

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

**CHEN (MORNING) YU
(160007)**

AND

**MORNING YU PERSONAL REAL ESTATE CORPORATION
(160007PC)**

CONSENT ORDER

RESPONDENT: Chen (Morning) Yu, representative, Laboutique Realty Ltd., while licensed with Pan Pacific Platinum Real Estate Services Inc. dba New Coast Realty

Morning Yu Personal Real Estate Corporation

DATE OF REVIEW MEETING: October 19, 2018

DATE OF CONSENT ORDER: October 19, 2018

CONSENT ORDER REVIEW COMMITTEE: E. Mignosa
S. Heath
S. Sidhu

ALSO PRESENT: D. Avren, Director, Legal Services
J. Clee, Legal Counsel for the Real Estate Council
J. Moore, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On October 19, 2018, the Consent Order Review Committee ("Committee") resolved to accept the Consent Order Proposal ("COP") submitted by Chen (Morning) Yu, on her own behalf and on behalf of Morning Yu Personal Real Estate Corporation.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Chen (Morning) Yu, on her own behalf and on behalf of Morning Yu Personal Real Estate Corporation.

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

1. Chen (Morning) Yu and Morning Yu Personal Real Estate Corporation each be reprimanded;
2. Chen (Morning) Yu and Morning Yu Personal Real Estate Corporation be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$7,500.00 within ninety (90) days from the date of this Order; and
3. Chen (Morning) Yu and Morning Yu 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 Chen (Morning) Yu or Morning Yu 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 19th day of October, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“E. Mignosa”

E. Mignosa
Consent Order Review Committee

Attch.

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**CHEN (MORNING) YU
(160007)**

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(160007PC)**

**CONSENT ORDER PROPOSAL BY CHEN (MORNING) YU AND
MORNING YU PERSONAL REAL ESTATE CORPORATION**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Chen (Morning) Yu ("Ms. Yu") and Morning Yu Personal Real Estate Corporation 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, Ms. Yu and the Council have agreed upon the following facts:

1. Ms. Yu (160007) has been licensed as a representative since September 14, 2010.
2. On September 24, 2013, Ms. Yu became licensed as a representative with Pan Pacific Platinum Real Estate Services dba New Coast Realty (the "Brokerage").
3. Ms. Yu became licensed as Morning Yu Personal Real Estate Corporation (160007PC) on January 16, 2014.
4. On December 19, 2013, H.Y. became licensed as a representative with the Brokerage and began working there as an assistant to Ms. Yu.

5. On or about January 20, 2014, H.Y. and Ms. Yu entered into a Cooperation Agreement, which stipulated various provisions regarding a working relationship between H.Y., the Brokerage, and Ms. Yu, including commission sharing arrangements.

Complaint by K.C. regarding Rideau Place Property

6. On or about April 5, 2014, the Brokerage entered into a Multiple Listing Contract (the "Listing Contract") with W.M. (the "Seller") for the sale of the residential property located at 8XXX Rideau Place in Richmond (the "Property"). Ms. Yu and F.C., another licensee at the Brokerage, were appointed as Designated Agents for the Seller under the Listing Contract.
7. On or about April 11, 2014, Ms. Yu learned that a potential buyer (whom Ms. Yu later learned was the Complainant, K.C.) had contacted the Brokerage to make an appointment to view the Property. Ms. Yu asked H.Y. to show the Property to the buyer the next day.
8. On April 12, 2014, H.Y. showed the Property to K.C. Later that day, H.Y. prepared a contract of purchase and sale (the "Initial Offer") for K.C. which provided the following:

Purchase Price:	\$870,000.00
Deposit:	44,000.00 within 24 hours of subject removal date by bank draft
Buyer's Agent:	Morning Yu PREC and H.Y. New Coast Realty
Seller's Agent:	Morning Yu PREC and F.C., New Coast Realty
Subject to:	Mortgage, Property Disclosure Statement, insurance, title search, and an inspection – all to be removed by April 22, 2014

9. Accompanying the Initial Offer was a *Working with a REALTOR®* brochure dated April 12, 2014 that identified the name of the realtor as H.Y. with the words "Morning Yu PREC*" written in H.Y.'s handwriting beside H.Y.'s name, which was typewritten on the document. The brochure was signed by H.Y. and K.C., but not by Ms. Yu.
10. The Initial Offer was presented to the Seller who made a counter-offer, witnessed by F.C., to sell the Property for \$978,000.00. In response to the Seller's counter-offer, K.C. made a further counter-offer to purchase the Property for \$910,000.00. No agreement resulted from those negotiations.

11. On April 18, 2014 H.Y. drafted a new offer for K.C. (the "Second Offer") which provided the following:

Purchase Price:	\$930,000.00
Deposit:	\$47,000.00 within 24 hours of subject removal date by bank draft
Buyer's Agent:	H.Y., New Coast Realty
Seller's Agent:	Morning Yu PREC and F.C., New Coast Realty
Subject to:	Mortgage, Property Disclosure Statement, insurance, title search, and an inspection – all to be removed by April 30, 2014

12. Accompanying the Second Offer was a *Working with a REALTOR®* brochure dated April 12, 2014 and signed by K.C., designating H.Y. as his agent.

13. The Second Offer was provided by H.Y. to Ms. Yu who presented it to the Seller. In response to the Second Offer, the Seller made a counter-offer (the "Counter-Offer") by amending the price to \$938,000.00 and by crossing out the "subject to mortgage" and "subject to inspection" clauses contained in the Second Offer, and by dating and signing the Counter-Offer on April 18, 2014.

14. The Counter-Offer, which was accepted by K.C., provided the following:

Purchase Price:	\$938,000.00
Deposit:	\$47,000.00 within 24 hours of subject removal date by bank draft
Buyer's Agent:	H.Y., New Coast Realty
Seller's Agent:	Morning Yu PREC and F.C., New Coast Realty
Subject to:	Property Disclosure Statement, insurance and title search – all to be removed by April 24, 2014.

15. As a courtesy to the buyer, the Seller allowed K.C. access to the Property for mortgage purposes and to have the home inspected by a home inspector and fengshui master, although the Seller had refused to accept subject conditions relating to financing or inspection.

16. On April 24, 2014, K.C. had the home inspected by a home inspector and a fengshui master, after which K.C. refused to remove subjects and proceed with the purchase. H.Y. relayed the

buyer's decision to Ms. Yu who told H.Y. to inform K.C. that the seller could sue K.C. if he chose not to proceed with the purchase on the basis of the inspection or fengshui report.

17. On April 24 and 25, 2014, H.Y., in breach of her duty of confidentiality to K.C., forwarded copies of various email communications between her and K.C. to Ms. Yu. Ms. Yu discussed these communications with H.Y. and provided suggestions to H.Y. regarding the steps H.Y. should take in dealing with K.C.'s unwillingness to complete the purchase of the Property on the basis of the results of the inspection or fengshui report.
18. On or about April 25, 2014, Ms. Yu telephoned K.C. directly to discuss his unwillingness to complete the purchase on the basis of the results of the inspection or fengshui report.
19. K.C. did not remove the subjects from the Counter-Offer and the sale of the Property to K.C. collapsed.
20. Both the Initial Offer and the Second Offer indicated that they were "PREPARED BY: MORNING YU PREC* [H.Y.]". Ms. Yu states to Council that she had no involvement in preparing these offers or the *Working with a REALTOR*[®] brochures related to them. Ms. Yu acknowledges, however, that she received the Initial Offer and the Second Offer and became aware of their contents during the course of the negotiations between K.C. and the Seller. Ms. Yu also acknowledges that the presence of her personal real estate corporation's name beside H.Y.'s name on the Initial Offer and on the Second Offer could be understood by a reader of those documents as implying a connection between H.Y. and Ms. Yu In relation to the real estate services contemplated by those documents.

Approval of Name and Registration of Team

21. After joining the Brokerage in September of 2013, Ms. Yu and other licensees at the Brokerage worked together as a team.
22. Ms. Yu and the members of her team, from time to time and with increasing frequency over time, used the name "Team Morning Yu" in describing their team in advertising and promotional materials. By approximately mid-2014, Ms. Yu and her team members were regularly and frequently referring to their group by the name "Team Morning Yu" in their marketing materials and in internal and external communications.
23. In or about January of 2015, Ms. Yu and the other members of her team submitted Medallion Club Team Declaration forms to the Real Estate Board of Greater Vancouver declaring that they would be working together as a team with all of their MLS Medallion points to be credited to Morning Yu PREC as the designated "team leader".
24. Ms. Yu states to Council that she was unaware of the requirement to obtain approval from Council for the name "Team Morning Yu" that she and her team had been using until early March of 2015, when she was informed of this requirement by a member of the Brokerage's administrative staff.

25. In early March of 2015, Ms. Yu submitted a Team Name Request form to Council and, on March 6, 2015, Council informed Ms. Yu that the team name "Team Morning Yu" had been approved and was registered for advertising purposes.
26. In December of 2015, Ms. Yu and a number of the members of her team left the Brokerage and became licensed as representatives with Metro Edge Realty ("Metro Edge"). Ms. Yu's licence with Metro Edge came into effect on December 16, 2015.
27. Ms. Yu states to Council that she was unaware of the requirement to re-apply to Council for approval of her team name after relocating to Metro Edge until May of 2016, when she was informed of that requirement by the managing broker of Metro Edge.
28. On or about May 15, 2016, Ms. Yu submitted a Team Name Request form to Council with details of the members of her team and new brokerage at which they were licensed and, on May 16, 2016, Council informed Ms. Yu that the team name "Team Morning Yu" had been approved and was registered for advertising purposes.
29. An Amended Notice of Discipline Hearing was issued March 15, 2018 and served upon Ms. Yu.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Chen (Morning) Yu propose the following findings of misconduct be made by the CORC:

1. Ms. Yu committed professional misconduct within the meaning of section 35(1)(a) of the RESA while licensed as a representative with Pan Pacific Platinum Real Estate Services Inc. dba New Coast Realty ("New Coast") when she:
 - (a) contrary to section 4-6 of the Council Rules, between September 24, 2013 and March 6, 2015, advertised and operated under the name 'Team Morning Yu', when that team name had not been approved by the Council; and
 - (b) contrary to sections 3-3(a), (i) and (j), 3-4 and 5-10 of the Council Rules, in relation to the purchase and sale of 8XXX Rideau Place, Richmond, BC, she:
 - (i) failed to take adequate steps to ensure that K.C. understood the nature of the representation that she was providing in relation to the purchase and sale of the Property and, in particular, to ensure that K.C. understood that H.Y., and H.Y. only, was the designated agent for K.C. and that Ms. Yu was acting solely as the designated agent for the Seller;
 - (ii) engaged in discussions with H.Y., both before and after receiving email communications between H.Y. and K.C. which Ms. Yu knew or ought to have known were confidential, and made suggestions to H.Y., which Ms. Yu ought in the

circumstances to have realized may be taken by H.Y. as instructions, regarding how H.Y. should deal with K.C. in relation to his refusal to complete the purchase of the Property on the basis of the inspection or fengshui report; and

(iii) contacted K.C. directly to discuss his refusal to complete the purchase of the Property on the basis of the inspection or fengshui report when, on the basis of the nature of her representation described in the Second Offer, Ms. Yu did not represent K.C. and represented the Seller only in the transaction.

2. Ms. Yu committed professional misconduct within the meaning of section 35(1)(a) of the RESA, while licensed as a representative with Metro Edge Holdings Ltd. dba Metro Edge Realty when, contrary to section 4-6 of the Council Rules, between December 16, 2015 and May 16, 2016, she advertised and operated under the name "Team Morning Yu", when that team name had not been approved by the Council.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Chen (Morning) 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. Chen (Morning) Yu be reprimanded.
2. Chen (Morning) Yu pay a discipline penalty to the Council in the amount of \$7,500 within ninety (90) days of the date of this Order.
3. Chen (Morning) Yu pay enforcement expenses in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.

If Chen (Morning) Yu fail to comply with any of the terms of this Order, a Discipline Committee may cancel Chen (Morning) Yu's licences without further notice to Ms. Yu and Morning Yu Personal Real Estate Corporation.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Chen (Morning) 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. Chen (Morning) Yu acknowledge that they have 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 they have obtained independent legal advice or have

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. Chen (Morning) Yu acknowledge and are 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. Chen (Morning) Yu acknowledge and are 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. Chen (Morning) Yu hereby waive their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Chen (Morning) 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, the Proposal and its contents may not be used without the consent of Chen (Morning) Yu in any civil proceeding with respect to the matter.

"Chen (Morning) Yu"

**Chen (Morning) Yu on her own behalf and on
behalf of Morning Yu Personal Real Estate
Corporation**

Dated 24th day of October, 2018