

File # 13-258

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

IN THE MATTER OF
YIN SHUEN GILBERT LAM
(093690)

CONSENT ORDER

RESPONDENT: Yin Shuen Gilbert Lam, Associate
Broker, Pacific Evergreen Realty Ltd.,
while licensed with Pan Pacific
Platinum Real Estate Services Inc.
dba New Coast Realty,

DATE OF REVIEW MEETING: September 29, 2016

DATE OF CONSENT ORDER: September 29, 2016

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

ALSO PRESENT: R.O. Fawcett, Executive Officer
G. Thiele, Director, Legal Services
J. Moore, 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 Yin Shuen Gilbert Lam.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Yin Shuen Gilbert Lam 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 Yin Shuen Gilbert Lam committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Yin Shuen Gilbert Lam's licence be suspended for twenty-eight (28) days;
2. Yin Shuen Gilbert Lam is not to provide services as an unlicensed assistant during the period of his licence suspension; and
3. Yin Shuen Gilbert Lam is to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Order.

If Yin Shuen Gilbert Lam 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


_____, 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

YIN SHUEN GILBERT LAM

(093690)

AGREED STATEMENT OF FACTS,

PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Yin Shuen Gilbert Lam (“Mr. Lam”) and the Real Estate Council of British Columbia (the “Council”).

- A. Mr. Lam hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (“RESA”) that he:
 - 1. be suspended for 28 days;
 - 2. will not provide services as an unlicensed assistant during the time of his licence suspension; and
 - 3. pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500.00, within sixty (60) days from the date of the Order herein.
- B. Mr. Lam 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 RESA.
- C. As a basis for this Order, Mr. Lam acknowledges and agrees that the facts set forth herein are correct:
 - 1. Mr. Lam’s licensing history is as follows:

<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>
2016/01/27	Present	Pacific Evergreen Realty Ltd.	Associate Broker	Trading, Rental
2015/03/18	2016/01/27	WSV Real	Managing	Trading, Rental

		Estate Services	Broker	
2014/04/15	2015/03/18	New Coast Realty	Managing Broker	Trading, Rental
2013/10/29	2014/04/15	New Coast Realty	Associate Broker	Trading, Rental
2012/08/31	2013/10/29	AA Property Management Ltd.	Associate Broker	Trading, Rental, Strata
2009/05/27	2012/08/31	Magsen Realty Inc.	Associate Broker	Trading, Rental
2008/11/13	2009/05/26	Magsen Realty Inc.	Managing Broker	Trading, Rental
2005/11/24	2008/11/13	Magsen Realty Inc.	Associate Broker	Trading, Rental
2002/09/04	2005/11/24	New World Realty Ltd.	Associate Broker	Trading, Rental


2. In October 2013, Mr. Lam transferred his licence to Pan Pacific Platinum Real Estate Services Inc. dba New Coast Realty (“New Coast Realty”) as an associate broker.
3. P. L. was the managing broker.
4. In April 2014, the Council conducted an office and records inspection at the brokerage, during which it came to the auditor’s attention that:
 - (a) since November 2013, Mr. Lam had been providing rental property management services for six clients from his previous brokerage; and
 - (b) New Coast Realty had no record of, or any service agreements for, these clients, and no trust accounts been set up.
5. P.L. stated to the auditor the brokerage was currently providing trading service only and was in the process of setting up the rental property management division as they had hired Mr. Lam to start up the division. However, he was unaware that Mr. Lam had already been providing rental property management services.
6. Mr. Lam stated that P.L. was informed during their first meeting that Mr. Lam would be providing rental management services for his previous clients once he started with the brokerage.
7. Mr. Lam stated that P.L. told him that as long as the brokerage was not touching the client’s money it would not be necessary to set up a trust account.

8. Mr. Lam stated that it was not his intention to provide any real estate services outside the brokerage. He acknowledged that he should have been more diligent in ensuring that the proper processes and procedures were in place to effect the smooth transition of the clients to the brokerage. He realized that he should not have assumed that it was the sole responsibility of either the managing broker or the brokerage's staff to do so.
9. Mr. Lam provided the auditor with copies of one page rental property management service agreements, some of which were dated November 2013, and indicated that they were between the brokerage and the property owners. The auditor noted that those agreements did not contain certain provisions required under the Council Rules, including those detailing the use and disclosure of personal information and a description of the records to be kept by the brokerage on behalf of the owner.
10. The service agreements were properly amended and the appropriate trust accounts were set up.
11. Mr. Lam stated that he not receive a management fee or any other remuneration from the clients for the provision of rental property management services.
12. On April 15, 2014, Mr. Lam upgraded his licence to a managing broker.
13. In March 2015, Mr. Lam transferred his licence to another brokerage where he continued to provide rental property management services to those clients.
14. Mr. Lam has no prior discipline history with the Council.

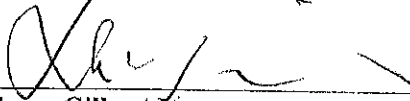
D. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Mr. Lam is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee that he committed professional misconduct within the meaning of section 35(1)(a) of RESA :
 - (a) when, from November 1, 2013 to December 31, 2014, he provided rental property management services outside of the brokerage to which he was licensed, contrary to section 7(3)(a) of the RESA; and
 - (b) with respect to certain rental property management agreements, failed to include:
 - (i) a provision respecting the use and disclosure of personal information, contrary to section 5-1(4)(g) of the Council Rules; and
 - (ii) a description of the records to be kept by the brokerage on behalf of the owner, contrary to section 5-1(5)(e) of the Council Rules.

2. Mr. Lam hereby waives his right to appeal pursuant to section 54 of the RESA.
3. Mr. Lam 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. Lam 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. Lam 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.
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 Moore, Legal Counsel
 Real Estate Council of British Columbia



 Yin Shuen Gilbert Lam

As to Part C only (Agreed Statement of Facts)

Dated 23 day of Sept, 2016

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

Dated 22 day of SEPT, 2016