

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

WAYNE LIN
(160476)

CONSENT ORDER

RESPONDENT: Wayne Lin, representative, Home Park Realty Ltd.

DATE OF REVIEW MEETING: October 24, 2018

DATE OF CONSENT ORDER: October 24, 2018

CONSENT ORDER REVIEW COMMITTEE: J. Daly
L. Hrycan
S. Heath
R. Wong

ALSO PRESENT: E. Duvall, Chair
E. Seeley, Executive Officer
Patrick Gilligan-Hackett, Legal Counsel
for the Real Estate Council

PROCEEDINGS:

On October 24, 2018, the Consent Order Review Committee (“Committee”) resolved to accept the Consent Order Proposal (“COP”) submitted by Wayne Lin.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Wayne Lin.

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

1. Wayne Lin be reprimanded;

2. Wayne Lin 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. Wayne Lin, 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;
4. Wayne Lin, within a time to be determined by the CORC:
 - a. complete a review of the Rules regulating assignments and licensees' responsibilities to their brokerage and managing broker;
 - b. meet with his managing broker to discuss his review described in subparagraph (a) above; and
 - c. provide a written certification from his managing broker confirming the meeting described in subparagraph (b) above.
5. Wayne Lin pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Order.

If Wayne Lin 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 24th day of October, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"J. Daly"

J. Daly
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

**WAYNE LIN
(160476)**

CONSENT ORDER PROPOSAL BY WAYNE LIN

BACKGROUND AND FACTS

This Consent Order Proposal (“Proposal”) is made by Wayne Lin (“Mr. Lin”) 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, Mr. Lin and the Council have agreed upon the following facts:

1. Mr. Lin (160476) has been licensed as a Representative, Trading since 2010.
2. Mr. Lin was at all relevant times licensed as a Representative, Trading with Home Park Realty Ltd.
3. On April 15, 2016 the Council received a complaint (“Complaint”) from three individuals (“Complainants”) about the conduct of Mr. Lin. The Complainants were the sellers of a residential property located at XXXX Eperson Road in Richmond, British Columbia (“Property”).
4. On or about November 26, 2015 the Complainants entered into a contract of purchase and sale dated November 23, 2015 (“Contract”) for the Property.
5. Mr. Lin acted as the buyer’s agent in the purchase and sale of the Property.
6. The Council investigated the Complaint.
7. The buyer (“Buyer”) of the Property under the Contract was one of Mr. Lin’s immediate family members.
8. At the time the Complainants and the Buyer entered into the Contract, Mr. Lin properly disclosed that he was providing trading services to an associate. Mr. Lin identified the nature of the relationship between himself and the associate.

9. The Contract contained an assignment clause stating:

The Buyer reserve [sic] her right to assign this contract in whole or in part to any third party without furthe [sic] notice to the Seller. Said assignment does not relieve the Buyer from her obligation to complete the terms and conditions of this contract should the assignee default.

10. When the sale of the Property completed on March 21, 2016 Mr. Lin was identified as the owner of the Property on the conveyance documents. This was done with Mr. Lin's knowledge and consent, apparently pursuant to an assignment from the Buyer to Mr. Lin.
11. In conjunction with his acquisition of the Property by the assignment, Mr. Lin failed to provide the Complainants with a Disclosure of Interest in Trade although one was required. The Complainants stated that the first notice they had of Mr. Lin's acquisition of the Property was when they received the conveyancing documents from their solicitor.
12. In his response dated July 16, 2016 to the Council's investigation Mr. Lin's then managing broker stated the following:

Please note that: Vancouver Home Park Realty Conveyancer department stated it to me;

*As Vancouver Home Park Realty Conveyancer's department, recalled and or remembered, the **Trade Record Sheet and Contract of Purchase and Sale Addendum with the buyer signature only**, provided it by Agent Wayne Lin was replaced or placed by the Agent **after the completion date March 21, 2016** of sale of [Property] and it was dated as of **February 23, 2016** and additionally the Agent Wayne Lin registered into **replacement** Trade Record Sheet in the Buyer's Information section, Wayne Lin, him self as the Buyer.*

and:

*The Agent Wayne Lin **never** discussed or disclosed or brought to Managing Broker's attention of his intend to change the name of the Buyer from [Buyer] to Wayne Lin himself at all, from starting to the completion date of sale [Property].*

(Except for text within square brackets as in the original document.)

13. The reference above to a "Contract of Purchase and Sale Addendum with the buyer signature only" is a reference to a Contract of Purchase and Sale Addendum dated February 23, 2016 and signed by the Buyer which states:

The Buyer hereby exercise [sic] her right to assign this Contract in whole to Wayne Lin. Said assignment does not relieve the Buyer from her obligation to complete the terms and conditions of this contract should the assignee default.

Mr. Lin did not deliver this document to the Complainants.

14. In his response dated July 25, 2016 to the Council's investigation, Mr. Lin stated:

We [i.e., Mr. Lin and the Buyer] included a term about assignment in the offer because at that time of offer we can not decide who will be the purchaser (My [Buyer] or myself) because I am not sure if I will get approved for the mortgage or not.

Later mortgage approved in my name. around Feb 2016 or so. I did not notify seller thinking that original disclosure was enough (the buyer [sic] knows I am acting for my [Buyer], I assumed they should not be surprised when a [Buyer] transfer the property to [Mr. Lin].) plus I have the assignment clause.

(Except as marked [sic] and for text within square brackets, as in the original document.)

15. The Council issued and served on Mr. Lin: a Notice of Disciplinary Hearing dated December 18, 2017; and an amended (change of dates and venue) Notice of Disciplinary Hearing dated 27 April, 2018.
16. Mr. Lin does not have a prior disciplinary record.

PROPOSED FINDINGS OF MISCONDUCT

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

Mr. Lin committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that he failed:

- A. to disclose to the sellers in the form required by section 5-9 of the Rules that he would be directly acquiring the Property after his associate assigned her interest in the Contract to him by an addendum to the Contract dated February 23, 2016 ("Assignment"), contrary to Rule 5-9(1)(a) of the Rules;
- B. to act with reasonable care and skill when on or after February 23, 2016 he added the Assignment to the brokerage's file concerning the Contract without providing the sellers with the disclosure required by section 5-9 of the Rules, contrary to section 3-4 of the Rules; and
- C. to keep his managing broker informed about the real estate services being provided and the other activities being performed by him on behalf of the brokerage when, after his associate assigned her interest under the Contract to him, he failed to inform his managing broker that he was acquiring the Property directly but had not provided the sellers with the disclosure required by section 5-9 of the Rules, contrary to section 3-2(2) of the Rules.

PROPOSED ORDERS

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

- a. Mr. Lin be reprimanded.
- b. Mr. Lin pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days of the date of this Order.
- c. Mr. Lin, 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.
- d. Mr. Lin complete, within a time to be determined by the CORC, a review of the Rules regulating assignments and a licensee's responsibilities to his/her brokerage and managing broker, followed by a meeting with his managing broker to discuss what he has reviewed and a written certification from his managing broker to the chair of the CORC that he/she has held this discussion with him.
- e. Mr. Lin pay enforcement expenses in the amount of \$1,500.00 within sixty (60) days from the date of this Order.

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

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Lin 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. Lin has been advised of and understands their right to obtain independent legal advice regarding the disciplinary process, including with respect to the execution and submission of the Proposal.
3. Mr. Lin 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. Lin 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. Lin hereby waives their right to appeal pursuant to section 54 of the RESA.

6. The Proposal and its contents are made by Mr. Lin 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. Lin in any civil proceeding with respect to the matter.

"W. Lin"

Wayne Lin

Dated 17, day of August, 2018

Signature of Wayne Lin witnessed on the above date

"Y. Zhang"

Witness Name (*Please Print*)

"Y. Zhang"

Witness Signature