

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
FUH-CHENG HARRY HSIAO
(097596)

AND

HARRY HSIAO PERSONAL REAL ESTATE CORPORATION
(097596PC)

CONSENT ORDER

RESPONDENT: Fuh-Cheng Harry Hsiao, Representative, West Coast Realty Ltd. dba Sutton Group-West Realty
Harry Hsiao Personal Real Estate Corporation

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 Fuh-Cheng Harry Hsiao, on his own behalf and on behalf of Harry Hsiao Personal Real Estate Corporation.

WHEREAS the COP, a copy of which is attached hereto, has been executed Fuh-Cheng Harry Hsiao on his own behalf and on behalf of Harry Hsiao Personal Real Estate Corporation.

NOW THEREFORE, the Committee having made the findings proposed in the attached COP, and in particular having found that Fuh-Cheng Harry Hsiao and Harry Hsiao Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Fuh-Cheng Harry Hsiao and Harry Hsiao Personal Real Estate Corporation each be reprimanded;
2. Fuh-Cheng Harry Hsiao and Harry Hsiao Personal Real Estate Corporation be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days from the date of this Order;
3. Fuh-Cheng Harry Hsiao, 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. Fuh-Cheng Harry Hsiao and Harry Hsiao Personal Real Estate Corporation 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 Fuh-Cheng Harry Hsiao or Harry Hsiao Personal Real Estate Corporation fails to comply with any term of this Order, the Council may suspend or cancel their licences 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”

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

**FUH-CHENG HARRY HSIAO
(097596)**

**HARRY HSIAO PERSONAL REAL ESTATE CORPORATION
(097596PC)**

**CONSENT ORDER PROPOSAL BY FUH-CHENG HARRY HSIAO AND
HARRY HSIAO PERSONAL REAL ESTATE CORPORATION**

BACKGROUND AND FACTS

This Consent Order Proposal (“Proposal”) is made by Fuh-Cheng Harry Hsiao (“Mr. Hsiao”) and Harry Hsiao Personal Real Estate Corporation (“HH PREC”) to the Consent Order Review Committee (“CORC”) of the Real Estate Council of British Columbia (“Council”) pursuant to section 41 of the *Real Estate Service Act* (“RESA”).

For the purposes of the Proposal, and the Council have agreed upon the following facts:

1. Mr. Hsiao has been licensed as a representative since 1992.
2. Mr. Hsiao was at all relevant times licensed as a representative with West Coast Realty Ltd.
3. HH PREC has been licensed as a Personal Real Estate Corporation, Trading, Rental since 2011.
4. This matter involves three complainants, CZ, SW, and DZ (“Complainants”). The Complainants are immediate family members.
5. Mr. Hsiao acted for the Complainants as the buyer’s representative in connection with the Complainants’ purchase, in each case by way of a pre-sale agreement, of seven properties (“Pre-Sale Properties”) from a major developer (“Seller”) on February 4, 2014.
6. In connection with the Complainants’ purchase of the Pre-Sale Properties, Mr. Hsiao issued personal cheques, payable to the Seller’s solicitors in trust, to secure the Complainants’

right to buy four of the Pre-Sale Properties for seven days while the Complainants obtained bank drafts to pay the required deposits.

7. Mr. Hsiao says that he made an agreement with the Seller that his personal cheques would not be cashed and that if the Complainants failed to provide the necessary bank drafts the Seller would return the uncashed personal cheques to Mr. Hsiao.
8. The Complainants provided the necessary bank drafts to Mr. Hsiao around February 6, 2014.
9. The Council did obtain copies of the uncashed personal cheques issued by Mr. Hsiao in 2014 during its investigation and these documents are consistent with Mr. Hsiao's account of his dealings with the Seller on behalf of the Complainants. However, the approach taken by Mr. Hsiao had the potential to appear to be a loan or to misinform a third party who was not aware of Mr. Hsiao's arrangements with the Seller or both.
10. The sale of the Pre-Sale Properties completed on July 3, 2014.
11. Around this time, Mr. Hsiao received a share of the commission paid by the Seller in relation to each of the Pre-Sale Properties.
12. On July 10, 2014 Mr. Hsiao's brokerage noted on five of the deal sheet reviews for the Pre-Sale properties that Mr. Hsiao had been reminded that the required Disclosure of Remuneration Forms were missing.
13. With the exception of one of the Pre-Sale Properties, Mr. Hsiao failed to provide the Complainants with the Disclosure of Remuneration Form required under the Rules.
14. A Notice of Discipline Hearing was issued on April 23, 2018 and served on Mr. Hsiao and HH PREC on April 23, 2018.
15. An Amended Notice of Discipline Hearing was issued on August 21, 2018 and served on Mr. Hsiao and HH PREC on September 11, 2018 to change the hearing date.
16. A Second Amended Notice of Discipline Hearing was issued on October 11, 2018 and served on Mr. Hsiao and HH PREC on October 17, 2018 to change the hearing date.
17. Neither Mr. Hsiao nor HH PREC have a prior disciplinary record with the Council.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the facts outlined herein, Mr. Hsiao and HH PREC propose the following findings of misconduct be made by the CORC:

1. Mr. Hsiao and HH PREC committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that they:

- a) failed to provide their clients with a disclosure of remuneration in the form required by section 5-11(2) of the Rules to reflect the compensation being received by their related brokerage from a developer in relation to the clients' purchase of six properties from the developer, contrary to section 5-11 of the Rules; and
- b) failed to act with reasonable care and skill when, pending the developer's receipt of the clients' deposit cheques, they provided Mr. Hsiao's personal cheques to the developer to secure the clients' right to buy four properties from the developer, contrary to section 3-4 of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Hsiao and HH PREC 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. Mr. Hsiao and HH PREC each be reprimanded.
2. Mr. Hsiao and HH PREC be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days of the date of this Order.
3. Mr. Hsiao, at his own expense, register for and successfully complete the 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. Hsiao and HH PREC be jointly and severally liable pay enforcement expenses to Council in the amount of \$1,500.00 within sixty (60) days from the date of this Consent Order.
5. If either Mr. Hsiao or HH PREC fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Hsiao's licence without further notice to Mr. Hsiao and HH PREC.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Hsiao, on his own behalf and on behalf of HH PREC, acknowledges and understands that the Council may refer or decline to refer this Proposal to the CORC. If this Proposal is referred to the CORC, it may be accepted or rejected by the CORC. If this Proposal is rejected by the CORC, the matter may be referred to a disciplinary hearing.
2. Mr. Hsiao, on his own behalf and on behalf of HH PREC, 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 this Proposal to the CORC; and, that he, on his own behalf and on behalf of HH PREC, has obtained independent legal advice or has chosen not to do so, and that he and HH PREC are making this Proposal with full knowledge of the contents and the consequences if this Proposal is accepted by the CORC.

3. Mr. Hsiao, on his own behalf and on behalf of HH PREC, acknowledges and is aware that the Council will publish this Proposal and any 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. Hsiao, on his own behalf and on behalf of HH PREC, 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. Hsiao, on his own behalf and on behalf of HH PREC, hereby waives his right to appeal pursuant to section 54 of the RESA.
6. This Proposal and its contents are made by Mr. Hsiao, on his own behalf and on behalf of HH PREC, 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 Mr. Hsiao in any civil proceeding with respect to the matter.

"H. Hsiao"

**FUH-CHENG HARRY HSIAO on his own behalf and
on behalf of HARRY HSIAO PERSONAL REAL ESTATE
CORPORATION**

Dated_20th_ day of __January__, 2019