

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  
MOHAMMED FAIAJ (KEVIN) KHAN  
(169284)

CONSENT ORDER

RESPONDENT: Mohammed Faij (Kevin) Khan, currently unlicensed, while licensed with OMAX Realty Ltd.

DATE OF REVIEW MEETING: December 12, 2018

DATE OF CONSENT ORDER: December 12, 2018

CONSENT ORDER REVIEW COMMITTEE: E. Mignosa  
Y. Amlani  
L. Hrycan  
N. Nicholson

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

PROCEEDINGS:

On December 12, 2018, the Consent Order Review Committee (“Committee”) resolved to accept the Consent Order Proposal (“COP”) submitted by Mohammed Faij (Kevin) Khan.

**WHEREAS** the COP, a copy of which is attached hereto, has been executed by Mohammed Faij (Kevin) Khan.

**NOW THEREFORE**, the Committee having made the findings proposed in the attached COP, and in particular having found that Mohammed Faij (Kevin) Khan committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Mohammed Faij (Kevin) Khan be reprimanded;

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2. Mohammed Faij (Kevin) Khan pay a discipline penalty to the Council in the amount of \$3,000 within ninety (90) days from the date of this Order;
  3. Mohammed Faij (Kevin) Khan, 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. Mohammed Faij (Kevin) Khan pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Mohammed Faij (Kevin) Khan 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 12th day of December, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Len Hrycan”

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Len Hrycan

Consent Order Review Committee

Attch.

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

**AND**

**IN THE MATTER OF**

**MOHAMMED FAIAJ (KEVIN) KHAN  
169284**

**CONSENT ORDER PROPOSAL BY MOHAMMED FAIAJ (KEVIN) KHAN**

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**BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by Mohammed Faij (Kevin) Khan ("Mr. Khan") 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 Service Act* ("RESA").

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

1. Mr. Khan (169284) has been licensed as a real estate representative since 2014.
2. Mr. Khan was at all relevant times licensed as a representative with OMAX Realty Ltd. dba Coldwell Banker Universe Realty ("Coldwell").
3. At all relevant times, Mr. Khan was acting as the co-listing agent for the seller (the "Seller") of a property located on 82 Avenue in Delta, BC (the "Property").
4. The Seller entered into a Multiple Listing Contract with Coldwell and its designated agents, Mr. Khan and HW, for the sale of the Property on March 18, 2016, Pursuant to the Multiple listing Contract, the Property would be listed for \$799,888 ones the Seller agreed to pay the listing brokerage 7% on \$100,000 and 2.5% on the remainder.
5. On March 21, 2016, the Seller entered into a Contract of Purchase and Sale for the Property for \$880,000.
6. On April 21, 2016, the Seller signed a Contract of Purchase and Sale Addendum (the "Addendum") indicating he would receive \$825,000 from the proceeds of the sale of the Property and the remainder would be given as a bonus to Mr. Khan and HW. The Addendum was witnessed by Mr. Khan and HW.
7. The transaction completed without incident.
8. The Council received a complaint from the Seller concerning the bonus on August 16, 2016.

9. Mr. Khan submits that the Seller offered the bonus to him and HW.
10. On January 26, 2017, the Seller wrote to the Council indicating that he had “settled” the matter with Mr. Khan and HW and was withdrawing his complaint.
11. A Notice of Disciplinary Hearing was issued on July 19, 2018 and served on Mr. Khan.
12. Mr. Khan has no prior discipline history with the Council.

### **PROPOSED FINDINGS OF MISCONDUCT**

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

1. Mr. Khan committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that while licensed as a representative with Coldwell and acting as the agent for the Seller of the Property between March and July 2016:
  - a. he failed to act in the best Interests of his client when he prepared and had the Seller sign an Addendum to the Contract of Purchase and Sale stating that the Seller would receive net proceeds from the sale and Mr. Khan would receive the remainder of the sale proceeds as a bonus, contrary to sections 3-3(a), 5-14(1) and 5-14(2) of the Rules; and
  - a. he acted in a potential conflict of interest and failed to advise the Seller to seek independent professional advice in relation to the remainder of the sale proceeds that Mr. Khan would receive as a bonus contrary to sections 3-3(d), 3-3(i) and 3-3(j) of the Rules.

### **PROPOSED ORDERS**

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Khan 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. Mr. Khan be reprimanded.
2. Mr. Khan pay a discipline penalty to the Council in the amount of \$3,000 within ninety (90) days of the date of this Order.
3. Mr. Khan, at his own expense, register for successfully complete the Real Estate Trading Services Remedial Education Course as provided by Sauder School of Business at the University of British Columbia within the time period as directed by the Council.
4. Mr. Khan pay enforcement expenses to Council in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.

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

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

1. Mr. Khan 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. Khan 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 has chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Mr. Khan 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. Khan 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. Khan hereby waives their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Khan 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. Khan in any civil proceeding with respect to the matter.

"Mohammed Faiaj (Kevin) Khan"

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**Mohammed Faiaj (Kevin) Khan**

**Dated 22<sup>nd</sup> day of October, 2018**