

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

HAO (LANDON) YAN
(168639)

CONSENT ORDER

RESPONDENT: Hao (Landon) Yan, representative with
RLK Realty dba Royal LePage Kelowna

DATE OF REVIEW MEETING: May 24, 2018

DATE OF CONSENT ORDER: August 20, 2018

CONSENT ORDER REVIEW COMMITTEE: R. Holmes, Q.C.
S. Heath
L. Hrycan

ALSO PRESENT: E. Seeley, Acting Executive Officer
G. Thiele, Director, Legal Services
A. Bjornson, Legal Counsel for the Real
Estate Council

PROCEEDINGS:

On May 24, 2018, the Consent Order Review Committee (“Committee”) resolved to accept the Consent Order Proposal (“COP”) submitted by Hao (Landon) Yan.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Hao (Landon) Yan.

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

1. Mr. Yan’s licence be suspended for 14 days.
2. Mr. Yan be prohibited from acting as an unlicensed assistant during the licence suspension period.

3. Mr. Yan, at his 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. Mr. Yan pay enforcement in the amount of \$1,500.00 within sixty (60) days from the date of this Consent Order.
5. If Mr. Yan fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Yan's licence without further notice to him.

If Hao (Landon) Yan 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 20th day of August, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"R. Holmes, Q.C."

R. Holmes, Q.C., Chair
Consent Order Review Committee

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

AND

IN THE MATTER OF

**HAO (LANDON) YAN
(168639)**

CONSENT ORDER PROPOSAL BY HAO (LANDON) YAN

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Mr. Yan 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, Mr. Yan and the Council have agreed upon the following facts:

1. Mr. Yan (168639) has been licensed as a representative since 2014.
2. Mr. Yan was at all relevant times licensed as a representative with RLK Realty dba Royal LePage Kelowna (X026688) (the "Brokerage").
3. This matter concerns property on Academy Way, in Kelowna (the "Property") for which Mr. Yan acted as a limited dual agent for the seller and the buyer.
4. On April 27, 2016 a representative of the seller entered into a lease agreement for the Property with a one year term from May 1, 2016 to May 1, 2017 (the "Lease Agreement").
5. On July 7, 2016, the seller and the Brokerage entered into a Multiple Listing Contract for the sale of the Property. Mr. Yan was aware of the Lease Agreement on this date or shortly thereafter.
6. On July 31, 2016 the seller, through a representative, purported to provide two months' notice to the tenants to vacate the Property, despite not meeting the requirements for ending a tenancy set out in s. 49 of the *Residential Tenancy Act*, SBC 2002, c. 78.
7. On August 24, 2016, the seller and buyer entered into a contract of purchase and sale of the Property (the "Contract"). The Contract provided that the buyer would have vacant possession at noon on September 1, 2016.

8. Mr. Yan was aware when he prepared the offer that the seller could not guarantee vacant possession on September 1, 2016 due to the terms of the Lease Agreement.
9. Mr. Yan did not include a provision in the Contract that addressed the Lease Agreement.
10. The tenants did not vacate the Property on or before September 1, 2016.
11. On September 7, 2016, Mr. Yan provided a copy of the Lease Agreement to the buyer for the first time.
12. On September 7, 2016, the buyer paid to the tenants an amount equal to three months' rent plus the deposit to obtain their agreement to vacate the Property.
13. On September 9, 2016, the tenants vacated the Property and the buyer took vacant possession of the Property.
14. For a portion of the period between September 1, 2016 and September 9, 2016, the buyer stayed in a short term lease at Mr. Yan's expense.
15. Mr. Yan contributed to the tenants' costs of a moving company and cleaners. He also paid \$4,000 to cover the difference in rent between the tenants' new lease and the remaining term of the Lease Agreement.
16. On September 21, 2016, the buyer's wife filed a complaint with the Council.
17. A Notice of Discipline Hearing was issued on February 19, 2018 and served on Mr. Yan.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Mr. Yan committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that he:
 - a. failed to discover and, or alternatively, advise the buyer prior to the buyer submitting an offer to purchase the Property that there was a tenancy agreement in place that could affect the buyer's ability to obtain vacant possession of the Property, contrary to sections 3-3(a), (f), and (h) of the Rules;
 - b. drafted a contract of purchase and sale that included a vacant possession date that was earlier than the earliest date that the tenants of the Property could be required to end their tenancy under the *Residential Tenancy Act*, contrary to sections 3-3(a) and 3-4 of the Rules; and

- c. failed to include a provision in the Contract that addressed the notice required to be provided to the tenants of the Property to end their tenancy under the *Residential Tenancy Act*, contrary to sections 3-3(a) and 3-4 of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Hao (Landon) Yan 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:

6. Mr. Yan's licence be suspended for 14 days.
7. Mr. Yan be prohibited from acting as an unlicensed assistant during the licence suspension period.
8. Mr. Yan, at his 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.
9. Mr. Yan pay enforcement in the amount of \$1,500.00 within sixty (60) days from the date of this Consent Order.
10. If Mr. Yan fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Yan's licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Yan 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. Yan 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 he is making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Mr. Yan 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. Yan 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. Yan hereby waives their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Yan 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. Yan in any civil proceeding with respect to the matter.

"H. Yan"

HAO (LONDON) YAN

Dated 22nd, day of March, 2017

Signature of Mr. Yan witnessed on the above date
by

"F. Braam"

Witness Name *(Please Print)*

"F. Braam"

Witness Signature