

IN THE MATTER OF The *Real Estate Act*, R.S.A. 2000 c. R-5
AND IN THE MATTER OF
CASTLE KWAN,
mortgage associate registered
with REMOEX GROUP INC. ,
and real estate associate registered with URBAN REALTY.CA

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Castle Kwan, at all relevant times mortgage associate registered with Mortgage Alliance company of Canada is deserving of sanction and/or whether he breached the requirements of the *Real Estate Act* (the “**Act**”) or the Rules prescribed pursuant thereto (the “**Rules**”)
2. The Executive Director and Castle Kwan agree to resolve all matters against Castle Kwan on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Castle Ka-Sau Kwan (Kwan) has been a mortgage associate, licensed by RECA since December 4, 2006.
4. At the time of the alleged matter he was registered with the Mortgage Alliance Company of Canada Ltd.
5. He was registered with Remoex Group Inc. until June 2, 2010.
6. Castle Ka-Sau Kwan has been a real estate associate, licensed by RECA since March 1, 2006.
7. He is currently registered as a real estate associate with Urban-Realty.ca.

8. There is a disciplinary history.
9. Kwan owns property at [{"Address 1"}]; [{"Address 2"}] and at [{"Address 3"}].
10. Kwan was transferring his personal mortgage from Equitable Trust to Macquarie Financial in April of 2008.
11. On April 28, 2008 Kwan submitted his application through his position as a mortgage associate at Mortgage Alliance Company of Canada Ltd.
12. Kwan states that his application was mistakenly processed by Macquarie in a manner that required he provide a Notice of Assessment.
13. As part of the documentation needed to transfer the mortgage he was asked to provide his notice of assessment for 2006 or 2007.
14. Kwan stated that he believed that had the application been processed in the appropriate context an NOA would not have been required.
15. Kwan said that Macquarie explained to him that based on preliminary income information it was unlikely that he would qualify for the transfer.
16. Kwan said he was not told directly to supply an altered NOA but by saying funding would not proceed without more income, Macquarie implied that Kwan should alter the NOA.
17. In his interview with complaint analyst Brian Shockey on March 11, 2010 Kwan said he had lost his NOA for 2006 so he took an older NOA he had retained and proceeded to make changes to the document which would meet Macquarie's conditions of financing.
18. Kwan said that he talked to his broker about his application to Macquarie but he did not tell his broker about his altering the NOA.
19. Kwan says his broker told him to withdraw the application.
20. On May 29, 2008 as a result of due diligence, Macquarie was able to spot the altered document and immediately collapsed the transaction.
21. Macquarie noted that the 2006 NOA they received had completely incorrect format as all fonts were incorrect and dots were periods rather than the CRA standard dots.
22. W.B. at Macquarie contacted CRA regarding an altered NOA and filed a complaint against Kwan with RECA.

23. Kwan told RECA that eventually he was able to get a transfer of mortgage with the Royal Bank of Canada (RBC).
24. Kwan said that because RBC employed the normal procedures used in this type of transfer and because RBC already had his financial records, he (Kwan) was not required to supply an NOA as part of the application process.

CONCLUSION

25. By reason of the matters described herein, Castle Kwan's conduct is deserving of sanction, in that he
26. Made representations or carried on conduct that was reckless or intentional and that misled or deceived any person or was likely to do so, contrary to s. 42(a) of the Rules made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. , when
 - a. On or about April 28, 2008 he presented a false Notice of Assessment to Macquarie Financial in order to meet the financial requirements for a transfer of his personal mortgage,
27. Participated in a fraudulent or unlawful activity in connection with the provision of services or in any dealings contrary to s. 42(b) of the Rules made pursuant to the *Real Estate Act* R.S.A. 2000, c. R-5. , when
 - a. On or about April 2008, he created a false Notice of Assessment to provide to the financial institution in order to meet the financial requirements for a transfer of his personal mortgage.

SETTLEMENT TERMS

28. In settlement of these issues, Castle Kwan will pay immediately to the Real Estate Council of Alberta a fine in the amount of \$10,000.00, together with costs in the amount of \$500.00.
29. Castle Kwan agrees that his authorization to trade in real estate and as a mortgage associate shall be suspended for a period of 1 year, such suspension to begin upon ratification of this Consent Agreement. Castle Kwan shall not be re-authorized to trade in real estate or mortgages until he has paid all fines and costs and completed all education requirements as required by this Consent Agreement.

30. Castle Kwan agrees that as a condition of his authorization to trade in real estate and to deal in mortgages, he will, within 6 months of the ratification of this Consent Agreement by the Hearing Panel, successfully complete both the Mortgage Broker update offered online by the Real Estate Council of Alberta and the Contract Law portion (Section 3 of Phase 2) of the Real Estate Associate Program offered either online or in class by various accredited institutions in Alberta., or a similar course or courses at the sole discretion of the Executive Director.
31. Castle Kwan acknowledges that he has been given an opportunity to seek the advice of legal counsel and acknowledges that he is agreeing to the terms of settlement of his own free will.
32. Castle Kwan is aware that a copy of this Consent Agreement will be placed on his file and may be reviewed and considered in any future disciplinary proceedings.
33. Castle Kwan is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
34. Castle Kwan hereby waives any rights he may have under the Act or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.
35. These settlement terms are intended to resolve all matters described herein and, subject to the approval of the Hearing Panel, the Executive Director will take no further action under the Act or before the courts in this regard.

AFFIDAVIT OF EXECUTION

CANADA) I, A.M. of
)
PROVINCE OF ALBERTA) the City of Calgary, in the Province of Alberta
)
TO WIT:) MAKE OATH AND SAY:

1. THAT I was personally present and did see Castle Kwan, named in the annexed instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.

2. THAT the same was executed at the City of Calgary, in the Province of Alberta, and that I am the subscribing witness thereto.

3. THAT I know the said party and he is in my belief of the full age of eighteen years.

SWORN BEFORE ME at the City)
of Calgary, in the Province of)
Alberta this 11th day of)
August 2010.)
)
) A.M.
) (signature of witness)
)
)
)
F.F.)
A Commissioner for Oaths in and)
for the Province of Alberta)