



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

- AND -

JESSICA FAN
doing business as AMBER TERRACE PROPERTY
and doing business as PROPERTIES AMBER

ORDERS UNDER SECTIONS 51 AND 49 OF
THE REAL ESTATE SERVICES ACT

UPON REVIEWING the submissions and exhibits contained in the Investigation Report prepared by the staff of the Superintendent of Real Estate ("Staff"), I am of the opinion that:

Background

1. On May 26 and June 6, 2011, the Office of the Superintendent of Real Estate (the "Superintendent") received a complaint from a member of the public (the "Complainant") that Jessica Fan ("Fan"), who does business under the name Amber Terrace Property ("Amber Terrace") and Properties Amber, was providing rental property management services without being licensed to do so (the "Complaint").
2. Neither Amber Terrace nor Properties Amber are registered companies, partnerships or sole proprietorships in British Columbia.
3. The Real Estate Council of British Columbia ("the Council") has confirmed that Fan, Amber Terrace and Properties Amber are not licensed to provide real estate services in the Province of British Columbia.

Applicable Legislation

4. Section 1 of the *Real Estate Services Act*, SBC 2004, c.42 ("*RESA*") provides the following definitions:

"**providing**", in relation to real estate services, includes

“providing”, in relation to real estate services, includes

- (a) offering to provide such services,
- (b) holding oneself out as a person who provides such services, or
- (c) soliciting for the purposes of the provision of such services;

"real estate" means

- (a) real property,
- (b) regardless of whether it is or is not an interest in real property, a cooperative interest, shared interest in land or time share interest, as these are defined in the *Real Estate Development Marketing Act*, and
- (c) a right in relation to real property that is defined by regulation to be real estate,

but does not include a right in relation to real property that is excluded by regulation;

"real estate services" means

- (a) rental property management services,
- (b) strata management services, or
- (c) trading services;

“remuneration” includes any form of remuneration, including a commission, fee, gain or reward, whether the remuneration is received, or is to be received, directly or indirectly;

"rental property management services" means any of the following services provided to or on behalf of an owner of rental real estate:

- (a) trading services in relation to the rental of the real estate;
- (b) collecting rents or security deposits for the use of the real estate;

- (c) managing the real estate on behalf of the owner by
 - (i) making payments to third parties,
 - (ii) negotiating or entering into contracts,
 - (iii) supervising employees or contractors hired or engaged by the owner, or
 - (iv) managing landlord and tenant matters

but does not include an activity excluded by regulation;

“rental real estate” means real estate that is or is intended to be rented or leased;

“trading services” means any of the following services provided to or on behalf of a party to a trade in real estate:

- (a) advising on the appropriate price for the real estate;
- (b) making representations about the real estate;
- (c) finding the real estate for a party to acquire;
- (d) finding a party to acquire the real estate;
- (e) showing the real estate;
- (f) negotiating the price of the real estate or the terms of the trade in real estate;
- (g) presenting offers to dispose of or acquire the real estate;
- (h) receiving deposit money paid in respect of the real estate

but does not include an activity excluded by regulation;

5. Section 3(1) of *RESA* states:

- 3(1) A person must not provide real estate services to or on behalf of another, for or in expectation of remuneration, unless the person is
 - (a) licensed under this Part to provide those real estate services, or

- (b) exempted by subsection (3) of the regulations from the requirement to be licensed under this Part in relation to the provision of those real estate services.

Complaint and Investigation

- 6. According to the Complainant:
 - (a) The Complainant had leased a home in Richmond in October 2010 through Fan, although the home was not owned by her.
 - (b) Fan conducts business under the names "Amber Terrace Property" and "Properties Amber".
 - (c) Fan was compensated for her services, being paid \$900 for the first month of the Complainant's tenancy and \$90 a month for each month thereafter.
 - (d) Fan was actively listing properties on the internet.
 - (e) The Complainant provided links to websites where he said Fan was advertising properties for rent, including craigslist.
- 7. Investigator Morgan Brewster ("Brewster") obtained additional documents from the Complainant, including the following:
 - (a) A business card which contains the following information:

Amber Terrace Property

Jessica Fan
Property Manager

Tel	604 936 [REDACTED]	[REDACTED]
Fax	604 936 [REDACTED]	Coquitlam, B.C. [REDACTED]
Cel [sic]	778 881 [REDACTED]	[REDACTED]@hotmail.com

- (b) A decision of the Residential Tenancy Branch Office of Housing and Construction Standards dated July 5, 2011 at which Fan appeared as agent for the Complainant's landlord.
- 8. On September 12, 2011, Brewster searched www.craigslist.org using Fan's cell number as it appears on the business card provided by the Complainant. The

search returned four properties offered for rent, with interested parties being directed to call 778 881 [REDACTED]. These four properties are as follows:

- (a) 7628 Burris Street, Burnaby, BC. ("7628 Burris");
 - (b) 8080 Rideau Place, Richmond, BC. ("8080 Rideau");
 - (c) 100 – 1125 Kensal Place, Coquitlam, BC ("1125 Kensal"); and
 - (d) 5671 Lancing Road, Richmond ("5671 Lancing").
9. Land Title Office searches conducted by Brewster on February 21, 2012 show that neither 7628 Burris, 8080 Rideau, 1125 Kensal nor 5671 Lancing are owned by Fan. None of these properties are owned by Fan, nor are any of them owned by the same person or persons.
10. On September 12, 2011, Brewster called 778 881 [REDACTED] and spoke with a woman who identified herself as "Jessica". In that call, Brewster posed as an interested tenant, asking about 8080 Rideau. In that call:
- (a) "Jessica" advised that 8080 Rideau was available for rent but she did not own it.
 - (b) She provided information about the condition of the home.
 - (c) She had another property for rent in Richmond, but it was in poor condition.
 - (d) She could arrange for a viewing of 8080 Rideau at any time.
11. On September 12, 2011, Brewster sent a pretext email, posing as a tenant interested in renting 8080 Rideau, by using the reply link on the www.craigslist.org posting. On September 13, 2011, Brewster received a response from "Jessica" at [REDACTED]@hotmail.com, the same email address which appears on Fan's business card, inviting Brewster to call her at 778 881 [REDACTED].
12. On September 14, 2011, Brewster called 778 881 [REDACTED] and spoke with "Jessica" about possibly renting 8080 Rideau. In that conversation, Fan explained that if he was interested in the property, Brewster would have to first complete a tenancy application, which she then forwarded to him by email. This email was signed "Jessica F" at [REDACTED]@hotmail.com.
13. On September 20, 2011, Investigative Analyst, Henry Hu called Fan at 778 881 [REDACTED] under pretext, posing as a property owner who needed someone to

manage property rentals for him. In that phone conversation, Fan advised as follows:

- (a) She would need to view the property before looking for possible tenants.
 - (b) She would take photographs of the property and prepare advertisements.
 - (c) She usually advertises the properties and checks over the applications. She will then let Hu know which applications are good, and Hu can then decide if he wants to rent to the applicants or not.
 - (d) If Hu wants to retain Fan, he will have to sign a contract with her for her services.
 - (e) She charges 50% of the first month's rent, and 5% for each month thereafter.
 - (f) As long as Fan is the one finding the tenants, she will also be responsible for handling problems with tenants too.
 - (g) She offered to send Hu a copy of the contract she requires landlords to enter into with her.
14. On September 20, 2011, Fan email Hu a copy of the Agreement on the Conditions of Agent Representation of Rental Property (the "Agreement") which included the following:
- (a) The parties to the Agreement are "The Owner" and "The Agent of the Owner (Jessica Fan)".
 - (b) The terms of the Agreement include:
 - (i) "The Owner wholly and without reservation invests the Agent to manage the lease and represent the Owner of the _____ property. The Owner determines the price of the rental, while the Agent assumes responsibility for the collection of rent and negotiating and initiating the lease and tenancy."
 - (ii) "The Agent will be compensated fifty percent (50%), or one-half, of one regular month's rent, and five percent (5%), or one-twentieth, of the rents of each subsequent month within the duration of that tenancy."
 - (iii) "The Agent will assist in organizing and arranging the necessary maintenance for the property, to be paid for by the Owner in the cases where the cause is *not* related to the tenant, and to be paid

for by the tenant in the cases where the cause is related to the tenant.”

- (iv) “In the scenario that legal actions are necessary of the lease of the property, the Agent will represent the property, while the Owner will bear all costs.”

15. On March 1, 2012, Investigator Scott Wallace (“Wallace”) searched www.craigslist.org using Fan’s cell number (778 881 [REDACTED]). That search returned nine properties offered for rent, with interested parties being directed to call 778 881 [REDACTED]. These nine properties are as follows:

- (a) A condo at 2980 Atlantic Avenue, Coquitlam;
- (b) 6233 Winch Street, Burnaby (the “Winch Street Property”);
- (c) 740 King George, West Vancouver;
- (d) A suite at 1370 Haywood Avenue, West Vancouver;
- (e) A condo at 8280 Lansdowne Road, Richmond;
- (f) Retail space at 1674 Davie Street;
- (g) A suite at 233 Dunlewey Place, West Vancouver;
- (h) 26000 48th Avenue, Langley; and
- (i) 4477 Haggart Street, Vancouver.

16. On March 1, 2012, Wallace conducted a search of the Land Title Office and BC Assessment and determined that the only property in British Columbia which Fan owns is located at [REDACTED] in Coquitlam, BC. She owns this property jointly with [REDACTED]. Fan is described on title as a “property manager.”

17. On March 1, 2012, Wallace conducted a search of the Land Title Office for the Winch Street Property. The search identified the owners of the property as [REDACTED] and [REDACTED].

AND WHEREAS I find that:

1. Neither Fan, nor Amber Terrace Property nor Properties Amber is licensed under *RESA* to provide real estate services within the province of British Columbia. A license is required pursuant to Section 3 of *RESA* for a person to provide real estate services to or on behalf of another.
2. "Real estate services" under *RESA* includes rental property management services.
3. Fan, doing business as Amber Terrace Property and Properties Amber, is actively engaged in providing rental property management services, to or on behalf of others, for or in expectation of remuneration. I note, in particular, the following:
 - (a) Fan has advertised, and continues to advertise, properties for rent which she does not own.
 - (b) When contacted on pretext by Brewster, posing as a potential tenant, she made representations about rental property, and sent him a tenancy application for completion.
 - (c) When contacted on pretext by Hu, posing as a landlord requiring a property manager, Fan provided a copy of a contract she required property owners to sign which clearly stipulated that she would:
 - (i) collect rent;
 - (ii) negotiate and initiate the lease and tenancy;
 - (iii) be paid for her services; and
 - (iv) assist in organizing and arranging any necessary property maintenance
3. Fan is not exempted from the requirement to be licensed by subsection 3(3) of the *RESA*, nor is she exempted from the requirement to be licensed by the *Real Estate Services Regulation*.
4. Fan is engaging in real estate services for which a license under *RESA* is required, although she does not have the required license.

I THEREFORE CONSIDER that Fan, doing business as Amber Terrace Property and Properties Amber, is conducting herself in a manner that would enable me to make an order under section 49 of *RESA*.

I AGREE with Staff that a hearing would require approximately three witnesses and would take approximately three days to complete, and could not be held until late July 2012, due to scheduling of parties, witnesses, counsel and the hearing officer.

I FIND that the length of time that would be required to hold a hearing in order to make an order under section 49 of *RESA* would be detrimental to the due administration of *RESA* given that it would likely result in further non-compliance with the provisions of *RESA*. Continued non-compliance would harm the reputation of the British Columbia real estate industry and would be detrimental to the public interest.

I AM FURTHER OF THE OPINION that it is in the public interest to make a summary order under section 51 of *RESA* so that the public is protected against further non-compliance with *RESA*.

I THEREFORE ORDER pursuant to sections 51(2) (a) and 49(2) (a) of *RESA* as follows:

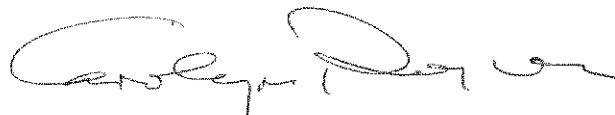
1. That Fan, doing business as Amber Terrace Property and Properties Amber, cease and desist conducting, directly or indirectly, real estate services, including rental property management services, in British Columbia, effective immediately, unless and until they become licensed to do so under the provisions of the *Real Estate Services Act*.
2. That Fan, doing business as Amber Terrace Property and Properties Amber, shall, no later than March 30, 2012, write to all those to whom she is presently providing rental property management services as follows:
 - (a) She shall notify each of them in writing that she is not licensed to provide rental property management services in British Columbia.
 - (b) She shall provide each of them with a copy of this order.
 - (c) She shall provide the Superintendent with a copy of each written notice provided pursuant to this order, by delivering same to the following address:

**Superintendent of Real Estate
Suite 2800 – Box 12116
555 West Hastings
Vancouver, BC
V6B 4N6
Attention: Morgan Brewster**

3. That Fan, doing business as Amber Terrace Property and Properties Amber shall, no later than March 30, 2012, provide the Superintendent with a list of the names and address of all those to whom she is currently providing rental property management services in British Columbia.
4. That Fan, doing business as Amber Terrace Property and Properties Amber, shall, no later than March 30, 2012, provide the Superintendent with a list of all properties in British Columbia which is currently listing for rent, for or on behalf of others.

TAKE NOTICE that Fan, may appeal this Order to the Financial Services Tribunal under section 54(1)(e) of *RESA*, or require a hearing before the Superintendent under sections 51(3) and 45(6) of the *RESA*.

Dated at the
City of Vancouver,
Province of British Columbia
this 7th day of March, 2012.



Carolyn Rogers
Superintendent of Real Estate
Province of British Columbia

TO: Jessica Fan
Doing business as Amber Terrace Property and Properties Amber
[REDACTED]
Coquitlam, BC
[REDACTED]

Real Estate Council of British Columbia
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