

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

**IN THE MATTER OF
OMAX REALTY LTD. DBA
COLDWELL BANKER UNIVERSE REALTY
(X029063)**

CONSENT ORDER

RESPONDENT: OMAX Realty Ltd. dba Coldwell
Banker Universe Realty, Brokerage

DATE OF REVIEW MEETING: December 8, 2016

DATE OF CONSENT ORDER: January 17, 2017

CONSENT ORDER REVIEW COMMITTEE: R. Holmes, Chair
S. Heath
G. Martin
M. Leslie
K. Khoo

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

PROCEEDINGS:

On December 8, 2016, an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver (“ASF”) submitted by OMAX Realty Ltd. dba Coldwell Banker Universe Realty was considered by the Consent Order Review Committee (the “Committee”) and rejected. On January 13, 2017, a revised ASF acceptable to the Committee was submitted by OMAX Realty Ltd. dba Coldwell Banker Universe Realty.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Jagmohan Bhandari on behalf of OMAX Realty Ltd. dba Coldwell Banker Universe Realty and on behalf of the Council;

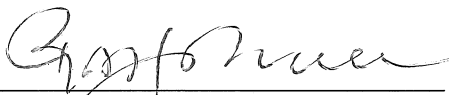
NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that OMAX Realty Ltd. dba Coldwell Banker Universe Realty committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that OMAX Realty Ltd. dba Coldwell Banker Universe Realty:

1. be reprimanded;
2. pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order;
3. fully comply with the trust accounting and financial records requirements in the RESA and the Rules made under the RESA and provide training and supervision to its accounting staff to ensure compliance; and
4. undergo an audit, at its own expense, by the Council, within six (6) months from the date of this Order to confirm compliance with the accounting and training and supervision requirements of this Order.

If OMAX Realty Ltd. dba Coldwell Banker Universe Realty fails to comply with any term of this Order, the Council may suspend or cancel its licence without further notice to it, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 17th day of January, 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**

AND

**IN THE MATTER OF
OMAX REALTY LTD. DBA
COLDWEL BANKER UNIVERSE REALTY
(X029063)**

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

The following agreement has been reached between OMAX Realty Ltd, dba Coldwell Banker Universe Realty ("Omax Realty") and the Real Estate Council of British Columbia ("Council").

- A. Omax Realty hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that it be reprimanded and pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of the Order herein.
- B. Omax Realty consents to fully comply with the trust accounting and financial records requirements in the RESA and the Rules made under the RESA ("Rules") and provide training and supervision to its accounting staff to ensure compliance.
- C. Omax Realty consents to an audit being conducted, at its own expense, within six (6) months from the date of the Order to confirm compliance with the accounting and training and supervision requirements of this Order.
- D. Omax Realty further consents to an Order that if it fails to comply with any of the terms of the Order, a Discipline Hearing Committee may suspend or cancel its licence without further notice to it, pursuant to section 43(3) and 43(4) of the RESA.
- E. As a basis for this Order, Omax Realty acknowledges and agrees that the facts set forth herein are correct:
 - 1. Omax Realty has been licensed as a brokerage since November 11, 2008 and provides trading, rental and strata property management services.
 - 2. In January 2013, the Council conducted an Office and Records Inspection at the brokerage as a follow-up to the recent suspension of one of the brokerage's licensees. The inspection also included a general examination of the brokerage's financial records.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

3. The auditor was advised by Mr. Moses that at the beginning of December 2012, the brokerage underwent a conversion to [REDACTED] software.
4. The auditor observed that three amounts in the commission trust account ledger were not reconciled or identified.
5. Subsequent to the audit, Mr. Moses was asked to provide to the Council the particulars about the unidentified amounts and to provide a commission trust liability listing for February and March 2013.
6. On July 3, 2013, Mr. Moses submitted to the Council commission trust liability listings for February and March 2013, but did not provide details about the unidentified amounts in the commission trust account ledger.
7. On October 28, 2014 Mr. Moses provided Council staff with a September 2014 reconciled commission trust account ledger with the three unidentified amounts removed from it.
8. Mr. Moses stated to the Council that the unidentified amounts did not affect the books of the company and were figures wrongly entered into the system during a training session when the brokerage converted its manual accounting system to [REDACTED]. Mr. Moses stated that neither he, his conveyancer nor his accountant was able to fix the problem, so he had contacted [REDACTED] for assistance. The [REDACTED] sales representative was not able to assist him and referred the matter to the forensic accounting department which after sometime rectified the problem.
9. In November 2014 , during a follow-up inspection of the brokerage's books and records, the auditor observed that the brokerage had not:
 - (a) prepared a detailed breakdown of the trust liability listing for the commission trust account for the months February, 2013 through to September, 2013; and
 - (b) reconciled the brokerage trust and commission trust accounts for the months May 2014 through to August 2014 until October 13, 2014.
10. The auditor also noted several posting errors and that several trade record sheets were not retained in the trade files.
11. As a result of the ongoing deficiencies in the trust accounting, the Council requested that the brokerage provide the Council with monthly reconciliations in their entirety for the trading services and commission trust accounts for the period of October 2014 to March 2015, which it did to the Council's satisfaction.
12. Omax Realty does not have a prior discipline history with the Council.

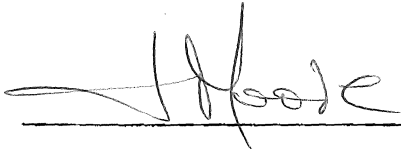
AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

F. Proposed Acceptance of Findings and Waiver


1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Omax Realty is prepared to accept the following findings if made against it by the Council's Consent Order Review Committee:
 - (a) Omax Realty committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, contrary to section 25 of the RESA and sections 8-1(1) and (2) and 8-2 of the Rules, it failed to:
 - (i) prepare and maintain financial records in accordance with the RESA and the Rules; in that three unidentified amounts were recorded in the brokerage commission trust ledger;
 - (ii) prepare a detailed breakdown of the trust liability listing for the commission trust account for the months February, 2013 through to September, 2013; and
 - (iii) reconcile the trust and commission trust accounts for the months of May 2014 through to August, 2014.
2. Omax Realty hereby waives its right to appeal pursuant to section 54 of the RESA.
3. Omax Realty acknowledges that it has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Omax Realty acknowledges and is 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. Omax Realty 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 this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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.



Janice L. Moore, Legal Counsel
Real Estate Council of British Columbia



Jagmohan Bhandari, on behalf of Omax
Realty Ltd.

As to Part F only (Agreed Statement
of Facts)

Dated 16th day of JANUARY, 2017

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

Dated 13 day of JANUARY, 2017