

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

OMAX REALTY LTD. DBA COLDWELL BANKER UNIVERSE REALTY  
(X029063)

CONSENT ORDER

RESPONDENT: OMAX Realty Ltd. dba Coldwell Banker  
Universe Realty, Brokerage

DATE OF CONSENT ORDER: April 4, 2019

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

PROCEEDINGS:

On February 27, 2019, a Consent Order Proposal (“Proposal”) submitted by OMAX Realty Ltd. dba Coldwell Banker Universe Realty was considered by the Consent Order Review Committee (the “Committee”) but not accepted. On March 12, 2019, a revised Proposal acceptable to the Committee was submitted by OMAX Realty Ltd. dba Coldwell Banker Universe Realty.

**WHEREAS** OMAX Realty Ltd. dba Coldwell Banker Universe Realty has submitted an amended Proposal.

**WHEREAS** the Proposal, a copy of which is attached hereto, has been executed by OMAX Realty Ltd. dba Coldwell Banker Universe Realty.

**NOW THEREFORE**, the Committee having made the findings proposed in the attached COP, and in particular having found that OMAX Realty Ltd. dba Coldwell Banker Universe Realty committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (the “RESA”), orders that:

1. OMAX Realty Ltd. dba Coldwell Banker Universe Realty be reprimanded;
2. OMAX Realty Ltd. dba Coldwell Banker Universe Realty pay a discipline penalty to the Council in the amount of \$3,500 within ninety (90) days from the date of this Order; and

3. OMAX Realty Ltd. dba Coldwell Banker Universe Realty pay enforcement expenses to the Council in the amount \$1,500 within sixty (60) days from the date of this Order.

If OMAX Realty Ltd. dba Coldwell Banker Universe Realty fails to comply with any term of this Order, the Council may suspend or cancel their licence without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 4<sup>th</sup> day of April, 2019, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"S. Heath"

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Sandra Heath  
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**

**OMAX REALTY LTD. dba COLDWELL BANKER UNIVERSE REALTY  
(X029063)**

**CONSENT ORDER PROPOSAL OF OMAX REALTY LTD dba COLDWELL BANKER UNIVERSE REALTY**

**BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by Omax Realty Ltd. dba Coldwell Banker Universe Realty 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, Omax Realty Ltd dba Coldwell Banker Universe Realty and the Council have agreed upon the following facts:

1. Omax Realty Ltd. dba Coldwell Banker Universe Realty (the "Brokerage") has been licensed as a brokerage since November 11, 2008 and provides trading, rental and strata property management services.
2. During the material period of time, Mr. D was a licensed as a rental manager at the Brokerage. Mr. D also owned and operated an unlicensed short term rental management company, KRC.
3. From December 2015 through April 2016, Mr. D collected rent cheques payable to XXX Property Management, an unlicensed entity, and deposited them into a trust account in the name of the Brokerage.
4. At all material times, the Brokerage managed a rental property at XXX Okanagan Centre Road in Kelowna. Mr. D had previously entered into a rental management service agreement with respect to this property.
5. In or around February 2016, Mr. D contracted a third party organization, PPE, through KRC to carry out an electrical inspection at XXX Okanagan Centre Road.
6. On or about February 16, 2016 PPE invoiced KRC \$514.50 for the electrical inspection at XXX Okanagan Road. KRC subsequently paid the invoice.

7. The March 2016 Brokerage Monthly Rental Property Management Form recorded a chargeback from the Brokerage of \$514.50 to the client of XXX Okanagan Centre Road.
8. On November 18, 2015, the Brokerage received payment of \$450 from the tenant of XXX Prior Road for housekeeping services. The amount was paid together with the tenant's rent and deposited into the Brokerage's trust account.
9. On January 5, 2016, the Brokerage received payment of \$620 from the tenant of XXX Sumac Crescent for housekeeping. The amount was paid together with the tenant's rent and deposited into the Brokerage's trust account.
10. On or about February 17, 2016, the Brokerage transferred the housekeeping amounts of \$450 and \$620 from the Brokerage's trust account to its general account. This transfer was done without specific authorization by the clients and without a proper record of the transaction.
11. On about April 7, 2016, in relation to two rental properties located at XXX Casorso Rd and XXX Fraser Rd. that were managed by the Brokerage, it permitted the transfer of \$700.00 and \$850.00 respectively from the Brokerage's security deposit trust account into the Brokerage's trust account. In each case, the transfer was made to cover rent that was owing to the owners; however, was made without the knowledge or authorization of the client.
12. A Notice of Discipline Hearing was issued July 13, 2018.
13. The Brokerage has previous discipline history with the Council.

#### **PREVIOUS DISCIPLINE HISTORY**

14. On January 17, 2017 the Brokerage entered into a Consent Order with the Council.
15. The Brokerage admitted that it committed professional misconduct within the meaning of of section 35(1)(a) of the RESA when, contrary to section 25 of the RESA and sections 8-1(1) and (2) and 8-2 of the Rules, it failed to:
  - a) prepare and maintain financial records in accordance with the RESA and the Rules; in that three unidentified amounts were recorded in the brokerage commission trust ledger;
  - b) prepare a detailed breakdown of the trust liability listing for the commission trust account for the months February, 2013 through to September, 2013; and
  - a) reconcile the trust and commission trust accounts for the months of May 2014 through to August, 2014.

16. As a result of its contraventions the Brokerage agreed to:
- a) be reprimanded;
  - b) pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order;
  - c) fully comply with the trust accounting and financial records requirements in the RESA and the Rules made under the RESA and provide training and supervision to its accounting staff to ensure compliance; and
  - d) undergo an audit, at its own expense, by the Council, within six (6) months from the date of this Order to confirm compliance with the accounting and training and supervision requirements of this Order.

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

For the sole purposes of the Proposal and based on the Facts outlined herein, Omax Realty Ltd. dba Coldwell Banker Universe Realty proposes the following findings of misconduct be made by the CORC:

1. Omax Realty Ltd. dba Coldwell Banker Universe Realty committed professional misconduct within the meaning of section 35(1)(a) of the RESA, and acted contrary to section 25 and 30(1)(g) of the RESA, when:
  - a. between February and March 2016, in relation to property located at xxx Okanagan Road, in Kelowna, BC, it:
    - i. without a proper recording of the transaction, permitted the transfer of client trust funds from the Brokerage's trust account to its general account without the specific client authorization; and
    - ii. allowed the client's trust account to be charged back in the amount of \$514.40 for work performed on behalf of and paid for by an unlicensed third party unrelated to the Brokerage.
  - b. on or about April 7, 2016, in relation to two rental properties that were managed by the Brokerage, it permitted the transfer of \$700.00 and \$850.00 respectively from the Brokerage's security deposit trust account into the Brokerage's trust account without the knowledge or authorization of the client.

## **PROPOSED ORDERS**

Based on the Facts herein and the Proposed Findings of Misconduct, Omax Realty Ltd. dba Coldwell Banker Universe Realty 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. Omax Realty Ltd. dba Coldwell Banker Universe Realty shall:

1. Be reprimanded;
2. Pay discipline penalty of \$3,500 within ninety (90) days from the date of this Consent Order; and
3. Pay enforcement expenses of \$1,500 within sixty (60) days from the date of this Consent Order.
4. If Omax Realty Ltd. dba Coldwell Banker Universe Realty fails to comply with any term of this Consent Order, the Council may suspend or cancel its license without further notice to it, pursuant to sections 43(4) and (4) of RESA.

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

1. Omax Realty Ltd. dba Coldwell Banker Universe Realty 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. Omax Realty Ltd. dba Coldwell Banker Universe Realty 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 have 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. Omax Realty Ltd. dba Coldwell Banker Universe Realty 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. Omax Realty Ltd. dba Coldwell Banker Universe Realty 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. Omax Realty Ltd. dba Coldwell Banker Universe Realty hereby waives his right to appeal pursuant to section 54 of the RESA.
  
6. The Proposal and its contents are made by Omax Realty Ltd. dba Coldwell Banker Universe Realty 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 Omax Realty Ltd. dba Coldwell banker Universe Realty in any civil proceeding with respect to the matter.

"J. S. Bhandari"

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**Jagmohan Singh Bhandari on behalf of Omax  
Realty Ltd. dba Coldwell Banker Universe Realty**

**Dated\_8\_\_, day of \_March\_, 2019**

Signature of Jagmohan Singh Bhandari  
OMAX  
Realty Ltd. dba Coldwell Banker Universe Realty  
witnessed on the above date by

"J. Bhandari"

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Witness Name (*Please Print*)

"J. Bhandari"

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Witness Signature