

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

**IN THE MATTER OF
RICHARD YAN-YUN LIU**

CONSENT ORDER

RESPONDENT: Richard Yan-Yun Liu, Managing
Broker, Castle Management Ltd.

DATE OF REVIEW MEETING: July 29, 2013

DATE OF CONSENT ORDER: September 25, 2013

CONSENT ORDER REVIEW COMMITTEE: S. Ghose
M. Leslie
B. Phillips
D. Rishel
M. Ziegler, Chair

ALSO PRESENT: R.O. Fawcett, Executive Officer
E. Wredenhagen, Director, Legal
Services
J. Gossen, Legal Counsel for the Real
Estate Council

PROCEEDINGS:

On July 29, 2013 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by Richard Yan-Yun Liu as submitted. It is therefore ordered that Richard Yan-Yun Liu be reprimanded. Richard Yan-Yun Liu is ordered to pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days of the date of this Order, and 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, Richard Yan-Yun Liu 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 Richard Yan-Yun Liu 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. Richard Yan-Yun Liu be reprimanded as he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he as the representative for a strata corporation client, Strata Corporation, Plan NW 32XX:
 - (a) failed to act in the best interest of the client and failed to act in accordance with the lawful instruction given by the client, when he failed to take legal action on behalf of the client to collect arrears from strata lot owners as instructed by the client, as recorded in the minutes of the Annual General Meeting (“AGM”) held on July 28, 2008, contrary to sections 3-3(1)(a) and 3-3(1)(b) of the Council Rules;
 - (b) failed to act in the best interest of his client and failed to act only within the scope of authority given by his client, when he authorized the retrofit and replacement of lighting in and around the parkade prior to the residential section owners having voted to approve this work, contrary to sections 3-3(1)(a) and 3-3(1)(c) of the Council Rules;
 - (c) failed to act in the best interest of his client and failed to act only within the scope of authority given by his client, when he invoiced the residential section on Dec 3, 2009 for the cost of these upgrades in the amount of \$15,454.70, even though the resolution to complete the lighting upgrades was defeated by the residential section owners at an AGM held on June 29, 2009, contrary to sections 3-3(1)(a) and 3-3(1)(c) of the Council Rules;
 - (d) failed to act in accordance with the lawful instruction of his client and failed to act with reasonable care and skill when he paid a portion of an invoice, in the amount of \$1,580.42, from the residential section’s operating fund trust account prior to the residential and commercial sections having an agreement about the allocation of common area expenses, contrary to sections 3-3(1)(b) and 3-4 of the Council Rules;
 - (e) acted outside of the scope of his authority given by his client when he sent a letter dated March 29, 2010 to all residential section owners, which included a demand letter and proxy form for the calling of a SGM to present resolutions prepared by him, without the residential section

executive council's authorization, contrary to section 3-3(1)(a), (c) and (i) of the Council Rules;

- (f) failed to act only within the scope of authority given by his client and failed to maintain confidential information respecting his client when he signed a letter, on behalf of the owner-developer, which demanded that the strata corporation hold a Special General Meeting to vote on (a) a resolution pertaining to his written service agreement with the residential section, and (b) a resolution that the legal opinion obtained by the residential section from Borden Ladner Gervais LLP, which the client requested remain confidential, be distributed to all residential section owners, contrary to sections 3-3(1)(c) and 3-3(1)(e) of the Council Rules;
 - (g) failed to take reasonable steps to avoid a conflict of interest and, when a conflict existed, he failed to promptly and fully disclose the conflict to his client when he signed a letter on behalf of the owner-developer which demanded that the strata corporation hold a Special General Meeting to vote on (a) a resolution pertaining to his written service agreement with the residential section, and (b) a resolution that the legal opinion from Borden Ladner Gervais LLP, obtained by the residential section which the client requested remain confidential, be distributed to all residential section owners, one of whom was the owner-developer, contrary to section 3-3(1)(i) of the Council Rules;
 - (h) failed to ensure that, when providing real estate services for both the residential and commercial sections as well as the owner-developer in respect of one residential strata lot, the brokerage had an agreement between it and all of the clients that modified one or more of the duties owed to the clients, contrary to section 3-3(2) of the Council Rules; and
 - (i) failed to disclose the amount of the remuneration his brokerage received from third parties as a result of providing strata management services on behalf of the client, contrary to section 5-11 of the Council Rules.
2. Richard Yan-Yun Liu is ordered pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days of the date of this Order.
 3. Richard Yan-Yun Liu 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. Richard Yan-Yun Liu 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 Richard Yan-Yun Liu 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 25th day of September, 2013 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 #09-495

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

IN THE MATTER OF

**RICHARD YAN-YUN LIU
(079643)**

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

The following agreement has been reached between Richard Yan-Yun Liu (“Mr. Liu”) and the Real Estate Council of British Columbia (the “Council”).

- A. Mr. Liu hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded, that he pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days of the date of the Order herein, and 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. 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. Liu 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 licence 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. Liu acknowledges and agrees that the facts set forth herein are correct:

1. Mr. Liu was at all relevant times licensed as a managing broker with Castle Management Ltd.
2. Mr. Liu'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>
2006/03/09	Present	Castle Management Ltd. (X025248)	Managing Broker	Trading, Rental, Strata
1996/03/25	2006/03/09	Castle Management Ltd. (X025248)	Managing Broker	Trading, Rental
1993/01/15	1996/03/25	F.C. Liu Realty Ltd. (X001118)	Managing Broker	Trading, Rental
1991/08/02	1993/01/14	*** Unlicensed ***		
1991/02/20	1991/08/01	F.C. Liu Realty Ltd. (X001118)	Representative	Trading, Rental
1991/02/14	1991/02/19	*** Unlicensed ***		
1989/02/14	1991/02/13	F.C. Liu Realty Ltd. (X001118)	Representative	Trading, Rental

3. On May 13, 2010, Council received a complaint from the president of the executive council for the residential section of Strata Plan NW-32XX (the "Residential section"), which was located in Richmond.
4. The Strata Corporation ("Strata") was developed by Norenger Development (Canada) Inc. ("Norenger") in 1990 and was sectioned into 44 residential strata lots and 4 commercial strata lots. From 1996, both sections were managed by Castle Management Ltd. ("Castle") with Mr. Liu as managing broker of the brokerage.
5. Mr. Liu, along with Esther Chan and Emily Chan, were directors of Castle Management. Emily Chan was also a director of Norenger.

6. Norenger owned all four of the commercial strata lots in the commercial section, and one strata lot in the residential section. Castle was also providing rental property management services on behalf of Norenger for the one residential strata lot.
7. Mr. Liu believed that the fact that Castle was an associate company of Norenger, was disclosed in that Castle shared an office with Norenger for approximately 20 years and the fact that Castle and Norenger shared a common director was well known.
8. Mr. Liu did not take legal action on behalf of the Strata to collect arrears from strata owners as instructed by the Strata. At the Annual General Meeting (“AGM”) dated July 28, 2008, the minutes recorded that the Strata decided “*all further legal action be taken in order to collect the arrears including applying to court for the property to be sold*”. Mr. Liu believed that the decision of the Strata was meant to strengthen his efforts to collect arrears from strata owners and was not necessarily instructions to commence legal proceedings.
9. Ultimately, one owner did pay the arrears and on October 20, 2008, the Strata decided that the most cost effective course of action was to proceed with a repayment schedule with the other strata owner. Throughout this process, Mr. Liu made the decision that it was not in the best interest of the Strata to pursue legal action but did not confirm this course of action with the Strata.
10. Mr. Liu authorized the retrofit and replacement of lighting in and around the parkade prior to the residential section owners having voted to approve this work.
11. Mr. Liu understood that the lights in the parkade were at the end of their useful life because the parts were worn out and were no longer available. He obtained opinions from electrical contractors who, in his opinion, confirmed the lights should be replaced.
12. Mr. Liu put this opinion forward to both the residential and commercial councils. The residential section did not wish to contribute to the cost of the replacement of the parkade lights based on unit entitlement as they were of the view that the commercial section benefitted from the improvement disproportionately to the residential section. Unit entitlement between the commercial and the residential was based on a calculation of cost sharing of 44.4% and 55.6%.
13. At the June 29, 2009 AGM, at the request of the Strata, a special resolution for the cost sharing by unit entitlement was defeated by the residential section. Despite this defeat, the light replacements commenced in late July 2009 and completed in November 2009.
14. At the June meeting, there was agreement that the lights needed replacement, which was reflected in the residential council’s letter to the residential section owners dated June 22, 2009, but the cost sharing was at issue. Mr. Liu advised the residential council that the commercial council authorized the replacement of the

lights and would pay for the replacement and, if the sections disagreed with the cost allocation, that matter could be disputed between the two sections.

15. At the instruction of the commercial section, Mr. Liu proceeded to have the lights replaced as the commercial section believed the replacement was necessary for the property maintenance and repair of the common property.
16. Mr. Liu provided notice to all residential owners that vehicles in the parkade needed to be moved, and the owners cooperated with this process. At the recommendation of Mr. Liu, the residential council agreed to obtain a legal opinion regarding the appropriate allocation of this expense.
17. Mr. Liu believed that he was authorized by the residential section to complete the work and the only issue was the cost allocation. Mr. Liu also believed it was in the best interest of the residential section that the lights be replaced for both safety and security reasons.
18. Mr. Liu invoiced the residential section for the costs of the lighting upgrades in the amount of \$15,454.70 on December 3, 2009, pursuant to the instructions of the commercial section as the commercial section that paid the whole of the cost of the light replacement.
19. This invoice was posted to the financials for the residential section but never paid and no money was taken from the residential section bank accounts at that time. Mr. Liu states that he posted this invoice to show all claims for payment so that the owners would be aware of outstanding amounts that might be payable. Later, at the request of the residential section, Mr. Liu reversed this accounting entry.
20. Mr. Liu paid \$1,580.42, which was a portion of an invoice to repair cracks in the parkade membrane on the third and fourth floors, from the residential section operating fund trust account prior to the residential and commercial sections having agreed on a common cost allocation. The December 14, 2009 minutes of the residential section council state that "The costs of such repair will be allocated once the commercial and residential sections agree on the split." Despite this language, Mr. Liu believed he was authorized to pay bills he considered applicable to the residential section account without specific instructions on any particular bill as he had been doing so for many years.
21. Mr. Liu was of the opinion that based on his understanding of the Strata's bylaws governing the apportionment of common property repairs, this expense should be shared by unit entitlement.
22. On March 14, 2010, the residential section council passed a resolution to terminate the service agreement with Castle citing what they believed was a conflict of interest between Mr. Liu's acting for the commercial and residential sections and his role with Norenger. The residential section gave Castle sixty days' notice as per the service agreement.

23. On March 29, 2010, without the residential section council's authorization, and partly on the instructions of Norenger, Mr. Liu sent a letter from Castle to all residential section owners which called for a Special General Meeting (SGM) of the Strata to deal with resolutions prepared by Mr. Liu and a proxy to provide Mr. Liu with the authority to vote for his own resolutions. Mr. Liu sent this letter to all residential owners except those that were council members.
24. The resolutions included a resolution to reverse the decision of the residential section executive council to terminate Castle; a resolution that any further attempts to terminate Castle could only be done by resolution of the owners, and a resolution that the legal opinion obtained by the residential section regarding the allocation costs of the parkade expenses be distributed to all residential owners.
25. Also on March 29, 2010, Mr. Lui signed a letter on behalf of Norenger repeating the demand that the residential section hold a SGM to vote on the same resolutions.
26. Mr. Liu was aware that the residential section did not want to have the legal opinion circulated to the commercial section with who they were in a dispute over the sharing of common expenses.
27. Mr. Liu did not have an agreement with either of the sections or with Norenger which modified or made inapplicable any of the duties set out in section 3-3(1) of the Council Rules as required by section 3-3(2) of the Council Rules.
28. Ultimately, the residential section consulted with their new strata manager and decided to make the legal opinion available to all section owners, including Norenger as the owner of a residential strata lot. The opinion confirmed that the lighting upgrade contributions should be by unit entitlement.
29. Castle received remuneration from third parties such as licensees, notaries and lawyers as a result of their preparation of forms required by the *Strata Property Act* (SPA) on behalf the Strata. Section 4(k) of Castle's service agreement referenced the service of providing any certificate which the strata corporation was required to provide by SPA, upon request and upon payment and stated "...of such fee as may lawfully be required (which fee will be received for the benefit of the Manager)...".
30. The specific fee amounts were not contained in this section of the agreement, nor were they contained in a schedule attached to the agreement.
31. Mr. Liu has no prior discipline history with the Council.

C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Richard Yan-Yun Liu is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:

-
- (a) Richard Yan-Yun Liu committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, as the representative for a strata corporation client, Strata Corporation, Plan NW 32XX:
- (i) failed to act in the best interest of the client and failed to act in accordance with the lawful instruction given by the client, when he failed to take legal action on behalf of the client to collect arrears from strata lot owners as instructed by the client, as recorded in the minutes of the Annual General Meeting (“AGM”) held on July 28, 2008, contrary to sections 3-3(1)(a) and 3-3(1)(b) of the Council Rules;
 - (ii) failed to act in the best interest of his client and failed to act only within the scope of authority given by his client, when he authorized the retrofit and replacement of lighting in and around the parkade prior to the residential section owners having voted to approve this work, contrary to sections 3-3(1)(a) and 3-3(1)(c) of the Council Rules;
 - (iii) failed to act in the best interest of his client and failed to act only within the scope of authority given by his client, when he invoiced the residential section on Dec 3, 2009 for the cost of these upgrades in the amount of \$15,454.70, even though the resolution to complete the lighting upgrades was defeated by the residential section owners at an AGM held on June 29, 2009, contrary to sections 3-3(1)(a) and 3-3(1)(c) of the Council Rules;
 - (iv) failed to act in accordance with the lawful instruction of his client and failed to act with reasonable care and skill when he paid a portion of an invoice, in the amount of \$1,580.42, from the residential section’s operating fund trust account prior to the residential and commercial sections having an agreement about the allocation of common area expenses, contrary to sections 3-3(1)(b) and 3-4 of the Council Rules;
 - (v) acted outside of the scope of his authority given by his client when he sent a letter dated March 29, 2010 to all residential section owners, which included a demand letter and proxy form for the calling of a SGM to present resolutions prepared by him, without the residential section executive council’s authorization, contrary to section 3-3(1)(a), (c), and (i) of the Council Rules;
 - (vi) failed to act only within the scope of authority given by his client

and failed to maintain confidential information respecting his client when he signed a letter, on behalf of the owner-developer, which demanded that the strata corporation hold a Special General Meeting to vote on (a) a resolution pertaining to his written service agreement with the residential section and (b) a resolution that the legal opinion obtained by the residential section from Borden Ladner Gervais LLP, which the client requested remain confidential, be distributed to all residential section owners, contrary to sections 3-3(1)(c) and 3-3(1)(e) of the Council Rules;

- (vii) failed to take reasonable steps to avoid a conflict of interest and, when a conflict existed, he failed to promptly and fully disclose the conflict to his client when he signed a letter on behalf of the owner-developer which demanded that the strata corporation hold a Special General Meeting to vote on (a) a resolution pertaining to his written service agreement with the residential section and (b) a resolution that the legal opinion from Borden Ladner Gervais LLP, obtained by the residential section which the client requested remain confidential, be distributed to all residential section owners, one of whom was the owner-developer; contrary to section 3-3(1)(i) of the Council Rules;
- (viii) failed to ensure that, when providing real estate services for both the residential and commercial sections as well as the owner-developer in respect of one residential strata lot, the brokerage had an agreement between it and all of the clients that modified one or more of the duties owed to the clients contrary to section 3-3(2) of the Council Rules;
- (ix) failed to disclose the amount of the remuneration his brokerage received from third parties as a result of providing strata management services on behalf of the client, contrary to section 5-11 of the Council Rules.

2. Mr. Liu hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Mr. Liu 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. Liu acknowledges and is 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. Liu 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.

“Jessica S. Gossen”
Jessica S. Gossen, Legal Counsel
Real Estate Council of British Columbia

As to Part B only (Agreed Statement of Facts)

Dated 7 day of June, 2013

“Richard Yan-Yun Liu”
Richard Yan-Yun Liu

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

Dated 6 day of June, 2013