

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
ALEXANDER OGHOGHO MOSES
(149311)

CONSENT ORDER

RESPONDENT: Alexander Oghogho Moses, Managing Broker,
City 2 City Real Estate Services Inc., while
licensed with OMAX Realty Ltd. dba Coldwell
Banker Universe Realty

DATE OF REVIEW MEETING: February 27, 2019

DATE OF CONSENT ORDER: February 27, 2019

CONSENT ORDER REVIEW COMMITTEE: E. Mignosa
B. Chisholm
L. Hrycan
D. Peerless

ALSO PRESENT: E. Duvall, Chair
E. Seeley, Executive Officer
D. Avren, Director, Legal Services
J. Whittow, QC, Legal Counsel for
the Real Estate Council

PROCEEDINGS:

On February 27, 2019, the Consent Order Review Committee (the "Committee") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Alexander Oghogho Moses.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Mr. Moses.

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

1. Alexander Oghogho Moses be reprimanded;

2. Alexander Oghogho Moses pay a discipline penalty to the Council in the amount of \$5,000 within ninety (90) days from the date of this Order;
3. Alexander Oghogho Moses, at his own expense, register for and successfully complete the Broker's 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. Alexander Oghogho Moses pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Alexander Oghogho Moses 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 27th day of February, 2019, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"Elana Mignosa"

Elana Mignosa
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

**ALEXANDER OGHOGHO MOSES
(149311)**

CONSENT ORDER PROPOSAL BY ALEXANDER OGHOGHO MOSES

BACKGROUND AND FACTS

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

1. Mr. Moses (149311) has been licensed with the Council at different levels since 2006. During the period material to this matter, Mr. Moses was licensed as a managing broker at OMAX Realty Ltd. dba Coldwell Banker Universe Realty (the "Brokerage").
2. Mr. Moses was Managing Broker of the Brokerage from April 2011 through June 14, 2016.
3. During the material period of time, Mr. D was a licensed as a rental representative at the Brokerage.

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4. At all material times, Mr. D owned and operated an unlicensed rental management company, KRC.
5. At all material times, Mr. D's "Om'Ax Realty Ltd." business card referred to the KRC website and his KRC email address.
6. On or about August 13, 2014, Mr. D entered into a rental management service agreement with JS on behalf of MS for the rental management of a property at XXX Okanagan Centre Road.
7. At all material times XXX Okanagan Centre Road was a rental property managed by the Brokerage.

8. At the time Mr. D entered into the rental management service agreement with JS, a Power of Attorney showing that JS had the requisite authority to enter into the agreement on behalf of MS was not presented.
9. The August 13, 2014, rental management service agreement listed the landlord as Mr. D representing Om'Ax Realty Ltd. Property Management (OM'AX). The legal name of the Brokerage at that time was OMAX Realty Ltd.
10. On or about April 10, 2015, the Brokerage registered its trade name as Omaxwell Realty. The legal name of the Brokerage remained OMAX Realty Ltd.
11. On or about September 30, 2015, RW and EB entered into a Residential Tenancy Agreement with "Omaxwell Realty – Property Management Division" for the rental of the XXX Okanagan Centre Road. The legal name of the Brokerage was OMAX Realty Ltd.
12. During the course of the investigation, Mr. Moses stated that he had no knowledge of the operation and capacity of KRC and understood the company had no relation to the Brokerage. The advertisement of KRC and OMAX Realty on the same webpage was done without his knowledge or authorization.
13. Once Mr. Moses was alerted to Mr. D's advertisement activities, he took immediate to ensure the Brokerage was in compliance with the legislation.
14. Mr. Moses has since transferred to another Brokerage.
15. A Notice of Disciplinary Hearing was issued on July 13, 2018 and served on Mr. Moses.

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16. From December 2015 through April 2016, Mr. D collected rent cheques from various properties payable to Omaxwell Realty Property Management, an unlicensed entity, and deposited them into a trust bank account in the name of the Brokerage.
17. In or around February, 2016, Mr. D contracted PPE through KRC to carry out an electrical inspection on a rental property at XXX Okanagan Centre Road.
18. On or about February 16, 2016, PPE charged KRC \$514.50 for an electrical inspection at XXX Okanagan Road. KRC paid the invoice.
19. The March 2016 Brokerage Monthly Rental Property Management Form recorded a chargeback of \$514.50 to the owners of XXX Okanagan Road.
20. 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.
21. 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.

22. 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 properly recording the transaction.

23. Between March 2016 and May 2016 TD Bank levied monthly services charges on the Brokerage trust account in the following amounts:

MONTH	BANK FEES
March 2016	\$41.00
April 2016	\$42.10
May 2016	\$12.82

24. On or about April 21, 2016, Mr. Moses reviewed, initialed and approved the monthly trust account reconciliations for the month of March 2016 which permitted a management fee in the amount of \$41.00 to be withdrawn from the Brokerage trust account.

25. In or around May, 2016, Mr. Moses reviewed and approved the monthly trust account reconciliations for the month of April 2016 which permitted a management fee in the amount of \$42.10 to be withdrawn from the Brokerage trust account.

26. On or about June 22, 2016, Mr. Moses reviewed, initialed and approved the monthly trust account reconciliations for the month of May which permitted bank services charges in the amount of \$12.82 to be withdrawn from the Brokerage trust account.

27. During the course of the investigation, Mr. Moses submitted that TD Bank was asked numerous times to stop charging the Brokerage's trust account with monthly service charges.

28. A Notice of Discipline Hearing was issued July 13, 2018.

29. Mr. Moses has a previous disciplinary history with the Council.

PREVIOUS DISCIPLINE HISTORY

30. On January 23, 2013, Mr. Moses entered into a Consent Order with Council.

31. Mr. Moses admitted that he committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, contrary to section 6(2) of the RESA and sections 3-1(1) and 3-1(3) of the Council Rules he failed in his managing broker duties to ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulations and Council Rules in that he:

- a. permitted the brokerage to contravene sections 7-5(1) and (2) of the Council Rules, when the brokerage made a payment from a trust account, payable to himself, which cleared the trust account on March 4, 2010, putting the trust account in an overdraft position, which amount was not replenished until March 17, 2010;
- b. failed to notify the Council within 10 days that the trust account was in a negative balance, contrary to section 7-5(3) of the Council Rules; and

- c. permitted the brokerage to contravene section 25 of the Real Estate Services Act and sections 8-2 and 8-3 of the Council Rules, when, despite the agreement of the brokerage indicated in a January 19, 2010 letter to the Council that the brokerage would follow through with the recommendations contained in the Office and Records Inspection Report dated December 7, 2009, the October 2011 Office and Records Inspection Report indicated that the brokerage trust and general bank accounts had not been reconciled since February 28, 2010.

32. As a result of the contraventions, Mr. Moses agreed to:

- a. be reprimanded; and
- b. be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within sixty (60) days from the date of the Order herein.

33. On September 29, 2016 Mr. Moses entered into a Consent Order with Council.

34. Mr. Moses admitted that he committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, contrary to sections 3-1(1) and 3-1(3)(a)(b) of the Council Rules, he failed to ensure that the brokerage:

- a. prepared and maintained financial records in accordance with the RESA and the Council Rules in that he allowed three unidentified amounts to be recorded in the brokerage commission trust ledger;
- b. prepared a detailed breakdown of the trust liability listing for the commission trust account for the months February, 2013 through to September, 2013; and
- c. reconciled the trust and commission trust accounts for the months May 2014 through to August 2014.

35. As a result of the contraventions, Mr. Moses agreed to:

- a. be reprimanded;
- b. pay a discipline penalty to the Council in the amount of \$1,500.00 within ninety(90) days from the date of the Order herein; and
- c. and pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of the Order herein.

PROPOSED FINDINGS OF MISCONDUCT

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

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1. Mr. Moses committed professional misconduct within the meaning of section 35(1)(a) of the RESA and contravened section 6(2) of the RESA and section 3-1(1) of the Council Rules when he:

- a. in or around May 2014, with respect to the property located at XXX Okanagan Centre Road East in Lake County (the "Property"), permitted a related licensee, Mr. D, to use a name that was not the licensed name of the Brokerage on the rental management service agreement and the tenancy agreement;
- b. in or around May 2014, with respect to the Property, permitted the Brokerage to enter into a service agreement with a person, JS, who was not the registered owner, and/or without confirming that person's authority to enter the agreement; and
- c. in or around 2015, permitted a licensee to use his personal office located at XXX Lawson Avenue in Kelowna, BC as an unlicensed branch office of the Brokerage.

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2. Mr. Moses committed professional misconduct within the meaning of section 35(1)(a) of the RESA, and acted contrary to section 6(2) of the RESA and sections 3-1(1) and/or 3-1(3) of the Rules when he:
 - a. failed to be actively engaged in the management of the Brokerage;
 - b. failed to ensure that the Brokerage maintained proper books and records;
 - c. allowed the Brokerage to transfer trust funds related to the properties at XXX Prior Road and XXX Sumac Crescent from the Brokerage's trust account to its general account without properly recording the transaction including authorization from the clients;
 - d. allowed the trust account for XXX Okanagan Road to be charged back by the Brokerage for work performed at the request of and paid by an unlicensed third party unrelated to the Brokerage;
 - e. reviewed, initialed and approved the monthly trust account reconciliations for the months March 2016 – May 2016 which indicated that monthly bank service charges were being withdrawn from the trust account; and
 - f. permitted bank service charges to be withdrawn from the Brokerage trust account for the months of March 2016 – May 2016.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Moses 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. Mr. Moses shall:

1. Be reprimanded;
2. Pay a discipline penalty to the Council in the sum of \$5,000.00 within ninety (90) days of the date of this Consent Order;

3. At his 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 Council;
4. Pay enforcement expenses of \$1,500 within sixty (60) days from the date of this Consent Order; and
5. If Mr. Moses fails to comply with any term of this Consent Order, the Council may suspend or cancel his license without further notice to him, pursuant to sections 43(4) and (4) of RESA.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

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

"Alexander Oghogho Moses"

ALEXANDER OGHOGHO MOSES

Dated 16th day of January, 2019