

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

AND

**KEVINDEEP SINGH BRATCH (148527)
and BRATCH REALTY LTD. (X030195)**

**SUPPLEMENTAL REASONS
FOR DECISION REGARDING LIABILITY**

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| Date and Place of Hearing: | November 1 and December 1, 2, and 3, 2020 Office of the Real Estate Council of British Columbia (RECBC) |
| Discipline Hearing Committee: | Y.Amlani, Chair R.Gialloreto S.Sidhu |
| Counsel for RECBC: | M. Kalan (RECBC) C. Davies (RECBC) |
| Respondent: | Kevindeep Singh Bratch, appearing on his own behalf |

A. THE BASIS FOR SUPPLEMENTAL REASONS

1. In late April 2021, the Committee issued Reasons for Decision Regarding Liability (the “Initial Reasons”). However, on or about June 3, 2021, the Council advised the Committee, with notice to Mr. Bratch, that the Committee had not addressed the following allegation concerning the Brokerage, as set out in paragraph 5 of the Notice:

5. The Brokerage committed conduct unbecoming within the meaning of section 35(3) **as Mr. Bratch**, the sole officer, director and managing broker of the Brokerage **committed conduct unbecoming as described at paragraph 1 above.** (emphasis added)

2. For ease of reference, paragraph 1 of the Notice alleged as follows:

1. You committed professional misconduct within the meaning of section 35(1) and/or conduct unbecoming within the meaning of section 35(2) of the RESA in that, in or about the time period of July 2015 to December 2017, while acting as the managing broker of Bratch Realty Ltd. (the “Brokerage”), and in relation to three properties described as:

a. [the Rxxxxx Axx. Property];

- b. [the Sxxxxxxxxx Property]; and
- c. [the Lxxxxx Property]

(together, the "Properties"), you,

- a. targeted the owners of the Properties with a "rent to own" program which included disadvantageous terms for the owners, who you knew were in foreclosure proceedings and you knew or ought to have known were financially distressed and vulnerable at the time;
- b. purchased the Properties at prices less than assessed value, in your name and/or your wife Mxxxxxxx Txxxxx's ("Ms. Txxxxx") name and/or a numbered company XXXXXXX BC Ltd. ("XXX BC") of which your wife was a director, and knew or ought to have known that the owners had no agency or legal representation;
- c. included a term in each contract of purchase and sale that the contract was conditional on the owners each entering into tenancy agreements with yourself, Ms. Txxxxx and/or XXX BC;
- d. had the owners each execute a document titled "Option Agreement" along with the sale of the Properties which gave the owners the right to repurchase their homes from Mr. Bratch, Ms. Txxxxx and/or XXX BC at a predetermined value in a specified time frame, when you knew or ought to have known that the owners did not have independent legal advice;
- e. created a mechanism in the Option Agreements by which:
 - a. the owners earned credits towards the re-purchase of their homes from their rent payments (approximately less than 20% of the actual monthly rent payment); and
 - b. all credits earned and consideration paid would be non-refundable if the owners did not exercise their right to the option or defaulted on their tenancy agreements;
- f. included a clause in each Option Agreement which states: "the recording of this option or any memorandum thereof will result in the automatic revocation of this option, and all monies paid to the owner by the tenants shall be retained by the owner as liquidated damages," to ensure that the owners did not register their options against the Properties in the Land Titles Office; and
- g. knew or ought to have known that the owners relied on your advice and self identification as a realtor with expertise in foreclosure matters when entering into the contracts related to the Properties

contrary to Rule 3-4 [*act honestly, with reasonable care and skill*] and/or section 35(2) of the RESA....

3. Under section 35(3) of the Act, the Committee may determine that a brokerage committed professional misconduct or conduct unbecoming, based on the conduct of a partner, officer, director, or controlling shareholder:

“A brokerage that is a partnership or corporation may be found to have committed professional misconduct or conduct unbecoming a licensee if a partner, officer, director or controlling shareholder of the brokerage does one or more of the things referred to in subsection (1) or (2).” (emphasis added)

4. The Act distinguishes between professional misconduct under section 35(1), and “conduct unbecoming a licensee” under section 35(2). Paragraph 5 of the Notice does not refer to professional misconduct, despite the Council amending the Notice to insert a reference to professional misconduct in paragraph 1 of the Notice. However, Paragraph 5 refers to section 35(3) of RESA, which allows the Committee to determine a brokerage committed “professional misconduct or conduct unbecoming a licensee” based on the conduct of a partner, officer, director, or controlling shareholder. The Committee has proceeded on the basis the reference to section 35(3) of the Act, in the context of paragraph 1 of the Notice, provided sufficient warning to Mr. Bratch and the Brokerage that the Committee might determine the Brokerage committed professional misconduct or conduct unbecoming a licensee, despite paragraph 5 of the Notice only referring to conduct unbecoming. After the Council submitted, in closing argument, that the Committee could find the Brokerage had committed professional misconduct (or conduct unbecoming) pursuant to RESA s. 35(3), Mr. Bratch did not dispute the point or assert, on behalf of the Brokerage, a lack of notice under paragraph 5 of the Notice.

B. THE COMMITTEE’S JURISDICTION

5. The Initial Reasons focused on Mr. Bratch’s conduct, except when it addressed the conduct of the Brokerage under paragraph 4 of the Notice. The Committee did not address paragraph 5 of the Notice. The Committee may address that outstanding issue, as the hearing is still in progress – the penalty portion of the hearing has not yet occurred – and even if the hearing had ostensibly completed, a tribunal always has jurisdiction to complete its statutory task: *Fraser Health Authority v. Workers’ Compensation Appeal Tribunal*, 2014 BCCA 499 at paras. 136-142.

C. ADDITIONAL DETERMINATIONS CONCERNING THE BROKERAGE

6. These Supplemental Reasons are based on the Committee’s findings in the Initial Reasons. The Committee also adopts all the defined terms it used in the Initial Reasons.

7. Based on its findings against Mr. Bratch in relation to the Lxxxxxx Property, the Committee has determined that the Brokerage committed both professional misconduct and conduct unbecoming a licensee in relation to the Lxxxxxx Property.

8. Based on its findings against Mr. Bratch in relation to the Rxxxxx Property, the Committee has determined that the Brokerage committed professional misconduct in relation to the Rxxxxx Property.

9. The Committee has, however, declined to determine pursuant to section 35(3) that the Brokerage committed professional conduct or conduct unbecoming in relation to the

Sxxxxxxxxx Property, given the Brokerage's differing role with respect to that property, in contrast to its roles with respect to the Lxxxxx Property and the Rxxxxx Property.

Dated at VANCOUVER, BRITISH COLUMBIA this 14th day of June 2021.

FOR THE DISCIPLINE HEARING COMMITTEE

"YASIN AMLANI"

Name: Yasin Amlani

Discipline Hearing Committee Chair

"ROBERT GIALLORETO"

Name: Robert Gialloreto

Discipline Hearing Committee Member

"SUKH SIDHU"

Name: Sukh Sidhu

Discipline Hearing Committee Member