

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

**IN THE MATTER OF
JOHNNY KWAI-LOK LAN
MILENA BERNINI CARELLA**

AND

ASCENT REAL ESTATE MANAGEMENT CORPORATION

CONSENT ORDER

RESPONDENTS:	Johnny Kwai-Lok Lan, Representative, Ascent Real Estate Management Corporation Milena Bernini, Managing Broker, Ascent Real Estate Management Corporation Ascent Real Estate Management Corporation, Brokerage
DATE OF REVIEW MEETING:	February 27, 2013
DATE OF CONSENT ORDER:	March 28, 2013
CONSENT ORDER REVIEW COMMITTEE:	M. Cowe (Chair) S. McGougan B. Phillips J. Nagy
ALSO PRESENT:	R. Fawcett, Executive Officer E. Wredenhagen, Director, Legal Services J. Worton, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On February 27, 2013 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by Johnny Kwai-Lok Lan, Milena Bernini Carella and Ascent Real Estate Management Corporation as submitted. It is therefore ordered that Johnny Kwai-Lok Lan be suspended for seven (7) days, that Milena Bernini Carella be reprimanded and Ascent Real Estate Management Corporation pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days of the date of this Order. Johnny Kwai-Lok Lan 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, Johnny Kwai-Lok Lan, Milena Bernini Carella and Ascent Real Estate Management are ordered to be jointly and severally liable 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 Johnny Kwai-Lok Lan, Milena Carella, Ascent Real Estate Management Corporation 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. Johnny Kwai-Lok Lan be suspended for seven (7) days as he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:
 - (a) contravened section 3-3(1)(a) of the Council Rules in that he failed to act in the best interests of the Strata and contravened section 3-4 of the Council Rules in that he failed to act with reasonable care and skill, by failing to distribute the Financial Records and the minutes for the Strata's Annual General Meeting, held on October 31, 2010, in a timely manner and, failed to respond promptly or at all, to numerous email and telephone requests sent to him by the Strata during November and December of 2010;
 - (b) contravened section 3-3(1)(d) of the Council Rules in that he failed to advise the Strata to seek independent professional advice on matters outside of his expertise when the Strata requested that a bylaw be

enacted requiring potential tenant(s) of any rental request to be subject to a screening requirement, when such a bylaw was contrary to provisions set out in the *Strata Property Act*; and

- (c) contravened section 3-4 of the Council Rules in that he failed to act with reasonable care and skill by drafting a bylaw for the Strata requiring potential tenant(s) of a rental request to be subject to a screening requirement, when such a bylaw was contrary to provisions set out in the *Strata Property Act*;
2. Johnny Kwai-Lok Lan 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.
3. Milena Bernini Carella be reprimanded as she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she:
 - (a) contravened section 3-1(1)(b) and/or 3-1(1)(c) of the Council Rules in that she did not ensure the business of the brokerage was carried out competently and in accordance with the *Real Estate Services Act*, the Council Rules and bylaws and/or failed to ensure that there was an adequate level of supervision for related associate brokers and representatives and for employees and others who perform duties on behalf of the brokerage in that she failed to ensure Mr. Lan and Ascent Real Estate Management Corporation provided to the Strata copies of the Financial Records, no later than 6 weeks after the end of the month for which those statements were issued, contrary to sections 7-9(7)(b) and 8-2(b) of the Council Rules.
4. Ascent Real Estate Management Corporation pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days of the date of this Order as it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it:
 - (a) contravened sections 7-9(7)(b) and 8-2(b) of the Council Rules by not providing to the Strata copies of Financial Records no later than 6 weeks after the end of the month for which those statements were issued.
5. Johnny Kwai-Lok Lan, Milena Bernini Carella and Ascent Real Estate Management Corporation are ordered to be jointly and severally liable 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 Johnny Kwai-Lok Lan, Milena Bernini Carella and Ascent Real Estate Management Corporation fail to comply with any of the terms of the Order set out above, the Council may suspend or cancel their licences, without further notice to them pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 27th day of March, 2013 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"Marshall Cowe"

M. Cowe, Chair
Consent Order Review Committee

Attch.

File #10-252

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

IN THE MATTER OF

**ASCENT REAL ESTATE MANAGEMENT CORPORATION
(X0212472)**

**MILENA BERNINI CARELLA
(139265)**

AND

**JOHNNY KWAI-LOK LAN
(134823)**

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

The following agreement has been reached between Milena Bernini Carella ("Ms. Carella"), Johnny Kwai-Lok Lan ("Mr. Lan"), Ascent Real Estate Management Corporation ("Ascent") and the Real Estate Council of British Columbia (the "Council").

- A. Mr. Lan hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be suspended for seven (7) days, that he 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 within the time period as directed by the Council,
- B. Ms. Carella hereby consent to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that she be reprimanded.
- C. Ms. Carella on behalf of Ascent hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that it pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days from the date of the Order herein.

- D. Mr. Lan, Ms. Carella, and Ms. Carella on behalf of Ascent agree to be jointly and severally liable 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.
- E. Mr. Lan, Ms. Carella, and Ms. Carella on behalf of Ascent further consent to an Order that if any of them fail to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel their licenses without further notice to them pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.
- F. As a basis for this Order, Mr. Lan, Ms. Carella, and Ms. Carella on behalf of Ascent acknowledge and agree that the facts set forth herein are correct:

1. Mr. Lan was at all relevant times licensed as a representative with Ascent Real Estate Management Corporation.
2. Mr. Lan'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>
12/12/2005	Present	Ascent Real Estate Management Corporation (X012472)	Representative	Rental, Strata
11/17/1998	12/12/2005	Ascent Real Estate Management Corporation (X012472)	Representative	Rental

3. Ascent was at all relevant times licensed as a brokerage.
4. Ascent'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>
11/16/2005	Present	Ascent Real Estate Management Corporation (X012472)	Brokerage	Trading, Rental, Strata
03/07/1986	11/15/2005	Ascent Real Estate Management Corporation (X012472)	Brokerage	Trading, Rental

11/16/1983 3/7/1986 Ascent Real Estate Brokerage Rental
Management Corporation
(X012472)

5. Ms. Carella was at all relevant times licensed as a managing broker with Ascent Real Estate Management Corporation.

6. Ms. Carella'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>
11/25/2010	Present	Ascent Real Estate Management Corporation (X012472)	Managing Broker	Trading, Rental, Strata
7/13/2009	11/25/2010	Ascent Real Estate Management Corporation (X012472)	Associate Broker	Trading, Rental, Strata
8/7/2007	7/13/2009	Ascent Real Estate Management Corporation (X012472)	Representative	Trading, Rental, Strata
8/1/2007	8/6/2007	*** Unlicensed ***		
5/28/2007	7/31/2007	Crosby Property Management Ltd. (X000867)	Representative	Trading, Strata
5/25/2007	5/27/2007	*** Unlicensed ***		
4/23/2004	5/24/2007	Sutton Centre Realty Ltd. dba Sutton Centre Realty (X021249)	Representative	Trading

7. Ms. Carella became licensed as Milena Carella Personal Real Estate Corporation on March 15, 2011.

8. Ascent entered into a written services agreement with a certain strata corporation (the "Strata") on August 5, 2003, and Ascent continued to

manage the Strata until December 2010. Ms. Carella was the managing broker of Ascent and Mr. Lan was the acting strata manager of the Strata and under Ms. Carella's supervision.

9. On April 29, 2009 there was an explosion in the Strata. As a result of the explosion the Strata was evacuated, and the residents were not able to return to the building until July 1, 2010.
10. The Strata held an annual general meeting on October 31, 2010 (the "AGM"), and Mr. Lan failed to distribute the minutes of that meeting in a timely manner, and failed to respond to numerous email and telephone requests for him to do so between November, 2010 and December, 2010.
11. Mr. Lan states that he was caring for his father who had recently been diagnosed with a terminal illness at the time and was unable to respond promptly. The minutes for the AGM were ultimately delivered to the Strata on December 6, 2010, approximately 6 weeks after the AGM.
12. During the AGM, the members passed a bylaw that was drafted by Mr. Lan. The bylaw read:

Be it resolved that by a ¾ vote pursuant to, Section 126 of the Strata Property Act of British Columbia, that the Owners' Strata Plan [VRxxx], agree to amend the strata corporation bylaws by requiring potential tenant(s) of any rental request be subject to the screening requirement as per the City of Vancouver Police Department's guideline (the "Bylaw")
13. Mr. Lan did not obtain legal advice before drafting the Bylaw. He states that he advised the Strata to obtain legal advice regarding the Bylaw, but the Strata did not want to incur the cost of doing so. The Strata denies that it was ever so advised.
14. Subsequently the Strata learned that the Bylaw was in contravention of the *Strata Property Act*.
15. Ms. Carella, and Ascent each acknowledge that Council Rules 7-9(7)(b) and 8-2(b) requires such financial statements to be prepared no later than five weeks after the end of the month being reconciled, and forwarded within 6 weeks after the end of the month for which a statement is issued.
16. The October, November, and December 2010 financial records and monthly reconciliations for the Strata, (together the "Financial Records") were not

provided to the Strata within 6 weeks after the end of the month for which the statements were issued, but were eventually provided to the strata.

17. Ms. Carella, and Ascent have since taken steps to review this procedure to ensure compliance with the *Real Estate Services Act*.
18. Ms. Carella, has no previous discipline with the Council.
19. Ascent was reprimanded for permitting an unlicensed individual to act as a property manager in transactions in which a licence was required from April 19, 2001 to and including November 2001 while employed with Ascent.
20. Mr. Lan received a Letter of Warning cautioning him to provide copies of monthly bank statements within 6 weeks after the end of each month for which the statement was issued, and to provide financial records that relate to trust accounts maintained on behalf of a former client, no later than 4 weeks following the date of termination.

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, Mr. Lan, Ms. Carella, and Ms. Carella on behalf of Ascent are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
 - (a) Johnny Kwai-Lok Lan committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he;
 - i. contravened section 3-3(1)(a) of the Council Rules in that he failed to act in the best interests of the Strata and contravened section 3-4 in that he failed to act with reasonable care and skill, by failing to distribute the Financial Records and the minutes for the Strata's Annual General Meeting, held on October 31, 2010, in a timely manner and, failed to respond promptly or at all, to numerous email and telephone requests sent to him by the Strata during November and December of 2010;
 - ii. contravened section 3-3(1) (d) of the Council Rules in that he failed to advise the Strata to seek independent professional advice on matters outside of his expertise when the Strata requested that a bylaw be enacted requiring potential tenant(s) of any rental request to be subject to a screening requirement, when such a bylaw was contrary to provisions set out in the *Strata Property Act*; and

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- iii. contravened section 3-4 of the Council Rules in that he failed to act with reasonable care and skill by drafting a bylaw for the Strata requiring potential tenant(s) of a rental request to be subject to a screening requirement, when such a bylaw was contrary to provisions set out in the *Strata Property Act*;
- (b) Ascent Real Estate Management Corporation committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it;
 - i. contravened sections 7-9(7)(b) and 8-2(b) of the Council Rules by not providing to the Strata copies of Financial Records no later than 6 weeks after the end of the month for which those statements were issued;
 - (c) Milena Bernini Carella committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she;
 - i. contravened section 3-1(1)(b) and/or 3-1(1)(c) of the Council Rules in that she did not ensure the business of the brokerage was carried out competently and in accordance with RESA, the Council Rules and bylaws and/or failed to ensure that there was an adequate level of supervision for related associate brokers and representatives and for employees and others who perform duties on behalf of the brokerage in that she:
 - a. failed to ensure Mr. Lan, and Ascent provided to the Strata copies of the Financial Records, no later than 6 weeks after the end of the month for which those statements were issued contrary to sections 7-9(7)(b) and 8-2(b) of the Council Rules.
- 2. Mr. Lan, Ms. Carella, and Ms. Carella on behalf of Ascent hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.
 - 3. Mr. Lan, Ms. Carella, and Ms. Carella on behalf of Ascent acknowledge that they have a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
 - 4. Mr. Lan, Ms. Carella, and Ms. Carella on behalf of Ascent acknowledge and are aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on the Council's website, and on CanLII, a website for legal research.

5. Mr. Lan, Ms. Carella, and Ms. Carella on behalf of Ascent acknowledge and are 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.

"Joni R. Worton"

**Joni R. Worton, Legal Counsel
Real Estate Council of British Columbia**

**As to Part E only (Agreed Statement
of Facts)**

Dated 24th day of Jan. , 2013

"Milena Bernini Carella"

Milena Bernini Carella

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

Dated 17th day of January, 2013

"Johnny Kwai-Lok Lan"

Johnny Kwai-Lok Lan

**As to Parts B, C, D, E, and F (proposed
penalty, Agreed Statement of Facts, Proposed
Acceptance of Findings and Waiver)**

Dated 17th day of January, 2013