

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

AND

IN THE MATTER OF

MAGSEN REALTY INC.  
(X023621)

And

BILLY KWOK-PIU YU  
(088906) (088906-1) (088906-2)

**CONSENT ORDER**

RESPONDENT: Billy Kwok-Piu Yu, Managing Broker, Magsen Realty Inc.  
Magsen Realty Inc., Brokerage

DATE OF REVIEW MEETING: January 30, 2019

DATE OF CONSENT ORDER: January 30, 2019

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

ALSO PRESENT: E. Duvall, Chair  
E. Seeley, Executive Officer  
D. Avren, Director, Legal Services  
P. Gilligan-Hackett, Legal Counsel for  
the Real Estate Council

PROCEEDINGS:

On January 30, 2019, the Consent Order Review Committee ("Committee") resolved to accept the Consent Order Proposal ("COP") submitted by Billy Kwok-Piu Yu, on his own behalf and on behalf of Magsen Realty Inc.

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**WHEREAS** the COP, a copy of which is attached hereto, has been executed by Billy Kwok-Piu Yu, on his own behalf and on behalf of Magsen Realty Inc.

**NOW THEREFORE**, the Committee having made the findings proposed in the attached COP, and in particular having found that Billy Kwok-Piu Yu and Magsen Realty Inc. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Billy Kwok-Piu Yu and Magsen Realty Inc. each be reprimanded;
2. Billy Kwok-Piu Yu and Magsen Realty Inc. each pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days from the date of this Order;
3. Magsen Realty Inc., at its own expense, arrange for an audit to be conducted at a time to be determined by Council but within six (6) months of the date of this Order;
4. Billy Kwok-Piu Yu, 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
5. Billy Kwok-Piu Yu and Magsen Realty Inc. be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Order.

If Billy Kwok-Piu Yu or Magsen Realty Inc. 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 *Real Estate Services Act*.

Dated this 30th day of January, 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

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

**-and-**

**IN THE MATTER OF**

**MAGSEN REALTY INC.  
(X023621)**

**AND**

**BILLY KWOK-PIU YU  
(088906) (088906-1) (088906-2)**

**CONSENT ORDER PROPOSAL BY MAGSEN REALTY INC. AND BILLY KWOK-PIU YU**

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**BACKGROUND AND FACTS**

This Consent Order Proposal ("Proposal") is made by Magsen Realty Inc. ("Magsen") and Billy Kwok-Piu Yu ("Mr. Yu") 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 this Proposal, Magsen, Mr. Yu, and the Council have agreed upon the following facts:

1. Magsen has been licensed as a brokerage since 1993.
2. Mr. Yu (088906) was first licensed in 1991 and has been licensed as a managing broker for Magsen since 1993.
3. Mr. Yu was at all relevant times licensed as a managing broker with Magsen.
4. Magsen entered into a service agreement dated September 22, 2010 ("Service Agreement") with strata VR XXX, located on East X<sup>th</sup> Avenue, Vancouver, BC ("Strata").
5. On October 9, 2015 the Council received a complaint ("Complaint") from the treasurer of the Strata. The Complaint was made against one of Magsen's related licensees, EC. EC was responsible for delivering the services Magsen provided to the Strata under the Service Agreement.
6. The Council investigated the Complaint. After completing the investigation, the Council did not recommend that the Complaint be referred to a hearing.

7. However, during the investigation, the Council identified deficiencies in both Magsen's management of the Strata's monies and its maintenance of the accounting records for the Strata. None of the deficiencies reflected any dishonest use of the Strata's monies by either Magsen or Mr. Yu.
8. More particularly, Magsen:
  - a. failed to ensure that monies received from the Strata as contingency reserve funds were deposited into the Strata's contingency reserve fund trust account;
  - b. failed to open a trust account in the name of the Strata for the purpose of holding monies received from the Strata as special levy funds;
  - c. failed to ensure that monies received from the Strata as special levy funds were deposited into the Strata's special levy fund trust account;
  - d. permitted monies received from the Strata as special levy funds and monies received from the Strata as contingency reserve funds to be co-mingled in both the Strata's contingency reserve fund trust account and a term deposit held by Magsen in the Strata's name;
  - e. failed, during the period from July 2014 to June 2015 to transfer monies received from the Strata as contingency reserve funds and deposited in the Strata's operating account from that account into the Strata's contingency reserve fund trust account within 7 days after the end of the month in which Magsen had received the monies; and
  - f. failed to ensure that the Strata had provided Magsen with the required instructions before Magsen transferred funds between the Strata's trust accounts.
9. In addition, Magsen was unable to produce the required addenda to the Service Agreement to support periodic increases in the service fees paid by the Strata to Magsen. In his response to the Council, Mr. Yu stated:

*"[i]f strata management fees had been changed and approved by the owners in a general meeting, we will always make an addendum for the change and have it signed by the strata council."*

Mr. Yu provided examples from three other strata corporations managed by Magsen as evidence of the steps typically taken by Magsen to document such service fee increases. Mr. Yu also stated that due to Magsen's transfer of all Strata documents after the Strata terminated Magsen's services with effect from September 30, 2015, the Brokerage could not locate any digital copies of the addenda to the Service Agreement.

10. A Notice of Discipline Hearing was issued on April 6, 2018 and served on Magsen.
11. A Notice of Discipline Hearing was issued on April 6, 2018 and served on Mr. Yu.

12. Neither Magsen nor Mr. Yu has a prior disciplinary record with the Council.
13. Magsen shut down its strata management business in May, 2016 and has operated exclusively as a trading and rental services brokerage since that date.

### **PROPOSED FINDINGS OF MISCONDUCT**

For the sole purpose of this Proposal and based on the facts outlined above, Magsen and Mr. Yu propose the following findings of misconduct be made by the CORC:

1. Magsen committed professional misconduct within the meaning of section 35(1)(a) of the RESA in connection with its provision of strata management services ("Services") to Strata Corporation VR XXX, East X<sup>th</sup> Avenue, Vancouver, British Columbia ("Strata") under the terms of a service agreement dated September 22, 2010 ("Service Agreement") in that Magsen:
  - (i) failed to ensure that monies received from the Strata as contingency reserve funds were deposited into the Strata's contingency reserve fund trust account opened under section 7-9(2)(b) of the Rules, contrary to section 7-9(3)(b) of the Rules
  - (ii) failed to open a trust account in the name of the Strata for the purpose of holding monies received from the Strata as special levy funds, contrary to section 7-9(2)(c) of the Rules;
  - (iii) Failed to ensure that monies received from the Strata as special levy funds were deposited into the Strata's special levy fund trust account opened under section 7-9(2)(c) of the Rules, contrary to section 7-9(3)(c) of the Rules;
  - (iv) Permitted monies received from the Strata as special levy funds and monies received from the Strata as contingency reserve funds to be co-mingled in both the Strata's contingency reserve fund trust account and a term deposit held by Magsen, contrary to section 7-9(3) and section 7-9(4) of the Rules
  - (v) failed during the period from July, 2014 to June, 2015 to transfer monies received from the Strata as contingency reserve funds and deposited in the Strata's operating account from that account into the Strata's contingency reserve fund trust account within 7 days after the end of the month in which Magsen had received the monies, contrary to section 7-9(4)(a) of the Rules;
  - (vi) Failed to ensure that the Strata had provided Magsen with the required instructions before Magsen transferred funds between the Strata's trust accounts, contrary to section 30(1)(g) of RESA; and
  - (vii) failed to retain for a period of 7 years after their creation copies of all records that established the scope of Magsen's authority when providing Services to the Strata by failing to retain copies of the signed amendments to the Service Agreement which permitted Magsen to collect fees in excess of those permitted under the

Service Agreement during the years from 2011 to 2015, contrary to section 8-4(1)(b) and section 8-10 of the Rules.

2. Mr. Yu committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that in relation to the Magsen's discharge of its obligations to the Strata under the Service Agreement he:
  - (i) failed to be responsible for the control of Magsen's real estate business and failed to be actively engaged in the management of Magsen by permitting Magsen to breach the *Real Estate Services Act* and the Rules in the manner set out above, contrary to section 6(2)(c) of the *Real Estate Services Act* and section 3-1(1)(a) of the Rules.

### **PROPOSED ORDERS**

Based on the Facts herein and the Proposed Findings of Misconduct, Magsen and Mr. Yu 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. Magsen be reprimanded.
2. Mr. Yu be reprimanded.
3. Magsen pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of this Order
4. Mr. Yu pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of this Order
5. Magsen, at its own expense, arrange for an audit to be conducted at a time to be determined by the Council but within six (6) months of the date of this Order;
6. Mr. Yu at his own expense, register for and successfully complete the Managing Broker's Remedial Education Course provided by the Realty Estate Division, Sauder School of Business at the University of British Columbia within the time directed by the Council.
7. Magsen and Mr. Yu be jointly and severally liable to pay enforcement expenses to the Council pursuant to section 44 of the RESA in the amount of \$1,500.00 within sixty (60) days from the date of this Order.
8. If either Magsen or Mr. Yu or both fail to comply with any of the terms of this Order set out above, a Discipline Committee may suspend or cancel either or both, as the case may warrant, of their licences without further notice to them.

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

1. Each of Magsen and Mr. Yu 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. Each of Magsen and Mr. Yu have been advised of and understands the right to obtain independent legal advice regarding the disciplinary process, including with respect to the execution and submission of this Proposal.
3. Each of Magsen and Mr. Yu acknowledges and is aware that the Council will publish this 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. Each of Magsen and Mr. Yu 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. Each of Magsen and Mr. Yu hereby waives the right to appeal pursuant to section 54 of the RESA.
6. This Proposal and its contents are made by Magsen and Mr. Yu 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, this Proposal and its contents may not be used without the consent of both Magsen and Mr. Yu in any civil proceeding with respect to the matter.

"B. Yu"

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**Authorized Signatory for Magsen Realty Inc**

"Billy Yu"

\_\_\_\_\_  
**Name**

November 7, 2018

**Dated:** \_\_\_\_\_

"B. Yu"

\_\_\_\_\_  
**Billy Kwok-Piu Yu**

November 7, 2018

**Dated:** \_\_\_\_\_