

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

**IN THE MATTER OF
BANTI BIKRAM SHAHI**

CONSENT ORDER

RESPONDENT: Banti Bikram Shahi, currently
unlicensed, while licensed as a
Representative with West Coast
Realty Ltd. (Brdwy) dba Sutton
Group – West Coast Realty (Brdwy)

DATE OF REVIEW MEETING: December 7, 2015

DATE OF CONSENT ORDER: December 29, 2015

CONSENT ORDER REVIEW COMMITTEE: M. Leslie, Chair
S. McGougan
C. Squires

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

PROCEEDINGS:

On December 7, 2015 the Consent Order Review Committee (the “Committee”) resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver (“ASF”) submitted by Banti Bikram Shahi.

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

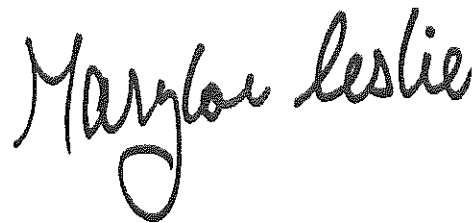
1. be reprimanded;

2. pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days of the date of this Order; and
3. pay enforcement expenses of this Consent Order to the Council in the amount \$1,500.00 within sixty (60) days from the date of this Order.

If Banti Bikram Shahi 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 29th day of December, 2015 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

A handwritten signature in black ink that reads "Marylou Leslie". The signature is written in a cursive style with a large, looped 'O' at the end.

M. Leslie, 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
BANTI BIKRAM SHAHI
(166398)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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

A. Mr. Shahi hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (the "Act") that he be reprimanded and that he pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days of the date of the Order herein. Further, he agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500 within sixty (60) days from the date of the Order herein. Mr. Shahi 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 her pursuant to sections 43(3) and 43(4) of the Act.

B. Mr. Shahi'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>
03/06/2014	16/12/2014	Fraseridge Realty dba Amex-Fraseridge Realty (X024387)	Representative	Trading
24/05/2014	02/06/2014	n/a	n/a	Unlicensed
08/05/2013	23/05/2014	West Coast Realty Ltd. (Brdwy) dba Sutton Group West Coast Realty (Brdwy) (X027671)	Representative	Trading

C. Facts - File 13-320

1. KM ("KM") entered into a Multiple Listing Contract dated October 1, 2013 with West Coast Realty Ltd. (Brdwy) dba Sutton Group West Coast Realty (Brdwy) ("West Coast") to list for sale property located at XX60 4th Street, Burnaby (the "KM Property"). Mr. Shahi was the designated agent of West Coast for the KM Property. Subsequently, KM and West Coast entered into a further Multiple Listing Contract dated January 6, 2014 (the "KM Listing Contract") to list for sale the KM Property. Mr. Shahi was the designated agent.
2. DS ("DS") entered into a Multiple Listing Contract dated January 13, 2014 (the "DS Listing Contract") with West Coast to list for sale property located at XX - XX75 17th Avenue, Burnaby (the "DS Property"). Mr. Shahi was the designated agent of West Coast for the DS Property.
3. On January 15, 2014, DS entered into a Contract of Purchase and Sale to sell the DS Property (the "DS Sale Contract"). The completion date was February 27, 2014, and the possession date was March 2, 2014. The DS Sale Contract provided that DS had an agency relationship with Mr. Shahi.
4. On January 17, 2014 KM entered into a Contract of Purchase and Sale to sell the KM Property to DS (the "KM Sale Contract"). The completion date was February 28, 2014 and the possession date was March 2, 2014. The KM Sale Contract provided that KM had an agency relationship with Mr. Shahi, but did not disclose any agency relationship between Mr. Shahi and DS, when in fact at the time of the KM Contract Mr. Shahi was the designated agent of DS for the sale of the DS Property. Mr. Shahi did not disclose to DS that with respect to the KM Property he thought he had no agency relationship with DS.
5. The KM Property was occupied by a tenant (the "Tenant") to which the *Residential Tenancy Act* (the "RT Act") applied. However, the KM Sale Contract provided for vacant possession on March 2, less than 50 days after the KM Sale Contract was entered into, and made no reference to any tenancy. The KM Contract was subject to a number of conditions precedent which were not required to be satisfied or waived until February 1, 2014, only 30 days before the date for vacant possession. On February 1, 2014 some conditions precedent were satisfied, but the date for removal of the "subject to financing" condition was extended to February 7, 2014 and that condition was satisfied on that date. No notice of termination was given to the Tenant pursuant to the RT Act after removal of all conditions precedent.
6. The KM Sale Contract completed on March 2, 2014. When DS attended at the KM Property, he discovered the Tenant was still in occupancy of the KM Property.
7. The KM Sale Contract had made no provision for proper notice of termination to be given to the Tenant pursuant to the RT Act, nor did Mr. Shahi take any steps to provide for vacant possession of the KM Property pursuant to the RT Act, so

that vacant possession of the KM property could be provided to DS on the possession date or at all, and none of the procedures or timelines set out in the RT Act had been complied with.

8. Ultimately the Tenant vacated the KM Property on March 20, 2104, after receiving a payment from Mr. Shahi.
9. At no time did Mr. Shahi provide a Disclosure of Remuneration to DS respecting the remuneration he expected to receive from KM with respect to the sale of the KM Property.

D. Facts - File 13-340

1. DS entered into the DS Listing Contract with West Coast pursuant to which Mr. Shahi was the designed agent, as set out in Section C above.
2. The DS Listing Contract set commission at 7% of the first \$100,000 of the sale price and 2.5% of the balance. The DS Listing Contract contained no provisions regarding any adjustment of the amount of commission payable.
3. On January 15, 2014 DS entered into the DS Sale Contract and on January 17, 2014 DS entered into the KM Sale Contract, all as set out above in Section C above.
4. Mr. Shahi sent to DS an email with an attached fee agreement dated February 25, 2014 (the "Fee Agreement"). In the Fee Agreement Mr. Shahi agreed to pay to DS "50% of my commission received upon completion of sale" of the DS Property.
5. The sale of the DS Property completed on February 24, 2014.
6. On March 13, 2014 DS sent an email to Mr. Shahi reminding him of the Fee Agreement, as DS had not received any payment. Mr. Shahi replied that he did not have enough funds to pay DS, and as of the date of this Agreed Statement of Facts, Mr. Shahi has not made any payments toward the amount owing to DS under the Fee Agreement.
7. Mr. Shahi did not inform Mr. Murchsion, his managing broker, of the Fee Agreement and did not provide a copy of the Fee Agreement to Mr. Murchison.
8. Mr. Shahi did not set out in the Fee Agreement any of the terms, method or timing of payment.

E. Proposed Acceptance of Findings and Waiver - File 13-320

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

- (a) That Mr. Shahi committed professional misconduct within the meaning of section 35(1)(a) of RESA in that with respect to the sale of the DS Property by DS in which transaction he acted for DS, and with respect to the sale of the KM Property by KM to DS, pursuant to the DS Sale Contract in which transaction he acted for KM while he were still acting for the DS in the sale of the DS Property:
- (i) in contravention of section 3-3(a) of the Council Rules and section 3-4 of the Council Rules, he failed to act in the best interests of the client and failed to act with reasonable care and skill, in that he prepared the KM Contract providing for vacant possession on March 2, 2014 when he knew that the KM Property was occupied by the Tenant and he knew or ought to have known that the terms of the KM Sale Contract did not allow sufficient time for a notice of termination to be given to the Tenant in accordance with the RT Act and the KM Sale Contract did not contain any provisions for proper notice of termination to be given to the Tenant pursuant to the RT Act;
 - (ii) in contravention of section 5-10 of the Council Rules, he failed to disclose the nature of representation to be provided and he failed to disclose he was providing trading services to another person, in that he was acting for KM in the sale of the KM Property while he was also acting for DS in the sale of the DS Property and he failed to disclose to KM the fact he was providing trading services to DS and he failed to disclose to DS that with respect to the KM Property he thought he had no agency relationship with DS, as set out in the DS Sale Contract; and
 - (iii) in contravention of section 5-11(2)(a) of the Council Rules, he failed to promptly disclose all remuneration to be paid, in that him failed to disclose in writing to KM that he was being paid remuneration by DS.

F. Proposed Acceptance of Findings and Waiver - File 13-340

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Mr. Shahi is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
 - (a) Mr. Shahi committed professional misconduct within the meaning of section 35(1)(a) of RESA in that with respect to the sale of the DS Property owned by DS and the Fee Agreement in which he agreed to return 50% of his commission to the Seller on completion of the sale of the DS Property:

- (i) in contravention of section 3-4 of the Council Rules, he failed to act honestly and with reasonable care and skill, in that he failed to pay DS 50% of his commission as set out in the Fee Agreement;
- (ii) in contravention of section 3-2(1) of the Council Rules, he failed to provide certain trading records to the managing broker, in that he failed to provide to his managing broker a copy of the Fee Agreement;
- (iii) in contravention of section 3-2(2)(a) of the Council Rules, he failed to keep the managing broker informed of the activities performed on behalf of the brokerage, in that he failed to inform his managing broker of his proposal to return 50% of his commission to the Seller and of his entering into the Fee Agreement;
- (iv) in contravention of section 3-3(a) of the Council Rules and section 3-4 of the Council Rules, he failed to act in the best interests of the client, and he failed to act with reasonable care and skill, in that he failed to fully and clearly set out the terms, method or timing of payment under the Fee Agreement.

G. Waivers and Acknowledgements

1. Mr. Shahi hereby waives his right to appeal pursuant to section 54 of RESA.
2. Mr. Shahi acknowledges that he has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
3. Mr. Shahi acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council; on the Council's website; and CanLii, a website for legal research.
4. Mr. Shahi acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of RESA, to appeal any decision of the Council, including this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver, and Consent Order.
5. 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. The Agreed Statement of Facts and

proposed Acceptance of Findings cannot be used in any other proceeding of any kind.

This Agreed Statement of Facts and Proposed Acceptance of Findings may be signed in counterparts.



Bruce Woolley, Q.C.
Legal Counsel
Real Estate Council of British Columbia
As to Parts B, C and D only (Agreed
Statement of Facts)

Dated Oct 29, 2015



Banti Bikram Shahi
As to Part A to G inclusive (Agreed
Statement of Facts, Proposed Acceptance of
Findings and Waiver)

Dated October 28th, 2015