these conditions, and agree to accept those duties. Any acceptable successor managing broker will also be provided with a copy of these conditions and must provide the same confirmation within 14 days of assuming the Managing Broker's duties.
- 12) If for any reason the Managing Broker is unable to perform any of the duties imposed herein, they must immediately advise Council of this inability.
- 13) If the Managing Broker is unable or unwilling to perform any of these duties and/or fails to meet their obligations under these conditions, Yan (Isabel) Wen's licence is suspended and will remain suspended until all conditions herein are met or a further order is made by Council under section 43(4) or (5) of the RESA. Any suspension of Yan (Isabel) Wen's licence under this paragraph does not limit the Council's ability to take further disciplinary action for breach of the conditions or of the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation.