

IN THE MATTER OF THE REAL ESTATE SERVICES ACT
SBC 2004, C. 42 as amended

AND

WEI QING (WENDY) YANG (159561) and
WENDY YANG PERSONAL REAL ESTATE CORPORATION (159561PC)

REASONS FOR DECISION REGARDING LIABILITY

Date of Hearing:	October 26-30, 2020; November 2-6, 2020; and January 20 and 26, 2021
Discipline Hearing Committee:	S. Heath (chairperson) M. Chan (member) Y. Amlani (member)
Counsel for RECBC:	D. McKnight N. Krueger M. Sull
Counsel for Respondent:	J. Scouten
Court Reporter:	Roberta Stinson

A. INTRODUCTION

1. The hearing was conducted before a Discipline Hearing Committee (the "Committee") of the Real Estate Council of British Columbia (the "Council") pursuant to section 42 of the *Real Estate Services Act*, R.S.C. 2004, c. 42 ("RESA" or the "Act") to consider whether Wei Qing (Wendy) Yang (the "Respondent" or "Ms. Yang"), acting personally or through her corporation ("Yang Corp."), committed professional misconduct within the meaning of s. 35(1) of the Act, or conduct unbecoming a licensee within the meaning of s. 35(2) of the Act.

2. The Respondent was a representative with the following brokerages during the following time periods:

- a. March 3, 2014 to February 3, 2016: Pan Pacific Platinum Real Estate Services Inc., doing business as New Coast Realty (“New Coast Realty”);
and
 - b. February 3, 2016 to present (apart from a period from February 12 to 15, 2016 when the Respondent was unlicensed): Metro Edge Holdings Ltd. (“Metro Edge”).
3. On February 15, 2015, while a representative of New Coast Realty, the Respondent registered various people as part of her team (the “Team”, also referenced by the parties as the “Wendy Yang Team”):
- a. Rxxx Sxx,
 - b. Jxxxx Lx,
 - c. Hxxx Rxx,
 - d. Bx Sxxxx,
 - e. Nxxx Lxxxx, and
 - f. Kxxx Cxx Hxxx.
4. Later changes to the Team included:
- a. Txxx Lx joining on March 3, 2015;
 - b. Yxxxx (Sxxxx) Zxxxx joining on July 15, 2015 (until February 1, 2016),
 - c. Kxxx (Hxxxx) Kxxx joining on January 1, 2016 (until February 2, 2016),
and
 - d. Cxxxx Yxxx (listed as a member of the Team as of January 10, 2016 in relation to the Wxxxxxxx Property).
5. While a representative of New Coast Realty, the Respondent provided services relating to various listing agreements (organized below by date, except for agreements she amended, listed under item (g)) each relating to specific property. The brief issue descriptions included here are for convenience only, and are not comprehensive.

[RECBC File No. 15-493]

- a. April 10, 2015: New Coast Realty listing agreement respecting xxx-xxxx Bxxxxxxx Wxx, Richmond, B.C. (the “Bxxxxxxx Property”);

(In brief, vendors asked to cancel their listing early, and issues include the Respondent’s delay; her failing to provide a cancellation form to the vendors and her signing the form on their behalf without their consent; and her failing to inform the vendors about a limitation against them re-listing their property within 60 days of the cancellation.)

[RECBC File No. 15-**845**]

- b. June 8, 2015: New Coast Realty listing agreement respecting xxxxx Gxxxxxxx Dxxxx, Richmond, B.C. (the “Gxxxxxxx Property”);

(In brief, issues include the Respondent failing to identify all Team members as designated agents; her failing to disclose the full extent of, or the distribution of, the remuneration to New Coast Realty; and her allowing a sale contract to improperly identify individuals as selling agents and as buying agents despite a Limited Dual Agency Agreement.)

[RECBC File No. 15-**802**]

- c. June 28, 2015: New Coast Realty listing agreement respecting xxxxx xxx Street, Surrey, B.C. (the xxx Street Property”);

(In brief, the issues include the Respondent failing to identify all Team members, including Mr. Zxxxx, as designated agents; her failing to disclose the full extent of, or the distribution of, the remuneration to New Coast Realty; and her allowing a sale contract to improperly identify individuals as selling agents and as buying agents despite a Limited Dual Agency Agreement.)

[RECBC File No. 15-**736**]

- d. December 31, 2015: New Coast Realty listing agreement respecting xxx-xxxx Lxxxx Dxxxx, Vancouver, B.C. (the “Lxxxx Property”);

(In brief, the issues include the Respondent, on January 27, 2016, amending a listing agreement’s expiry date to February 1, 2016, using a photocopied signature of Mr. Rxxxxxxx, the managing broker of New Coast Realty, without his knowledge or consent, and without providing that form to New Coast Realty; listing the Lxxxx Property with Metro Edge while she was with New Coast Realty; and submitting the new Metro Edge Agreement and a Listing Contract Submission Checklist to the Real Estate Board of Greater Vancouver (REBGV) without the knowledge or consent of New Coast Realty.)

[RECBC File No. 15-**470**]

- e. January 11, 2016: New Coast Realty listing agreement respecting xxxxx Wxxxxxxx Rxxx, Richmond, B.C. (the “Wxxxxxxx Property”);

(In brief, the issues include the Respondent amending a listing agreement using a photocopied signature of Mr. Rxxxxxxx, without his knowledge or consent, and without providing the form to New Coast Realty.)

- f. January 12, 2016: New Coast Realty listing agreement respecting xxxxx Sxxxxx Dxxxx, Richmond, B.C. (the “Sxxxxx Property”);

(In brief, the issues include Mr. Rxxxxxxx making several requests for transaction documents after learning of an accepted offer on or around

January 29, 2016, but the Respondent not providing the documents until February 13, 2016.)

- g. January 27, 28 and 29, 2016: Amendments to various listing agreements, using a photocopied signature of Mr. Rxxxxxxx, without his knowledge or consent, and without providing those forms to New Coast Realty, respecting:
- i. xxx-xxxx Lxxxxxxx Rxxx, Richmond, B.C. (the “Lxxxxxxx Property”) with a new expiry date of January 31, 2016;
 - ii. xxxxx Sxxxxxxx Cxxxxxxx, Richmond, B.C. (the “Sxxxxxxx Property”) with a new expiry date of January 31, 2016;
 - iii. xxxx Fxxxxxx Rxxx, Richmond, B.C. (the “Fxxxxxx Property”) with a new expiry date of January 31, 2016 and a reduced listing price;
 - iv. xxxx Dxxxxxx Rxxx, Richmond, B.C. (the “Dxxxxxx Property”) with a new expiry date of January 29, 2016;
 - v. xxxx Txxxxxx Pxxxx, Richmond, B.C. (the “Txxxxxx Property”) with a new expiry date of January 30, 2016 and an altered listing price;
 - vi. xxxx Gxxxxxxx Rxxx, Richmond, B.C. (the “Gxxxxxxx Property”) with a new expiry date of January 31, 2016 and an altered listing price;
 - vii. xx-xxxxx Rxxxx Dxxxx, Richmond, B.C. (the “Rxxxx Property”) with a new expiry date of January 31, 2016;
 - viii. xxxx-xxxx Kxxxxxxx Sxxxxx, Richmond, B.C. (the “Kxxxxxxx Property”) with a new expiry date of January 31, 2016

(collectively the “Other Properties”); and

[RECBC File No. 15-813]

- h. February 2, 2016: Metro Edge listing agreement respecting xxxx Gxxxxx Rxxx, Richmond, B.C. (the “Gxxxxx Property”).

(In brief, the issues include the Respondent, on her last full day with New Coast Realty, listing the Gxxxxx Property with Metro Edge while still with New Coast Realty.)

6. The Council did not proceed with matters addressed as RECBC File No. 15-520.

7. Attached to and forming a part of these Reasons are a List of Exhibits (Schedule A) and a Table of Contents (Schedule B).

B. RELEVANT STATUTORY PROVISIONS

8. The Respondent’s conduct involves many transactions allegedly engaging many provisions of the Act and the Real Estate Rules (the “Rules”).

9. **Categories of improper conduct:** The Act provides for two broad classes of improper conduct: professional misconduct, and conduct unbecoming a licensee.

10. RESA s. 35(1) addresses “professional misconduct” by a licensee:

“**35** (1) A licensee commits **professional misconduct if the licensee** does one or more of the following:

- (a) **contravenes this Act, the regulations or the rules;**
- (b) breaches a restriction or condition of their licence;
- (c) does anything that constitutes wrongful taking or deceptive dealing;
- (d) **demonstrates incompetence in performing any activity for which a licence is required;**
- (e) fails or refuses to cooperate with an investigation under section 37 [*investigation by council*] or 48 [*investigations by superintendent*];
- (f) fails to comply with an order of the real estate council, a discipline committee or the superintendent;
- (g) makes or allows to be made any false or misleading statement in a document that is required or authorized to be produced or submitted under this Act.” (emphasis added)

11. RESA s. **35(2)** addresses “conduct unbecoming a licensee”:

“[35] (2) A licensee commits **conduct unbecoming a licensee if the licensee engages in conduct that**, in the judgment of a discipline committee,

- (a) is contrary to the best interests of the public,
- (b) **undermines public confidence in the real estate industry, or**
- (c) **brings the real estate industry into disrepute.”** (emphasis added)

Conduct may fall within more than one category of improper conduct. Conduct that contravenes specific Bylaw provisions might, for example, also demonstrate incompetence, or disclose conduct unbecoming a licensee.

12. **Contraventions of specific provisions:** The Council has alleged contraventions of specific provisions of both the Act and the Rules. The Act creates specific duties, including a duty of a licensee to provide services only on behalf of the brokerage in relation to which they are licensed, pursuant to RESA s. **7(3)(a)**:

“Relationships between brokerages and other licensees

7. ... (3) A managing broker, associate broker or representative

(a) **must not provide** real estate **services other than on behalf of the brokerage** in relation to which they are licensed....” (emphasis added)

13. The Rules also create specific duties, including the following Rules:

a. Rule s. **3-2(1)(b)** and **(2)(a)**:

“Associate broker and representative responsibilities

3-2 (1) Records - An associate broker or representative **must promptly provide to the managing broker** the original or a copy of **all records** referred to in

... (b) section 8-5 [*trading records*]....

...

Associate broker and representative responsibilities

[3-2] (2) *Keeping managing broker informed* – An associate broker or representative **must**

(a) **keep the managing broker informed of the real estate services being provided**, and other activities being performed, by the associate broker or representative on behalf of the brokerage....”

b. Rule **3-3(c)** and **(f)**:

“Duties to clients

Subject to sections 3-3.1 and 3-3.2, if a client engages a brokerage to provide real estate services to or on behalf of the client, **the brokerage and its related licensees must do all of the following:**

... (c) **act only within the scope of the authority given** by the client;

... (f) without limiting the requirements of Division 2 [*Disclosures of Part 5 [Relationships with Principals and Parties]*], **disclose to the client all known material information** respecting the real estate services, and the real estate and the trade in real estate to which the services relate....” (emphasis added)

c. Rule **3-4**:

“Duty to act honestly and with reasonable care and skill

3-4 When providing real estate services, a licensee **must act honestly and with reasonable care and skill.**” (emphasis added)

(As of February 1, 2021, Rule 3-4 has been split into Rules 3-4 [*Duty to act honestly*] and 3-5 [*Duty to act with reasonable care and skill*].)

d. Rule **5-1(4)**:

“Written service agreements required in some cases

5-1 (1) *Requirement for service agreement* – Unless waived by the prospective client, a brokerage must have a written service agreement in accordance with this section if:

(a) the brokerage is to provide trading services to an owner of real estate in relation to the offering of that real estate for sale or other disposition....

...

(4) Specific content requirements – In all cases, **a service agreement** required under subsection (1) **must include** the following:

(a) the name of the client and **the licensee name of the brokerage**;

(b) the address of the real estate in relation to which services are provided under the agreement;

(c) the date on which the agreement is effective;

(d) in the case of a service agreement for trading services, the date on which the agreement expires and, in any other case, the duration of the agreement;

(e) a general description of services to be provided by the brokerage;

(f) the remuneration to be paid under the agreement and the circumstances in which it will be payable;

(f.1) in the case of a service agreement for trading services that provides for a portion of remuneration to be paid by a listing brokerage to a cooperating brokerage, the following information:

(i) if there is a cooperating brokerage,

(A) the remuneration to be paid by the seller to the listing brokerage,

(B) the remuneration to be paid by the listing brokerage to the cooperating brokerage, and

(C) the remuneration to be retained by the listing brokerage;

(ii) if there is no cooperating brokerage, the remuneration to be paid by the seller and to be retained by the listing brokerage.

(g) provision respecting the use and disclosure of personal information. (emphasis added)

e. Rule **5-10(a)** [as in effect prior to June 15, 2018]:

5-10 Disclosure of representation and relationship in trading services

Before providing trading services to or on behalf of a party to a trade in real estate, a licensee must disclose the following to the party:

- (a) the nature of the representation that the licensee will provide to the party...

As of June 15, 2018, Rule 5-10 was repealed and replaced. For clarity, Rule 5-10(1) now provides as follows:

"Disclosure of representation in trading services

5-10 (1) Before providing trading services to or on behalf of a party to a trade in real estate, a licensee must disclose to the party whether or not the licensee will represent the party as a client."

f. Rule **5-11**:

"Disclosure of remuneration

5-11 (1) This section applies **if a licensee receives or anticipates receiving**, directly or indirectly, **remuneration, other than remuneration paid directly by a client**, as a result of the licensee:

- (a) providing real estate services to or on behalf of the client,
- (b) recommending to the client:
 - (i) a home inspector, mortgage broker, notary public, lawyer or savings institution, or
 - (ii) any other person providing real estate related products or services, or
- (c) recommending the client to a person referred to in paragraph (b) (i) or (ii).

(2) Subject to subsection (3), the licensee must **promptly disclose to the client all remuneration paid or payable to the licensee's related brokerage** in relation to the real estate services provided, **and the disclosure must include** all of the following:

- (a) **the source** of the remuneration,
- (b) **the amount** of the remuneration or, if the amount of the remuneration is unknown, the likely amount of the remuneration or the method of calculation of the remuneration, and
- (c) **all other relevant facts** relating to the remuneration.

(3) If trading services are provided by a licensee who has been designated to provide those services as a designated agent to or on

behalf of only one party to a trade in real estate, the only remuneration that must be disclosed is the remuneration paid or payable to the licensee's related brokerage in relation to the services provided by that licensee to or on behalf of that party, and the disclosure must be made in accordance with subsection (2). (emphasis added)

14. Section 3-4 of the Rules refers to a duty to act honestly. Other RECBC discipline committees have referred to the concept of dishonesty as described by the Judicial Committee of the Privy Council of the United Kingdom:

...**acting dishonestly**, or with a lack of probity, which is synonymous, means **simply not acting as an honest person would in the circumstances**. This is an objective standard. At first sight this may seem surprising. Honesty has a connotation of subjectivity, as distinct from the objectivity of negligence. Honesty, indeed, does have a strong subjective element in that **it is a description of a type of conduct assessed in the light of what a person actually knew at the time**, as distinct from what a reasonable person would have known or appreciated. ...

However, these subjective characteristics of honesty do not mean that individuals are free to set their own standards of honesty in particular circumstances. **The standard of what constitutes honest conduct is not subjective**. Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour.

In most situations there is little difficulty in identifying how an honest person would behave. Honest people do not intentionally deceive others to their detriment. Honest people do not knowingly take others' property. (emphasis added)

(See, for example, *Behroyan (Re)*, 2020 CanLII 36926 (BCREC) at para. 60, referring to *Royal Brunei Airlines Sdn Bhd v. Tan* (P.C.), [1995] 2 A.C. 378, [1995] UKPC 22 (P.C.) [BAILII]. This is not a case addressed by the parties, but is a case previously applied by RECBC Discipline Committees. A tribunal is not bound to rely solely on the law as presented by the parties: *International Woodworkers of America, Local 2-69 v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, 1990 CanLII 132 at para. 32.)

C. ISSUES IN THE NOTICES OF HEARING

15. The precise issues before the Committee are set out in six hearing notices dated August 25, 2020 (the "Notice"). These reasons duplicate the Notices to provide clarity as to the specific allegations. The Committee has, however, added the Notice number to the paragraph numbers to avoid confusion between different Notices.

C.1 File No. 15-493 (“493”)

- 493-1. You committed professional misconduct within the meaning of section 35(1)(a) of the RESA when acting as the listing agent for Mxxxxx and Sxxxxx Sxxxxxxx (the “Sellers”) of property located at #xxx-xxxx Bxxxxxxx Wxx, Richmond, B.C. (the “Property”).
- 493-2. You failed to cancel the listing of the Property on October 7, 2015 upon being asked to do so by the Sellers, you failed to provide to the Sellers and have the Sellers sign a Cancellation of Multiple Listing Form in relation to the listing of the Property, you signed the Cancellation of Multiple Listing Form on November 26, 2016 on behalf of the Sellers without obtaining their consent to do so, and you failed to advise the Sellers of the terms and conditions of the cancellation of the listing and, in particular, that upon cancellation of the listing on November 26, 2016, the Property could not be re-listed until January 26, 2017, 60 days from the date of cancellation, contrary to sections 3-3(c) [act only within the scope of authority of clients] and 3-4 (act honestly with reasonable care and skill) of the Rules.

C.2 File No. 15-845 (“845”)

- 845-1. You committed professional misconduct within the meaning of section 35(1)(a) of the RESA, when, acting as the listing agent for Mxxxxx Sxxxxx and Sxxxxxxx Sxxxxx (the “Sellers”) of residential property located at xxx Gxxxxxxx Dxxxx, Richmond, B.C. (the “Property”), and as the leader of the Wendy Yang Team.
- 845-2. You failed to disclose the nature of the representation you were providing to your clients, contrary to section 3-4 [act with reasonable care and skill] and 5-10(a) [disclosure of representation] of the Rules, when you:
- (a) allowed and/or directed Txxx Lx (“Mr. Lx”), who was a member of the Wendy Yang Team, to prepare the contract of purchase and sale for the Property that indicated that you and Bx Sxxxxx (“Mr. Sxxxxx”) were the designated agents for the Sellers, and Mr. Lx was the designated agent for the buyer, when you, Mr. Sxxxx and Mr. Lx had at the same time entered into a limited dual agency agreement with the Sellers and the buyer;
 - (b) failed to ensure that all members of the Wendy Yang Team were included as the designated agents of the Sellers on the multiple listing contract; and
 - (c) failed to ensure that all members of the Wendy Yang Team were identified on the contract of purchase and sale.

845-3. You failed to disclose material information and remuneration, contrary to sections 3-3(f) [duty to disclose material information], 3-4 and 5-11 [disclosure of remuneration] of the Rules, when you:

- (a) failed to disclose to the Sellers that Mr. Lx would only receive \$950.00 of the total commission, and that the balance of the commission, plus the \$30,000.00 bonus offered to Mr. Lx (as the buyer's designated agent) would not be given to Mr. Lx, but would rather be disbursed among you, New Coast Realty and Mr. Sxxxxx; and
- (b) failed to ensure (in your capacity as a limited dual agent) that the full amount of the commission payable to the brokerage was disclosed to the buyer.

C.3 File No. 15-802 ("802")

802-1. You committed professional misconduct within the meaning of section 35(1)(a) of the RESA when acting as the listing agent for Fxxxxxx Kxxx (the "Seller") of residential property located at xxxxx-xxxx Sxxxxx, Surrey, B.C. (the "Property") and, as the leader of the Wendy Yang Team.

802-2. You failed to disclose the nature of the representation you were providing to the Seller, contrary to sections 3-4 [act with reasonable care and skill] and 5-10(a) [disclosure of representation] of the Rules, when you:

- (a) allowed and/or directed Yxxxx (Sxxxx) Zxxxx ("Mr. Zxxxx"), who was a member of the Wendy Yang Team, to prepare the contract of purchase and sale for the Property, that indicated that you were the designated agent for the Seller and he was the designated agent for the buyer, when you and Mr. Zxxxx had at the same time entered into a limited dual agency agreement with the Seller and the buyer;
- (b) failed to ensure that all members of the Wendy Yang Team were included as designated agents of the Seller on either of the multiple listing agreements; and
- (c) failed to ensure that all members of the Wendy Yang Team were identified on the contract of purchase and sale.

802-3. You failed to act with reasonable care and skill and disclose all material information and remuneration, contrary to sections 3-4 [act with reasonable care and skill], 3-3(f) [duty to disclose all known material information] and 5-11 [disclosure of remuneration] of the Rules, when you:

- (a) failed to disclose to the Seller that Mr. Zxxxx would only be paid \$950.00 of the total commission, and that the balance of the commission, plus the \$20,000 bonus offered to Mr. Zxxxx (as the buyer's designated agent) would not be given to Mr. Zxxxx, but would

rather be disbursed among you, New Coast Realty and Lxx (Cxxxx) Yxxx who was another member of the Wendy Yang Team; and

- (b) failed to ensure (in your capacity as a limited dual agent) that the full amount of the commission payable to the brokerage was disclosed to the buyer.

C.4 File No. 15-736 (“736”)

736-1. You committed professional misconduct within the meaning of section 35(1)(a) of the RESA when as acting as the listing agent for property located at xxx - xxxx Lxxxxx Dxxxx, Richmond, B.C. (the “Property”), and without the knowledge and/or consent of your managing broker, and contrary to the brokerage’s policy about cancelling a listing or accelerating a listing’s expiry date, you altered an amendment of multiple listing contract form, or alternatively, made use of another amendment form that had been previously signed by the managing broker for an unrelated listing, in order to change the expiry date for the listing of the Property from June 30, 2016 to February 1, 2016, contrary to section 3-4 [act honestly and with reasonable care and skill] of the Rules.

736-2. You committed professional misconduct within the meaning of section 35(1)(a) of the RESA and failed to act honestly and with reasonable skill and keep your managing broker informed when you listed the Property for sale with an unrelated brokerage, contrary to section 7(3)(a) [must not provide real estate services other than on behalf of the brokerage in relation to which they are licensed] of the RESA, and sections 3-2(2)(a) [failed to managing broker informed], 5-1(4) [specific content requirements] and 3-4 [act honestly with reasonable care and skill] of the Rules.

C.5 File No. 15-470 (“470”)

470-1. You committed professional misconduct within the meaning of section 35(1)(a) of the RESA, while licensed with Pan Pacific Platinum Real Estate Services Inc. dba New Coast Realty (until February 3, 2016), and when acting as a listing agent, and you acted contrary to section 7(3)(a) [providing real estate services outside the brokerage] of the RESA, and sections 3-2(1)(b) and 3-2(2)(a) [duty to promptly provide records to managing broker and keep managing broker informed] and 3-4 [duty to act with reasonable care and skill] of the Rules, when:

- (a) With respect to property located at xxxx Wxxxxxxx Rxxx, Richmond, B.C. (“Wxxxxxxx Property”), you failed to promptly provide New Coast Realty with a copy of the offer that had been accepted by the buyer on January 27, 2016, (not doing so until February 6, 2016 which was 3 days after you had transferred your licence to Metro Edge Realty);

- (b) With respect to property located at xxxx Sxxxxxx Dxxxx, Richmond, BC ("Sxxxxxx Property"), you failed to promptly provide New Coast Realty with a copy of the offer that had been accepted by the buyer on January 28, 2016, (not doing so until February 16, 2016, which was 13 days after you had transferred your licence to Metro Edge Realty);
- (c) With respect to the properties listed below, on January 27, 2016, without the knowledge and/or consent of your managing broker, and contrary to the brokerage's policy manual which expressly prohibited the practice of changing the expiry date of a listing so as to effectively cancel the listing early, you prepared an amendment to the multiple listing contract form and used a photocopy of the managing broker's signature on that form, or alternatively, used a blank amendment form that had been pre- signed by the managing broker (which form was to be used for the sole purpose of expediting price changes), photocopied it for each property, and made the following changes:
- xxx-xxxxx Lxxxxxxxx Rxxx, Richmond, B.C. - changed the listing expiry date to an earlier expiry date of January 31, 2016;
 - xxxxx Sxxxxxxx Cxxxxxxx, Richmond, B.C. - changed the listing expiry date to an earlier expiry date of January 31, 2016;
 - xxx-xxxxx Lxxxxx Dxxxx, Richmond, B.C. - changed the listing expiry date to an earlier expiry date of February 1, 2016; and
 - xxxx Fxxxxxx Rxxx, Richmond, B.C. - changed the listing expiry date to an earlier expiry date of January 31, 2016, and changed the listing price from \$2,688,000.00 to \$2,768,000.00.
- (d) With respect to the properties listed below, on January 28, 2016 without the knowledge and/or consent of your managing broker, and contrary to the brokerage's policy manual which expressly prohibited the practice of changing the expiry date of a listing so as to effectively cancel the listing early, you prepared an amendment to the multiple listing contract form and used a photocopy of the managing broker's signature on that form, or alternatively, used a blank amendment form that had been pre-signed by the managing broker (which form was to be used for the sole purpose of expediting price changes) and photocopied it for each property, and made the following changes:
- xxxx Dxxxxxx Rxxxx, Richmond, B.C. - changed the listing expiry date to an earlier expiry date of January 29, 2016; and

- xxxx Txxxxxx Pxxxx, Richmond, B.C. - changed the listing expiry date to an earlier expiry date January 30, 2016, and changed the listing price from \$1,799,000.00 - \$1,798,000.00.

(e) With respect to the properties listed below, on January 29, 2016 without the knowledge and/or consent of your managing broker, and contrary to the brokerage's policy manual which expressly prohibited the practice of changing the expiry date of a listing as to effectively cancel the listing early, you prepared an amendment to the multiple listing contract form, and used a photocopy of the managing broker's signature on that form, or alternatively, used a blank amendment form that had been pre-signed by the managing broker (which form was to be used for the sole purpose of expediting price changes) and photocopied it for each property, and made the following changes:

- xxxx Gxxxxxxxx Rxxxx, Richmond, B.C. - changed the listing expiry date to an earlier expiry date of January 31, 2016 and changed the listing price from \$1,988,000.00 to \$2,100,000.00;
- xx - xxxxx Rxxxx Dxxxx, Richmond, B.C. - changed the listing expiry date to an earlier expiry date of January 31, 2016; and
- xxxx-xxxx Kxxxxxxxx Sxxxx, Richmond, B.C. - changed the listing expiry date to an earlier expiry date of January 31, 2016.

(f) On or about February 3, 2016, you submitted each of the amendments forms (as set out in paragraphs 1(c), (d) and (e) above) to the Greater Vancouver Real Estate Board ("GVREB") after the respective seller had signed it, without providing the brokerage with a copy for processing or for the brokerage's listing file.

470-2. Further, or in the alternative, you committed professional misconduct within the meaning of section 35(1)(a) of the RESA and acted contrary to sections 35(1)(d) [demonstrates incompetence] of the RESA, when you engaged in the conduct set out in paragraphs 1(a) through (e) above.

470-3. Further, or in the alternative, you committed conduct unbecoming a licensee within the meaning of section 35(2)(b) and (c) [undermined the public confidence in the real estate industry and brought the real estate industry into disrepute] of the RESA, when you engaged in the conduct set out in paragraphs 1(a) through (f) above.

470-4. [Withdrawn by the Council] ...

470-5. You committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, while licensed with Metro Edge Realty

(commencing on February 3, 2016), and in your capacity as a listing agent you acted contrary to section 7(3)(a) [providing real estate services outside the brokerage] of the RESA, and section 3-2(1)(b) and 3-2(2)(a) [duty to promptly provide records to managing broker and keep managing broker informed] and 3-4 [act honestly and with reasonable care and skill] of the Rules, when you:

- (a) [*Withdrawn by the Council*] ...
- (b) on or about February 3, 2016, re-listed with Metro Edge Realty, the properties set out in 1(c), (d) and (e) above;
- (c) with respect to the Wxxxxxxx Property:
 - (i) on or about February 4, 2016, prepared an amendment to the multiple listing contract form and used a photocopy of the managing broker's signature on that form, or alternatively, used a blank amendment form that had been pre-signed by the managing broker (which form was to be used for the sole purpose of expediting price changes) photocopied it, and changed the listing expiration date from July 11, 2016 to February 4, 2016; increased the listing price; and reduced the real estate commission fee to zero;
 - (ii) on or about February 4, 2016, submitted the amendment form directly to the GVREB, without providing New Coast Realty with a copy for processing or for the brokerage's listing file;
 - (iii) on or about February 4, 2016, re-listed the property with Metro Edge Realty;
 - (iv) on or about February 4, 2016, prepared an addendum to the contract of purchase and sale (with New Coast Realty logo noted at the top), which indicated that the subject conditions were removed on February 4, 2016; and
 - (v) on or about February 6, 2016, after several requests from New Coast Realty's managing broker, provided a copy of the accepted offer to him.
- (d) with respect to the Sxxxxxx Property:
 - (i) [*Withdrawn by the Council*] ...
 - (ii) [*Withdrawn by the Council*] ...
 - (iii) [*Withdrawn by the Council*] ...

- (iv) on February 16, 2016, after several requests from New Coast Realty's managing broker delivered a copy of the accepted offer to him.

470-6. Further, or in the alternative, you committed professional misconduct within the meaning of section 35(1)(a) of the RESA and acted contrary to sections 35(1)(d) [demonstrates incompetence] of the RESA, when you engaged in the conduct set out in paragraphs 5(a) through (d) above.

470-7. Further, or in the alternative, you committed conduct unbecoming a licensee within the meaning of section 35(2)(b) and (c) [undermined the public confidence in the real estate industry and brought the real estate industry into disrepute] of the RESA, when you engaged in the conduct set out in paragraphs 5(a) through (d) above.

C.6 File No. 15-813 ("813")

813-1. You committed professional misconduct within the meaning of section 35(1)(a) of the RESA, when acting as the listing agent for property located at xxxx Gxxxx Rxxx, Richmond, B.C. ("Property"), you listed the Property for sale with Metro Edge Holdings Ltd. dba Metro Edge Realty, when you were licensed with another brokerage, and acted contrary to section 7(3)(a) [must not provide real estate services other than on behalf of the brokerage in relation to which you are licensed] of the RESA, and sections 5-1(4) [specific content requirements] and 3-4 [act with reasonable care and skill] of the Rules.

D. BURDEN OF PROOF AND EVIDENCE

D.1 The burden and standard of proof:

16. Under section 43 of the RESA, the Committee may determine that the Respondent has committed professional misconduct or dismiss the matter.

17. The burden of proof is on the Council to demonstrate that the Respondent committed professional misconduct. The standard of proof is, as in every civil case, the balance of probabilities. The balance of probabilities means that the Committee must be satisfied, based on the evidence that is sufficiently clear, convincing and cogent, that the occurrence of an event was more likely than not: *F.H. v. McDougall*, 2008 SCC 53. Considerations such as the seriousness of the allegations do not change the standard of proof: *McDougall* at para. 40.

D.2 The evidence that the Committee may accept:

18. As an administrative tribunal, the Committee is not bound by court rules of evidence, in the absence of any statutory provision to the contrary, and it may consider evidence it considers relevant: *Wilson v. Esquimalt and Nanaimo Railway Company Co.*, [1922] 1 A.C. 202 (P.C.) [B.C.]; *Kane v. The Board of Governors (University of British Columbia)*, [1980] 1 S.C.R. 1105; *Hale v. B.C. (Superintendent of Motor Vehicles)*, 2004

BCSC 1358 at para. 23. The Council has also cited, in submissions about the admissibility of evidence, *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119 at paras. 38 and 40. The Committee may, however, draw upon principles underlying court rules of evidence to exclude or assess evidence.

19. As a public authority, the Committee must also afford procedural fairness to a respondent where a decision may affect his or her rights, privileges or interests. This right includes a right to be heard. The Committee affords every respondent an opportunity to respond to the case against them by providing advance notice of the issues and the evidence, and an opportunity to present evidence and argument. The Committee must determine facts and decide issues set out in the Notice of Discipline Hearing, based on evidence. Committee members may, however, apply their individual expertise and judgment to how they evaluate or assess evidence.

D.3 The credibility of witnesses

20. The Committee considered the credibility of each of the witnesses, pursuant to the approaches set out in *Faryna v. Chorny*, 1951 CanLII 252 (B.C.C.A.) and *Bradshaw v. Stenner*, 2010 BCSC 1398, affirmed 2012 BCCA 296, at para. 186-187. For clarity, the Committee considered their testimony with a view to factors personal to the witnesses (e.g., their ability to observe events, their firmness of memory, the consistency of their accounts, any motives to lie, and their demeanour), and with a view to their consistency with the testimony of other witnesses, the documentary evidence, and the “preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions”: *Bradshaw* at para. 187. However, very few of the Committee’s findings of fact turn on the credibility of the witnesses. Rather, the Committee’s findings largely involve facts about which the parties agree, facts not seriously at issue, or facts clearly evidenced by documentary records.

E. REASONS

E.1 The evidence before the Committee:

21. The documentary evidence in the hearing consisted of:
- a. Agreed Statement of Facts (“ASOF”);
 - b. Council’s Book of Documents Volumes 1 and 2; and
 - c. Respondent’s Book of Documents #1-52 and #55-64.
22. The oral evidence in the hearing consisted of testimony from:
- a. Jxxxxx Rxxxxxxx (managing broker at New Coast Realty);
 - b. Sxxxxxxx Kxxx Sxxxxx (co-owner of the Gxxxxxxx Property);
 - c. Mxxxxx Sxxxxxxx (co-owner of the Bxxxxxxx Property);
 - d. Jxxxx Lx;

- e. Axxxxxx Mxxxxxxx (co-buyer of the Gxxxxxxx Property);
- f. Txxx Lx;
- g. Jxxxxx Dxxxxx Sxx Kxxx (son of Fxxxxxx Kxxx, owner of the xxxxSxxxxx Property);
- h. Yx Zxx (Sxxxx) Zxxxx;
- i. Wendy Yang (Respondent); and
- j. Lxx (Cxxxx) Yxxx.

E.2 General facts

23. As a term of her employment at New Coast Realty, the Respondent was obligated to comply with New Coast Realty's Policy Manual (the "Policy Manual") and any additions thereto, including memos published by New Coast Realty:

As a condition of his/her association or employment with NEW COAST REALTY the agent or employee agrees to abide by the terms of this Manual as presently adopted and as amended in the future by publication from management of any changes.

(ASOF, EX 1, para 18; Council's BOD Tab B.2, p 42)

24. The Policy Manual does not necessarily correspond to the provisions of the Act and the Rules that bind the Respondent for purposes of licensee discipline. However, the provisions of the Policy Manual are relevant insofar as they may inform the duty to act honestly, reasonably and with care under (what was formerly) s. 3-4 of the Rules.

25. The Policy Manual contained the following provisions, amongst others:

Compliance with All Laws, Rules and Regulations: As an agent of NEW COAST REALTY, each person assumes the obligation of strict compliance with all laws, rules and regulations which govern real estate licensees in British Columbia.

Compliance with this Policy Manual: As an agent of NEW COAST REALTY, each person agrees to comply with all policies as stated in this manual and its additions, changes and amendments as from time to time published by management of the company. Failure to comply with the policies herein subjects the agent or staff member to disciplinary action which may include termination of association with the company (ASOF, EX 1, para 17; Council's BOD Tab B.2, p 28).

26. The Policy Manual expressly prohibited licensees from using MLS Listing Amendment forms to accelerate or shorten the expiration date of a listing with the intent to have it expire prematurely:

12. Cancellation. Under no circumstances, shall a NEW COAST REALTY agent use a MLS Listing amendment form to accelerate or shorted [sic-

shorten] the expiration date of a listing with the intent to have it expire prematurely. NEW COAST REALTY will only recognize the proper MLS Cancellation or Unconditional Release forms for the purpose to cancel a listing. The Managing Broker will have full discretion on determining if they are willing to let the listing be cancelled or not.

(ASOF, EX 1, para 19; Council's BOD Tab B.2, p 22.) Amendment of Multiple Listing Contract forms are themselves contracts under which sellers and brokerages agree to vary the terms of their existing listing contracts. Amendment forms must be signed by the brokerage as well as by the sellers.

27. The Policy Manual also sets out an extensive list of "DO's and DON'T's" relating to the disclosure of agency relationship with buyers, sellers and in situations where there is a dual agency agreement. (ASOF, EX 1, para 20; Council's BOD Tab B.2, p 42-48). The Policy Manual's "DO's" for a seller's agent include the following entry:

3. DO Explain to the seller how the listing agent is paid, the company's rate of compensation and the company's policy on splitting fees and the amount that it will pay to cooperating agents. Council's BOD Tab B.2, p 49).

However, part of this requirement goes beyond what the Rules require of licensees. Although the Respondent had an employment duty to disclose New Coast Realty's policy on splitting fees, the Rules do not require that a licensee disclose how remuneration will be split within a brokerage.

28. On or about July 31, 2015, Mr. Rxxxxxxx prepared a memo which was distributed to New Coast Realty agents advising its licensees that all member names including the name of team leaders had to be included in each Purchase and Sale Contract. The memo attached a sample form of Addendum to be used for that purpose and advised that agents must use it immediately. (ASOF, EX 1, para 21)

29. On August 7, 2015, Mr. Rxxxxxxx prepared a further memo which was distributed to New Coast Realty agents advising that for, all listing contracts and contracts of purchase and sale, the names of all team members must be provided in the designated agency section of those documents and, if all names cannot be fit into that section, to use the Schedule A and list all team members on there. (ASOF, EX 1, para 22)

E.3 Notice-specific Determinations

30. An Agreed Statement of Facts, signed by all parties on October 26, 2020, sets out over 13 pages the agreed facts for the general context and with respect to each of the 6 files.

31. The below sections set out additional findings of facts that apply specifically to each of the files. These additional findings of fact are interspersed with information from the Agreed Statement of Facts for context. These findings must be read together, as facts set out earlier in the reasons concerning one notice may apply to other notices, to the extent relevant.

(a) 493 (the Bxxxxxxx Property)

(i) Facts (493)

32. On or around April 10, 2015, New Coast Realty entered a Multiple Listing Contract (the “Bxxxxxxx Listing Contract”) with the sellers of the Bxxxxxxx Property. Wendy Yang PREC was listed as the designated agent. The listing was set to expire on April 30, 2016, but under Schedule “A” of the Bxxxxxxx Listing Contract the seller had the right to cancel the listing after three months. (ASOF, EX 1, para 24)
33. The sellers believed they could cancel the Bxxxxxxx Listing Contract after three months without any conditions or restrictions on them relisting the Bxxxxxxx Property. (DE, Mr. Sxxxxxxx, Hearing Transcript Vol 4, p 485-488). Clause 5A(ii), however, obligated the sellers to pay a commission for any contract of sale “within sixty (60) days after the expiration of the term of this Contract...” Ms. Yang did not bring Clause 5A(ii) of the Bxxxxxxx Listing Contract to the sellers’ attention. (DE, Mr. Sxxxxxxx, Hearing Transcript Vol 4, p 484-486; 488)
34. On or around October 7, 2015, the sellers of the Bxxxxxxx Property asked Ms. Yang to cancel the listing (ASOF, EX 1, para 25). The sellers wanted to take the property off the market. (DE, Mr. Sxxxxxxx, Hearing Transcript Vol 4, p 493) Although the sellers tried to contact Ms. Yang on numerous occasions, Ms. Yang did not respond to the sellers’ requests to cancel the listing. (DE, Mr. Sxxxxxxx, Hearing Transcript Vol 4, p 493-494)
35. Ms. Yang did not cancel the listing in early October because she was “really busy” with buying and selling at the time. (DE, Ms. Yang, Hearing Transcript Vol 6, p946)
36. Ms. Yang informed the sellers on November 26, 2015 that the listing had been cancelled. Ms. Yang did not inform the sellers at that time, or at any time, of the implications of section 5A(ii) of the Bxxxxxxx Listing Contract for sale through another agency. (ASOF, EX 1, para 27)
37. On November 26, 2015, when Ms. Yang called the sellers to advise them that the Bxxxxxxx Listing Contract had been cancelled, she did not ask them to sign a Cancellation of Multiple Listing Form or discuss an unconditional release. Ms. Yang did not advise the sellers of any conditions or restrictions on relisting the Bxxxxxxx Property. (DE, Mr. Sxxxxxxx, Hearing Transcript Vol 4, p 494-497)
38. On November 27, 2015, Ms. Yang prepared a Cancellation of Multiple Listing form for the Bxxxxxxx Property and signed the form with her own signature beside the word “Per:”. Ms. Yang did not show the form to the sellers or provide a copy of the form to them. (ASOF, EX 1, para 26) The cancellation form contained the following all-caps text:

“I/WE AGREE THAT THE SAID PROPERTY WILL NOT BE SOLD PRIOR TO THE DATE OF EXPIRY OF THE LISTING SET OUT IN THE LISTING AGREEMENT OR PRIOR TO 60 DAYS FROM THE DATE OF SIGNING HEREOF, WHICHEVER IS THE SOONER; AND IF IT IS SOLD OR AN OFFER FOR SALE IS ACCEPTED BY

ME/US DURING THE SAID PERIOD, I/WE AGREE TO PAY YOU THE FULL SALES COMMISSION AS PROVIDED IN THE LISTING AGREEMENT SIGNED BY ME/US, AND REFERRED TO ABOVE. I/WE HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THIS CANCELLATION FORM.” (emphasis added)

Ms. Yang did not bring this language to the attention of the sellers. (DE, Mr. Sxxxxxxx, Hearing Transcript Vol 4, p 498-499)

39. Ms. Yang did not ask the sellers if she could sign this form on their behalf. (DE, Mr. Sxxxxxxx, Hearing Transcript Vol 4, p 500)

40. The Committee heard some conflicting testimony as to whether Mr. Rxxxxxxx approved the form with Ms. Yang’s signature. Ms. Yang testified that she signed the form first, and then gave it to Mr. Rxxxxxxx, who then signed it. (Ms. Yang, Hearing Transcript Vol 6, p 949-951 and Vol 8, p 1222-1224) However, Mr. Rxxxxxxx’s evidence was that he signed the cancellation form because he was going out of town, on vacation, and told Ms. Yang to get the sellers to sign the form and hand it in to the office promptly. (Mr. Rxxxxxxx, Hearing Transcript Vol 1, p 91-93) The Committee also heard evidence that Ms. Yang had obtained approval for the cancellation form from ExxxxxWx, an agent at the brokerage who carried out quasi-managerial function.

41. After the Bxxxxxxx Property listing was cancelled, the sellers attempted to relist the Bxxxxxxx Property with a new brokerage. They were advised they could not re-list the property for 60 days unless they obtained an unconditional release from New Coast Realty. New Coast Realty refused to provide an unconditional release. Accordingly, the sellers did not relist the Bxxxxxxx Property until January or February of 2016. (DE, Mr. Sxxxxxxx, Hearing Transcript Vol 4, p 502-505, 509)

42. On February 11, 2016, the sellers of the Bxxxxxxx Property submitted a complaint about Ms. Yang’s conduct to Council. (ASOF, EX 1, para 28)

(i) Findings (493)

43. Respecting Notice para. 493-2, the Committee is satisfied that the Respondent committed professional misconduct pursuant to RESA s. 35(1)(a), by failing to act with reasonable care and skill pursuant to s. 3-4 of the Rules, when she:

- a. failed to advise the sellers that upon the listing being cancelled, the Bxxxxxxx Property could not be re-listed for 60 days;
- b. failed to cancel the listing within a reasonable time of the sellers’ instructions; and
- c. failed to provide a copy of the cancellation form to the sellers.

44. However, given that the sellers authorized the Respondent to cancel the listing, the Committee is satisfied that the Respondent, when signing the cancellation form, acted within the scope of her authority. In other words, the Committee was not satisfied that the Respondent contravened s. 3-3(c) of the Rules. The Committee need not decide

if Mr. Rxxxxxxx implicitly approved the Respondent signing the cancellation form on behalf of the sellers.

(b) 845 (the Gxxxxxxx Property)

(i) Facts (845)

45. On June 8, 2015, New Coast Realty entered a Multiple Listing Contract with the sellers of the Gxxxxxxx Property (the "Gxxxxxxx Listing Contract"). The Gxxxxxxx Listing Contract, which Ms. Yang prepared, identified Yang Corp. and Mr. Sxxxx as the designated agents for the sellers, but did not identify other members of the Team. (ASOF, EX 1, para 29)

46. The Gxxxxxxx Listing Contract provided for New Coast Realty a commission of 7% for the first \$100,000 and 2.5% of the balance of the purchase price plus a bonus of \$5,000. The Gxxxxxxx Contract also provided that New Coast Realty would offer to cooperating brokerages a portion of its commission in the amount of 3.2% for the first \$100,000 and 1.15% of the balance of the purchase price plus a bonus of \$5,000. (ASOF, EX 1, para 30)

47. On July 20, 2015, the listing price for the Gxxxxxxx Property was reduced from \$1,538,000 to \$1,399,990. (ASOF, EX 1, para 31)

48. On August 30, 2015, the buyers offered to purchase the Gxxxxxxx Property for \$1,300,000, a counteroffer was then made, and the final price that the parties agreed to was \$1,355,000. (DE, Mrs. Sxxxx, Hearing Transcript Vol 3, p 412-414)

49. On August 30, 2015, Mr. Lx, Mr. Sxxxx and Ms. Yang entered into a Limited Dual Agency Agreement with both the buyers and the sellers of the Gxxxxxxx Property. (ASOF, EX 1, para 32) According to Ms. Sxxxx's testimony, the document was not explained to her. Her understanding was that "Wendy is working for us and Txxx Lx is for the other side." (DE, Mrs. Sxxxx, Hearing Transcript Vol 3, p420-421) According to Mr. Mxxxxxxx's testimony, the document was not explained to him when he signed it. (DE, Mr. Mxxxxxxx, Hearing Transcript Vol 4, p596-599) Mr. Mxxxxxxx did not understand any of Ms. Yang, Mr. Sxxxx or Mr. Lx to be his agent. (DE, Mr. Mxxxxxxx, Hearing Transcript Vol 4, p602)

50. On August 30, 2015, as Ms. Yang told Mr. Lx there was a buyer that wanted to write an offer, Mr. Lx prepared a Contract of Purchase and Sale for the Gxxxxxxx Property (the "Gxxxxxxx Sale Contract"). (DE, Mr. Lx, Hearing Transcript Vol 5, p 629-630) Section 21 of the Gxxxxxxx Sale Contract indicated Ms. Yang and Mr. Sxxxx were the sellers' designated agents and Mr. Lx was the buyers' designated agent. (Council's BOD Vol 1, Tab D4) No members of the Team other than Ms. Yang, Mr. Sxxxx, and Mr. Lx were identified in the Gxxxxxxx Sale Contract. (ASOF, EX 1, para 33)

51. Ms. Yang reviewed the Gxxxxxxx Sale Contract, including s. 21, before signing. She agreed that s. 21(c) [setting out the designated dual agent(s)] should have been completed, and not 21(a) [setting out Mr. Sxxxx and Ms. Yang as designated seller's agent] and 21(b) [setting out Mr. Lx as designated buyer's agent], because of the Limited

Dual Agency Agreement she had signed on the same date. Ms. Yang dismissed the inaccuracy because, in her view, paperwork was not her responsibility. (DE, Ms. Yang, Hearing Transcript Vol 7, p 999; Vol 8, p 1243-1244)

52. On August 30, 2015, the sellers signed a form stating that the total gross commission payable to New Coast Realty in respect of the sale of the Gxxxxxxx Property was \$60,870, plus GST of \$3,043.75, for a total of \$63,918.75. (ASOF, EX1, para 34) This commission reflects a substantially increased bonus. According to Ms. Sxxxx's testimony, the amount of the commission was not explained to her. (DE, Mrs. Sxxxx, Hearing Transcript Vol 3, p422-423; p458-459) According to the Respondent, Mr. Sxxxx raised the issue of an extra commission with the sellers, and he calculated the commission. (CE, Ms. Yang, Transcript Vol 8, p1251-1252 and p1265-1268) The Council has not, however, alleged misconduct in relation to the increased bonus amount.

53. Of the total commission payable for the sale of the Gxxxxxxx Property, Mr. Lx received \$950 and Ms. Yang, Mr. Sxxxx and New Coast Realty received the balance of the commission payable. (ASOF, EX 1, para 35)

54. Pursuant to the ASOF, Ms. Yang did not inform the buyers of the full amount of the commission payable to New Coast Realty. Ms. Yang also did not discuss with the sellers or the buyers, or seek or obtain their consent, about how the commission would be distributed amongst New Coast and the agents involved in the transaction. (ASOF, EX 1, para 36; also (DE, Mr. Mxxxxxxx, Hearing Transcript Vol 4, p602 ln14-23; p603-604)

55. Mr. Mxxxxxxx (the buyer) was not told about any commissions payable to the brokerage, or about a bonus. (DE, Mr. Mxxxxxxx, Hearing Transcript Vol 4, p 602)

56. On June 6, 2016, the sellers filed a complaint with Council concerning the sale of the Gxxxxxxx Property. (ASOF, EX 1, para 37)

57. On November 14, 2017, Mr. Lx agreed to a Consent Order Proposal, and on December 6, 2017, the Consent Order Review Committee accepted the proposal, found the facts set out in the proposal, determined that Mr. Lx committed professional misconduct, and made orders accordingly. The facts admitted by Mr. Lx include, among other things, that due to him and others representing the buyers and sellers as dual agents, he should have disclosed to the buyers the commission payable to the brokerage, which was 7% on the first \$100,000, 2.5% on the balance, and a \$30,000 bonus. Mr. Lx also admitted that the brokerage advised him on October 6, 2015 that clause 21 of the Gxxxxxxx Sale Contract had been completed incorrectly. (Council's BOD Vol 1, Tab D14) While Mr. Lx's admissions do not bind the Respondent, they are consistent with facts arising from other evidence.

(ii) Findings (845)

58. In the Committee's view, the Respondent's role within the Team does not eliminate or reduce her duties as a licensee under the RESA or under the Rules, in this matter or in any of the matters.

59. Respecting Notice para. 845-2(a), the Committee is satisfied that the Respondent committed professional misconduct pursuant to RESA s. 35(1)(a), by failing to act with reasonable care and skill pursuant to s. 3-4 of the Rules, and by failing to disclose the nature of the representation the licensee would provide pursuant to s. 5-10(a) of the Rules, when despite a dual agency agreement, she allowed the Gxxxxxxx Sale Contract to improperly label herself and Mr. Sxxxx as seller's agents, and to label Mr. Lx as buyer's agent.

60. Respecting Notice para. 845-2(b), the Committee is satisfied that the Respondent committed professional misconduct, by failing to act with reasonable care and skill and by failing to disclose the nature of the representation the licensee would provide, when she failed to disclose everyone on the Team as designated agents for the sellers in the Gxxxxxxx Listing Contract.

61. Respecting Notice para. 845-2(c), the Committee is satisfied that the Respondent committed professional misconduct, by failing to act with reasonable care and skill and by failing to disclose the nature of the representation the licensee would provide, when she failed to disclose everyone on the Team in the Gxxxxxxx Sale Contract.

62. Respecting Notice para. 845-3(a), the Committee is not satisfied that the Respondent committed professional misconduct by failing to disclose how the commission was distributed internally. The Committee is not satisfied the Rules required that the Respondent disclose a break-down of how remuneration would be disclosed within the brokerage or within the Team.

63. Respecting Notice para. 845-3(b), the Committee is satisfied that the Respondent committed professional misconduct by failing to act with reasonable care and skill, and by failing to disclose remuneration, when she failed to disclose to the buyer the full amount of the commission.

(c) 802 (the xxxx Sxxxxx Property)

(i) Facts (802)

64. On June 28, 2015, New Coast Realty entered a Multiple Listing Contract with the seller of the xxxx Sxxxxx Property (the "First xxxx Listing Contract"). (ASOF, EX 1, para 38)

65. The xxxx Listing Contract, which Ms. Yang prepared, indicated that the listing price of the xxxx Sxxxxx Property was \$1,299,000 with a commission rate of 7% for the first \$100,000 and 2.5% of the balance of the purchase price. Yang Corp. was listed as the designated selling agent. No other members of the Team were identified in the xxxx Listing Contract. (ASOF, EX 1, para 39)

66. The seller of the xxxx Sxxxxx Property was an elderly man, approximately 87 years old, with hearing difficulties. (ASOF, EX 1, para 40)

67. On August 24, 2015, Ms. Yang prepared a Cancellation of Multiple Listing form, which was signed by the seller, which cancelled the First xxxx Listing Contract. (ASOF,

EX 1, para 41) The seller's son had asked that he or one of his siblings be present when his father signed anything. (DE, Jxxxx Kxxx, Transcript Vol 5 p699 and p735-736)

68. On August 25, 2015, New Coast Realty entered a new Multiple Listing Contract for the xxxx Sxxxx Property with the seller, which was prepared by Ms. Yang (the "Second xxxx Listing Contract"). The seller's son was not present when Ms. Yang had the seller sign the second contract. (DE, Jxxxx Kxxx, Transcript Vol 5 p706, 709-712, and 715-716) The second contract provided that the commission payable to New Coast Realty would be 7% for the first \$100,000 and 2.5% of the balance of the purchase price plus a \$20,000 bonus. To assist in obtaining a buyer for the property, New Coast Realty would offer to cooperating brokerages a portion of its commission in the amount of 3.2% of the first \$100,000 and 1.15% of the balance of the purchase price plus a bonus of \$20,000. (ASOF, EX 1, para 42)

69. Schedule "A" of the Second xxxx Listing Contract showed that Rxxx Sxx, Jxxxx Lx, Mr. Sxxxx, Hxxx Rxx, Mr. Lx, Sxxxx Zxxx, Rxxxxx Fxxx and Lxx (Cxxxx) Yxxx were members of the Team. The Schedule "A" did not, however, list Mr. Zxxxx as a member of the Wendy Yang Team. (ASOF, EX 1, para 43)

70. Ms. Yang testified that Mr. Zxxxx was not included on Schedule "A" because she did not consider him an official team member yet, as he was not sufficiently qualified. Although Mr. Zxxxx joined the Team on July 15, 2015, at the time the Second xxxx Listing Contract and Schedule "A" were prepared, Ms. Yang had not formally added Mr. Zxxxx to the Team by filing notice of his addition to the Team with the Council. (DE, Ms. Yang, Hearing Transcript Vol 7, p 1045, 1048-1049)

71. On September 11, 2015, Mr. Zxxxx and Ms. Yang entered into a Limited Dual Agency Agreement with the buyer and the seller. At that time, neither Ms. Yang nor Mr. Zxxxx informed the buyer of the full amount of commission payable to New Coast Realty in respect of the sale of the xxxx Sxxxx Property to the buyer. (ASOF, EX 1, para 44)

72. On September 11, 2015, a Contract of Purchase and Sale was prepared for the xxxx Sxxxx Property (the "xxxx Sale Contract"). Section 21 of the xxxx Sale Contract identified Ms. Yang as the seller's designated agent and Mr. Zxxxx as the buyer's designated agent. No other members of the Team, other than Ms. Yang and Mr. Zxxxx, were identified in the xxxx Sale Contract. (ASOF, EX 1, para 45)

73. It is unclear from the evidence who prepared the Contract of Purchase and Sale for the xxxx Street Property.

- a. Mr. Zxxxx testified that his name appears on the xxxx Sale Contract, but he did not prepare any part of the document, including s. 21 (DE, Mr. Zxxxx, Hearing Transcript Vol 5, p 773-774). On November 15, 2017, the Consent Order Review Committee accepted a consent order proposal under which Mr. Zxxxx admitted to preparing the xxxx Sale Contract. (Respondent's BOD, EX 3, Document #63) Mr. Zxxxx testified, however, this admission was not a true statement, as he did not prepare the Contract of Purchase and Sale. (CE, Mr. Zxxxx, Hearing

Transcript Vol 5, p 863) About one week after becoming licensed, he transferred his licence to New Coast Realty and joined the team. Ms. Yang asked Mr. Zxxxx to sign documents relating to the xxxx Street Property, which he did.

- b. Ms. Yang testified that Mr. Zxxxx would have prepared the Contract of Purchase and Sale. However, Ms. Yang testified that she presented the Contract of Purchase and Sale to Mr. Kxxx Sr, and that she noted that s. 21 was filled out improperly. She testified that s. 21(c) should have indicated the Team was acting pursuant to a Limited Dual Agency Agreement. She also confirmed that hers is the only signature of a New Coast Realty agent on the xxxx Sale Contract. (DE, Ms. Yang, Hearing Transcript Vol 7, p 1030, 1032; CE, Ms. Yang, Hearing Transcript 8, p 1288-1289)

In any event, the Committee is satisfied that the Respondent, pursuant to her role as agent under the Limited Dual Agency Agreement, was responsible for reviewing and advising of any changes to be made to the xxxx Sale Contract.

74. Of the total commission payable for the sale of the xxxx Sxxxxx Property, Mr. Zxxxx only received \$997.59. Ms. Yang, Mr. Yxxx and New Coast Realty received the balance of the commission payable in respect of the transaction. (ASOF, EX 1, para 46)

75. Ms. Yang did not discuss with the seller or the buyer, or seek or obtain their consent, about how the commission would be distributed amongst New Coast Realty and the agents involved in the transaction. (ASOF, EX 1, para 47)

76. New Coast Realty's managing broker, after reviewing the contract documents, advised Mr. Zxxxx to disclose to the buyer the full amount of the remuneration to be paid to the brokerage. (Respondent's BOD Doc. 63) On or about November 27, 2015, Mr. Zxxxx provided a Disclosure of Remuneration form to the buyer of the xxxx Sxxxxx Property advising that the total amount of commission payable to New Coast Realty was 7% for the first \$100,000 and 2.5% for the balance of the purchase price, plus a bonus of \$20,000 (ASOF, EX 1, para 48). The buyer signed this document. (Council's BOD EX 2, Tab E.15.

77. On May 31, 2016, the seller's son filed a complaint with Council regarding Ms. Yang's conduct in the sale of the xxxx Sxxxxx Property (ASOF, EX 1, para 49).

(ii) Findings (802)

78. Respecting Notice para. 802-2(a), the Committee is satisfied that the Respondent committed professional misconduct pursuant to RESA s. 35(1)(a), by failing to act with reasonable care and skill pursuant to s. 3-4 of the Rules, and by failing to disclose the nature of the representation the licensee would provide pursuant to s. 5-10(a) of the Rules, when despite a dual agency agreement, she allowed the xxxx Sale Contract to improperly identify herself as the seller's agent, and to identify Mr. Zxxxx as the buyer's agent.

79. Respecting Notice para. 802-2(b), the Committee is satisfied that the Respondent committed professional misconduct, by failing to act with reasonable care and skill and by failing to disclose the nature of the representation the licensee would provide, when she failed to disclose everyone on the Team, and specifically Mr. Zxxxx, as designated agents for the sellers in the xxxx Listing Contract.

80. Respecting Notice para. 802-2(c), the Committee is satisfied that the Respondent committed professional misconduct, by failing to act with reasonable care and skill and by failing to disclose the nature of the representation the licensee would provide, when she failed to disclose everyone on the Team in the xxxx Sale Contract.

81. Respecting Notice para. 802-3(a), the Committee is not satisfied that the Respondent committed professional misconduct by failing to disclose how the commission was distributed internally. The Committee is not satisfied the Rules required that the Respondent disclose a break-down of how remuneration would be disclosed within the brokerage or within the Team.

82. Respecting Notice para. 802-3(b), the Committee is not satisfied that the Respondent committed professional misconduct by failing to act with reasonable care and skill, and by failing to disclose remuneration, when she failed to disclose to the buyer the full amount of the commission. The non-disclosure was cured through the oversight of the managing broker, which led to disclosure by Mr. Zxxxx dated November 27, 2015. (Council's BOD EX 2, Tab E.15)

(d) 736 (the Lxxxxx Property)

(i) Facts (736)

83. On December 31, 2015, New Coast Realty entered a Multiple Listing Contract with the sellers of the Lxxxxx Property (the "Lxxxxx Listing Contract"). The Lxxxxx Listing Contract, which was prepared by Ms. Yang, identified Ms. Yang and Exxxx Sxx, a member of the Team, as the designated agents for the sellers, and had a listing expiry date of June 30, 2016. (ASOF, EX 1, para 50)

84. **Ms. Wxxx's decision to leave New Coast Realty.** In January 2016, Ms. Yang received a new Sales Team Leader Agreement from Mr. Wx, an owner of New Coast Realty.

- a. Ms. Yang had concerns about terms in the contract. On January 14, 2016, she spoke to Mr. Wx about her concerns. She asked Mr. Wx to make commitments to her about the number and type of leads that would be provided to her team, and reached an agreement with Mr. Wx regarding these matters. However, when Ms. Yang met with Mr. Wx again on January 16, 2016, Mr. Wx reneged on certain aspects of the earlier agreement.
- b. On January 26, 2016, Ms. Yang spoke with Mr. Gxxxx Zxxxx, another New Coast Realty shareholder. Mr. Zxxxx told her she needed to sign a document, and if she did not, she would need to leave the brokerage.

At this point, Ms. Yang had already been discussing with her team members the possibility of leaving New Coast Realty and taking listings with them. After her conversation with Mr. Zxxxx, Ms. Yang was angry and sad. She wanted to fight. She had obtained her listings through work and effort, and did not want to leave the listings with New Coast. She decided to take the listings with her. She decided to take matters into her own hands by creating false documents to change the listing dates and transfer the properties from New Coast Realty to Metro Edge. (DE, Ms. Yang, Hearing Transcript V7, p 1067, 1070-1075, 1083-1095, 1099, 1101, 1169, 1170-1171) The Committee notes that in all the matters before the Committee (including but not limited to matters addressed as part of File No. 736), where the Respondent created documents using photocopies of Mr. Rxxxxxxx's signature to apparently amend agreements, she obtained the signatures of the sellers. What she failed to obtain were genuine signatures of Mr. Rxxxxxxx to signify agreement by New Coast Realty.

85. **Moving up the expiry date of the Lxxxx Listing Contract.** On January 27, 2016, Ms. Yang completed an Amendment of Multiple Listing Contract form for the Lxxxx Property (the "Lxxxx Amendment Form") to change the expiry date of the listing from June 30, 2016 to one minute before midnight on February 1, 2016. (ASOF, EX 1, para 51)

86. Ms. Yang created the Lxxxx Amendment Form using a photocopied Amendment of Multiple Listing Contract form containing Mr. Rxxxxxxx's signature, without the knowledge or consent of Mr. Rxxxxxxx or New Coast Realty. Ms. Yang also submitted the Amendment of Multiple Listing Contract to the Real Estate Board of Greater Vancouver ("REBGV") without the knowledge or consent of Mr. Rxxxxxxx or New Coast Realty and without providing New Coast Realty with a copy of the form. (ASOF, EX 1, para 52)

87. Although Mr. Rxxxxxxx's signature is found at the bottom of the Lxxxx Amendment Form, Mr. Rxxxxxxx did not sign or approve this form, and did not consent to Ms. Yang using his signature on the form. At no time did Mr. Rxxxxxxx provide pre-signed blank forms to New Coast licensees so they could speed up or facilitate changes to listings. (DE, Mr. Rxxxxxxx, Hearing Transcript Vol 2, p 149-150, 156)

88. **Ms. Yang's move to Metro Edge:** On February 2, 2016, Mr. Rxxxxxxx surrendered Ms. Yang's licence to Council. (ASOF, EX 1, para 3) However, Council did not receive it until February 3, 2016. (Council BOD EX 2, Tab A.2; Council's BOD Vol. 1 Doc. A.2 (date-stamp of receipt February 3, 2016)) Although the surrender of licence form submitted by Mr. Rxxxxxxx allows a brokerage to surrender a licence "effective" as of a specific date, which allows a brokerage to submit a surrender for a future date, the Committee is satisfied that the surrender of a licence to the Council cannot be effective before it is processed by the Council, and until that occurs, it is merely a pending surrender.

89. On February 2, 2016, the Respondent applied to Council to transfer to Metro Edge. However, Ms. Yang was not licensed with Metro Edge until February 3, 2016, according to Council's records. (DE, Ms. Yang, Hearing Transcript Vol 7, p1105-1107)

90. The Respondent prepared a Multiple Listing Contract for the Lxxxxx Property with Metro Edge as the listing brokerage and herself as the designated agent for the seller (the "Lxxxxx Metro Edge Listing Contract"). The new listing contract was signed February 3, 2016. (Council BOD EX 2, Tab A.2) However, the new listing contract had an effective date of February 2, 2016, and a new expiry date of July 31, 2016. (ASOF, EX 1, para 53; Council BOD EX 2, Tab G.3) Unlike the surrender of a licence, a contract may be effective on such date as the parties agree, which in this case was February 2, 2016. Accordingly, the Respondent listed the Lxxxxx Property with Metro Edge as of February 2, 2016, while she was still with New Coast Realty.

91. On February 3, 2016, the Respondent completed a Listing Contract Submission Checklist for the Lxxxxx Property, indicating the listing was a new listing. The checklist and the Lxxxxx Metro Edge Listing Contract were submitted to the Real Estate Board of Greater Vancouver without the consent or knowledge of New Coast Realty, and without her providing New Coast Realty with copies of those documents. (ASOF, EX 1, para 54)

92. Ms. Yang wrongly assumed, because she had submitted her licence application on February 2, 2016, that it had been processed and she was licensed with Metro Edge at the time she completed and submitted the listing forms for the Lxxxxx Property. (DE, Ms. Yang, Hearing Transcript 7, p 1105-1106)

93. Between February 3, 2016 and February 11, 2016, Ms. Yang was licenced as a representative with Metro Edge Holdings Ltd. (ASOF, EX 1, para 4)

94. On February 5, 2016, a buyer entered a Contract of Purchase and Sale for the Lxxxxx Property (the "Lxxxxx Sale Contract"). The Lxxxxx Sale Contract indicated the seller's agent was Yang Corp., which was licensed in relation to Metro Edge, and that the buyer's agent was Axxxx Yxxx who was licensed in relation to Royal Pacific Realty. (ASOF, EX 1, para 55)

95. **Subsequent events:** On or about February 5, 2016, the REBGV reinstated the original MLS Listing for the Lxxxxx Property after Mr. Rxxxxxxx discovered that Ms. Yang had relisted the Lxxxxx Property with Metro Edge. (ASOF, EX 1, para 56)

96. On or about March 15, 2016, New Coast Realty sent a Sales Report Form to the REBGV regarding the completion of the sale of the Lxxxxx Property. (ASOF, EX 1, para 57)

97. On August 18, 2016, following arbitration proceedings between New Coast Realty and Metro Edge, the REBGV determined that 100% of the commission due for the sale of the Lxxxxx Property was payable to New Coast Realty. (ASOF, EX 1, para 58; also, Council's BOD Vol 1 Doc G.17)

98. The Policy Manual stated that New Coast Realty's managing broker had exclusive authority to cancel MLS listings prior to their expiry date. (ASOF, EX 1, para 16)

99. The Policy Manual also expressly prohibited licensees from using MLS Listing Amendment forms to accelerate or shorten the expiration date of a listing with the intent to have it expire prematurely. (ASOF, EX 1, para 19)

(ii) Findings (736)

100. Respecting Notice para. 736-1, the Committee is satisfied that the Respondent committed professional misconduct pursuant to RESA s. 35(1)(a), by failing to act honestly and with reasonable care and skill pursuant to s. 3-4 of the Rules, when she misused an amendment form to change the expiry date for the Lxxxxx Listing Contract from June 30, 2016 to February 1, 2016.

101. Respecting Notice para. 736-2, the Committee is satisfied that the Respondent committed professional misconduct, by failing to act honestly and with reasonable care and skill; by failing to provide real estate services only on behalf of New Coast Realty on February 2, 2016 pursuant to RESA section 7(3)(a); and by failing to keep New Coast Realty informed of services provided pursuant to section 3-2(2)(a) of the Rules. The Committee rejects the suggestion by the Respondent of a “technical” mistake, as the Respondent should have known transfer of her licence to Metro Edge would not be effective immediately on February 2, 2016.

(e) 470 (Wxxxxxxx Property, Sxxxxxx Property, Other Properties)

(i) Facts (470)

102. The Council has withdrawn its allegations at Notice paragraphs 470-4 and 470-5(a) and (d)(i)-(iii). Accordingly, the Committee has not addressed facts relating to withdrawn allegations.

103. The Committee has made findings of fact about discussions between the Respondent and the owners of New Coast Realty, and her decision to move to Metro Edge and take listings with her.

The Wxxxxxxx Property

104. On January 11, 2016, New Coast Realty entered a Multiple Listing Contract with the sellers of the Wxxxxxxx Property (the “Wxxxxxxx Listing Contract”). The Wxxxxxxx Listing Contract, which Ms. Yang prepared, identified Yang Corp. and Mr. Lx as the sellers’ designated agents, and attached a Schedule “A” listing the members of the Team. (ASOF, EX 1, para 59) The expiry date for the Wxxxxxxx Listing Contract was July 11, 2016. (Council BOD, EX 2, Tab H.1)

105. The Wxxxxxxx Listing Contract provided the commission payable to New Coast Realty was 7% for the first \$100,000 and 2.5% for the balance of the purchase price and a bonus of \$20,000 if the Wxxxxxxx Property sold for an amount over the listing price. (ASOF, EX 1, para 61)

106. On January 27, 2016, Ms. Yang prepared a Contract of Purchase and Sale for the Wxxxxxxx Property (the “Wxxxxxxx Sale Contract”) with an offer price of \$1,920,000 which

exceeded the listing price of \$1,888,000. (ASOF, EX 1, para 62; Council's BOD Vol 2, Doc H.7)

107. On January 27, 2016, Ms. Yang entered into an agreement with the sellers to change the commission payable in respect of the sale of the Wxxxxxxx Property to zero (\$0) dollars, without the knowledge or consent of Mr. Rxxxxxxx or New Coast Realty. (ASOF, EX 1, para 63)

108. On January 28, 2016, Ms. Yang prepared an Amendment of Multiple Listing Contract form to amend the Wxxxxxxx Listing Contract (the "Wxxxxxxx Amendment Form"). The Wxxxxxxx Amendment Form changed the expiry date of the Wxxxxxxx Listing Contract from July 11, 2016 to February 4, 2016, and increased the listing price from \$1,888,000 to \$1,999,000. (Council BOD, EX 2, Tab H.31)

109. Although Mr. Rxxxxxxx's signature is found at the bottom of the Wxxxxxxx Amendment Form, Mr. Rxxxxxxx did not sign or approve this form, or tell Ms. Yang she could use his signature on this form. (DE, Mr. Rxxxxxxx, Hearing Transcript Vol 2, p 169-171; Council BOD, EX 2, Tab H.31) Ms. Yang confirmed she falsified the amendment form to add Mr. Rxxxxxxx's signature, without his knowledge or consent. (CE, Ms. Yang, Hearing Transcript Vol 8, p 1308-1309)

110. Ms. Yang submitted the Wxxxxxxx Amendment Form directly to the REBGV without providing a copy to New Coast Realty. (CE, Ms. Yang, Hearing Transcript Vol 8, p 1312). Ms. Yang had submitted that form by February 3, 2016, as the MLS Listing for the Wxxxxxxx Property as printed on February 3, 2016 showed the new expiry date of February 4, 2016. (Council BOD, EX 2, Tab H.2)

111. On or before February 4, 2016, after her licence had been transferred to Metro Edge, Ms. Yang prepared an Addendum to the Contract of Purchase and Sale with New Coast Realty logo noted at the top indicating the subject conditions were removed on February 4, 2016. (ASOF, EX 1, para 65)

112. On or about February 5, 2016, at the request of New Coast Realty, the REBGV amended the MLS listing for the Wxxxxxxx Property to indicate Sxxxxx Lx of New Coast Realty as the listing sale representative. (ASOF, EX 1, para 66)

113. Ms. Yang did not provide Mr. Rxxxxxxx with transaction documents related to the Wxxxxxxx Property until February 6, 2016 or thereabouts. Mr. Rxxxxxxx viewed this as late, as the transaction was executed on January 27, 2016 and accepted by the buyer and seller. Mr. Rxxxxxxx would have expected to receive the documents on or around January 28, 2016 at the latest. Mr. Rxxxxxxx had been requesting the documents since February 2, 2016. (DE, Mr. Rxxxxxxx, Hearing Transcript Vol 2, p 171; CE, Ms. Yang, Hearing Transcript V8, p 1314)

The Sxxxxx Property

114. On January 12, 2016, New Coast Realty entered a Multiple Listing Contract with the seller of the Sxxxxx Property (the "Sxxxxx Listing Contract"). The Sxxxxx Listing

Contract, which Ms. Yang prepared, identified Yang Corp. and Mr. Lx as the designated agents, and had a listing expiry date of April 30, 2016. (ASOF, EX 1, para 67)

115. On January 28, 2016, a buyer entered a Contract of Purchase and Sale for the Sxxxxxx Property (the "Sxxxxxx Sale Contract"). (Council's BOD Vol 2, Doc H.10) Section 21 of the Sxxxxxx Sale Contract identified the seller's agent as Yang Corp., licensed in relation to New Coast Realty, and that the buyer's agent was Lxxxx Yxxx, licensed in relation to Sutton Group-West Coast Realty. (ASOF, EX 1, para 68)

116. Mr. Rxxxxxxx, after he learned that there was an accepted offer from a buyer on or around January 29, 2016, made several requests for transaction documents. Ms. Yang did not provide the documents until approximately February 13, 2016. (DE, Mr. Rxxxxxxx, Hearing Transcript Vol 2, p 172)

The Other Properties

117. **The Jan. 27 Amendments:** On January 27, 2016, the Respondent prepared an Amendment of Multiple Listing Contract form for each of the following properties:

- (a) the Lxxxxxxx Property;
- (b) the Sxxxxxx Property; and
- (c) the Fxxxxxx Property

(the "January 27 Forms"). (ASOF, EX 1, para 69)

118. Using the January 27 Forms, the Respondent amended the listing agreements for the Lxxxxxxx Property, the Sxxxxxx Property, and the Fxxxxxx Property to change their expiry dates to January 31, 2016, without the knowledge or consent of Mr. Rxxxxxxx. (ASOF, EX 1, para 70) Ms. Yang also changed the listing price for the Fxxxxxx Property from \$2,688,000 to \$2,768,000, without the knowledge or consent of Mr. Rxxxxxxx. (ASOF, EX 1, para 71)

119. Notice para. 470-1(c), bullet 3, also refers to the Lxxxxxx Property, but the Committee has addressed the facts relating to the Respondent amending the Lxxxxxx Listing Contract with respect to Notice 736.

120. Mr. Rxxxxxxx did not sign the January 27 Forms, although he acknowledged that his signature appears on them. He did not sign or approve the January 27 Forms, did not tell Ms. Yang she could use his signature on the forms, and did not sign blank forms for those listings. (DE, Mr. Rxxxxxxx, Hearing Transcript Vol 2, p 175-176, 178-179, 180-181)

121. The Respondent confirmed she falsified amendment forms, which would include the January 27 Forms, by using a photocopy of Mr. Rxxxxxxx's signature. She admitted that in doing so, she was acting contrary to company policy. (DE, Ms. Yang, Hearing Transcript Vol 7, p 1101-1103; CE, Ms. Yang, Hearing Transcript Vol 8, p 1316)

122. The Respondent submitted the January 27 Forms, among others, to the REBGV, after each respective seller had signed them, without providing New Coast Realty with copies. (ASOF EX 1 para. 78)

123. **The Jan. 28 Amendments:** On January 28, 2016, the Respondent prepared an Amendment of Multiple Listing Contract form for each of the following properties:

(a) the Dxxxxxx Property; and

(b) the Txxxxxx Property

(the "January 28 Forms"). (ASOF, EX 1, para 72)

124. The Respondent amended the listing agreement for the Dxxxxxx Property to change the listing expiry date to January 29, 2016 without the knowledge or consent of Mr. Rxxxxxxx. (ASOF, EX 1, para 73)

125. The Respondent amended the listing agreement for the Txxxxxx Property to change the listing expiry date to January 30, 2016, and changed the listing price from \$1,799,000 to \$1,798,000, without the knowledge or consent of Mr. Rxxxxxxx (ASOF, EX 1, para 74)

126. Mr. Rxxxxxxx did not sign the January 28 Forms, although he acknowledged that his signature appears on them. He did not sign or approve the January 28 Forms, did not tell Ms. Yang she could use his signature on the form, and did not sign blank forms for those listings. (DE, Mr. Rxxxxxxx, Hearing Transcript Vol 2, p 183-184, 191)

127. The Respondent confirmed that she falsified amendment forms, which would include the January 28 Forms, by using a photocopy of Mr. Rxxxxxxx's signature. She admitted that in doing so, she was acting contrary to company policy. (DE, Ms. Yang, Hearing Transcript Vol 7, p 1101-1103; CE, Ms. Yang, Hearing Transcript Vol 8, p1316)

128. The Respondent submitted the January 28 Forms, among others, to the REBGV, after each respective seller had signed them, without providing New Coast Realty with copies. (ASOF EX 1 para. 78)

129. **The Jan. 29 Amendments:** On January 29, 2016, the Respondent prepared an Amendment of Multiple Listing Contract form for each of the following properties:

(a) the Gxxxxxxx Property;

(b) the Rxxxx Property; and

(c) the Kxxxxxxx Property

(the "January 29 Forms"). (ASOF, EX 1, para 75)

130. Using the January 29 Forms, the Respondent amended the listing agreements for the Gxxxxxxx Property, the Rxxxx Property, and the Kxxxxxxx Property to change their expiry dates to January 31, 2016 without the knowledge or consent of Mr. Rxxxxxxx. (ASOF, EX 1, para 76) Ms. Yang also changed the listing price for the Gxxxxxxx Property

from \$1,988,000 to \$2,100,000, without the knowledge or consent of Mr. Rxxxxxxx. (ASOF, EX 1, para 77)

131. Mr. Rxxxxxxx did not sign the January 29 Forms, although he acknowledged that his signature appears on the forms. He did not sign or approve the January 29 Forms, did not tell Ms. Yang she could use his signature on the forms, and did not sign blank forms for those listings. (DE, Mr. Rxxxxxxx, Hearing Transcript Vol 2, p 196, 199, 202)

132. The Respondent confirmed that she falsified amendment forms, which would include the January 29 Forms, by using a photocopy of Mr. Rxxxxxxx's signature. She admitted that in doing so, she was acting contrary to company policy. (DE, Ms. Yang, Hearing Transcript Vol 7, p 1101-1103; CE, Ms. Yang, Hearing Transcript Vol 8, p 1316)

133. The Respondent submitted the January 29 Forms, among others, to the REBGV, after each respective seller had signed them, without providing New Coast Realty with copies. (ASOF EX 1 para. 78)

134. **Subsequent events:** The Respondent likely submitted amendment forms to the REBGV before February 2, 2016, as Mr. Rxxxxxxx testified that one of his agents notified him of the expiring listings on or around this date. (DE, Mr. Rxxxxxxx, Hearing Transcript Vol 2, p 152) On February 4, 2016, Mr. Rxxxxxxx sent an email to the Council attaching amendment forms and advising that the forms had been sent to the REBGV. (Council BOD EX 2, Tab H.13)

135. On or about February 3, 2016, the Respondent re-listed the Lxxxxxxx Property, the Sxxxxxxx Property, the Fxxxxxx Property, the Dxxxxxx Property, the Txxxxxx Property, the Gxxxxxxx Property, the Rxxxxx Property and the Kxxxxxxx Property with Metro Edge. (ASOF, EX 1, para 79)

136. As the Committee has already determined, the Respondent also prepared the Lxxxxx Metro Edge Listing Contract with an effective date of February 2, 2016. (ASOF, EX 1, para 53; Council BOD EX 2, Tab G.3)

137. As the Committee has already determined, on February 3, 2016, the Respondent submitted Lxxxxx Metro Edge Listing Contract and a checklist to the REBGV without the consent or knowledge of New Coast Realty and without providing New Coast Realty with copies of the documents. (ASOF, EX 1, para 54)

138. On or about February 5, 2016, after Mr. Rxxxxxxx discovered that Ms. Yang had relisted the Lxxxxx Property with Metro Edge, the REBGV reinstated the original MLS Listings for the Lxxxxxxx Property, the Sxxxxxxx Property, the Fxxxxxx Property, the Dxxxxxx Property, the Txxxxxx Property, the Gxxxxxxx Property, the Rxxxxx Property and the Kxxxxxxx Property with New Coast Realty. (ASOF, EX 1, para 80). The REBGV also reinstated the original MLS Listing for the Lxxxxx Property. (ASOF, EX 1, para. 56)

(ii) Findings (470)

139. Respecting Notice para. 470-1(a), which relates to parties agreeing to the Wxxxxxxx Sale Contract on January 27, 2016, and to Ms. Yang not providing the Wxxxxxxx Sale Contract to New Coast Realty until February 6, 2016, the Committee is not satisfied the Respondent committed professional misconduct by contravening sections 3-2(1)(b) or 3-2(2)(a) of the Rules. Section 3-2(1)(b) refers to the obligation of a representative to “promptly” provide trading records to the managing broker. The Committee declines to conclude that a delay of ten days contravenes the Rules, where in this case the subject conditions were not removed until February 4, 2016.

140. Respecting Notice para. 470-1(b), which relates to the Respondent not providing the Sxxxxxx Property transaction documents to New Coast Realty for fifteen days, the Committee is satisfied that the Respondent committed professional misconduct, by failing to act honestly and with reasonable care and skill; by failing to promptly provide records to her managing broker; and by failing to keep her managing broker informed. The Sxxxxxx Sale Contract did not have subject provisions. The Respondent did not provide documents promptly.

141. Respecting Notice paragraph 470-1(c), (d) and (e), relating to the Respondent amending listing contracts so that they would expire early, without the consent of New Coast Realty and using a photocopied signature of a managing broker, with respect to:

- a. [470-1(c)] the Lxxxxxxxxx Property, the Sxxxxxxx Property, and the Fxxxxxx Property,
- b. [470-1(d)] the Dxxxxxx Property and the Txxxxxx Property, and
- c. [470-1(e)] the Gxxxxxxxxx Property, the Rxxxx Property and the Kxxxxxxxx Property.

The Committee is satisfied that the Respondent committed professional misconduct, by failing to act honestly and with reasonable care and skill. The Committee need not and does not address the issue of professional misconduct based on the Respondent having breached any provision of the Policy Manual.

142. Respecting Notice paragraph 470-1(f), relating to the Respondent failing to provide the January 27 Forms, the January 28 Forms, or the January 29 Forms to New Coast Realty, the Committee is satisfied that the Respondent committed professional misconduct, by failing to act honestly and with reasonable care and skill; by failing to comply with section 3-2(1)(b) of the Rules; and by failing to comply with section 3-2(2) of the Rules.

143. Respecting Notice para. 470-2, relating to the Respondent’s conduct as alleged in Notice para. 470-1(a) to (e), the Committee has already found professional misconduct with respect to the conduct alleged in Notice para. 470-1(b), (c), (d) and (e). The Committee declines to find that her conduct was the result of incompetence.

144. Respecting Notice para. 470-3, relating to the Respondent's conduct as alleged in Notice para. 470-1(a) to (f), the Committee is satisfied that, apart from the conduct alleged in Notice para. 470-1(a), that the Respondent's misconduct is also "conduct unbecoming a licensee" pursuant to RESA s. 35(2). Specifically, the Respondent's conduct "(b) undermines public confidence in the real estate industry" and "(c) brings the real estate industry into disrepute".

145. The Council has withdrawn the allegations at Notice paragraphs 470-4 and 470-5(a) and 470-5(d)(i), (ii) and (iii).

146. Respecting Notice para. 470-5(b), which relates to the Respondent allegedly re-listing specific properties with Metro Edge on February 3, 2016, namely,

- a. [470-1(c)] the Lxxxxxxx Property, the Sxxxxxxx Property, and the Fxxxxxx Property,
- b. [470-1(d)] the Dxxxxxx Property and the Txxxxxx Property, and
- c. [470-1(e)] the Gxxxxxxx Property, the Rxxxx Property and the Kxxxxxxx Property.

The evidence before the Committee does not establish these facts. A Notice of Civil Claim filed by New Coast Realty against the Respondent, filed March 22, 2016 (Council's BOD Vol 2, Doc H.46) does allege that, "9. On or around February 3 and 4, 2016, Ms. Yang, as the designated listing agent, relisted nine of the eleven Listing Contracts with Metro Edge Realty as the listing brokerage (the "Relisted Contracts")". The documentary evidence does not establish these re-listings. For regulatory purposes, however, the Respondent's conduct is effectively captured by the Committee's finding that the Respondent falsified amendment forms.

147. Respecting Notice para. 470-5(c)(i) to (v), which relates to the Respondent's conduct relating to the Wxxxxxxx Property, and specifically,

- [470-5(c)(i)] to the Respondent amending the Wxxxxxxx Listing Contract using the Wxxxxxxx Amendment Form to add an earlier expiry date, to change the listing price, and to reduce the commission to zero, all using a photocopied signature of a managing broker,
- [470-5(c)(ii)] to the Respondent submitting the Wxxxxxxx Amendment Form to the REBGV without providing a copy to New Coast Realty,
- [470-5(c)(iii)] to the Respondent re-listing the Wxxxxxxx Property with Metro Edge Realty,
- [470-5(c)(iv)] to the Respondent preparing, on or about February 4, 2016, an Addendum to the Wxxxxxxx Sale Contract with a New Coast Realty logo, and
- [470-5(c)(v)] to the Respondent not providing documentation to New Coast Realty until February 6, 2016.

The Committee is satisfied that the Respondent committed professional misconduct as follows:

- a. [470-5(c)(i)] the Respondent committed professional misconduct by failing to act honestly and with reasonable care and skill, as a result of her falsifying the Wxxxxxxx Amendment Form using the photocopied signature of Mr. Rxxxxxxx.
- b. [470-5(c)(ii) and (v)] the Respondent committed professional misconduct by failing to promptly provide the Wxxxxxxx Amendment Form (as distinct from the Wxxxxxxx Sales Contract) to New Coast Realty, pursuant to s. 3-2(1)(b) of the Rules, or informing New Coast Realty of the amendment, pursuant to s. 3-2(2)(a).

148. Respecting Notice para. 470-5(d)(iv), which relates to the Respondent not providing the Sxxxxxx Property transaction documents to New Coast Realty until February 16, 2016, the Committee found misconduct in relation to para. 470-1(b).

149. Respecting Notice para. 470-6, which relates to the Respondent's conduct as alleged in Notice para. 470-5(a) to (d) (but subject to allegations withdrawn by the Council), the Committee has found instances of professional misconduct. The Committee declines to find that the Respondent's conduct was the result of incompetence.

150. Respecting Notice para. 470-7, relating to the Respondent's conduct as alleged in Notice para. 470-5(a) to (d) (but subject to allegations withdrawn by the Council), the Committee is satisfied that the Respondent's conduct as alleged in Notice para. 470-5(c)(i), namely falsifying the Wxxxxxxx Amendment Form in order to amend the Wxxxxxxx Listing Contract, is also "conduct unbecoming a licensee" pursuant to RESA s. 35(2)(b) and (c).

(f) 813 (the Gxxxxx Property)

(i) 813 Facts

151. As the Committee has already determined in relation to Notice 813:

- a. on February 2, 2016, Mr. Rxxxxxxx surrendered Ms. Yang's licence to Council, (ASOF, EX 1, para 3) but Council did not receive it until February 3, 2016. (Council BOD EX 2, Tab A.2)
- b. As of February 2, 2016, Ms. Yang was licensed with New Coast Realty, and her licence was not with Metro Edge until February 3, 2016. (ASOF, EX 1, para 4)

152. On February 2, 2016, Ms. Yang provided the sellers of the Gxxxxx Property with business cards indicating she was licensed with New Coast Realty. (ASOF, EX 1, para 83) However, on that same day, Ms. Yang listed the Gxxxxx Property with Metro Edge as the listing brokerage through a Multiple Listing Contract dated and effective from February 2, 2016 (the "Gxxxxx Listing Contract"). (ASOF, EX 1, para 82)

153. Ms. Yang did not advise Mr. Rxxxxxxx or anyone else at New Coast Realty that she was listing the Gxxxxx Property with Metro Edge while she was still licensed with New Coast Realty. (ASOF, EX 1, para 84)

(ii) 813 Findings

154. Respecting Notice para. 813-1, the Committee is satisfied that the Respondent committed professional misconduct, by failing to act honestly and with reasonable care and skill, pursuant to s. 3-4 of the Rules; by failing to provide real estate services only on behalf of New Coast Realty on February 2, 2016, pursuant to RESA section 7(3)(a); and by failing to provide accurate brokerage information in the Gxxxxx Listing Contract, pursuant to s. 5-1(4) of the Rules. As with Notice para. 736-2, the Committee rejects the suggestion by the Respondent of a “technical” mistake that should be excused.

F. CONCLUSIONS

155. Based on the evidence, including witness testimony, the Discipline Hearing Committee determines that the Respondent committed professional misconduct, and engaged in conduct unbecoming a licensee, the particulars of which the Committee has set out above.

G. FURTHER MATTERS

156. The Committee will hear evidence and submissions from the parties concerning orders under section 43(2) of the RESA, and expenses under section 44(1) of the RESA, and any other actions available to the Committee, at a date, time and place to be set. Once the Committee has arrived at a decision on these issues, it will issue additional reasons that will form a part of this decision, make an order under section 43(2) of the RESA, and make such other orders under the RESA as the Committee may deem appropriate.

157. Once the Committee has made orders under Part 4, Division 2 of the RESA, the Respondent will have a right to appeal to the Financial Services Tribunal under section 54(1)(d) of the RESA, within 30 days of the date of the penalty decision: *Financial*


Institutions Act, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Dated at VANCOUVER, BRITISH COLUMBIA this 9th day of April 2021.

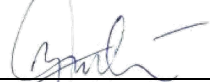
FOR THE DISCIPLINE HEARING COMMITTEE



S. Heath
Discipline Hearing Committee
Chairperson



M. Chan
Discipline Hearing Committee Member



Y. Amlani
Discipline Hearing Committee Member

Schedule A - LIST OF EXHIBITS

- | | |
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