

CITATION: Yang (Re), 2023 BCSRE 47

Date: 2023-11-14

File # INC 20-41

THE BC FINANCIAL SERVICES AUTHORITY

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended**

AND

IN THE MATTER OF

**DAVID CHIAN WEI YANG
(043031)**

AND

**DAVID C.W. YANG PERSONAL REAL ESTATE CORPORATION
(043031PC)**

CONSENT ORDER

[This Order has been redacted before publication.]

RESPONDENT: David Chian Wei Yang and David C.W. Yang
Personal Real Estate Corporation

DATE OF CONSENT ORDER: November 14, 2023

COUNSEL: Gareth Reeves, Legal Counsel for the BC
Financial Services Authority
Amandeep Sandhu, Legal Counsel for the
BC Financial Services Authority

PROCEEDINGS:

On November 14, 2023, the Superintendent of Real Estate (the "Superintendent"), or the Superintendent's authorized delegate, of the BC Financial Services Authority ("BCFSA") accepted the Consent Order Proposal (the "Proposal") submitted by David Chian Wei Yang ("Yang") and David C.W. Yang Personal Real Estate Corporation ("Yang PREC").

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Yang and Yang PREC.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Yang and Yang PREC committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*

("RESA") and sections 3-3, 3-4, 5-8, and 5-10 of the *Real Estate Services Rules* (the "Rules"), pursuant to section 43 of the RESA the Superintendent orders that:

1. Yang and Yang PREC be jointly and severally liable to pay a discipline penalty to BCFSA in the amount of \$50,000 immediately payable from the date of this Order for Yang's contravention of section 35(1)(a) of the RESA and the Rules, sections 3-3 [*Duty to act in the best interest of the client*], 3-4 [*Duty to act honestly and with reasonable care and skill*], 5-8 [*Disclosures*] and 5-10 [*Disclosure of representation in trading services*].
2. Yang, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Sauder School of Business at the University of British Columbia in the time period as directed by BCFSA.
3. Yang's and Yang PREC's licences include conditions requiring enhanced supervision by a managing broker for a period of one year from the date of this Order, as more particularly described in Schedule 1 of this Order.
4. Yang and Yang PREC be jointly and severally liable to pay enforcement expenses to BCFSA in the amount of \$5,000 immediately payable from the date of this Order.

If Yang and Yang PREC fail to comply with any term of this Order, the Superintendent may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 14th day of November, 2023 at the City of Vancouver, British Columbia.

Superintendent of the BC Financial Services Authority

"Original signed by Jonathan Vandall"

Jonathan Vandall
Delegate of the Superintendent of Real Estate
Province of British Columbia

Attch.

**IN THE MATTER OF THE REAL ESTATE SERVICES ACT
SBC 2004, c 42 as**

amended AND

IN THE MATTER OF

**TRACY XIAOMEI LI
(178286)**

AND

**TRACY LI PERSONAL REAL ESTATE CORPORATION
(FLU178286PC)**

AND

**DAVID CHIAN WEI
YANG (043031)**

AND

**DAVID C.W. YANG PERSONAL REAL ESTATE
CORPORATION (043031PC)**

AND

**LOK CHI ANNIE FONG
(173995)**

AND

**ANNIE FONG PERSONAL REAL ESTATE CORPORATION
(173995PC)**

AND

**LO-MING LEE
(125608)**

AND

**PACIFIC EVERGREEN REALTY LTD.
(X030719)**

**CONSENT ORDER PROPOSAL BY DAVID CHIAN WEI YANG AND DAVID C.W.
YANG PERSONAL REAL ESTATE CORPORATION**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by David Chian Wei Yang ("Yang") on his own behalf and on behalf of David C.W. Yang Personal Real Estate Corporation ("PREC") to the Superintendent of Real Estate (the "Superintendent") of the BC Financial Services Authority ("BCFSA") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, Yang on his own behalf and on behalf of PREC and the Superintendent have agreed upon the following facts:

1. Yang (043031) was first licenced as a representative in the trading and rental categories on February 18, 1983. He has been intermittently unlicensed from April 6 to October 12, 1983; October 13, 1985 to July 31, 1986; January 13 to February 16, 1987; August 1 to September 4, 1990; September 5 to September 19, 1994; September 20, 1998 for one day; September 12 to 13, 2000; August 9 to 10, 2017; and September 14 to 17, 2020. While licensed he has been with various brokerages.
2. PREC became licensed on September 14, 2010.
3. Yang was at all relevant times licensed as a representative with Pacific Evergreen Realty Ltd. (the "Brokerage").
4. In November and December 2019, two licensees being Traci Li and Yang provided real estate services in relation to the purchase and sale of a residential property at [Property 1], Richmond (the "Property"). Yang acted as real estate agent to the buyer of the Property, [Buyer 1].
5. The managing brokers supervising Li and Yang in relation to the transaction were Annie Fong and Lo-Ming Lee.
6. As detailed below, the sale of the property was effected by [Seller 1] ("[Seller 1]") through a fraudulent Power of Attorney ("POA") executed by a co-conspirator of [Seller 1]'s posing as the true owner. The true owner was [Owner 1]. Herein [Seller 1]'s co-conspirator will be referred to as the Fake [Owner 1]. Also involved in the transaction and working with Li and Yang were Li's assistant, [Assistant 1]; the Brokerage's FINTRAC compliance officer, [Brokerage Compliance Officer 1]; a conveyancer at the Brokerage, [Conveyancer 1]; and a licensee engaged by the Brokerage, [Licencee 1].
7. On November 16, 2019:
 - (a) Li met with [Seller 1] at the Property. [Seller 1] told Li that the owner was willing to sell for \$1.8 million.
 - (b) Li returned to the Brokerage's Richmond office and told the licensees there about the Property. She advised it was in very poor condition and it was missing all appliances and this was reflected in the price. Yang was present and said he might have a buyer, he briefly spoke with his client's representative, [Buyer's Representative 1], and then advised Li that his client was interested and would send an offer.
 - (c) Yang prepared a Contract of Purchase and Sale between [Owner 1] as seller of the Property and [Buyer 1] as buyer. This first offer was for \$1,795,000 and was subject to a satisfactory viewing by the buyer. Yang emailed this to Li.
 - (d) Yang provided [Buyer 1] a Disclosure of Representation in Trade form that was not fully completed to identify Yang as acting in the capacity as agent for [Buyer 1].
8. On November 18, 2019:
 - (a) Yang visited the Property for the first time and noted that it was "run down". In addition to the missing appliances, an entry door was broken, copper piping was missing and cabinetry was damaged.
9. On November 19, 2019:
 - (a) [Buyer's Representative 1], Yang, Li, [Assistant 1], and [Seller 1] attended at the Property to

view it around 2:00 pm. They toured the property. [Seller 1] made a counter-offer of \$1,800,000 without subjects at this time.

10. On November 20, 2019:
 - (a) At approximately 12:00 pm, [Buyer 1]'s inspector, [Buyer's Representative 1], Yang, [Seller 1], and Li attended at the Property. Verbal discussions occurred and an oral agreement was struck for a price of \$1,750,000 without subjects. [Seller 1] purported to call [Owner 1] to approve this offer.
 - (b) At approximately 5:15 pm, the parties again met at the Property. [Buyer's Representative 1] then reduced his offer to \$1,725,000.
 - (c) Yang spoke to [Buyer's Representative 1] about the fact that the contract would be signed through a POA and [Buyer's Representative 1] said his lawyer would deal with it.
 - (d) The offer was accepted for \$1,725,000 with completion and possession to occur on December 9 and 10, 2019 respectively (the "Contract"). [Owner 1] was listed as unrepresented and [Seller 1] signed on behalf of [Seller 1]. Yang was listed as agent for [Buyer 1]. The Contract was subject free and sold the Property in "as is where is" condition with all items which happened to be inside.
11. On November 21, 2019:
 - (a) Li prepared Individual Identification Information Records for [Seller 1] and "[Owner 1]".
 - (b) The identification documents provided to Li caused her some concerns along with the fact she had not been able to directly communicate with [Owner 1]. Li communicated her concerns to the brokerage.
12. On November 22, 2019:
 - (a) Addenda to the Contract were executed providing for the following:
 - (i) The completion and possession dates were changed to November 27 and November 28, 2019 respectively;
 - (ii) The POA would form part of the Contract;
 - (iii) The property was sold in "as is where is" condition; and
 - (iv) If either party was unable to complete the Contract, the deposit would "be forfeited without written or verbal consent to the non-defaulting party." (The original version of this was prepared by Yang to protect his client).
13. On November 23, 2019:
 - (a) [Assistant 1] provided the Contract documents to [Conveyancer 1], a conveyancer at the Brokerage.
 - (b) A Trade Record Sheet was prepared listing Li as the seller's agent and Yang as the buyer's agent.
14. Between November 21 and November 27, 2019 there were communications between Li, Yang and the brokerage representations regarding certain suspicious behaviour of the seller's representative and the documentation provided to Li.
15. On November 27, 2019:
 - (a) Transaction records were prepared for Li and Yang for the sale of the Property, they show Li receiving \$35,284.59 as the listing commission including GST and Yang receiving \$22,145.63 including GST as the selling commission. They show Li on the listing side described as "No Agency (but Tracy Li is helping)".
 - (b) At 1:41 pm, A Fong sent an email to Yang and Li with L-M Lee, [Licencee 1], and A Fong in cc advising Yang and Li that the transaction appeared suspicious and that A Fong and L-M Lee worried it "might be scam". A Fong also instructed Yang and Li to consult a lawyer. Yang again recommended that [Buyer's Representative 1] have the transaction reviewed by his lawyer. [Buyer's Representative 1] who had, himself, noted the conduct of the seller was "weird"

- confirmed he would make sure his lawyer carefully looked at the documents for the sale.
- (c) At 4:21 pm, [Assistant 1] sent the Contract documents to [Lawyer 1], lawyer for the seller.
16. On November 29, 2019:
- (a) The Contract was assigned to [Company 1] and [Company 2].
- (b) The Contract completed and the application to transfer the Property to [Company 1] and [Company 2] was registered with the Land Title Office. The Form A transfer was executed by [Seller 1] on behalf of [Owner 1] before [Lawyer 1].
17. At all times Yang dealt with Li as the representative of the seller. All offers, contracts and addenda were provided to Li. All showings were arranged through Li. At no time did Yang deal directly with the seller's representative, [Seller 1].
18. On December 6, 2019:
- (a) Li was paid \$35,048.35 by electronic funds transfer, being her commission on the sale of the Property less the Brokerage's deal fee of \$225.00 and plus GST.
- (b) Yang was paid \$24,016.65 by electronic funds transfer, being his commission on the sale of the Property less the Brokerage's deal fee of \$225.00 and plus GST.
19. On April 2, 2020:
- (a) [Owner 1] filed a Notice of Civil Claim suing [Seller 1], two John Does, [Notary 1], Li, Yang, the Brokerage, [Lawyer 1] and his Law Corporation, [Company 1], [Company 2], and the directors of those companies for their involvement in the fraud.
20. On April 3, 2020:
- (a) [Owner 1] filed a certificate of pending litigation against the Property.
21. The civil litigation has since resolved.
22. BCFSA received a complaint on April 3, 2020 from [Lawyer 2], General Counsel and Practice Advisor to the Society of Notaries Public of BC enclosing the above noted Notice of Civil Claim.
23. A Notice of Discipline Hearing was issued on March 16, 2022 and served on Yang on his own behalf and on behalf of PREC.
24. While Yang believes he acted reasonably in advising his client, the buyer, Yang admits now, he ought to have provided the buyer with more specific details of the suspicious conduct of [Seller 1] as known by the brokerage, to ensure his client fully understood the risks and could best seek advice from his lawyer.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Yang and PREC propose the following findings of misconduct be made by the Superintendent:

25. Yang and PREC committed professional misconduct within the meaning of sections 35(1)(a) and (d) of the RESA in that, while licensed as a representative in relation to Pacific Evergreen Realty Ltd. in the trading and rental property management categories, they:
- (a) On or about November 16, 2019, failed to properly disclose to [Buyer 1] in writing, separately from any service agreement or other agreement under which real estate services are provided, separately from any agreement giving effect to a trade in real estate, and in the form approved by RECBC at the time whether or not he would represent [Buyer 1] as a client in regard to the purchase of the Property contrary to the Rules, sections 3-4 [*Duty to act honestly and with reasonable care and skill*], 5-8 [*Disclosures*] and 5-10 [*Disclosure of representation in trading services*].
- (b) Further, between November 16 and November 29, 2019, failed to take reasonable steps to alert

other persons acting in relation to the sale of the Property of the suspicious circumstances surrounding the sale and [Seller 1]'s conduct which were known or reasonably ought to have been known by Yang contrary to each or all of the Rules, sections 3-3 [*Duty to act in the best interest of the client*] and 3-4 [*Duty to act honestly and with reasonable care and skill*].

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Yang and PREC propose that the Third Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the Superintendent, pursuant to section 43 of the RESA:

1. Yang and PREC be jointly and severally liable to pay a discipline penalty to BCFSA in the amount of \$50,000 immediately payable from the date of this Order for Yang's contravention of section 35(2) of the RESA and the Rules, sections 3-3 [*Duty to act in the best interest of the client*], 3-4 [*Duty to act honestly and with reasonable care and skill*], 5-8 [*Disclosures*] and 5-10 [*Disclosure of representation in trading services*].
2. Yang, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Sauder School of Business at the University of British Columbia in the time period as directed by BCFSA.
3. Yang and PREC be jointly and severally liable to pay enforcement expenses to BCFSA in the amount of \$5000 immediately payable from the date of this Order.
4. If Yang and PREC fail to comply with any of the terms of this Order, the Superintendent may suspend or cancel their licences without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

5. Yang and PREC acknowledge and understand that the Superintendent may accept or reject the Proposal. If the Proposal is rejected by the Superintendent, the matter may be referred to a disciplinary hearing.
6. Yang and PREC acknowledge that they have been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Third Notice of Discipline Hearing, and the execution and submission of the Proposal to the Superintendent; and, that they have obtained independent legal advice or have chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
7. Yang and PREC acknowledge and are aware that BCFSA will publish the Proposal and the Consent Order or summaries thereof on BCFSA's website, on CanLII, a website for legal research and in such other places and by such other means as BCFSA in its sole discretion deems appropriate.
8. Yang and PREC hereby waive their right to appeal pursuant to section 54 of the RESA.
9. If the Proposal is accepted and/or relied upon by the Superintendent, Yang and PREC will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Yang or PREC from making full answer and defence to any civil or criminal proceeding(s).
10. The Proposal and its contents are made by Yang and PREC for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of Yang and PREC in any civil proceeding with respect to the matter.

"Original signed by David Yang"

David Chian Wei Yang on his own behalf and on behalf of
David C.W. Yang personal Real Estate Corporation

Date 10 day of Nov, 2023

SCHEDULE 1

Enhanced Supervision Conditions

1. David Chian Wei Yang and David Yang Personal Real Estate Corporation's (collectively, the "Licensee") licences will be restricted to a brokerage (the "Brokerage") acceptable to the Superintendent of Real Estate (the "Superintendent") of the BC Financial Services Authority ("BCFSA"), which at the date of these conditions is Pacific Evergreen Realty Ltd, for a period of not less than one (1) year (the "Enhanced Supervision Period").
2. During the Enhanced Supervision Period, the Licensee must remain under the direct supervision of [Managing Broker 1], the managing broker of the Brokerage who is acceptable to the Superintendent, and who has confirmed in writing to the Superintendent that he has read these conditions, is aware of his duties under these conditions, and agrees to accept these duties (the "Managing Broker").
3. These conditions are in addition to the Licensee's and the Managing Broker's obligations under the Real Estate Services Act ("RESA"), and the Regulations and Rules made under the RESA (together, the "Legislation"). The Managing Broker may impose his own additional conditions to ensure that the Licensee meets her obligations under the Legislation.
4. The Licensee must keep the Managing Broker informed biweekly, or more frequently as required, of the real estate services that he is providing and other real estate-related activities that he is engaging in by providing written status reports (the "Status Reports") to the Managing Broker that include, for each matter, as applicable:
 - (a) the names of the principals and their agents;
 - (b) the locations of the properties;
 - (c) a description of services provided;
 - (d) the status of the matter;
 - (e) scheduled dates (e.g. closing dates and dates for waiver or satisfaction of conditions precedent);
 - (f) funds paid and received; and
 - (g) any other information relevant to the matter.
5. To ensure that the Licensee meets the Licensee's obligations under these conditions and the Legislation, the Managing Broker must meet with the Licensee on a biweekly basis during the Enhanced Supervision Period to discuss the following:
 - (a) the most recent Status Report;
 - (b) any practice issues identified by the Managing Broker or the Licensee;
 - (c) the appropriate course of action for addressing any identified practice issues and/or whether appropriate steps have been taken to address previously identified practice issues; and
 - (d) confirm the Licensee's attendance at or completion of any educational or training opportunities recommended by the Managing Broker.
6. The Licensee must consult with the Managing Broker in advance of taking any action on matters in respect of which there are questions or concerns regarding compliance with the Legislation, other applicable legislation, or the Brokerage's policies and procedures.
7. In addition to providing the Brokerage with all records required under the Legislation, the

Licensee must provide the Brokerage with all records created in connection with the provision of real estate services regardless of whether such records are associated with a specific transaction, including records of listing presentations, appraisals, comparative market analyses, correspondence, and referrals.

8. The Licensee must obtain the Managing Broker's approval before presenting documents prepared by the Licensee to principals or their agents for execution.
9. The Licensee must provide to the Managing Broker all documents signed by the Licensee's principals and the Managing Broker must review all such documents.
10. The Managing Broker will provide a written report to BCFSA each quarter with the first delivered on the date three months from the commencement of these conditions (each, an "Interim Report") confirming in relation to that period (the "Reporting Period"):
 - (a) that the Licensee has provided real estate services under their direct supervision;
 - (b) that the Licensee's activities have been carried out competently and in compliance with these conditions, the Legislation, all other applicable legislation (to the best of the Managing Broker's knowledge having made reasonable inquiries), and in accordance with Brokerage's policies and procedures, or alternatively, providing details of non-compliance;
 - (c) that they have reviewed all transactions in which the Licensee has provided real estate services, and that all documents relevant to the transactions are contained in the appropriate deal file and kept at the Brokerage;
 - (d) that the Licensee has not conducted real estate services outside of the Brokerage and that any remuneration he has received for real estate services provided has been received only from the Brokerage;
 - (e) they have met with the Licensee on a weekly basis to discuss the matters specified under these conditions; and the number of real estate transactions that the Licensee has conducted and details regarding the principal(s), the agency offered, and any dealings with unrepresented parties.
11. Each Interim Report will be reviewed by BCFSA, who will determine if the Licensee has been providing real estate services in accordance with the Legislation and these conditions during the Reporting Period and if not, will so advise the Managing Broker and the Licensee.
12. Within 30 days before the end of the initial Enhanced Supervision Period or any continuation period, or within 14 days after the Managing Broker ceases to be the Managing Broker, whichever is earlier, the Managing Broker must provide a final report (the "Report") to BCFSA confirming in relation to the Enhanced Supervision Period or applicable continuation period, or during the period in which Managing Broker acted as Managing Broker under these conditions, as applicable:
 - (a) that the Licensee has provided real estate services under their direct supervision;
 - (b) that the Licensee's activities have been carried out competently and in compliance with these conditions, the Legislation, all other applicable legislation (to the best of the Managing Broker's knowledge having made reasonable inquiries), and in accordance with Brokerage's policies and procedures, or alternatively, providing details of non-compliance;
 - (c) that they have reviewed all transactions in which the Licensee has provided real estate services, and that all documents relevant to the transactions are contained in the appropriate deal file and kept at the Brokerage;
 - (d) that the Licensee has only conducted real estate services through his Brokerage and any remuneration he has received for those real estate services has been through

- the Brokerage only;
- (e) they have met with the Licensee on a weekly basis to discuss the matters specified under these conditions; and
 - (f) the number of real estate transactions that the Licensee has conducted and details regarding the principal(s), the agency offered, and any dealings with unrepresented parties.
13. The Report will be reviewed by BCFSA, who will determine if the Enhanced Supervision Period or any continuation period has provided an adequate opportunity for BCFSA to make a determination that the Licensee is providing real estate services in accordance with the Legislation and these conditions and if not, will so advise the Managing Broker and the Licensee and may continue the conditions for a continuation period.
14. The Managing Broker must immediately report to BCFSA anything of an adverse nature with respect to the Licensee's real estate services, including;
- (a) failure by the Licensee to observe these conditions, the requirements of the Legislation or all other applicable legislation; and
 - (b) complaints received by the Brokerage, including the nature of the complaint, the parties involved, and how the complaint was resolved.
15. The Managing Broker must ensure that the Licensee receives adequate, appropriate and ongoing training with respect to their obligations under the Legislation and the Brokerage's policies and procedures.
16. If the Managing Broker is absent from the Brokerage:
- (a) for more than one week but less than one month, the Managing Broker may delegate his duties to another managing broker or an associate broker who confirms his agreement to accept the supervision duties under these conditions to BCFSA in writing; or
 - (b) for more than one month, the Licensee must notify BCFSA immediately and approval from the Superintendent for a successor managing broker to supervise the Licensee must be sought as set out in paragraphs 1-2 of these conditions.
17. If for any reason the Managing Broker is unable to perform any of the duties imposed herein, he must immediately advise BCFSA.
18. If there is a change in the managing broker of the Brokerage, the former managing broker and the Licensee must immediately notify BCFSA in writing. If the Superintendent determines that the successor managing broker (the "Successor") is acceptable as a managing broker for the purposes of these conditions, the Successor will be provided with a copy of these conditions and will be asked to confirm in writing to the Superintendent that the Successor has read these conditions, is aware of the Successor's duties under these conditions, and agrees to accept these duties. If the Successor fails to provide such confirmation within 14 days of becoming a managing broker at the Brokerage, the Successor will be deemed to be unable or unwilling to perform the duties set out in these conditions.
19. Failure by the Licensee to adhere to one or more of the conditions may constitute professional misconduct and the Superintendent retains the discretion to investigate this and any other matter, including matters set out in the Interim and Final Reports reviewed by the Superintendent, pursuant to section 37 of the RESA.

I, acknowledge that I have received and read a copy of the above Enhanced Supervision Conditions and agree to the conditions as set out therein.

Acknowledged this 10 day of Nov, 2023

“Original signed by David Yang”

David Chian Wei Yang on his own behalf and on behalf
of David Yang Personal Real Estate Corporation
Trading and Rental Property Management Representative, Pacific Evergreen Realty Ltd

I, acknowledge that I have received and read a copy of the above Enhanced Supervision Conditions and agree to the supervision of the conditions as set out therein.

Acknowledged this 10 day of Nov, 2023

“Original signed by [Managing Broker 1]”

[Managing Broker 1]
Managing Broker, Pacific Evergreen Realty Ltd