

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

AND

IN THE MATTER OF

**KEN CHENG MIN PHUAH
(161287)**

AND

**KEN CHUNG PERSONAL REAL ESTATE CORPORATION
(161287PC)**

CONSENT ORDER

RESPONDENT: Ken Cheng Min Phuah and Ken Phuah
Personal Real Estate Corporation,
Representative, Sutton Group-West
Coast Realty

DATE OF REVIEW MEETING: February 22, 2017

DATE OF CONSENT ORDER: February 22, 2017

CONSENT ORDER REVIEW COMMITTEE: R. Holmes, Q.C., Chair
R. Gialloreto
S. Sidhu
L. Hrycan
J. Daly

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

PROCEEDINGS:

On February 22, 2017 the Consent Order Review Committee ("Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Ken Cheng Min Phuah, on his own behalf and on behalf of Ken Phuah Personal Real Estate Corporation.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Ken Cheng Min Phuah, on his own behalf and on behalf of Ken Phuah Personal Real Estate Corporation and on behalf of the Council;

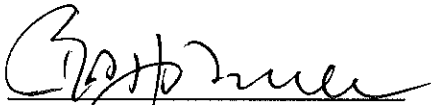
NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Ken Cheng Min Phuah, on his own behalf and on behalf of Ken Phuah Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that Ken Cheng Min Phuah and Ken Phuah Personal Real Estate Corporation:

1. each be reprimanded;
2. at his own expense, Ken Cheng Min Phuah register for and successfully complete the Real Estate Trading Service 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;
3. for two years from the date of the Order, a condition be placed on the licences of Ken Cheng Min Phuah and Ken Phuah Personal Real Estate Corporation that they shall provide adequate, appropriate, and ongoing training to all unlicensed assistants in their employ as to what activities may and may not be performed while acting as an unlicensed assistant; and
4. Ken Cheng Min Phuah and Ken Phuah Personal Real Estate Corporation be jointly and severally liable to pay enforcement expenses pursuant to section 44 of the Act in the amount of \$1,500.00 within sixty (60) days from the date of the Consent Order.

If Ken Cheng Min Phuah or Ken Phuah Personal Real Estate Corporation fails to comply with any term of this Order, the Council may suspend or cancel their licence without further notice to them, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 22 day of February, 2017 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



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

Attch.

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

IN THE MATTER OF

**KEN CHENG MIN PHUAH
(161287)**

**KEN PHUAH PERSONAL REAL ESTATE CORPORATION
(161287PC)**

**AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER**

The following agreement has been reached between Ken Cheng Min Phuah ("Mr. Phuah"), Ken Phuah Personal Real Estate Corporation ("Ken Phuah PREC") and the Real Estate Council of British Columbia (the "Council").

- A. Mr. Phuah, on his own behalf and on behalf of Ken Phuah PREC, hereby consents to an Order to be made pursuant to section 43 of the *Real Estate Services Act* ("RESA") that:
1. they be reprimanded;
 2. at his own expense, Mr. Phuah register for and successfully complete the Real Estate Trading Service 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;
 3. for two years from the date of the Order, a condition be placed on the licences of Mr. Phuah and Ken Phuah PREC that they shall provide adequate, appropriate, and ongoing training to all unlicensed assistants in their employ as to what activities may and may not be performed while acting as an unlicensed assistant;
 4. they be jointly and severally liable to pay enforcement expenses pursuant to section 44 of the Act in the amount of \$1,500.00 within sixty (60) days from the date of the Consent Order; and
 5. if they fail to comply with any of the terms of the Order as set out above, a Discipline Committee may suspend or cancel their licences without further notice to them pursuant to section 43(3) and 43(4) of the RESA.
- B. As a basis for this Order, the Council and Mr. Phuah and Ken Phuah PREC acknowledge and agree that the facts set forth herein are correct:
1. Mr. Phuah was at all relevant times licensed as a representative with Sutton Group – West Coast Realty.

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AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

2. Mr. Phuah's licensing history is as follows:

Start Date	End Date	Brokerage	Branch Name	Licence Level	Category
02/02/2012	Present	Sutton Group - West Coast Realty Ltd. (X028975)	Vancouver Cambie Street	Representative	Trading
15/03/2011	02/02/2012	Sutton Group - West Coast Realty Ltd. (X014036)	Coquitlam	Representative	Trading

3. Ken Phuah Personal Real Estate Corporation has been licensed since May 30, 2011.
4. This matter arose out of Mr. Phuah's failure to supervise his unlicensed assistant, H.T. (the "Assistant").

Property on Minoru Boulevard, Richmond, B.C.

5. On December 27, 2015, the Assistant sent a text message to M.L., the listing agent of a property located on Minoru Boulevard, Richmond, B.C., and requested to view the property. In the text message, the Assistant identified himself as being "from Sutton Westcoast".
6. On December 28, 2015, the Assistant attended the showing with clients and provided a business card to M.L. which indicated that he was a "Business Broker" and an "Associate to Ken Phuah SUTTON GROUP – WEST COAST REALTY". The business card also referred to a website at www.businesssold.ca, which is the website on which Mr. Phuah's real estate services are advertised.
7. In the course of his interaction with M.L., the Assistant did not disclose that he was unlicensed.
8. After the showing, M.L. searched the Assistant by name in the Real Estate Board of Greater Vancouver (the "REBGV") records as well as the Council database but was unable to find the Assistant.
9. M.L. also searched the Assistant by name on the Internet and found that the Assistant identified himself on his LinkedIn profile as a "Realtor" with Ken Phuah.
10. M.L. phoned the Assistant, requested feedback on the viewing and asked whether he was licensed with the Council. The Assistant replied that he "works with Ken Phuah, for Sutton on Cambie" and disclosed that he was not licensed.
11. On December 29, 2015, M.L.'s managing broker reported this matter to the Council and the REBGV raising concerns about the Assistant's activities under Mr. Phuah's supervision.
12. Mr. Phuah stated that the Assistant had driven his clients on December 28, 2015 to several listings in Richmond, B.C., one of them being the property on Minoru Boulevard, as Mr. Phuah was away. Mr. Phuah asserted that the Assistant did not provide real estate

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services; he stated that the clients were well aware that the Assistant was unlicensed and that his role was to simply drive them to view properties.

13. On February 5, 2016, the Assistant was registered with the REBGV as an unlicensed assistant.

Property on Williams Road, Richmond, B.C.

14. On or about February 29, 2016, a compliance officer of the Council (the "Compliance Officer") contacted the Assistant by e-mail using an alias and inquired about a property located at [REDACTED], Richmond B.C. (the "Property"). The Property was listed for sale on the MLS[®] by Mr. Phuah on February 9, 2016.
15. The Assistant responded by e-mail with information regarding the Property as well as the adjacent property next to it. He explained that the two lots were being sold together to maximize the development potential, and provided the listing price and the rental rates for both properties. The Assistant wrote "*please call me to discuss further. Or if you may, I could call you*".
16. On March 3, 2016, the Compliance Officer phoned the Assistant to discuss her family's interest in the Property as an investment. The Assistant identified himself as a "developer" and that the "*people [he works with]...are Realtors[®] and builders*". He responded to the Compliance Officer's questions regarding the property listing, discussed the Property's development potential and advised on the appropriate price of the real estate upon development. He also referred to "*my website*" which, although he did not specify as such, was in reference to Mr. Phuah's website at www.businesssold.ca.
17. Mr. Phuah says that the Assistant had "*three working roles*" with Mr. Phuah:
 - (i) Part-time as an unlicensed assistant to Ken Phuah PREC;
 - (ii) Part-time as a coordinator for a real estate development company owned by Mr. Phuah and his spouse (the "Company");
 - (iii) Part-time as a business broker with Ken Phuah PREC.
18. Mr. Phuah was and still remains the director and officer of the Company. Mr. Phuah's spouse is a sole shareholder of the Company and she was also the legal owner of the Property at the relevant time.
19. According to Mr. Phuah, the Assistant believed that he was acting in his capacity as an employee of the Company because "*the shareholder of [the Company] owns the [Property]*".
20. Mr. Phuah was unable to produce any record of payment issued by the Company to the Assistant.
21. From about September 2015 to May 2016, Ken Phuah PREC paid the Assistant on a monthly basis at an hourly rate for his part-time unlicensed assistant work.
22. Effective June 1, 2016, the Assistant ceased to be an employee of Ken Phuah PREC.

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Advertising

23. Mr. Phuah's website at www.businesssold.ca displayed the name of his brokerage, Sutton Group – West Coast Realty, but showed the address of the Company instead of the address of the brokerage.
24. The address of the Company is the same address at which Mr. Phuah's property development business, Phuah Properties Development Group, is registered with BC Registry Services.
25. Mr. Phuah was unaware that he could not advertise the address of his own company in relation to his brokerage on his website. He corrected the address on his website immediately.

Mr. Phuah and the Managing Broker

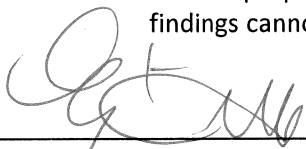
26. Mr. Phuah took this matter seriously and responded to the Council's inquiry promptly. He stated that he had no intention to breach the Rules and expressed his commitment to comply with the regulatory framework at all times.
27. When this complaint was filed, Mr. Phuah discussed and reviewed the Council's practice standards with the Assistant to ensure that he understood the boundaries of his work. On January 12, 2016, Mr. Phuah had the Assistant sign a form acknowledging that he had read and understood the Council's practice standards relating to the activities of unlicensed assistants.
28. Mr. Phuah's managing broker, M.M., stated that the Assistant was briefly licensed with the Council and engaged with his brokerage for approximately four months in 2015. On November 4, 2015, the Assistant's licence was terminated on the basis that he was leaving the business. M.M. was unaware, nor was he made aware, that the Assistant continued to work for Mr. Phuah in an unlicensed capacity after leaving the brokerage.
29. M.M. submitted that the Assistant had forgotten to update his information on his business card and LinkedIn profile but made corrections immediately upon M.M.'s request.
30. M.M. discussed this incident with both Mr. Phuah and the Assistant, and reinforced the Council's practice standards with respect to what an unlicensed assistant can and cannot do.
31. Mr. Phuah does not have a prior discipline history with the Council.

C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts herein, and without making any admission of liability, Mr. Phuah, on his own behalf and on behalf of Ken Phuah PREC, is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

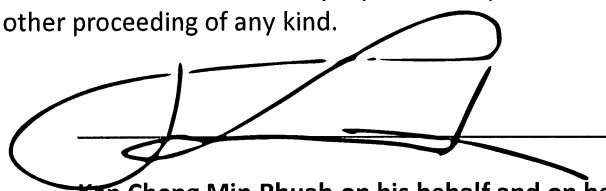
- (a) Mr. Phuah, as a representative licensed with Sutton Group – West Coast Realty, committed professional misconduct within the meaning of section 35(1)(a) of the RESA. In particular:
- (i) contrary to sections 3-2(4) and 3-4 of the Rules, Mr. Phuah failed to adequately supervise his unlicensed assistant, in that he permitted the Assistant to perform duties on his behalf, which duties entailed providing trading services and holding himself out as a person who provides such services;
 - (i) contrary to section 4-6(4) of the Rules, in his real estate advertising on his website, Mr. Phuah used the address of his own property development company instead of the address of the related brokerage office.
2. Mr. Phuah and Ken Phuah PREC hereby waive their right to appeal pursuant to section 54 of the RESA.
3. Mr. Phuah and Ken Phuah PREC acknowledge that they have been advised that they have a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Mr. Phuah and Ken Phuah PREC acknowledge and are aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on the Council's website, and on CanLII, a website for legal research.
5. Mr. Phuah and Ken Phuah PREC 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 this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.
6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any other proceeding of any kind.



Esther Jeon, Legal Counsel
Real Estate Council of British Columbia

As to Part B only (Agreed Statement of Facts)

Dated 6th day of February, 2017



Ken Cheng Min Phuah on his behalf and on behalf of Ken Phuah Personal Real Estate Corporation

As to Parts A, B, and C, (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

Dated 1st day of FEBRUARY, 2017