

CITATION: Pacific Evergreen Realty Ltd. (Re), 2023 BCSRE 35

Date: 2023-10-10

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

PACIFIC EVERGREEN REALTY LTD
(X030719)

CONSENT ORDER

[This Order has been redacted before publication.]

RESPONDENT: Pacific Evergreen Realty Ltd

DATE OF CONSENT ORDER: October 10, 2023

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

PROCEEDINGS:

On October 10, 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 Pacific Evergreen Realty Ltd (the "Brokerage").

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

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that the Brokerage committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("RESA") and sections 5-8, 5-10, and 8-4(1)(a) of the *Real Estate Services Rules* (the "Rules"), pursuant to section 43 of the RESA the Superintendent orders that:

1. The Brokerage pay a discipline penalty to BCFSA in the amount of \$25,000 immediately payable from the date of this Order;

2. The Brokerage pay enforcement expenses to BCFSA in the amount \$5,000 immediately payable from the date of this Order;
3. Within 30 days of this order, or such time period directed by BCFSA, the Brokerage will submit to BCFSA a compliance plan, approved by the Brokerage's managing brokers, directors, and officers, for BCFSA's approval that will address the identification of, reporting of, and both the Brokerage's and individual related licensee's response to suspicious transactions, including but not limited to possibly fraudulent transactions (the "Compliance Plan"). The Compliance Plan must include, at least, systems, procedures, and policies to:
 - a. educate and continue to educate the Brokerage's related licensees and unlicensed employees and contractors on the indicia of suspicious or fraudulent transactions;
 - b. specify the actions the Brokerage and the Brokerage's related licensees and unlicensed employees and contractors should take in response to suspicious or possibly fraudulent transactions and to avoid being used as dupes to fraud;
 - c. educate and continue to educate the Brokerage's related licensees and unlicensed employees and contractors on client and non-client identification requirements and agency disclosure requirements;
 - d. specify the actions the Brokerage's related licensees and unlicensed employees and contractors should take to identify their clients and non-clients;
 - e. specify the standards or reporting and record keeping expected of the Brokerage and the Brokerage's related licensees and unlicensed employees and contractors; and
 - f. specify the degree and method of supervision of the Brokerage's related licensees and unlicensed employees and contractors in identifying suspicious or possibly fraudulent transactions, identifying clients and non-clients, making disclosures of representation, and meeting the expectations placed on them.

The Compliance Plan must include an explanation of the brokerage's systems, policies, and procedures noted above and a plan for the periodic review and update of the Compliance Plan and communication of the Compliance Plan to the Brokerage's related licensees and unlicensed employees and contractors.

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

Dated this 10th day of October, 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.

File # INC 20-41

BC FINANCIAL SERVICES AUTHORITY**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended****IN THE MATTER OF****PACIFIC EVERGREEN REALTY LTD
(X030719)****CONSENT ORDER PROPOSAL BY PACIFIC EVERGREEN REALTY LTD**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Pacific Evergreen Realty Ltd (the "Brokerage") 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, the Brokerage and the Superintendent have agreed upon the following facts:

1. The Brokerage (X030719) has been licensed since March 8, 2013, and provides trading and rental property management services.
2. As detailed below, this matter involves the sale of a property at [Property 1], Richmond, BC effected by an individual identifying himself as [Seller 1] ("[Seller 1]") through a fraudulent Power of Attorney ("POA") executed by a co-conspirator of [Seller 1]'s posing as the person on title. The person on title was [Owner 1]. Herein [Seller 1]'s co-conspirator will be referred to as the "Fake [Owner 1]".
3. T Li and D Yang are licensed representatives of the Brokerage. At all material times, they were independent contractors and not employees of the Brokerage. Also working with T Li and D Yang were T 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].

4. On November 15, 2019, the Fake [Owner 1] attended before [Notary 1], a qualified notary public in British Columbia, to execute a form of power of attorney.
5. On November 15, 2019, [Seller 1] called T Li to arrange a meeting at the Property.
6. On November 16, 2019:
 - a. T Li met with [Seller 1] at the Property. He advised her that he was selling the Property on behalf of the owner, who [Seller 1] said was in Toronto.
 - b. T Li showed [Seller 1] transactions for properties in the neighbourhood surrounding the Property that had completed in the neighbourhood for the preceding six months. Based on those sales, they discussed that the value of the property might be \$2.1 million. However, the house located on the Property was in poor condition and would therefore lower the perceived market value. As such, [Seller 1] represented to T Li the owner was willing to sell the Property for \$1.8 million.
 - c. T Li returned to the Brokerage's office and told the licensees at that office about the deal proposed by [Seller 1]. D Yang was present at those meetings and advised T Li that he had a client that was interested and would send an offer. T Li says D Yang told her to sign a listing agreement as soon as possible.
 - d. T Li says she then called [Seller 1] and reported that an offer was coming to which T Li says he responded, "I guess the listing is yours."
 - e. D Yang prepared a Contract of Purchase and Sale for the Property with [Buyer 1] as the buyer. This first offer was for \$1,795,000 and was subject to a satisfactory viewing by the buyer, which D Yang emailed to T Li. T Li attempted to contact the seller by emailing the offer to the email address for [Owner 1] provided by [Seller 1], [email address redacted] (the "[Owner 1] Email"). In that email, T Li offered to prepare a counter-offer on behalf of [Owner 1] for [Owner 1] to sign.
 - f. T Li called [Seller 1] to explain the offer to him. [Seller 1] advised T Li of his client's preference to complete the sale of the Property by an early completion.

as a lawyer. [Seller 1] signed disclosure forms and a fee agreement indicating that [Owner 1] was not a client of T Li or the Brokerage.

- c. During the meeting at the Property, T Li provided [Seller 1] with the following documents, dated November 16, 2019, and prepared in [Owner 1]'s name:
 - i. A "Fee Agreement Seller Pays (Buyer Represented Seller Not Represented)" agreement signed between the Brokerage as buyer's brokerage and [Owner 1] as seller, which indicated "Tracy Li/David Yang" as designated agents for [Buyer 1] providing for a commission. T Li executed the document on behalf of the Brokerage. The form states that [Owner 1], as seller, acknowledges that no agency exists between [Owner 1] and the Brokerage or the designated agents;
 - ii. A "Disclosure of Risk to Unrepresented Parties" form;
 - iii. A "Not a Client? Know the Risks" form;
 - iv. A "Your Relationship with a Real Estate Professional" form indicating there was no agency relationship between [Owner 1] and T Li; and
 - v. A "Privacy Notice and Consent" form.
 - d. [Buyer 1]'s representative signed a subject free offer of purchase and sale for the Property offering to have [Buyer 1] purchase the Property for \$1,800,000 and delivered it to Mr. Yang.
 - e. T Li asked [Seller 1] for [Owner 1]'s identification and the POA via text message.
11. On November 20, 2019:
- a. [Buyer 1]'s representative, D Yang, [Seller 1], and T Li attended at the Property. Verbal discussions occurred and an oral agreement was struck for a revision to the price for sale of the Property. [Seller 1] called a person he identified as [Owner 1] to approve the offer.
 - b. The parties again met at the Property and agreed to a further reduction in the price for the purchase and sale of the Property to \$1,725,000 and fully executed a finalized contract of purchase and sale for the Property in that amount (the "Contract").

- c. T Li and D Yang also removed Item 20A, restricting assignments, from the written offer and provided [Seller 1] a “Notice to Seller Regarding Assignment” form. The form was dated November 16, 2019.
 - d. The Contract provided for completion and possession to occur on December 9 and 10, 2019, respectively. [Owner 1] was listed as unrepresented and [Seller 1] signed on behalf of [Owner 1]. D Yang was listed as agent for [Buyer 1].
 - e. A “Paying for Real Estate Service: What Sellers Need to Know” disclosure was prepared listing the full commission payable and dividing it between T Li and D Yang. [Seller 1] signed this document on behalf of [Owner 1].
12. On November 21, 2019:
- a. A lawyer, [Lawyer 1], notarized [Seller 1]’s signature on the POA as required to make it effective under Power of Attorney Act, RSBC 1996, c 370, s 17. He did so in two different forms, one of which was provided to T Li as noted below and one in relation to a form of power of attorney witnessed by [Notary 1] on November 15, 2019.
 - b. T Li says that she, and [Assistant 1], tried to call [Owner 1] a total of three times with no answer. She noted in a text message to [Seller 1] that “It’s my duty to talk with him [[Owner 1]] to verify his identification.” In response, [Seller 1] sent T Li copies of the POA and a purported driver’s licence of [Owner 1].
 - c. T Li prepared Individual Identification Information Records for [Seller 1] and “[Owner 1]”. These were dated to November 16, 2019. She indicated that she identified them by their drivers’ licenses. The form for “[Owner 1]” states on page 3 of 4 that:

I did not meet this property owner. His executive assistant who is selling the property on behalf of him provided the photot of his driver licence and gave me his phone number [phone number redacted]. But I wasn’t able to get a hold of him prior to do the transaction. According to [Owner 1], his assistant, the seller’s official status I still an International Student, He has been enrolled in various different courses in media and broadcasting relations over the past few years. It is his hope and dream to develop Apps & search engines promoting the goods and services of others by preparing and plcing

advertisements in an electronic magazine. His last enrolled course was Macromedia University.

[sic]

13. On November 22, 2019:

- a. Addenda to the Contract were executed providing for the following, among others:
 - i. The completion and possession dates were changed to November 27 and November 28, 2019, respectively; and
 - 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.”
- b. These documents were signed by a representative for the buyer and [Seller 1].

14. 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 T Li as the seller’s agent and D Yang as the buyer’s agent.

15. On November 27, 2019:

- a. Transaction records were prepared for T Li and D Yang for the sale of the Property, they show T Li receiving the listing commission and D Yang receiving the selling commission. They show T Li on the listing side described as “No Agency (but Tracy Li is helping)”.
- b. [Assistant 1] sent the Contract documents to [Lawyer 1], lawyer for the seller.
- c. The Contract was assigned to [Company 1] and [Company 2], clients of D Yang.

16. On November 28, 2019:

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- a. [Lawyer 1] advised [Brokerage Compliance Officer 1] that the closing had been moved to November 29, 2019. No documents were provided regarding this change.
17. On November 29, 2019:
 - a. The Contract completed and the application to transfer the Property to [Company 1] and [Company 2] was registered with the Land Title Office.
 - b. The Form A transfer was executed by [Seller 1] on behalf of [Owner 1] before N.A.
 18. On December 6, 2019:
 - a. T Li was paid commission on the sale of the Property.
 - b. D Yang was paid commission on the sale of the Property.
 19. At all material times, D Yang was acting as agent for the buyers and was not an agent for the seller.
 20. The Brokerage had no knowledge that [Seller 1] or the Fake [Owner 1] would receive the sale proceeds.
 21. A Notice of Discipline Hearing was issued on March 16, 2022, and served on the Brokerage.
 22. The Brokerage does not have a discipline history.
 23. Since the transaction, the Brokerage has taken the following remedial steps to prevent future misconduct:
 - a. Updated its education and training to real estate agents, licensees and conveyancers in respect of transactions involving Powers of Attorney, including conducting education seminars;
 - b. Improved its written policies and procedures respecting transactions involving Powers of Attorney;
 - c. Updates its code of conduct respecting transactions listed by third-parties;
 - d. Ensuring that the client who holds the POA obtain independent legal or professional advice before entering into any real estate transaction;

- e. Agents are required to take steps to independently verify the authority of the POA by contacting the party who purportedly authorized the POA, and obtain their contact information;
- f. Update the relevant managing broker on all real estate services; and
- g. Requiring managing brokers to be in active charge and supervision of the business of the Brokerage.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, the Brokerage proposes the following findings of misconduct be made by the Superintendent

1. The Brokerage committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that, while licensed as a brokerage in the trading and rental property management categories, it failed to ensure that, before providing trading services to or on behalf of a party to a trade in real estate, licensees engaged by the Brokerage, including T Li and D Yang, disclose to the party accurate copies of the Disclosure of Representation in Trade documentation, contrary to the Rules, sections 5-8 [*Disclosures*], 5-10 [*Disclosure of representation in trading services*], and 8-4(1)(a) [*General records*].

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, the Brokerage proposes that the 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. The Brokerage pay a discipline penalty to BCFSA in the amount of \$25,000 immediately payable from the date of this Order for its contraventions of the Rules, sections 5-8 [*Disclosures*], 5-10 [*Disclosure of representation in trading services*], and 8-4(1)(a) [*General records*].
2. The Brokerage pay enforcement expenses to BCFSA in the amount of \$5,000 immediately payable from the date of this Order.

3. Within 30 days of this order, or such time period directed by BCFSA, the Brokerage will submit to BCFSA a compliance plan, approved by the Brokerage's managing brokers, directors, and officers, for BCFSA's approval that will address the identification of, reporting of, and both the Brokerage's and individual related licensee's response to suspicious transactions, including but not limited to possibly fraudulent transactions (the "Compliance Plan"). The Compliance Plan must include, at least, systems, procedures, and policies to:
 - a. educate and continue to educate the Brokerage's related licensees and unlicensed employees and contractors on the indicia of suspicious or fraudulent transactions;
 - b. specify the actions the Brokerage and the Brokerage's related licensees and unlicensed employees and contractors should take in response to suspicious or possibly fraudulent transactions and to avoid being used as dupes to fraud;
 - c. educate and continue to educate the Brokerage's related licensees and unlicensed employees and contractors on client and non-client identification requirements and agency disclosure requirements;
 - d. specify the actions the Brokerage's related licensees and unlicensed employees and contractors should take to identify their clients and non-clients;
 - e. specify the standards or reporting and record keeping expected of the Brokerage and the Brokerage's related licensees and unlicensed employees and contractors; and
 - f. specify the degree and method of supervision of the Brokerage's related licensees and unlicensed employees and contractors in identifying suspicious or possibly fraudulent transactions, identifying clients and non-clients, making disclosures of representation, and meeting the expectations placed on them.

The Compliance Plan must include an explanation of the brokerage's systems, policies, and procedures noted above and a plan for the periodic review and update of the Compliance Plan and communication of the Compliance Plan to the Brokerage's related licensees and unlicensed employees and contractors.

4. If the Brokerage fails to comply with any of the terms of this Order, the Superintendent may suspend or cancel their licence without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. The Brokerage acknowledges and understands 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.
2. The Brokerage acknowledges 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 Notice of Discipline Hearing, and the execution and submission of the Proposal to the Superintendent; and, that they have obtained independent legal advice or has 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.
3. The Brokerage acknowledges and is 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.
4. The Brokerage hereby waives their right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, the Brokerage will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict the Brokerage from making full answer and defence to any civil or criminal proceeding(s).

6. The Proposal and its contents are made by the Brokerage 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 the Brokerage in any civil proceeding with respect to the matter.

“Original signed by Richard Lui”

**Richard Lui on behalf of
PACIFIC EVERGREEN REALTY LTD**

Dated 25 day of September, 2023.