

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

**IN THE MATTER OF
LOUIS MAN KAM KWONG**

CONSENT ORDER

RESPONDENT: Louis Man Kam Kwong, Managing
Broker, Sunrich Realty Ltd. dba Amex
Sunrich Realty

DATE OF REVIEW MEETING: June 8, 2012

DATE OF CONSENT ORDER: June 13, 2012

CONSENT ORDER REVIEW COMMITTEE: B. Brandle
M. Leslie
G. Martin
M. Ziegler (Chair)

ALSO PRESENT: R. Fawcett, Executive Officer
D. Berger, Director, Legal Services

PROCEEDINGS:

On June 8, 2012 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by Louis Man Kam Kwong as submitted. It is therefore ordered that Louis Man Kam Kwong's managing broker's licence be suspended for seven (7) days, but that he is immediately eligible to be licensed as an associate broker or representative. It is ordered that a re-audit of the brokerage be completed within six months of the date of the Order herein and that Mr. Kwong pay the cost of the audit in the amount of \$75.00 per hour. Mr. Kwong is ordered to successfully complete the Strata Management Remedial Education Course as provided by Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council. Further, Mr. Kwong is ordered to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,000.00 within sixty (60) days from the date of this Order.

WHEREAS an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was executed by Louis Man Kam Kwong and the Real Estate Council of British Columbia (“Council”), a copy of which is attached hereto.

NOW THEREFORE, the Council has made the following findings and orders the following penalties based on the Agreed Statement of Facts and Proposed Acceptance of Findings:

1. Louis Man Kam Kwong’s managing broker’s licence be suspended for seven (7) days, but that he be immediately eligible to be licensed as an associate broker or representative as he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 3-1(1)(a) and (b) and section 3-1(3)(a) and (b) of the Council Rules in that he:
 - (i) failed to ensure that the brokerage maintained proper and up to date books, accounts and other records as required by section 25 of RESA, and sections 8-2 and 8-3 of the Council Rules;
 - (ii) failed to ensure that the brokerage provided the said complainants no later than six weeks after the end of the month for which the statement under the required subsection was issued, a copy of that statement and the monthly reconciliation referred to in section 8-2(b) of the Council Rules in relation to that statement;
 - (iii) failed to ensure that the brokerage acted only within the scope of authority given by the said strata as required by section 3-3(1)(c) of the Council Rules in that:
 - (a) the brokerage refunded prepaid amounts for units 202, 204 and 206 without having first sought the strata’s approval;
 - (b) the brokerage filed a T2 for the year ending July 31, 2007 on behalf of the strata without their review and approval;
 - (c) the brokerage continued to withdraw on behalf of the said strata, through automatic withdrawal system, strata fees from strata lot owners bank accounts for the months of March 2009 and April 2009 even though the brokerage’s written services agreement with the strata corporation had ended February 28, 2009;
 - (iv) failed to ensure that the brokerage provided the records belonging to the complainants as requested by the complainants by the date that is four weeks following the date of termination, that being February 28, 2009 as required by section 8-7.1(4) of the Council Rules;

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- (v) failed to ensure that the complainants were provided timely financial statements and bank reconciliations as required by section 7-9(7)(b) of the Council Rules; and
 - (vi) failed to ensure that the brokerage's written service agreement, for the provision of strata management services, included the following clauses as required by sections 5-1(5.1)(a) through (f) of the Council Rules:
 - (a) an indication of where the brokerage will be holding one or more of (i) contingency reserve fund money, (ii) operating fund money, (iii) special levy money, (iv) other amounts, on behalf of the brokerage;
 - (b) any authority under section 30(1)(g) of RESA for the brokerage to transfer amounts (i) between the brokerage trust accounts maintained under section 7-9(2) of the Council Rules for the strata corporation, or (ii) from such a brokerage trust account under section 7-9(2)(a) of these rules to a pooled trust account from one or more strata corporations;
 - (c) the scope of authority of the brokerage or a related licensee when acting on behalf of the strata corporation, including any authority to (i) sign cheques or make disbursements on behalf of the strata corporation, (ii) enter into contracts on behalf of the strata corporation, and (iii) invest money held by the brokerage on behalf of the strata corporation;
 - (d) the timing, frequency and nature of accounting statements and other records to be provided by the brokerage to the strata corporation, in addition to those required to be provided under section 7-9(7) of the Council Rules;
 - (e) a description of the records that are to be kept by the brokerage on behalf of the strata corporation, including an indication of which, if any, of the records required under section 35 of the *Strata Property Act* that the brokerage will retain on behalf of the strata corporation;
 - (f) provision respecting the use and disclosure of information respecting the strata corporation, including the use and disclosure of personal information respecting the owners who are the members of the strata corporation; and
 - (iv) failed to ensure that Nancy Yan Yan Chan, a licensee with his brokerage, was licensed to conduct strata management services before she performed those services.

2. It is ordered that the brokerage be re-audited six months from the date of the Order herein and that Mr. Kwong pay the costs of that audit in the amount of \$75.00 per hour.
3. Mr. Kwong is ordered to successfully complete the Strata Management Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council.
4. Mr. Kwong is ordered to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,000.00 within sixty (60) days from the date of this Order.

If Mr. Kwong fails to comply with any of the terms of the Order set out above, 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 13th day of June, 2012 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Michael Ziegler”

M. Ziegler, Chair
Consent Order Review Committee

Attch.

File #09-077

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

**IN THE MATTER OF
LOUIS MAN KAM KWONG
(065350)**

**AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER**

The following agreement has been reached between Louis Man Kam Kwong ("Mr. Kwong"), and the Real Estate Council of British Columbia (the "Council").

- A. Mr. Kwong hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that his managing broker's licence be suspended for seven (7) days, but that he be immediately eligible to be licensed as an associate broker or representative, that the brokerage be re-audited six months after the date of the Order herein and that Mr. Kwong pay the costs of that audit in the amount of \$75.00 per hour and that he successfully completes the Strata Management Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council. Further he agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,000.00 within sixty (60) days from the date of the Order herein. Mr. Kwong 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 license without further notice to him pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.
- B. As a basis for this Order, Mr. Kwong acknowledges and agrees that the facts set forth herein are correct:
1. Mr. Kwong was at all relevant times licensed as a managing broker with Sunrich Realty Ltd. dba Amex Sunrich Realty ("Amex").
 2. Mr. Kwong'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>
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2/9/2006	Present	Sunrich Realty Ltd. dba Amex Sunrich Realty (X025048)	Managing Broker	Trading, Rental, Strata
5/28/1998	2/9/2006	Sunrich Realty Ltd. dba Amex Sunrich Realty (X025048)	Managing Broker	Trading, Rental
10/7/1997	5/27/1998	*** Unlicensed ***		
2/17/1997	10/6/1997	Amex International Realty Corp. (Rhmd) (X023862)	Managing Broker	Trading, Rental
5/28/1996	5/27/1998	Sunrich Realty Ltd. dba Amex Sunrich Realty (X025048)	Managing Broker	Trading, Rental
1/18/1994	2/16/1997	Amex International Realty Corp. (Rhmd) (X023862)	Managing Broker	Trading, Rental
12/2/1993	1/18/1994	Amex International Realty Corp. (Vanw8) (X023861)	Managing Broker	Trading, Rental
6/15/1993	12/2/1993	Amex International Realty Corp. (X022559)	Managing Broker	Trading, Rental
1/8/1993	6/15/1993	Aeon Realty Ltd. (X0224	Associate Broker	Trading, Rental
10/2/1992	1/8/1993	Realtrust Real Estate Corp (X002541)	Managing Broker	Trading, Rental
3/22/1991	10/1/1992	New World Realty Ltd. (X020632)	Associate Broker	Trading, Rental
3/20/1991	3/21/1991	*** Unlicensed ***		
10/1/1990	3/19/1991	Keystone Realty Ltd. (X016344)	Associate Broker	Trading, Rental
2/17/1987	10/1/1990	Keystone Realty Ltd. (X016344)	Representative	Trading, Rental

3. A strata corporation located on 15th Street in North Vancouver (the "Complainants") entered into a written service agreement with Amex for the provision of strata management services on May 5, 2006.
4. From October 2008 – February 2009 the Complainants had not received financial information from Amex. They also identified a number of errors in the financial statements prepared by Amex and found it difficult to get any answers as the brokerage accounting clerk was away from the brokerage for two or three months due to illness.
5. The Complainants' fiscal year end was July 31. The Complainants advised the year end financial statements for the annual general meeting held in September 2008 were not current or correct.
6. Due to the incorrectness of the financial statements, the Complainants were required to reproduce these financial statements on their own.
7. The Complainants terminated their service agreement with Amex which took effect February 28, 2009. Despite this, the Complainants reported that for the months of March 2009 and April 2009, Amex continued to withdraw strata fees from owners' bank accounts through the automatic withdrawal system without authority.
8. Amex failed to provide the records belonging to the Complainants when requested by them by the date that was four weeks following the date of termination, that being February 28, 2009.
9. Amex failed to provide the Complainants new management company with the balance of the strata funds held in the operating trust account of Amex until July 24, 2009, nearly five months after termination of their service agreement. Amex had, however, issued payment for the balance of the contingency reserve fund trust monies, within the period that was four weeks following the date of termination.
10. Amex failed to prepare to prepare monthly reconciliations of the bank statements for the Complainants no later than five weeks after the end of the month being reconciled.
11. For each brokerage trust account held on behalf of the Complainants, Amex failed to provide the Complainants no later than six weeks after the end of the month for which the bank statement was issued, a copy of that statement and the monthly reconciliation.

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12. The brokerage failed to amend its written service agreement to include the following as required by section 5-1(5.1) (a) through (f) of the Council Rules:
- (a) an indication of where the brokerage will be holding one or more of (i) contingency reserve fund money, (ii) operating fund money, (iii) special levy money, (iv) other amounts, on behalf of the brokerage;
 - (b) any authority under section 30(1)(g) of RESA for the brokerage to transfer amounts (i) between the brokerage trust accounts maintained under section 7-9(2) of the Council Rules for the strata corporation, or (ii) from such a brokerage trust account under section 7-9(2)(a) of these rules to a pooled trust account from one or more strata corporations;
 - (c) the scope of authority of the brokerage or a related licensee when acting on behalf of the strata corporation, including any authority to (i) sign cheques or make disbursements on behalf of the strata corporation, (ii) enter into contracts on behalf of the strata corporation, and (iii) invest money held by the brokerage on behalf of the strata corporation;
 - (d) the timing, frequency and nature of accounting statements and other records to be provided by the brokerage to the strata corporation, in addition to those required to be provided under section 7-9(7) of the Council Rules;
 - (e) a description of the records that are to be kept by the brokerage on behalf of the strata corporation, including an indication of which, if any, of the records required under section 35 of the *Strata Property Act* that the brokerage will retain on behalf of the strata corporation; and
 - (f) provision respecting the use and disclosure of information respecting the strata corporation, including the use and disclosure of personal information respecting the owners who are the members of the strata corporation.
13. After the strata corporation entered into the service agreement with Amex in 2006 Nancy Chan was assisting the strata manager at that time as an unlicensed strata management assistant as she was only licensed to conduct trading and rental property management.
14. Ms. Chan completed the Strata Management Supplemental Course and passed the examination on June 21, 2007 but inadvertently failed to amend her licence to include strata management services.

15. Ms. Chan provided strata management services to the said strata corporation shortly after June 21, 2007 up to approximately February 28, 2009 without being licensed to do so.
16. The Council staff discovered that Ms. Chan was not licensed to conduct strata management services in approximately July of 2011 and advised Ms. Chan accordingly.
17. Ms. Chan then became licensed to conduct strata management services on August 3, 2011.
18. Mr. Kwong admits that as managing broker for Amex he:
 - (a) failed to ensure that the brokerage maintained proper and up to date books, accounts and other records;
 - (b) failed to ensure that the brokerage provided the said complainants no later than six weeks after the end of the month for which the bank statement was issued a copy of that statement, and the monthly reconciliation in relation to that statement;
 - (c) failed to ensure that the brokerage acted only within the scope of authority given by the Complainants in that:
 - (i) the brokerage refunded prepaid amounts for units 202, 204 and 206 without having first sought the strata's approval;
 - (ii) the brokerage filed a T2 for the year ending July 31, 2007 on behalf of the strata without their review and approval;
 - (iii) the brokerage continued to withdraw on behalf of the said strata, through automatic withdrawal system, strata fees from strata lot owners bank accounts for the month of March 2009 and April 2009 even though the brokerage's written services agreement with the strata corporation had ended February 28, 2009;
 - (d) failed to ensure that the brokerage provided the records belonging to the Complainants as requested by the Complainants by the date that was four weeks following the date of termination, that being February 28, 2009 as required by section 8-7.1(4) of the Council Rules;
 - (e) failed to ensure that the Complainants were provided timely financial statements and bank reconciliations as required by section 7-9(7)(b) of the Council Rules;

- (f) failed to ensure that the brokerage's written service agreement, for the provision of strata management services, included the clauses as referred to above as required by sections 5-1(5.1)(a) through (f) of the Council Rules; and
- (g) failed to ensure that Nancy Yan Yan Chan, a licensee with his brokerage, was licensed to conduct strata management services before she performed these services.

Discipline History

19. Mr. Kwong was issued a letter of warning by the Council dated December 8, 2005 cautioning him that in his capacity as managing broker that he demonstrate that he is in active charge of the brokerage by supervising his licensees to ensure that they:
 - Conduct all real estate services only through, and under the name of the employing brokerage.
 - They do not employ an unlicensed assistant to perform services for which a license is required.
 - They promptly deliver all remuneration, and any other monies received from real estate services to the employing brokerage.
 - They comply with all aspects of Section 4-4 to 4-7 inclusive of the Council Rules and pages 189 to 194 of the Licensee Practice Manual relating to future advertising.
20. Council also issued a letter of warning to Mr. Kwong dated December 8, 2008 cautioning him to ensure that in the future, the business of the brokerage is carried out competently specifically relating to real estate services being provided other than in the name of the brokerage and further, that he ensure all trust deposits are provided to the brokerage and deposited in a timely manner.

G. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Louis Man Kam Kwong is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
 - (a) Louis Man Kam Kwong, as managing broker for Sunrich Realty Ltd. dba Amex Sunrich Realty committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*

[contravention of Act, Regulation or Council Rules] in that he contravened section 3-1(1)(a) and (b) and section 3-1(3)(a) and (b) of the Council Rules in that he:

- (i) failed to ensure that the brokerage maintained proper and up to date books, accounts and other records as required by section 25 of RESA, and sections 8-2 and 8-3 of the Council Rules;
- (ii) failed to ensure that the brokerage provided the said complainants no later than six weeks after the end of the month for which the statement under the required subsection was issued, a copy of that statement and the monthly reconciliation referred to in section 8-2(b) of the Council Rules in relation to that statement;
- (iii) failed to ensure that the brokerage acted only within the scope of authority given by the said strata as required by section 3-3(1)(c) of the Council Rules in that:
 - (a) the brokerage refunded prepaid amounts for units 202, 204 and 206 without having first sought the strata's approval;
 - (b) the brokerage filed a T2 for the year ending July 31, 2007 on behalf of the strata without their review and approval;
 - (c) the brokerage continued to withdraw on behalf of the said strata, through automatic withdrawal system, strata fees from strata lot owners bank accounts for the months of March 2009 and April 2009 even though the brokerage's written services agreement with the strata corporation had ended February 28, 2009;
- (iv) failed to ensure that the brokerage provided the records belonging to the complainants as requested by the complainants by the date that is four weeks following the date of termination, that being February 28, 2009 as required by section 8-7.1(4) of the Council Rules;
- (v) failed to ensure that the complainants were provided timely financial statements and bank reconciliations as required by section 7-9(7)(b) of the Council Rules; and
- (vi) failed to ensure that the brokerage's written service agreement, for the provision of strata management services, included the following clauses as required by sections 5-1(5.1)(a) through (f) of the Council Rules:

- (a) an indication of where the brokerage will be holding one or more of (i) contingency reserve fund money, (ii) operating fund money, (iii) special levy money, (iv) other amounts, on behalf of the brokerage;
- (b) any authority under section 30(1)(g) of RESA for the brokerage to transfer amounts (i) between the brokerage trust accounts maintained under section 7-9(2) of the Council Rules for the strata corporation, or (ii) from such a brokerage trust account under section 7-9(2)(a) of these rules to a pooled trust account from one or more strata corporations;
- (c) the scope of authority of the brokerage or a related licensee when acting on behalf of the strata corporation, including any authority to (i) sign cheques or make disbursements on behalf of the strata corporation, (ii) enter into contracts on behalf of the strata corporation, and (iii) invest money held by the brokerage on behalf of the strata corporation;
- (d) the timing, frequency and nature of accounting statements and other records to be provided by the brokerage to the strata corporation, in addition to those required to be provided under section 7-9(7) of the Council Rules;
- (e) a description of the records that are to be kept by the brokerage on behalf of the strata corporation, including an indication of which, if any, of the records required under section 35 of the *Strata Property Act* that the brokerage will retain on behalf of the strata corporation;
- (f) provision respecting the use and disclosure of information respecting the strata corporation, including the use and disclosure of personal information respecting the owners who are the members of the strata corporation; and
- (v) failed to ensure that Nancy Yan Yan Chan, a licensee with his brokerage, was licensed to conduct strata management services before she performed those services.

2. Mr. Kwong hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.

3. Mr. Kwong 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. Kwong acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter and on the Council's website.
5. Mr. Kwong acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services Act*, 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.

"David P. Berger"

David P. Berger, Legal Counsel
Real Estate Council of British Columbia

As to Part B only (Agreed Statement
of Facts)

Dated 8 day of June, 2012

"Louis Man Kam Kwong"

Louis Man Kam Kwong

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

Dated 7 day of June, 2012

REAL ESTATE COUNCIL OF BRITISH COLUMBIA

In The Matter of the *Real Estate Services Act*

S.B.C. 2004, c. 42

And

In the Matter of

Louis Man Kam Kwong

CORRIGENDUM

TO CONSENT ORDER ISSUED June 13, 2012

The Consent Order Review Committee further ordered that:

1. (a) an indication of where the brokerage will be holding one or more of (i) contingency reserve fund money, (ii) operating fund money, (iii) special levy money, (iv) other amounts, on behalf of the brokerage;

It should read:

1. (a) an indication of whether the brokerage will be holding one or more of (i) contingency reserve fund money, (ii) operating fund money, (iii) special levy money, (iv) other amounts, on behalf of the brokerage;

Dated this 10th day of October , 2012

For the Real Estate Council of British Columbia

“Michael Ziegler”

M. Ziegler
CHAIR