

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. dba LeHomes Realty First, while licensed with Metro Edge Holdings Ltd. dba Metro Edge Realty Morning Yu Personal Real Estate Corporation
DATE OF REVIEW MEETING:	September 14, 2018
DATE OF CONSENT ORDER:	October 12, 2018
CONSENT ORDER REVIEW COMMITTEE:	R. Holmes, QC E. Mignosa J. Lynch
ALSO PRESENT:	D. Avren, Director, Legal Services G. Thiele, Acting Manager, Legal Services L. Fong, Independent Legal Counsel J. Clee, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On September 14, 2018, a Consent Order Proposal (“COP”) submitted by Chen (Morning) Yu, on her own behalf and on behalf of Morning Yu Personal Real Estate Corporation was considered by the Consent Order Review Committee (the “Committee”) but not fully accepted. On October 11, 2018, a revised COP acceptable to the Committee was 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.

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* (RESA), orders that:

1. Chen (Morning) Yu and Morning Yu Personal Real Estate Corporation 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 within ninety (90) days from the date of this Order;
3. Chen (Morning) Yu, at her own expense, register for and successfully complete the Real Estate 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 as directed by the Council;
4. 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 \$1,500 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 12th day of October, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“J. Lynch”

J. Lynch
Consent Order Review Committee

Attch.

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

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**CHEN (MORNING) YU
160007**

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**MORNING YU PERSONAL REAL ESTATE CORPORATION
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 Morning Yu Personal Real Estate Corporation and the Council have agreed upon the following facts:

1. Ms. Yu (160007) has been licensed as a representative since September 14, 2010.
2. Ms. Yu became licensed as Morning Yu Personal Real Estate Corporation (160007PC) on January 16, 2014.
3. Ms. Yu was at all relevant times licensed as a representative with Metro Edge Holdings Ltd. dba Metro Edge Realty (the "Brokerage").
4. On February 13, 2016, WC and XC as sellers and QD as buyer entered into a Contract of Purchase and Sale respecting XXXX Lancelot Drive, Richmond, BC (the "Property"). The details of this Contract of Purchase and Sale (the "Contract") were as follows:

Purchase Price:	\$1,450,000.00
Deposit:	\$70,000.00 to be paid by bank draft within 24 hours after all subject removal
Subject Conditions:	Buyer obtaining and being satisfied with the special

restrictions and zoning of the property by February 19, 2016.

Assignment: The Buyer reserves the right to assign this contract in whole or in part to any third party without further notice to the seller, said assignment not to relieve the Buyer from his obligation to complete the terms and conditions of the contract should the assignee default.

Complete Date: May 5, 2016

Seller's Agent: Dina Zhu, New Coast Realty

Buyer's Agent: No agency

5. The buyer under the Contract, QD, is married to JZ, with whom Ms. Yu has had a personal acquaintance for several years.
6. On or about March 30, 2016, JZ approached Ms. Yu to ask for her help in finding a buyer for the Property. By that time, QD had removed the buyer's conditions and paid the deposit under the Contract. JZ told Ms. Yu that she and her husband did not wish to complete the purchase but wished to find an assignee of their rights to purchase under the Contract to complete the purchase of the Property instead.
7. Between April 1 and April 6, 2016, Ms. Yu and members of her team contacted clients of theirs to let them know that the Property was available for purchase by way of assignment. With the consent of the original listing agent, a showing of the Property was arranged by Ms. Yu for April 6, 2016 which a number of prospective buyers attended.
8. On or about April 6, 2016, an offer to purchase the Property for \$1,488,000.00 was received from a prospective buyer through GS, another agent at the Brokerage. The offer had a closing date of June 7, 2016. Ms. Yu asked GS to arrange for the buyer to resubmit the offer in the form of an offer to take an assignment of the Contract (rather than as an offer to purchase the Property by way of a contract of purchase and sale) with a completion date of May 5, 2016, to coincide with the completion date under the Contract. The buyer, however, decided not to pursue the negotiations further.
9. On or before April 6, 2016, JZ told Ms. Yu that she and her husband, QD, were unable to arrange mortgage financing to complete the purchase of the Property under the Contract. After the buyer described in paragraph 8 decided no to proceed, JZ told Ms. Yu that she and QC were prepared to assign their rights under the Contract, for the existing Contract price without mark up, in order to secure a buyer to complete the purchase of the Property in their place so as to avoid losing their deposit.
10. On April 6, 2016, QD entered into an Exclusive Listing Contract with the Brokerage for the purpose of assigning the Contract. The Exclusive Listing Contract indicated that the designated agent for QC was Morning Yu Personal Real Estate Corporation. Also on April 6, 2016, QC signed a *Working with a REALTOR®* brochure indicating that he was in a client relationship under designated agency with Morning Yu Personal Real Estate Corporation.
11. The Exclusive Listing Contract also indicated that the listing price was \$1,450,000.00 (which was same as the purchase price specified in the original Contract), and that QD would pay \$0 in commission to the Brokerage. Ms. Yu says that the reason she agreed to not charge a

commission under the Exclusive Listing Contract was because, under the market conditions then existing, it appeared unlikely that QD could do any better than assign the Contract at the original Contract price, and that she wished to do JZ and her husband a favour by helping them to find another buyer to step in to purchase the Property without them sustaining a loss.

12. As of April 8, 2016, no buyer interested in purchasing the Property for the original Contract price had been located. On April 8, 2016, Ms. Yu contacted her mother, YC, to suggest that she consider purchasing the Property. YC had immigrated to Canada in 2013 and, to Ms. Yu's knowledge, would qualify for a mortgage as a new immigrant enabling her to complete the purchase. After speaking with Ms. Yu, YC agreed to purchase the Property.
13. On April 9, 2016, QD as assignor and YC as assignee entered an Assignment of Contract of Purchase and Sale in respect of the Property (the "Assignment Contract"). The details of the Assignment Contract were as follows:

Assignment Amount:	\$70,000.00 (reimbursement of deposit)
Assignee's total purchase price:	\$1,450,000.00
Limited Dual Agency:	Morning Yu Personal Real Estate Corporation, Metro Edge Realty

14. The Assignment Contract predated the Provincial requirements relating to the assignment of real estate contracts, which came into force in BC on May 16, 2016.
15. Also on April 9, 2016:
 - a) YC signed a *Working with a REALTOR®* brochure acknowledging a client relationship under designated agency with Ms. Yu;
 - b) QD and YC entered a Limited Dual Agency Agreement dated April 9, 2016 respecting the Property, acknowledging Ms. Yu was acting as a limited dual agent;
 - c) Ms. Yu provided a Disclosure of Interest in Trade form to QD indicating that she was providing trading services to YC, her mother; and
 - d) Ms. Yu signed a Disclosure of Remuneration form to YC indicating that the Brokerage anticipated receiving a commission of \$0 as a consequence of Ms. Yu's role as a limited dual agent.
16. The sale of the Property to YC completed on May 5, 2016. YC's intention in agreeing to purchase the Property was not to hold it for an extended period of time but rather to re-sell it for a profit in a short time frame if she could.
17. On May 5, 2016, Ms. Yu was contacted by CG, another client of hers, who asked Ms. Yu to prepare an offer for him on an unrelated property in Richmond. CG, as it happened, knew Ms. Yu's mother, YC, personally. Ms. Yu told CG that her mother had just purchased the Property and suggested that CG consider making an offer to purchase it, on a private basis, instead.

18. After having someone drive by the Property to look at it from the street, CG told Ms. Yu that he wished to make an offer to buy it. Ms. Yu told CG and her mother, YC, that she (Ms. Yu) would assist in writing up an offer for CG to purchase the Property for whatever price they agreed on, but would not be acting as the real estate agent for either of them on the transaction.
19. On May 7, 2016, YC and CG entered into a Contract of Purchase and Sale under which CG agreed to purchase the Property for \$1,700,000, with a completion date of June 28, 2016 (the "May 7th Contract"). The purchase price for the Property and date for completion of the sale were negotiated between YC and CG directly without Ms. Yu's involvement. Ms. Yu prepared the May 7th Contract containing the terms as to price and completion date agreed upon by YC and CG, and including Terms and Conditions added by Ms. Yu. YC and CG signed the contract without Ms. Yu witnessing their signatures or being present when they signed.
20. The May 7th Contract called for a \$85,000 deposit to be paid within 24 hours of acceptance. The deposit was paid by CG by way of a bank draft made payable to YC's lawyers, Woodward Law Corporation, which acted as the conveyancing solicitors in completing the sale. The May 7th Contract did not make any mention of the brokerage involved, the person who prepared the contract, where the deposit was held, or the agency relationships with the seller or buyer.
21. Ms. Yu says that the reason she did not submit the May 7th Contract to the Brokerage, or inform the Brokerage of the details of the deposit that CG had paid directly to YC's solicitor was that she viewed the May 7th Contract as a private agreement entered into between YC and CG directly, in which her involvement was limited to writing up the May 7th Contract for them to sign without providing advice or representation to either of them.
22. The sale of the Property under the May 7th Contract completed on June 28, 2016.
23. A Notice of Discipline Hearing was issued on February 9, 2017, and served on Ms. Yu and Morning Yu Personal Real Estate Corporation.
24. No complaints have been made against Ms. Yu in relation to this matter.
25. Ms. Yu does not have any previous discipline history with the Council and since October 16, 2016, Ms. Yu and Morning Yu Personal Real Estate Corporation's licences have been subject to conditions and restrictions without reported infraction.
26. Ms. Yu has completed the following two courses required by the Council's Relicensing Education Program: Residential Legal Update 2018 and Rule Changes: Agency and Disclosure.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Ms. Yu and Morning Yu Personal Real Estate Corporation propose the following findings of misconduct be made by the CORC:

Ms. Yu committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, while acting for the buyer and her mother who was the seller of the property located at XXXX Lancelot Drive, Richmond, BC (the "Property"), she:

- a) provided real estate services other than on behalf of the brokerage to which she was licensed, contrary to section 7(3)(a) of the RESA;
- b) did not promptly provide her managing broker with the original or a copy of all records in relation to the sale of the Property by YC to CG, contrary to section 3-2(1) of the Rules;
- c) did not keep her managing broker informed about the real estate services she was providing, contrary to section 3-2(2)(a) of the Rules;
- d) failed to identify in the contract of purchase and sale for the Property dated May 7, 2016 the following, contrary to section 3-4 of the Rules:
 - i) her brokerage or herself;
 - ii) the agency relationship between her and the buyer, and her and the seller;
 - iii) where the bank draft for the \$85,000.00 deposit would be held; and
- e) did not notify her managing broker that the deposit had not been received in relation to the May 7th Contract, contrary to section 3-2(2)(b) of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Ms. Yu and Morning Yu Personal Real Estate Corporation 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. Ms. Yu and Morning Yu Personal Real Estate Corporation be reprimanded.
2. Ms. Yu and Morning Yu Personal Real Estate Corporation pay a discipline penalty to the Council in the amount of \$7,500.00 within ninety (90) days of the date of the Order made by CORC.
3. Ms. Yu, at her own expense, register for and successfully complete the Real Estate 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. Ms. Yu and Morning Yu Personal Real Estate Corporation pay enforcement expenses in the amount of \$1,500 to the Council within sixty (60) days from the date of this Consent Order.
5. If Ms. Yu and Morning Yu Personal Real Estate Corporation fail to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Ms. Yu and Morning Yu Personal Real Estate Corporation's licences without further notice to Ms. Yu and Morning Yu Personal Real Estate Corporation.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Yu and Morning Yu Personal Real Estate Corporation 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. Ms. Yu and Morning Yu Personal Real Estate Corporation have been advised of and understand their right to obtain independent legal advice regarding the disciplinary process, including with respect to the execution and submission of the Proposal.
3. Ms. Yu and Morning Yu Personal Real Estate Corporation 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. Ms. Yu and Morning Yu Personal Real Estate Corporation 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. Ms. Yu and Morning Yu Personal Real Estate Corporation hereby waive their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Ms. Yu and Morning Yu Personal Real Estate Corporation 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 Ms. Yu and Morning Yu Personal Real Estate Corporation 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 ESATE CORPORATION

Dated 11th day of October, 2018

Sonya Zheng

WITNESS NAME (PLEASE PRINT)

“Sonya Zheng”

WITNESS SIGNATURE