

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

IN THE MATTER OF

**AMYN SOMANI
(158296)**

AND

**KAZAWEST SERVICES INC.
(X029578)**

CONSENT ORDER

RESPONDENTS:	Amyn Somani, Managing Broker, Kazawest Services Inc. Kazawest Services Inc., Brokerage
DATE OF REVIEW MEETING:	July 7, 2016
DATE OF CONSENT ORDER:	July 25, 2016
CONSENT ORDER REVIEW COMMITTEE:	D. Fimrite C. Lindberg S. Lynch, Chair C. Squires
ALSO PRESENT:	R.O. Fawcett, Executive Officer G. Thiele, Director, Legal Services J. Gossen, Legal Counsel for the Real Estate Council
PROCEEDINGS:	

On July 7, 2016 the Consent Order Review Committee (the "Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Amyn Somani and Kazawest Services Inc.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Amyn Somani, Kazawest Services Inc. and on behalf of the Council;

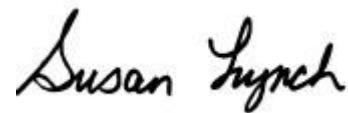
NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Amy Somani and Kazawest Services Inc. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Amy Somani and Kazawest Services Inc. each be reprimanded;
2. Amy Somani pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of this Order;
3. Amy Somani, at his own expense, register for and successfully complete the Broker's 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. Amy Somani and Kazawest Services Inc. be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Order.

If Amy Somani or Kazawest Services Inc. fail to comply with any term of this Order, the Council may suspend or cancel their licence without further notice to them, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 25th day of July, 2016 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



S. Lynch, Chair
Consent Order Review Committee

Attch.

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

IN THE MATTER OF

**AMYN SOMANI
(158296)**

AND

**KAZAWEST SERVICES INC.
(X029578)**

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

The following agreement has been reached between Aryn Somani (“Mr. Somani”), Kazawest Services Inc. (“Kazawest”) and the Real Estate Council of British Columbia (the “Council”).

- A. Mr. Somani hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded, and that he pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of the Order herein.
- B. Mr. Somani on behalf of Kazawest hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that it be reprimanded.
- C. Mr. Somani and Mr. Somani on behalf of Kazawest agree to be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500.00 within sixty (60) days from the date of the Order herein.
- D. Mr. Somani, further agrees, at his own expense, to successfully complete the Broker's 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.
- E. Mr. Somani and Mr. Somani on behalf of Kazawest further consent to an Order that if either 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*.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

F. As a basis for this Order, Mr. Somani and Kazawest acknowledge and agree that the facts set forth herein are correct:

1. Kazawest was at all relevant times licensed as a brokerage.
2. Kazawest’s licensing history is as follows:

<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>	<u>Start Date</u>	<u>End Date</u>
Kazawest Services Inc. (X029578)	Brokerage	Trading, Rental, Strata	2/27/2016	Present
Kazawest Services Inc. (X029578)	Brokerage	Trading, Rental, Strata	2/27/2014	2/26/2016
Kazawest Services Inc. (X029578)	Brokerage	Trading, Rental, Strata	2/27/2012	2/26/2014
Kazawest Services Inc. (X029578)	Brokerage	Trading, Rental, Strata	09/06/2011	2/26/2012
Kazawest Services Inc. (X029578)	Brokerage	Trading, Rental, Strata	2/27/2010	09/06/2011

3. Mr. Somani was at all relevant times licensed as a managing broker with Kazawest.
4. Mr. Somani’ licensing history is as follows:

<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>	<u>Start Date</u>	<u>End Date</u>
Kazawest Services Inc. (X029578)	Managing Broker	Trading, Rental, Strata	27/02/2012	Present
Kazawest Services Inc. (X029578)	Representative	Trading, Rental, Strata	28/03/2011	26/02/2012
Kazawest Services Inc.	Representative	Rental	27/02/2010	28/03/2011

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

(X029578)

5. The Strata Council of BCS27xx (the “Strata”), a Strata Corporation located in Coquitlam, filed a complaint against. Aryn Somani, Managing Broker of Kazawest Services.
6. On December 1, 2011, the Strata entered into a fixed thirty-six month term strata management service agreement with Kazawest Services.
7. On November 2013, Kazawest forwarded a revised service agreement and schedules to the Strata Council, notifying them of revised fees effective January 1, 2014. The Strata Council did not agree to the revised fees communicated this to the Brokerage via emails.
8. During the proceeding months, the Strata communicated via email to Mr. Somani that they disagreed with the added charges and to stop the billings. Mr. Somani responded by stating in an email of March 13, 2014; *“Based on the service schedules in effect for this year the accounting was done correctly.”*
9. On January 27, 2014, in response to a request from the Strata to Mr. Somani to provide proof of payment approval for all invoices paid by the Brokerage, Mr. Somani responded; *“as per O.s contract agreement, all Kazawest invoices have standing order approval just like all utilities, elevator maintenance, common area cleaning, landscaping, etc.. for O.”*
10. On February 1, 2014, the Strata provided termination notice to Kazawest, as per the terms of the service agreement. Mr. Somani requested the Strata sign a Services Termination & Release Agreement but, following legal advice, the Strata called a Special General Meeting to obtain a $\frac{3}{4}$ Vote of the owners.
11. On September 30, 2014, the strata management service agreement was terminated following a Special General Meeting where the owners approved a $\frac{3}{4}$ Vote Resolution to terminate the services.
12. Mr. Somani stated that Kazawest staff processed payments to the Brokerage based on Schedules A and B of the service agreement. Schedule A states;

“The client shall request an appropriate and reasonable set of action items from Kazawest in consideration of the volume and complexity of the property action

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

items workload, the agreed monthly management fee, and the preferred rate basis for the client which shall be equivalent to the preferred hourly rate for service as stated in Schedule B. The prepaid service hours each month shall be equivalent to the monthly management fee divided by the hourly rate. All service hours provided above the prepaid amount shall be billed the hourly rate, or other terms when mutually agreed.”

13. Mr. Somani provided a copy of the service agreement while signed on the last of the body of the agreement, did not have initials of the client indicating their agreement either on each page of the agreement or on Schedules A and B. The Schedules were independent of the service agreement and were only referred to in the agreement. The Schedules were not dated but with every new version sent to the Strata Council as notification, had an effective date on the bottom right hand corner typed in. Mr. Somani advised that the standard practice of the brokerage was to have only the signature page signed.
14. Mr. Somani stated that he explained to the Strata that the changes in Schedules A and B for additional services and amended charges were optional. When the Strata explained they did not agree with the amended Schedules or the fees and directed Mr. Somani to stop charging the extra charges, he explained that the Brokerage would then stop providing the additional services, as per the amended Schedules.
15. Mr. Somani contends that he offered to reduce their management fee by the cost of further council meetings, *“to avoid further hostile treatment”* until such time the Strata found another management company, but the Strata declined the offer.
16. Mr. Somani believed that, after further discussion with the Strata, they came to mutual agreement to terminate the service agreement. Mr. Somani emailed the Strata a Termination and Release Form but it was not returned. The Strata sought legal advice and proceeded to schedule a Special General Meeting to get a $\frac{3}{4}$ Vote to terminate.
17. Some of the contested billings were for legal support for liens in progress, legal opinion, legal administration, engineering inspections, and project management charges. Mr. Somani explained that legal support and litigation support is provided by the Brokerage through staff, even though the Brokerage did not have lawyers on staff.
18. The service agreement as provided dated December 1, 2011, does not include the specified content as set out in the Council Rules 5-1(5.1) including;

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

- an indication of whether the brokerage will be holding one or more of the contingency reserve funds, operating funds, or other amounts, on behalf of the strata corporation;
 - the scope of authority of the brokerage or a related licensee when acting on behalf of the Strata Corporation;
 - description of financial records that are to be kept by the Brokerage, nature of accounting statements as required under Section 7-9(7) of the Council Rules;
 - the timing, frequency and nature of accounting statement and other records to be provided by the brokerage to the strata corporation.
20. The Brokerage sent the amended Schedule A and Schedule B of the service agreement, amending costs and scope of extra services to the Strata thirty days prior to the Brokerage implementing the new costs. Without agreement with the client, the Brokerage charged the Strata an increase in fees for services, effective January 1, 2013, April 1, 2013, and January 1, 2014.
21. Payments from the Strata to the Brokerage were processed for time spent seeking legal support services, time spent seeking legal opinions, time spent facilitating engineering inspections and time spent managing projects.
22. When the Strata directed Mr. Somani to stop processing the extra charges, he failed to follow that instruction.
23. Both Mr. Somani and Kazawest have no discipline history with the Council.

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, Aryn Somani and Kazawest Services Inc. are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
- (A) Aryn Somani committed professional misconduct within the meaning of section 35(1)(a) of RESA in his capacity as managing broker, in relation to Strata Corporation BCS 27X (the "Client") when he:
1. contravened section 5-1(5.1) of the Council Rules in that the written services agreement with the Client did not include the following required information:

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

- (i) where the brokerage would be holding one or more of the contingency reserve funds, operating funds, or other amounts, on behalf of the Client;
 - (ii) the authorized financial scope of authority of the brokerage or related licensees when acting on behalf of the Client;
 - (iii) the description of financial records that are to be kept by the brokerage, and the nature of accounting statements as required by section 7-9(7) of the Council Rules; and
 - (iv) the timing, frequency and nature of accounting statements and other records to be provided by the brokerage to the Client.
 2. contravened section 30(1)(g) of RESA and sections 3-3(c) and 5-1(6) of the Council Rules in that he increased the fees for the services provided to his Client effective January 1, 2013, April 1, 2013 and January 1, 2014 without having a signed written agreement in place, and deducted the new amounts without receiving written consent to do so from his Client;
- (B) Kazawest Services Inc. committed professional misconduct within the meaning of section 35(1)(a) of RESA in relation to the client, Strata Corporation BCS 27XX (the "Client"), when it:
1. contravened section 5-1(5.1) of the Council Rules in that the written services agreement with the Client did not include the following required information:
 - (i) where the Brokerage would be holding one or more of the contingency reserve funds, operating funds, or other amounts, on behalf of the Client;
 - (ii) the authorized financial scope of authority of the Brokerage or related licensees when acting on behalf of the Client;
 - (iii) the description of financial records that are to be kept by the Brokerage, and the nature of accounting statements as required by section 7-9(7) of the Council Rules; and

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

- (iv) the timing, frequency and nature of accounting statements and other records to be provided by the Brokerage to the Client.
- 2. contravened section 30(1)(g) of RESA and sections 3-3(c) and 5-1(6) of the Council Rules in that the fees for the services provided to the Client effective January 1, 2013, April 1, 2013 and January 1, 2014 were increased without having a signed written agreement in place, and the Brokerage deducted the new amounts without receiving written consent to do so from the Client.
- 2. Mr. Somani and Kazawest hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.
- 3. Mr. Somani and Kazawest 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. Somani and Kazawest 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. Somani and Kazawest 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.

“J. Gossen”

“A. Somani”

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

Amy Somani

As to Part F only (Agreed Statement of Facts)

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

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

Dated 22 day of June, 2016

Dated 26 day of May, 2016

“A. Somani”

**Amy Somani on behalf of Kazawest
Services Inc.**

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

Dated 26 day of May, 2016