

CITATION: Kim (Re), 2024 BCSRE 66

Date: 2024-09-24

File # 21-1778

BC FINANCIAL SERVICES AUTHORITY

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended**

AND

IN THE MATTER OF

**YOO KYUNG (ASHLEY) KIM
(184774)**

CONSENT ORDER

[This Order has been redacted before publication.]

RESPONDENT: Yoo Kyung (Ashley) Kim, Representative, Evergreen West Realty Inc
dba Evergreen West Realty

DATE OF CONSENT ORDER: September 24, 2024

COUNSEL: Simon Adams, Senior Legal Counsel for the BC Financial Services
Authority

PROCEEDINGS:

On September 24, 2024, the Superintendent of Real Estate (the "Superintendent"), or the Superintendent's authorized delegate, of BC Financial Services Authority ("BCFSA") accepted the Consent Order Proposal (the "Proposal") submitted by Yoo Kyung (Ashley) Kim.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Yoo Kyung (Ashley) Kim.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Yoo Kyung (Ashley) Kim committed professional misconduct within the meaning of sections 35(1)(a), (e) and (g), and 37(4) of the *Real Estate Services Act* ("RESA") and sections 30(a) and 34 of the *Real Estate Services Rules* (the "Rules"), pursuant to section 43 of the RESA the Superintendent orders that:

1. Yoo Kyung (Ashley) Kim have their licence suspended for six (6) months;

2. Yoo Kyung (Ashley) Kim will not act as an unlicensed assistant during the time of their licence suspension;
3. Yoo Kyung (Ashley) Kim pay a discipline penalty to BCFSa in the amount of \$10,000 within three (3) months from the date of this Order;
4. Yoo Kyung (Ashley) Kim pay enforcement expenses to BCFSa in the amount of \$4,000 within two (2) months from the date of this Order.

If Yoo Kyung (Ashley) Kim fails to comply with any term of this Order, the Superintendent may suspend or cancel their licence without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 24th day of September, 2024 at the City of Vancouver, British Columbia.

Superintendent of the BC Financial Services Authority

“Original signed by Jonathan Vandall”

Jonathan Vandall
Delegate of the Superintendent of Real Estate
Province of British Columbia

Attch.

File # 21-1778

BC FINANCIAL SERVICES AUTHORITY**IN THE MATTER OF THE REAL ESTATE SERVICES ACT
SBC 2004, c 42 as amended****AND****IN THE MATTER OF****YOO KYUNG (ASHLEY) KIM
(184774)****CONSENT ORDER PROPOSAL BY YOO KYUNG (ASHLEY) KIM****BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by Yoo Kyung (Ashley) Kim ("A Kim") to the Superintendent of Real Estate (the "Superintendent") of the BC Financial Services Authority ("BCFSA") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, A Kim and the Superintendent have agreed upon the following facts:

1. A Kim (184774) has been licensed as a trading representative since October 7, 2019.
2. A Kim was at all relevant times licensed as a trading representative with Evergreen West Realty.
3. A Kim represented prospective buyers who were interested in viewing [Property 1], Langley, BC [Postal Code redacted] (the "Property") in May 2021.
4. [Seller 1] ("[Seller 1]") is the owner/seller of the Property. [Licensee 1] also known as [Alias 1] ("[Alias 1]") was the seller's agent.
5. On May 13, 2021, at 4:02 pm, A Kim sent a showing request to [Alias 1] via Touchbase, a software for real estate showing management, to bring clients to see the Property on May 19, 2021 from 2:00-2:30 pm.
6. On May 13, 2021, at 4:27 pm, [Alias 1] confirmed A Kim's showing request via Touchbase and advised A Kim of the access code (7722) on the front door's keypad which would allow her to access the Property.
7. On the morning of May 19, 2021, [Alias 1] sent a message via Touchbase to A Kim advising her that [Seller 1] had changed the front door code so the previous code she had provided on May 13, 2021 would no longer work.
8. On May 19, 2021, at 2:01 pm, [Alias 1] received a missed call and a Touchbase message from A Kim, informing her that the door code for the Property was not working.
9. The owner, [Seller 1], had a home video surveillance camera set up at the Property through which she was able to view and hear people who were at her front door remotely.

10. [Seller 1] had been advised of the showing and was watching the live surveillance camera feed at this time on May 19, 2021. Doing so she observed a group of people at the front door of the Property who were having trouble with the door's keypad and unable to open the front door.
11. On May 19, 2021, at 2:04 pm, [Alias 1] called A Kim to advise that she must press the lock icon after entering the code. A Kim said she would try again. Shortly after, A Kim texted [Alias 1] to confirm that they were able to access the Property.
12. [Alias 1] and [Seller 1] were corresponding during this time discussing the door code and accessing the Property. [Seller 1] sent a message to [Alias 1] to advise her that the person trying to access the Property was a man, and he was with a couple and two kids.
13. [Seller 1] texted A Kim asking her if she was at the Property, and advised her that the owner has a camera at the front door, and that the owner saw a man trying to access the Property and speaking on the phone with someone while he was having difficulty.
14. A Kim replied to [Alias 1]'s message with "Yes! I asked my client to open the door for me!"
15. [Alias 1] subsequently attempted to FaceTime and call A Kim to verify her attendance at the Property with her clients, but A Kim did not answer. [Alias 1] texted A Kim back and told her that her clients could not be at the Property by themselves without her.
16. A Kim never returned [Alias 1]'s calls.
17. As [Alias 1] was too far away, she asked [Seller 1] if she were close by and if she could go to the Property to see if A Kim was present at the showing.
18. [Seller 1] was close by and agreed to go, but when she arrived at the Property, the couple with the two children were in a car and pulling out of the Property's driveway.
19. [Seller 1] stopped them as she drove by them and asked to speak to A Kim. The woman in the car responded and said that she was A Kim. [Seller 1] advised the woman that [Alias 1] was trying to get a hold of her during the showing. The woman did not respond.
20. Reviewing a recording of the camera footage of the front door during the time the man, couple and children were trying to enter the Property, it shows that at no time was the woman in the footage who was at the front door of the Property was on the phone speaking with anyone. Specifically, she was clearly not on the phone during the time that [Alias 1] was communicating with A Kim by phone regarding how to enter the Property.
21. [Seller 1] subsequently looked up A Kim on the internet and found a picture of A Kim on her real estate website. [Seller 1] noted that the woman in the car was not A Kim.
22. [Seller 1] also reviewed the video camera footage and confirmed that the woman in the car was the same woman captured by her surveillance camera.
23. In her complaint, [Seller 1] provided a copy of the video captured by her in-home surveillance camera on May 19, 2021. In the video, there were two adult males, one adult female and two children at the Property at the time of the showing.
24. The video also captured audio of them speaking on the doorstep, however the conversation was in Korean. A translation of the video audio showed that:

- A male in a white shirt called someone on the telephone and said “Honey, 7272 does not work...7722, it doesn’t work either. Call [the other party] and ask again.”
 - The couple chatted about the size of the Property and neighbourhood. The male in the white shirt agreed with the couple and stated that “3100 square feet is really big”.
 - The male in the white shirt also provided brief information about two parking lots in front of the Property and availability of visitor parking.
25. BCFSA Investigations interviewed A Kim twice with respect to the May 19, 2021 showing of the Property. The first interview occurred on December 15, 2022, and the second interview was held on June 9, 2023.
26. On December 15, 2022, in a telephone interview with BCFSA:
- a. A Kim confirmed that she was with her buyer clients at the Property during the showing, and that she let her buyer clients into the Property.
 - b. When BCFSA informed A Kim that there was a surveillance video that showed that she was absent at the showing of the Property, A Kim stated that her husband, unlicensed to provide real estate services, let her buyer clients in the Property, and she herself was in the car because she was sick with COVID.
 - c. A Kim further stated that this was the first time she had someone show her clients a property.
27. On April 29, 2023, in response to a letter from BCFSA Investigations asking A Kim about the showing, A Kim submitted that:
- a. on the day of the showing, she felt dizzy; however, she was not sick;
 - b. she was capable of showing the Property, but due to the pandemic she felt that she would have her husband show it instead;
 - c. she waited in the car while her husband showed the Property; and
 - d. she could have contacted another licensee to show the Property, and that she will never make the same mistake again.
28. On June 9, 2023, BCFSA conducted a second interview with A Kim, this time, via video conference. In this interview, A Kim stated that:
- a. she did not feel well on the day of the Property showing, so she asked her husband to open the door for her buyer clients;
 - b. having her husband show the Property was not the right course of action to take and that she should have cancelled the showing;
 - c. during the telephone call on December 15, 2022 with BCFSA, she was very confused and rushed to recall her memories when she said she had COVID;
 - d. as English was not her first language, she said she wanted to relay that while she did not have COVID at the time of the showing, she felt dizzy and wanted to be cautious and considerate of her clients’ wellbeing; and
 - e. her response letter of April 29, 2023 to BCFSA “is the true version”.

29. A Kim also stated the following in her second interview:
- a. She parked by the entrance of the complex on the street because her husband called her to tell her that there was no parking;
 - b. She later stated that she arrived at the Property first and then her husband arrived at the Property;
 - c. Her husband called her for the door code when he was at the Property because she had parked "2 minutes away" from him; and
 - d. When [Alias 1] sent her a text message at the time of the showing asking if she was at the Property, she told her that she was at the Property, but did not explain that she was waiting in the car.
30. On April 24, 2023, BCFSA interviewed [Seller 1]. At this interview, [Seller 1] stated that:
- a. her driveway could hold two vehicles and that there is a visitor parking spot beside the Property; and
 - b. she could not recall how many vehicles were parked on the driveway at the time of the showing or if the visitor's spot was occupied when she left, but that there are a lot of visitor parking spots in the complex and that there is usually one available.
31. A Notice of Discipline Hearing was issued on June 24, 2024, and served on A Kim.
32. A Kim has no discipline history.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, A Kim proposes the following findings of misconduct be made by the Superintendent:

1. A Kim committed professional misconduct within the meaning of section 35(1)(a) [*Misconduct by licensee: contravention of the RESA, the Regulation or the Rules*] of the RESA when while acting as buyer's agent, they:
 - a. failed to act with reasonable care and skill when they did not accompany their clients to the showing of the property located at [Property 1], Langley, BC (the "Property") on May 19, 2021, contrary to section 34 of the Rules [*Duty to act with reasonable care and skill*] (previously Rules, s 3-5); and
 - b. failed to act in the best interest of their clients when they allowed an unlicensed person to provide real estate services when they asked the unlicensed person to show their clients the Property in their place, contrary to section 30(a) of the Rules [*Act in the best interests of the client*] (previously Rules, s 3-3(a)).
2. A Kim committed professional misconduct within the meaning of section 35(1) [*Misconduct by licensee*] including section 37(4) [*Withhold, destroy, conceal or refuse to provide information or things required for an investigation*], 35(1)(e) [*Misconduct by licensee: fails or refuses to cooperate with an investigation*] and/or 35(1)(g) [*Misconduct by licensee: makes or allows to be made a false or misleading statement*] of the RESA when, during the investigation conducted by BCFSA, they

provided different statements to BCFSA, orally and in writing, regarding the showing of the Property, including whether or not they attended and why they did not attend, which were false or misleading.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, A Kim proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the Superintendent, pursuant to section 43 of the RESA:

1. A Kim's licence be suspended for six (6) months.
2. A Kim be prohibited from acting as an unlicensed assistant during the licence suspension period.
3. A Kim pay a discipline penalty to BCFSA in the amount of \$10,000 within three (3) months from the date of this Order.
4. A Kim pay enforcement expenses to BCFSA in the amount of \$4,000 within two (2) months from the date of this Order.
5. If A Kim fails to comply with any of the terms of this Order, the Superintendent may suspend or cancel A Kim's licence without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. A Kim acknowledges and understands that the Superintendent may accept or reject the Proposal. If the Proposal is rejected by the Superintendent, the matter may be referred to a disciplinary hearing.
2. A Kim acknowledges that they have been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of the Proposal to the Superintendent; and, that they have obtained independent legal advice or has chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. A Kim acknowledges and is aware that BCFSA will publish the Proposal and the Consent Order or summaries thereof on BCFSA's website, on CanLII, a website for legal research and in such other places and by such other means as BCFSA in its sole discretion deems appropriate.
4. A Kim hereby waives their right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, A Kim will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict A Kim from making full answer and defence to any civil or criminal proceeding(s).

6. The Proposal and its contents are made by A Kim for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of A Kim in any civil proceeding with respect to the matter.

“Original signed by Yoo Kyung Kim”

Yoo Kyung (Ashley) Kim

Dated 20 day of September, 2024