

File # 13-064

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

IN THE MATTER OF
EHSAN SHARENEJAD (EHSAN SHAREN)
(148304)

CONSENT ORDER

RESPONDENT: Ehsan Sharenejad (Ehsan Sharen),
Representative, West Coast Realty
Ltd. (Brdwy) dba Sutton Group-West
Coast Realty, (Brdwy)

DATE OF REVIEW MEETING: September 29, 2016

DATE OF CONSENT ORDER: September 29, 2016

CONSENT ORDER REVIEW COMMITTEE: H. Exner
M. Leslie
S. Lynch
G. Martin
J. Pearson
T. O'Grady

ALSO PRESENT: R.O. Fawcett, Executive Officer
G. Thiele, Director, Legal Services
J. Gossen, Legal Counsel for the Real
Estate Council

PROCEEDINGS:

On September 29, 2016 the Consent Order Review Committee (the "Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Ehsan Sharenejad ("Ehsen Sharen").

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Ehsen Sharen 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 Ehsan Sharen committed professional misconduct

within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that Ehsen Sharen:

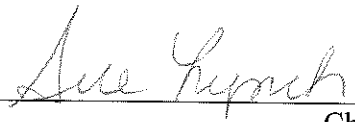
1. be reprimanded;
2. pay a discipline penalty to the Council in the amount of \$5,000.00 within sixty (60) days of the date of this Order;
3. at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course, as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council;
4. pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within sixty (60) days from the date of this Order.

If Ehsen Sharen 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 29 day of September, 2016 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

Attch.


_____, Chair
Consent Order Review Committee

Sue Lynch

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

IN THE MATTER OF

**EHSAN SHARENEJAD
(148304)**

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

The following agreement has been reached between Ehsan Sharenejad ("Mr. Sharenejad") and the Real Estate Council of British Columbia (the "Council").

A. Mr. Sharenejad hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded, that he pay a discipline penalty to the Council in the amount of \$5,000.00 within sixty (60) days from the date of the Order herein, and 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 as directed by the Council. Further, he agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within sixty (60) days from the date of the Order herein. Mr. Sharenejad further consents to an Order that if he fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel his licence without further notice to him pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.

B. As a basis for this Order, Mr. Sharenejad acknowledges and agrees that the facts set forth herein are correct:

1. Mr. Sharenejad was at all relevant times licensed as a representative with West Coast Realty Ltd. (Brdwy) dba Sutton Group - West Coast Realty (Brdwy).

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

<u>Start Date</u>	<u>End Date</u>	<u>Licensing History</u>	<u>Licence Level</u>	<u>Licence Category</u>
2009/07/27	Present	West Coast Realty Ltd. (Brdwy) (X027671)	Representative	Trading
2006/09/11	2009/07/27	Macdonald Realty Ltd. (X001949)	Representative	Trading

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

2006/06/20	2006/09/11	Judith Meisen BuyVancouver Inc. (X028557)	Representative	Trading
2006/03/21	20/06/2006	Macdonald Realty Ltd. (X001949)	Representative	Trading

3. On November 6, 2010 the buyer, D.M., entered into a Contract of Purchase and Sale to purchase a property located at [REDACTED] Prince Edward Street (the "Property").
4. The following details were contained in the Contact of Purchase and Sale:

Purchase Price: \$336,900
Deposit: was to be paid directly to the Seller's lawyer in accordance with the *Real Estate Development Marketing Act*.
Initial deposit: \$16,849
Deposit Increases: 5% of the purchase price by June 30, 2011
2.5% of the purchase price by October 30, 2011
2.5% of the purchase price by May 30, 2012
Assignment: required the prior written consent of the Seller. It appears that permission would be granted provided that:
 - a) Eighteen months after the acceptance of the original offer
 - b) Deposit has been paid in full
 - c) Assignment fee of 1.5% of the purchase price plus HST
 - d) The Assignor and Assignee sign a consent agreement wherein the Assignee assumes the obligations of the Assignor and the deposit is assigned to and deemed to belong to the Assignee as if the deposit was paid by the Assignee to the Seller.Addendum: the Seller offered an "HST Helper Discount" of \$6000, which was not assignable.
The Buyer's Agency relationship with Mr. Sharenejad was confirmed and a Realtor's Commission Agreement was signed.
5. D.M. paid all the deposits to the Sellers' lawyer in excess of \$50,000.00.
6. Mr. Sharenejad submitted that D.M. contacted him in the spring of 2012 to advise that he was interested in assigning the contract.
7. Mr. Sharenejad further stated that the developer would not permit the property to be advertised or listed on MLS, so he let it be known to other licensees in his office that the property was available.
8. On April 24, 2012, D.M. entered into an Exclusive Listing Contract for the Property, effective April 24, 2012 to October 2012 with Mr. Sharenejad. The Property was listed for \$389,900 and the commission was set out at 3.255% on the first \$100,000 and 1.1625% of the balance.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

9. Schedule "A" of the listing contract detailed the commission, stating that the listing agent agreed to pay a cooperating brokerage 3.255% on the first \$100,000 and 1.1625% on the balance. A clause was added stating: "Should the Vendor achieve a sale price above \$375,000 the listing agent will collect the difference between the final sale price and \$375,000 as commission, to a maximum of \$5000, inclusive of HST."

10. On August 23, 2012 an Assignment of Contract of Purchase and Sale was prepared by Mr. Sharenejad with the following terms:

Assignment amount: \$349,900

a) Reimbursement of Deposits Paid Under the Contract to Date by Assignor: \$33,690

b) Balance of Assignment Amount: \$13,000

c) Assignment Amount (a+b): \$46,690

d) Assignee's total Purchase Price (original purchase price +b): \$349,900.

Deposit: \$33,690 as part of the assignment amount to be paid to the brokerage trust upon subject removal (this amount was originally entered as \$28,030.08 which was crossed out and initialled by both parties)

Developer's Assignment Fee: to be paid by the Assignee

Release of Assignment Amount: (D) per Addendum

11. Additionally, there was a 2 page Addendum to the Assignment of Contract of Purchase and Sale which included the following clauses:

- The final purchase price is \$349,900.00 plus applicable GST/HST. Applicable GST/HST will be payable on the original purchase price of \$336,900 and be the responsibility of the Assignee.

- The "HST Helper discount" of \$6,000.00 to be transferred in full to the Assignee.

- The Assignee's deposit in the amount of \$33,690.00 payable within 24 hours of subject removal to the brokerage in trust. If the developer does not consent to the Assignment by August 31st the full deposit to be returned to the Assignee and the contract become null and void.

- The Assignee is responsible to pay the 1.5% Developer's Assignment Fee of \$5,659.92.

- Upon Subject removal, the deposit of \$33,690.00 to be released: total commission of \$13,000.00 inclusive of HST to be paid to the brokerage and disbursed to the licensees and remaining \$20,690.00 held by the brokerage in trust.

- If the Assignee fails to complete and the Assignor is obligated to complete, both commissions paid to the licensees and the remaining \$20,690 held in trust by the brokerage will be forfeit and reimbursed directly to the Assignor.

- Assignee to assume the Assignee's rights and obligations at completion.

-Assignor and Assignee have been advised to seek independent legal and accounting advice before signing.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

- Assignor is aware there is no external storage locker.
- Subject to financing by August 31, 2012.
- Subject to the Assignee receiving, reviewing and approving the original Developer's Disclosure Statement dated September 9, 2010 by August 31, 2010.
- Subject to the Assignee receiving, reviewing and approving the original "Offer to Purchase and Agreement of Sale" contract between the Developer and Assignor by August 31, 2012.
- Subject to the Assignee receiving viewing and approving the floor plan and colour scheme.
- Agency: the parties agreed to a Limited Dual Agency Agreement with Mr. Sharenejad and John Ly.

12. Mr. Ly was the Agent of the Assignee while Mr. Sharenejad was the Assignor's Agent. Although the Assignee signed a Working with a Realtor Brochure on August 22, 2012, the parties signed a Limited Dual Agency Agreement along with the Assignment on August 23, 2012. Mr. Ly states that he and Mr. Sharenejad initially discussed the listing, including the price and deposit structure. D.M. instructed Mr. Sharenejad to disclose to John Ly that a purchase price of \$349,900 plus GST would be acceptable.
13. The transaction completed on February 21, 2013. The brokerage did not realize a commission on the transaction as the ultimate selling price was less than the minimum selling price set out in Schedule "A".
14. On April 19, 2013 D.M. signed a release with Mr. Sharenejad's brokerage and received approximately \$23,690.00 which was part of the deposit made by the Assignee.
15. D.M states that he was owed an additional \$16,000.00, which Mr. Sharenejad originally agreed with and advised D.M.to start a legal claim and that E&O insurance would cover the loss D.M. suffered.
16. On August 6, 2013, D.M. filed a claim in Small Claims court against the brokerage. D.M and Mr. Sharenejad discussed the claim and Mr. Sharenejad commented that there would be no dispute with the claim and that E&O insurance would cover D.M's loss.
17. The law suit was settled to the satisfaction of all parties.
18. Mr. Sharenejad has no prior discipline history with the Council

C. Proposed Acceptance of Findings and Waiver

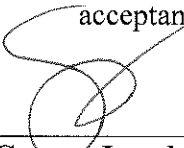
1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Ehsan Sharenejad is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

- (a) Ehsan Sharenejad committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* [contravention of Act, Regulation or Council Rules] in that he:
 - (i) contravened section 5-14 of the Council Rules, by entering into an exclusive listing contract with [REDACTED] BC Ltd., dated April 24, 2012, (the "Exclusive Listing Contract") for Property located in Vancouver BC, (the "Property") in which the payment of remuneration was based on the difference between the price at which the Property was listed for sale and the actual price for which it was sold, and in particular provided that "Should the Vendor achieve a sale price above \$375,000, the listing agent will collect the difference between the final sale price and \$375,000 as commission, to a maximum of \$5,000, inclusive of HST."; and
 - (ii) contravened section 3-4 of the Council Rules by:
 - a. preparing the Assignment Contract on behalf of his client, as assignor, which incorrectly identified the amount of the deposits paid by the assignor to be \$33,690.00, when the assignor had actually paid \$50,543.00 in deposits, a difference of \$16,853.00 which was not returned to his client as agreed upon; and
 - b. incorrectly indicated on the Assignment Contract that he was acting as a Limited Dual Agent, together with another licensee of the same brokerage, and his client executed a Limited Dual Agency Agreement, dated August 24, 2012, when he was not acting as a Limited Dual Agent but rather as a Designated Agent, and conducted himself throughout the transaction as a Designated Agent.
- 2. Mr. Sharenejad hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.
- 3. Mr. Sharenejad acknowledges that he has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
- 4. Mr. Sharenejad 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. Mr. Sharenejad acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services Act*, 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.



Jessica S. Gossen, Legal Counsel
Real Estate Council of British Columbia

As to Part B only (Agreed Statement
of Facts)

Dated 12 day of Sept, 2016



Ehsan Sharenejad

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

Dated 12 day of September, 2016