

## IN THE MATTER OF THE REAL ESTATE ACT, R.S.A. 2000 c. R-5

### AND IN THE MATTER OF Gerritt Micheal Willebrands Yuin, a real estate associate currently registered with Impact Real Estate Group Ltd. o/a Residential One Real Estate and formerly registered with The Real Estate Company Ltd. o/a The Real Estate Company

#### INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Gerritt Micheal Willebrands Yuin, a real estate associate currently registered with Impact Real Estate Group Ltd. o/a Residential One Real Estate and formerly registered with The Real Estate Company Ltd. o/a The Real Estate Company, is deserving of sanction and whether he breached the requirements of the *Real Estate Act*, RSA 2000, c. R-5 (the "**Act**") or the Rules prescribed pursuant thereto (the "**Rules**") or the Code of Conduct prescribed pursuant thereto (the "**Code of Conduct**") in force October 1, 1999, through October 1, 2006.
2. The Executive Director and Gerritt Micheal Willebrands Yuin hereby agree to resolve all matters against him on the terms and conditions set out herein.

#### AGREED STATEMENT OF FACTS

3. Gerritt Micheal Willebrands Yuin ("**Mr. Yuin**") has been an industry member since October 21, 2003 and was at all relevant times hereto registered with The Real Estate Company Ltd. o/a The Real Estate Company.
4. There is no discipline history.
5. On September 1, 2004, Yuin signed a Sales Representative Agreement with Carling Development Inc. ("**Carling**") with a term to August 31, 2006. Carling was in the business of constructing and selling residential properties. It was agreed that Mr. Yuin would provide service selling Carling's new residential properties.
6. In February of 2005, Carling transferred title to a condominium unit to a contractor, R&M Plumbing and Heating Ltd. ("**R&M**") as compensation for services provided by R&M in the construction of Carling's development. Title of this unit ("**Unit**") was transferred from Carling to R&M for consideration of \$180,000.00 on February 16, 2005. Mr. Yuin was involved in documenting this transaction on behalf of Carling.
7. In July, 2005, Mr. Yuin was contacted by a potential buyer, A.C.. Mr. Yuin showed some of Carling's units to A.C. as well as the Unit which remained for sale.

8. A.C. decided to purchase the Unit.
9. Mr. Yuin prepared Residential Real Estate Purchase Contract 0177650611 between R&M as seller and A.C. as buyer.
10. In this contract Mr. Yuin identified Carling as his “brokerage”.
11. Mr. Yuin did not advise his broker at The Real Estate Company of this transaction.
12. Further, Mr. Yuin drafted the Purchase Contract 0177650611 to state that C.A. would pay a \$15,000 initial deposit to be delivered with the offer and held in trust by the Sellers solicitor, knowing that C.A. had no deposit and would not be making any deposit until her prior residential property was sold.
13. The transaction did close.

#### Failure to Cooperate in the Investigation

14. As a result of issues of water damage A.C. complained to RECA.
15. Mr. Yuin was notified of the investigation into his conduct by letter dated June 13, 2006. In that letter he was asked for a written statement responding to the written complaint of A.C. which was included with the notice of investigation. He was asked to provide all documents relating to the transaction not submitted to his registered brokerage.
16. On July 10, 2006 RECA received from Yuin his written response to the complaint but no documents. Mr. Yuin’s statement included the following description of his initial dealings with A.C.: “There was no commission or Realtor’s name being mentioned during this conversation [with A.C.]. [A.C.] didn’t know I was a Realtor. I was not acting as a Realtor during the whole process.”
17. On November 22, 2007, newly assigned RECA investigator, Sabina Sava, phoned Mr. Yuin to arrange an interview concerning the complaint at RECA offices. During the discussion with Mr. Yuin on the phone, Mr. Yuin advised that it was his view that he “...was working for a new home builder at the time ...” and further that both R&M and Carling were involved in paying his commission for sale of the Unit at issue.
18. On November 27, 2007, Mr. Yuin attended the offices at RECA and was interviewed by Ms. Sava concerning the complaint and related events. It was confirmed with Mr. Yuin that the property sold to the complainant was owned by R&M and not Carling.

19. By letter dated January 23, 2008, Ms. Sava requested that Mr. Yuin provide to the RECA investigator the following:
  - his 2005 T4 from C.,
  - his 2005 tax return,
  - his daily start and finish work schedule with C. and
  - an explanation of any tools and equipment used in working for C.

This information was relevant to the question of whether Mr. Yuin was an employee of Carling or R&M at the time of the sale of the Unit to A.C. and could prove or disprove whether a commission was paid and by whom for the sale of the Unit to A.C., an issue that was raised by Mr. Yuin's statements made to the investigator. The deadline for this request was February 13, 2008.

20. On February 11, 2008, Ms. Sava phoned Mr. Yuin to inquire whether he would be providing the requested documents. Mr. Yuin advised Ms. Sava she could not talk to him and she would have to speak to his lawyer.
21. Ms. Sava then sent a letter dated February 14, 2008, to Mr. Yuin requesting that he cooperate and provide the documents requested by letter dated January 23, 2008.
22. On February 29, 2008, Sava received a letter from the lawyer for Mr. Yuin. This letter was signed by both M.L. and Mr. Yuin and stated as follows:

As an investigator you have the power to ask anyone any relevant questions and ask anyone to produce any relevant documents or records. To this end you have requested our client's 2005 T4 slip for Carling Developments and his 2005 Tax Return. **It is our position that the principles of natural justice and the Act do not require the production of these documents and they will not be provided unless you are in position to explain to us how they are relevant to your investigation.**

(emphasis added)

23. By letter dated April 10, 2008, the Executive Director advised Mr. Yuin that he was required to cooperate with the investigation and that the information requested by RECA was required by May 1, 2008.
24. By letter dated April 25, 2008, and signed by Mr. Yuin, Mr. Yuin stated follows:

In relation to a request for Mr. Willebrand's 2005 T4 Slip from Carling Development and his 2005 Tax Return, **this information will not be provided as you failed to establish its relevance.**

(emphasis added)

25. On April 29, 2008, Ms. Sava phoned Mr. Yuin to inquire about whether he would be providing information to RECA as requested. Mr. Yuin advised Ms. Sava that she could not “communicate with me [Mr. Yuin] anymore”.
26. Mr. Yuin did not provide either his 2005 T4 or his 2005 Tax Return.

### **CONCLUSION**

27. By reason of the matters described herein, it is agreed that Mr. Yuin’s conduct is deserving of sanction as follows:
  - (a) Failed to keep his broker informed of the activities being performed by him on behalf of the brokerage contrary to **Rule 23(f)**:
    - Mr. Yuin was not an employee of R&M, was registered with The Real Estate Company and therefore was acting on behalf of the brokerage at the time of his involvement in the sale of the Unit to A.C.;
    - Mr. Yuin did not advise his broker at The Real Estate Company of this transaction.
  - (b) Participated in the creation of a contract or form of communication that the member knows is false and misleading contrary to **s.4(d) of the Code of Conduct**:
    - Identified Carling as his “brokerage” on Purchase Contract 0177650611;
    - Included an Initial Deposit in Purchase Contract 0177650611 which was not paid into trust with the offer as required by the contract and was never intended to be paid until A.C.’s house sold.
  - (c) Failed to cooperate fully with, and provide any information requested to a person appointed under section 38(1) of the *Real Estate Act* to conduct an investigation contrary to **s.7(d) of the Code of Conduct and s. 38(4) of the Real Estate Act**:
    - Failed to provide documents as requested by a RECA investigator; and
    - Refused to speak with the investigator about providing the documents.

### **SETTLEMENT TERMS**

28. In settlement of the foregoing contraventions, it is agreed that fines for the contraventions are as follows:

(a)	23(f)	\$1500
(b)	s.4(d) of the Code of Conduct	\$1500
(c)	s.7(d) of the Code of Conduct	\$5000

**Total Fines** **\$8,000.00**

29. Costs of the investigation will be paid by Mr. Yuin in the amount of **\$1000.00**.
30. Mr. Yuin further agrees that he will within 6 months of ratification of this agreement complete **sections 3 and 4 of Phase 2 of the REAP**, or a similar course at the discretion of the Executive Director if that course is not available.
31. Mr. Yuin 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. Mr. Yuin 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. Mr. Yuin is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
34. Mr. Yuin 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.

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.

**IN WITNESS WHEREOF** the undersigned agrees and accepts the terms and conditions of this settlement this 3<sup>rd</sup> day of May 2010.

Signed in the presence of	)	
	)	<i>Gerritt Micheal Willebrands Yuin</i>
<u>C.L.</u>	)	
Witness	)	



