

CITATION: Yang (Re), 2024 BCSRE 48

Date: 2024-07-23

File # 15-793

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.]

RESPONDENTS: David Chian Wei Yang, Representative, Pacific Evergreen Realty Ltd,
while licensed with Royal Pacific Realty Corp.

David C.W. Yang Personal Real Estate Corporation

DATE OF CONSENT ORDER: July 23, 2024

COUNSEL: Jenna Graham, Legal Counsel for the BC Financial Services Authority

PROCEEDINGS:

On July 17, 2024, 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, on their own behalf and on behalf of David C.W. Yang Personal Real Estate Corporation.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by David Chian Wei Yang, on their own behalf and on behalf of David C.W. Yang Personal Real Estate Corporation.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and in particular having found that David Chian Wei Yang and David C.W. Yang Personal Real Estate Corporation committed professional misconduct within the meaning of sections 35(1)(a), (c), and (d), of the *Real Estate Services Act* ("RESA") and contravened sections 3-3(a), 3-3(f), 3-3(i), 3-3(j), 3-2, 3-4, 5-1(4), 5-8, 5-10, and 5-11, of the *Real Estate Services Rules* (the "Rules") in effect at the time of the misconduct, and committed conduct unbecoming a licensee within the meaning of section 35(2) of the RESA, pursuant to section 43 of the RESA the Superintendent orders that:

1. David Chian Wei Yang and David C.W. Yang Personal Real Estate Corporation have their licences suspended for six (6) months;
2. David Chian Wei Yang will not act as an unlicensed assistant during the time of their licence suspension;
3. David Chian Wei Yang and David C.W. Yang Personal Real Estate Corporation jointly and severally pay a discipline penalty to BCFSA in the amount of \$10,000 within three (3) months from the date of this Order;
4. David Chian Wei Yang and David C.W. Yang Personal Real Estate Corporation jointly and severally pay enforcement expenses to BCFSA in the amount of \$6,000 within two (2) months from the date of this Order.

If David Chian Wei Yang and/or David C.W. Yang Personal Real Estate Corporation fails 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 23rd day of July, 2024 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.

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BC FINANCIAL SERVICES AUTHORITY

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IN THE MATTER OF

**DAVID CHIAN WEI YANG
(043031)**

AND

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

CONSENT ORDER PROPOSAL

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by David Chian Wei Yang ["D Yang"] on his own behalf and on behalf of David C.W. Yang Personal Real Estate Corporation ["DY 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, D Yang on his own behalf and on behalf of DY PREC and the Superintendent have agreed upon the following facts:

1. D Yang (043031) was first licenced as a representative in the trading and rental categories on February 18, 1983.
2. DY PREC became licensed on September 14, 2010.
3. D Yang was at all relevant times licensed as a trading representative with Royal Pacific Realty Corp. (the "Brokerage").

Disclosure of Remuneration and Agency Relationship

4. In 2015, D Yang failed to accurately disclose in writing his remuneration in relation to an assignment of a property where all the assignment profit was received as gross commission, and D Yang subsequently paid a portion of the profit back to the assignor, his client. In doing so, D Yang misrepresented to his brokerage that his commission was an amount higher than his true commission.
5. D Yang initially claimed to BCFSA that this had only occurred in connection to one transaction. D Yang admits that the same course of conduct has occurred in relation to four other assignment transactions between 2015 and 2016.

6. In respect of a property located at [Property 1], Vancouver, BC ["Property 1"]:
 - a. On November 25, 2015, AB [Client 1] entered into a contract of purchase and sale ("CPS") for the purchase of Property 1 for \$3,000,000.
 - b. On December 7, 2015, Client 1 assigned his right to purchase Property 1 to an unrelated third party for \$4,060,000. D Yang represented Client 1 as their designated agent during the assignment transaction.
 - c. The difference between the original purchase price under the CPS for Property 1 and the assignment price was \$1,060,000.
 - d. D Yang provided information and documentation to the Brokerage which stated that the gross commission from the assignment of Property 1 totalled \$1,060,000, with the listing commission payable for D Yang's services totalling \$1,008,245.50, when in fact D Yang and Client 1 had an agreement that D Yang's actual commission would total approximately \$250,000 with D Yang taking the bulk of the assignment profit at the close of the transaction and returning a portion to Client 1 following the close of the transaction.
 - e. The agreement between D Yang and Client 1 regarding the commission was not reduced to writing.
 - f. The assignment transaction closed on December 18, 2015.
 - g. The "Working with a Realtor" ("WWR") form setting out the agency relationship between D Yang and Client 1 was dated December 18, 2015, eleven days after the assignment contract for Property 1 was executed.
 - h. No written remuneration disclosure to Client 1 was found in the brokerage file. D Yang sought a two-week extension during the BCFSa investigation into these matters to provide the remuneration disclosure form and subsequently produced to BCFSa investigators a "Remuneration Disclosure" form dated December 7, 2015, purportedly acknowledged by Client 1 on the same date, which stated that the Brokerage was to receive \$1,060,000 of the purchase price from Client 1 as remuneration for the assignment transaction.
 - i. The Brokerage received \$1,060,000 as gross commission at the close of the assignment transaction which it distributed amongst the listing and selling licensees.
 - j. On December 18, 2015, D Yang received \$1,008,035.50 from the Brokerage as commission from the assignment of Property 1, after Brokerage fees were deducted.
 - k. On December 18, 2015, D Yang retained \$251,851.36 of the commission amount as remuneration from the assignment of Property 1, and D Yang and DY PREC indirectly returned to Client 1 \$756,184.74 of the commission paid to D Yang by the Brokerage.
7. In respect of a property located at [Property 2], Richmond, BC ["Property 2"]:
 - a. On February 15, 2015, Client 1 entered into a CPS for the purchase of Property 2 for \$850,000.
 - b. On March 24, 2015, Client 1 assigned his right to purchase Property 2 for \$895,000 to an unrelated third party. D Yang represented Client 1 as their designated agent during the assignment transaction.

- c. The difference between the original purchase price under the CPS for Property 2 and the assignment price under the assignment agreement was \$45,000.
 - d. D Yang provided information and documentation to the Brokerage which stated that the gross commission from the assignment of Property 2 totalled \$45,000 with the listing commission payable for D Yang's services totalling \$36,000, when in fact D Yang and Client 1 had an agreement that D Yang's actual commission would total approximately \$9,000, with D Yang taking the bulk of the assignment profit at the close of the transaction but returning a portion to Client 1 following the close of the transaction.
 - e. The agreement between D Yang and Client 1 regarding the commission was not reduced to writing.
 - f. No written remuneration disclosure was provided to Client 1 nor was a WWR form completed between Mr. Yang and Client 1 in respect of Property 2.
 - g. The assignment transaction closed on April 15, 2015.
 - h. The Brokerage received \$45,000 as gross commission at the close of the assignment transaction which it distributed amongst the listing and selling licensees.
 - i. On April 15, 2015, D Yang received \$35,790 from the Brokerage as commission, after Brokerage fees were deducted.
 - j. On April 16, 2015, D Yang and DY PREC retained \$6,790 as remuneration from the assignment of Property 2 and indirectly returned to Client 1 \$29,000 of the commission paid to D Yang by the Brokerage.
8. In respect of a property located at [Property 3], Richmond, BC ["Property 3"]:
- a. On October 17, 2015, [Client 2] ("Client 2") entered into a CPS for the purchase of Property 3 for \$2,068,000.
 - b. The sole director of Client 2 was Client 1.
 - c. On November 17, 2015, Client 2 assigned their right to purchase Property 2 for \$2,300,000 to an unrelated third party. D Yang represented Client 2 as their designated agent during the assignment transaction.
 - d. The difference between the original purchase price under the CPS for Property 3 and the assignment price under the assignment agreement was \$232,000.
 - e. D Yang provided information and documentation to the Brokerage which stated that the gross commission from the assignment of Property 3 totalled \$232,000 with the listing commission payable for D Yang's services totalling \$212,000, when in fact D Yang and Client 2 had an agreement that D Yang's actual commission would total approximately \$20,000 with D Yang taking the bulk of the assignment profit at the close of the transaction but returning a portion to Client 2 following the close of the transaction.
 - f. The agreement between D Yang and Client 2 regarding the commission was not reduced to writing.
 - g. No written remuneration disclosure was provided to Client 2 nor was a WWR form completed between Mr. Yang and Client 2 in respect of Property 3.

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- h. The assignment transaction closed on December 18, 2015.
 - i. The Brokerage received \$232,000 as gross commission at the close of the assignment transaction which it distributed amongst the listing and selling licensees.
 - j. On December 18, 2015, D Yang received \$211,790 from the Brokerage as commission, after Brokerage fees were deducted.
 - k. On December 18, 2015, D Yang and DY PREC retained \$19,790 as remuneration for the assignment of Property 3 and indirectly returned to Client 2 \$192,000 of the commission paid to D Yang by the Brokerage.
9. In respect of a property located at [Property 4], Vancouver, BC ["Property 4"]:
- a. On May 13, 2016, [Client 3] ("Client 3") entered into a CPS for the purchase of Property 4 for \$3,800,000.
 - b. Client 1 was a director of Client 3.
 - c. On July 4, 2016, Client 3 assigned their right to purchase Property 4 for \$4,450,000 to an unrelated third party. D Yang represented Client 3 as their designated agent during the assignment transaction.
 - d. The difference between the original purchase price under the CPS and the assignment price under the assignment agreement was \$650,000.
 - e. The WWR form setting out the agency relationship between D Yang and Client 3 was dated September 12, 2016, over two months after the assignment contract for Property 4 was executed.
 - f. D Yang provided information and/or documentation to the Brokerage which set out that the gross commission from the assignment of Property 4 totalled \$650,000 with the listing commission payable for D Yang's services totalling \$579,912.50, when in fact D Yang and Client 3 had an agreement that D Yang's actual commission would total 1/3 of the net profit with D Yang taking the bulk of the assignment profit at the close of the transaction but returning a portion to Client 3 following the close of the transaction.
 - g. The agreement between D Yang and Client 3 regarding the commission was not reduced to writing.
 - h. No written remuneration disclosure was provided to Client [3] by D Yang.
 - i. The assignment transaction closed on September 9, 2016.
 - j. The Brokerage received \$650,000 as gross commission at the close of the assignment transaction which it distributed amongst the listing and selling licensees.
 - k. On September 9, 2016, D Yang received \$579,676.25 from the Brokerage as commission, after Brokerage fees were deducted.
 - l. On September 13, 2016, D Yang and DY PREC retained \$188,225.43 as remuneration and directly and indirectly returned to Client 3 \$391,450.82 of the commission paid to D Yang by the Brokerage.

10. In respect of a property located at [Property 5], Vancouver, BC ["Property 5"]:
 - a. On January 20, 2016, CLL ("Client 4") entered into a CPS for the purchase of Property 5 for \$3,630,000.
 - b. On January 22, 2016, Client 4 assigned their right to purchase Property 5 for \$3,890,000 to an unrelated third party. D Yang represented Client [4] as their designated agent during the assignment transaction.
 - c. The difference between the original purchase price for Property 5 under the CPS and the assignment price under the assignment agreement was \$260,000.
 - d. The WWR form setting out the agency relationship between D Yang and Client 4 was dated March 3, 2016, over 1 month after the assignment contract for Property 5 was executed.
 - e. D Yang provided information and documentation to the Brokerage which set out that the gross commission from the assignment of Property 5 totalled \$260,000 with the listing commission payable for D Yang's services totalling \$210,320.56, when in fact D Yang and Client 4 had an agreement that D Yang's actual commission would total \$100,000 with D Yang taking the bulk of the assignment profit at the close of the transaction but returning a portion to Client 4 following the close of the transaction.
 - f. The agreement between D Yang and Client 4 regarding the commission was not reduced to writing.
 - g. No written remuneration disclosure was prepared or provided to Client 4 by D Yang.
 - h. The assignment transaction closed on March 1, 2016.
 - i. On March 1, 2016, D Yang received \$210,084.32 from the Brokerage as commission, after Brokerage fees were deducted.
 - j. On March 1, 2016, D Yang and DY PREC retained \$100,084.32 as remuneration and directly and indirectly returned to Client 4 \$110,000 of the commission paid to D Yang by the Brokerage.

Conflict of Interest

11. D Yang used his personal funds to assist two transactions in closing by funding a holdback requested by a buyer and funding a deposit on behalf of a buyer.
12. On or about December 7, 2015, in respect of Property 1, while representing Client 1, D Yang personally funded a holdback of \$100,000 on behalf of Client 1 that was required by the assignee in order to complete the sale of the property. The holdback amount was released to D Yang following the close of the transaction.
13. On or about June 13, 2016, in relation to a property located at [Property 6], Vancouver, BC, while representing the buyer as their designated agent, D Yang personally funded the buyer's deposit of \$100,000. The buyer subsequently repaid Mr. Yang the amount of the deposit.

PROPOSED FINDINGS OF MISCONDUCT

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

1. D Yang and DY PREC committed professional misconduct within the meaning of section 35(1)(a) and/or 35(1)(d) of the RESA in that:
 - a. Between January 1, 2015 and December 31, 2016, while licensed as a representative in relation to Royal Pacific Realty Corp, he failed to reduce to writing commission agreement(s) with the client regarding the commission payable; and failed to provide proper written disclosure of his commission and/or any rebate payable to the client contrary to Rule 3-4 [*act with honesty and reasonable care and skill*], Rule 5-1(4) [*written service agreement*], Rule 5-8 [*disclosures*] and Rule 5-11 [*disclosure of remuneration*] of the *Real Estate Services Rules* (the "Rules") in relation to five transactions;
 - b. Between January 1, 2015 and December 31, 2016, while licensed as a representative in relation to Royal Pacific Realty Corp, he failed to provide disclosure of the representation and agency relationship to his respective client(s) 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 the client prior to the client entering into an agreement to assign their rights under a contract of purchase and sale contrary to Rule 3-3(a) [*act in the best interests of the client*], Rule 3-3(f) [*disclose to the client all known material information respecting the real estate services, and the real estate and the trade in real estate to which those services relate*], Rule 3-4 [*act with reasonable care and skill*], 5-8 [*Disclosures*] and Rule 5(10) [*disclosure of representation and relationship in trading services*] of the Rules in respect of at least five transactions;
 - c. On or about December 7, 2015, he failed to act with reasonable care and skill and avoid a conflict of interest in relation to the assignment of a property located at [Property 1], Vancouver, BC by personally providing monies that were used to fund a holdback of \$100,000 on behalf of a client upon completion of the sale of the property contrary to Rule 3-4 [*act with reasonable care and skill*] and Rule 3-3(i) [*take reasonable steps to avoid any conflict of interest*] of the Rules; and failed to disclose the conflict of interest to the client once it arose as required by Rule 3-3(j) [*disclose conflict to client*] of the Rules; and
 - d. On or about June 13, 2016, he failed to act with reasonable care and skill and/or avoid a conflict of interest in relation to the sale of a property located at [Property 6], Vancouver, BC by personally funding a client's deposit of \$100,000 contrary to Rule 3-4 [*act with reasonable care and skill*] and Rule 3-3(i) [*take reasonable steps to avoid any conflict of interest*] of the Rules; and failed to disclose the conflict of interest to the client once it arose as required by Rule 3-3(j) [*disclose conflict to client*] of the Rules.
2. Between January 1, 2015 and December 31, 2016, D Yang and DY PREC committed professional misconduct within the meaning of section 35(1)(a) and/or 35(1)(d) of the RESA when, while licensed as a representative in relation to Royal Pacific Realty Corp, he provided information and/or documentation to the brokerage stating that his commission was an amount higher than his actual commission; and/or failed to inform his brokerage of the amount of a rebate that was subsequently

to be disbursed from the commission contrary to Rule 3-2 [*associate broker and representative responsibilities*] and Rule 3-4 [*act with honesty and reasonable care and skill*] of the Rules in relation to the assignment of the contract of purchase and sale of five properties.

3. D Yang and DY PREC committed professional misconduct within the meaning of section 35(1)(c) of the RESA when, while licensed as a representative in relation to Royal Pacific Realty Corp, D Yang engaged in the conduct set out in paragraphs 1.a. and paragraph 2.
4. D Yang and DY PREC committed conduct unbecoming within the meaning of section 35(2) of the RESA when, while licensed as a representative in relation to Royal Pacific Realty Corp, D Yang engaged in the conduct set out at paragraphs 1, 2 and 3, contrary to the best interests of the public, undermining public confidence in the real estate industry, or bringing the real estate industry into disrepute.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, D Yang and DY PREC propose 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. D Yang and DY PREC's licences be suspended for six months;
2. D Yand DY PREC be prohibited from acting as an unlicensed assistant during their licence suspension period;
3. D Yang and DY PREC be held jointly and severally liable to pay a discipline penalty to BCFSA in the amount of \$10,000 within three (3) months from the date an Order is made by the Superintendent of Real Estate (the "Order");
4. D Yang and DY PREC be held jointly and severally liable to pay enforcement expenses to BCFSA in the amount of \$6,000 within two (2) months from the date of the Order;
5. If D Yang and DY PREC fail to comply with any of the terms of the Order, the Superintendent may suspend or cancel their licences without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. D Yang and DY 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.
2. D Yang and DY 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 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.
3. D Yang and DY 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.

4. D Yang and DY PREC hereby waive their right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, D Yang and DY PREC will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict D Yang and DY PREC from making full answer and defence to any civil or criminal proceeding(s).
6. D Yang and DY PREC acknowledge and are aware that the Superintendent is not bound to accept any application for relicensing or renewal of their licences. D Yang and DY PREC must always satisfy the Superintendent that they meet the requirements for a licence in section 10 of the RESA, and any Rules, regulations or other instruments made pursuant to the RESA.
7. The Proposal and its contents are made by D Yang and DY 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 D Yang and DY PREC in any civil proceeding with respect to the matter.

“Original signed by David Yang”

**DAVID CHIAN WEI YANG on their own behalf and on
behalf of DAVID C.W. YANG PERSONAL REAL
ESTATE CORPORATION**

Dated 22 day of July, 2024