

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

IN THE MATTER OF

ANDRE ZUBKO
(150076)

AND

ANDRE ZUBKO PERSONAL REAL ESTATE CORPORATION
(150076PC)

Corrected Decision: Various typographical errors corrected on July 4, 2024
at pages: 1, 7, 12, 14, 16, 19, 36, 39, and 42.

REASONS FOR DECISION REGARDING LIABILITY

[These Reasons have been redacted before publication.]

Date of Hearing: April 15 -19, 2024
Counsel for BCFSA: Greg Cavouras
Elizabeth Allan
Counsel for the Respondents: Kelly Murray
Hearing Officer: Andrew Pendray

Introduction

1. On June 1, 2023, the BC Financial Services Authority (“BCFSA”) issued, pursuant to section 40 of the *Real Estate Services Act* (“RESA”), a notice of discipline hearing to Andre Zubko. On March 17, 2024 that notice of discipline hearing was amended¹.
2. The Notice of Hearing set out specific allegations of professional misconduct within the meaning of section 35 of RESA against Mr. Zubko, relating to eight real estate transactions which occurred in 2016 and 2017. Further allegations were made against Mr. Zubko in terms of his response to

¹ I will refer to the amended notice of discipline hearing as the “Notice of Hearing”.

the investigation conducted against him by the former Real Estate Council of British Columbia (“RECBC”)².

3. In general terms, the allegations against Mr. Zubko are that while working as a realtor, he conceived of arrangements with other realtors in order to obtain commission payments he was not entitled to, and to obtain payments that he did not disclose to his clients.
4. In doing so, Mr. Zubko was alleged to have failed to have taken reasonable steps to avoid a conflict of interest, and to have engaged in wrongful taking or deceptive dealing, including by inducing his seller clients to sign contracts of purchase and sale with individuals with whom Mr. Zubko had a personal relationship, with the sole purpose of assigning those contracts of purchase and sale to a future buyer at a higher price.
5. In general terms then, in the eight transactions at issue, Mr. Zubko was alleged to have been working against the best interests of his seller clients.
6. This hearing proceeded by way of an oral hearing. At the hearing of this matter, BCFSA and Mr. Zubko entered into an agreed statement of facts and proposed findings of misconduct (the “ASF”). As a result of the ASF, no witnesses were called. The parties were both represented by legal counsel, and extensive submissions were made regarding the meaning that ought to be ascribed to the facts agreed to in the ASF.
7. I note that despite their dispute about how the details of the ASF ought to be interpreted, neither party resiled from the proposed findings of misconduct set out in the ASF.

Notice of Hearing

8. The allegations against Mr. Zubko and his personal real estate corporation (“PREC”) are set out in the Notice of Hearing as follows:
 1. You committed professional misconduct within the meaning of section 35(1)(a) [*misconduct by licensee: contravention of the RESA, the Regulation or the Rules*] and/or 35(1)(c) [*misconduct by licensee: wrongful taking or deceptive dealing*] of the RESA with respect to one or more of the following trades in real estate in British Columbia:
 - a. [Property 1], Squamish (the “[Property 1] Property”) on or about January 12, 2016;
 - b. [Property 2], Squamish on or about February 8, 2016;
 - c. [Property 3], Squamish on or about April 13, 2016;
 - d. [Property 4], Coquitlam on or about September 12, 2016; and/or
 - e. [Property 5], Squamish (the “[Property 5] Property”) on or about July 26, 2017,

(each a “Transaction” and collectively the “Transactions”), as follows:

² RECBC was integrated into BCFSA in August 2021. I will generally refer to RECBC and BCFSA as the “regulator”.

- i. you entered into an arrangement with [Licensee 1] (“[Licensee 1]”), a licensee who purported to be the buyer’s agent in the Transaction, to circumvent the commission provisions of the listing agreement and/or to obtain remuneration to which you were not entitled;
 - ii. you identified [Licensee 1] as the buyer’s agent in the Transaction documents when in fact he did not provide agency representation to the buyers and/or acted upon direction from you thereby making a false representation;
 - iii. you failed to take reasonable steps to avoid conflicts of interest by providing agency representation to the buyer and the seller and you failed to promptly and fully disclose those conflicts of interest and the nature of your representation to the buyer and seller;
 - iv. you caused the seller to enter a written commission agreement with your brokerage or enter a written commission agreement with [Licensee 1]’s brokerage, in order to pay a higher rate of commission than that provided in their listing agreement, relying on the false representation that [Licensee 1] was the buyer’s agent; and/or
 - v. you received or expected to receive a portion of [Licensee 1]’s commission earned on the Transaction, and you failed to disclose to your client the remuneration you received or expected to receive from [Licensee 1].
2. You committed professional misconduct within the meaning of section 35(1)(a) [*misconduct by licensee: contravention of the RESA, the Regulation or the Rules*] and/or 35(1)(c) [*misconduct by licensee: wrongful taking or deceptive dealing*] of the RESA with respect to the [Property 1] Transaction, as follows:
 - a. in or about early January 2016, while acting as the agent for the seller of [Property 1], you entered into an arrangement with [Licensee 1], who was purporting to act as the agent for the named buyer, which arrangement includes one or more of the further particulars set out in subparagraphs (b) – (f) below, for the purpose of inducing the seller to enter into a contract of purchase and sale for [Property 1] with the intention that the named buyer would promptly assign the contract of purchase and sale to another individual at a higher price and thereby deprive the seller of the opportunity to obtain fair market value for the property;
 - b. on or about January 9, 2016, you caused or arranged for [Licensee 1] to prepare a contract of purchase and sale for [Property 1] on behalf of the named buyer, when you knew or ought to have known that the named buyer was not intending to complete the purchase;

- c. on or about January 21, 2016, you caused or arranged for [Licensee 1] to send you an email which indicated that [Licensee 1] had made inquiries about the development potential of [Property 1] on behalf of the named buyer and discovered problems regarding its feasibility for development when:
 - i. you knew or ought to have known that some or all of the representations regarding the feasibility of [Property 1] for development were untrue or were reckless as to the truth of those representations; and/or
 - ii. some or all of the representations were intended to induce the seller to reduce the sale price and/or to deprive the seller of the fair market value of [Property 1];
 - d. on or about February 11, 2016, relying on the misrepresentations in the January 21, 2016 email, you induced or advised the seller to amend the contract of purchase and sale with the named buyer to reduce the selling price from \$350,000 to \$175,000 when you knew or ought to have known that the reduced price was less than the fair market value of [Property 1];
 - e. on or about February 17, 2016, you prepared, or arranged for [Licensee 1] to prepare, an assignment of the contract of purchase and sale from the named buyer to another individual for a purchase price of \$335,000, and you did not advise the seller that you were aware of and/or had participated in the assignment, or that the property was being sold for \$335,000 and not \$175,000; ~~and/or~~
 - e.f. on or about February 23, 2016, you obtained a bank draft from your bank account and provided it to the named buyer for the deposit of the purchase price of [Property 1] for the purpose of ensuring the named buyer fulfilled the terms of the contract of purchase and sale so that [Property 1] could then be assigned at a profit, when you were acting as the seller's agent; and/or
 - f.g. you made a false representation when you identified [Licensee 1] as the named buyer's agent on the assignment documents when in fact he did not provide agency representation to the named buyer and/or acted upon direction from you.
3. You committed professional misconduct within the meaning of section 35(1)(a) [*misconduct by licensee: contravention of the RESA, the Regulation or the Rules*] and/or 35(1)(c) [*misconduct by licensee: wrongful taking or deceptive dealing*] of the RESA with respect to [Property 5], as follows:
- a. in or about July 2017, while acting as the agent for the seller of [Property 5], you entered into an arrangement with [Licensee 1], who was purporting to act as the agent for the named buyer, which arrangement

includes one or more of the further particulars set out in subparagraphs (b) – (g) below, for the purpose of inducing the seller to enter into a contract of purchase and sale for [Property 5] with the intention that the named buyer would promptly assign the contract of purchase and sale to another individual at a higher price and thereby deprive the seller of the opportunity to obtain fair market value for [Property 5];

- b. on or about July 26, 2017, you directed or arranged for [Licensee 1] to prepare a contract of purchase and sale for [Property 5] on behalf of the named buyer, when you knew or ought to have known that the named buyer was not intending to complete the purchase;
- c. you represented to the seller of [Property 5] that the named buyer had carried out a home inspection on the property and that the property required new windows when:
 - i. the named buyer had not carried out a home inspection;
 - ii. you knew or ought to have known the representations regarding the results of the home inspection were untrue or were reckless as to the truth of those representations; and/or
 - iii. the representations were intended to induce the seller to reduce the sale price and/or to deprive the seller of the fair market value of [Property 5];
- d. on or about August 14, 2017, relying on the misrepresentations regarding the home inspection, you induced or advised the seller to amend the contract of purchase and sale with the named buyer to reduce the selling price from \$807,000 to \$797,000, when you knew or ought to have known that the reduced price was less than the fair market value of [Property 5];
- e. prior to advising the seller to reduce the purchase price, you prepared or arranged for [Licensee 1] to prepare an assignment of the contract of purchase and sale, dated August 10, 2017, from the named buyer to another individual for a purchase price of \$845,000, and you did not advise the seller that you were aware of and/or had participated in the assignment of the contract of purchase and sale or that the property had been assigned for \$845,000;
- f. on or about August 16, 2017, you instructed or arranged for [Individual 1], your spouse, to provide a cheque for the deposit of the purchase price of [Property 5] on behalf of the named buyer for the purpose of ensuring the named buyer fulfilled the terms of the contract of purchase and sale so that [Property 5] could then be assigned at a profit, when you were acting as the seller's agent; and/or
- g. you made a false representation when you identified [Licensee 1] as the named buyer's agent on the assignment documents when in fact he did

not provide agency representation to the named buyer and/or acted upon direction from you.

4. You committed professional misconduct within the meaning of section 35(1)(a) [*misconduct by licensee: contravention of the RESA, the Regulation or the Rules*] and/or 35(1)(c) [*misconduct by licensee: wrongful taking or deceptive dealing*] of the RESA with respect to one or more of the following trades in real estate in British Columbia:

- a. [Property 6], Squamish, BC on or about March 27, 2017;
- b. [Property 7], Squamish, BC on or about April 21, 2017; and/or
- c. [Property 8], Squamish, BC on or about October 10, 2017,

(each a “Transaction” and collectively the “Transactions”), as follows:

- i. you entered into an arrangement with [Licensee 2] (“[Licensee 2]”), a licensee who purported to be the buyer’s agent in the Transaction, to circumvent the commission provisions of the listing agreement and/or to obtain remuneration to which you were not entitled;
 - ii. you identified [Licensee 2] as the buyer’s agent in the Transaction documents when in fact he did not provide agency representation to the buyer and/or acted upon direction from you thereby making a false representation;
 - iii. you failed to take reasonable steps to avoid conflicts of interest by providing agency representation to the buyer and the seller and you failed to promptly and fully disclose those conflicts of interest and the nature of your representation to the buyer and seller;
 - iv. you caused the seller to enter into a written agreement with your brokerage or enter into a written agreement with [Licensee 2]’s brokerage, in order to pay a higher rate of commission than that provided in the listing agreement, relying on the false representation that [Licensee 2] was the buyer’s agent; and/or
 - v. you received or expected to receive a portion of [Licensee 2]’s commission earned on the Transaction, and you failed to disclose to your client the remuneration you received or expected to receive from [Licensee 2].
5. You committed professional misconduct within the meaning of sections 35(1) [*misconduct by licensee: contravention of the RESA, the Regulation or the Rules*] including section 37(4) [*withhold, destroy, conceal or refuse to provide information or things required for an investigation*], 35(1)(e) [*misconduct by licensee: fails or*

refuses to cooperate with an investigation] and/or 35(1)(g) [*misconduct by licensee: makes or allows to be made a false or misleading statement]* of the RESA as follows:

- a. You proposed and/or made an agreement with [Licensee 1] and/or other persons that one or more of you would provide false or misleading statements to the Real Estate Council of British Columbia (the "Council") during its investigation of the matters identified in one or more of paragraphs 1–3 above, including asking [Licensee 1] to conceal the fact that he had not actually provided agency representation to one or more of the parties involved in the transactions described in paragraphs 1-3 above;
 - b. You made false or misleading statements to the Council or the BCFSA during its investigation of the matters identified in one or more of paragraphs 1–4 above, including one or more of the following:
 - i. You concealed the fact that you had effectively acted for both the seller and the buyer in one or more of the transactions described in paragraphs 1-4 above;
 - ii. You denied receiving payment from [Licensee 1] with respect to one or more of the transactions described in paragraph 1 above, or you understated the amount of the payment received from [Licensee 1];
 - iii. You denied receiving payment from [Licensee 2] with respect to one or more of the transactions described in paragraph 4 above, or you understated the amount of the payment received from [Licensee 2]; and/or
 - iv. You denied any participation in the assignment of [Property 1] when you collaborated with [Licensee 1] to induce the sellers to lower the purchase price so that [Property 1] could be assigned at a profit, as set out in paragraphs 2(a) - 2(f) above.
 - c. You deleted, destroyed, or withheld records related to one or more of the Transactions so that those records would not be available to Council or the BCFSA in its investigation of the matters identified in one or more of paragraphs 1–4 above.
6. Further, or in the alternative, you committed conduct unbecoming a licensee within the meaning of sections 35(2)(a) [*misconduct by licensee: conduct contrary to the best interests of the public*], 35(2)(b) [*misconduct by licensee: undermines public confidence in the real estate industry*], and/or 35(2)(c) [*misconduct by licensee: brings the real estate industry into disrepute*] of the RESA, when you engaged in the conduct set out in one or more of paragraphs 1–5 above.

Issues

9. The issue is whether the allegations set out in the Notice of Hearing have been proven.

Jurisdiction and Procedure

10. Pursuant to section 2.1(3) of RESA the Superintendent of Real Estate (the “Superintendent”) may delegate any of its powers. The Chief Hearing Officer and Hearing Officers of the Hearings Department of BCFSa have been delegated the statutory powers and duties of the Superintendent of Real Estate with respect to sections 42 through 53 of RESA.
11. BCFSa must prove its case on the balance of probabilities, that is, it must prove that it is more likely than not that the facts as alleged occurred. In order to make a finding against the respondents, I must find that the evidence is “sufficiently clear, convincing and cogent” to satisfy that test: *FH v McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41.
12. Evidence is generally considered as a matter of procedure³. As an administrative tribunal the Superintendent is not bound by court rules of evidence, and in the absence of any statutory provision to the contrary, may consider any evidence it considers relevant, including hearsay evidence: *Adams v. British Columbia (Superintendent of Motor Vehicles)*, 2019 BCCA 225).
13. Further, the fact that the legislation may provide for a formal structure for enforcement proceedings does not preclude hearsay evidence from being admitted at a hearing⁴. There is no provision in RESA which imports civil or criminal rules of evidence into the administrative proceedings held by the Superintendent. The Superintendent may, however, draw upon principles underlying court rules of evidence to exclude or assess evidence.
14. The Superintendent 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 Superintendent affords every respondent an opportunity to respond to the case against him or her by providing advance notice of the issues and the evidence, and an opportunity to present evidence and argument. The Superintendent must determine facts, and decide issues set out in the Notice of Hearing, based on evidence. The Superintendent may, however, apply its individual expertise and judgment to how it evaluates or assesses evidence.

Background

15. The evidence and information before me consists of the information set out in the ASF, as well as a significant number of documents referred to by the parties in the course of their submissions and the review of the ASF.
16. The following background is largely summarized from the ASF entered into by BCFSa and the Respondents.
17. I accept the facts set out in the ASF. What follows is not a reiteration of each and every fact set out therein.

General Summary

³ *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119, para. 38.

⁴ *Cambie Hotel*, paragraph 38.

18. Andre Zubko was a successful real estate licensee. He was licensed from 2006 to 2017, and worked largely in the area of Squamish, BC. For the period of January through December 2016, he was paid total gross commissions of \$383,178.23 (inclusive of GST).
19. Prior to the allegations at issue in this matter, Mr. Zubko did not have any history of discipline with the regulator. Mr. Zubko's licence renewal application was denied in 2017, and he has not had a licence since.
20. Despite his success as a real estate licensee Mr. Zubko, unfortunately, commencing in 2016 and proceeding through 2017 until an investigation was started by the regulator, engaged in eight real estate transactions which involved tactics that were prohibited by RESA and the *Real Estate Services Rules* ("Rules").
21. In general terms, those transactions involved Mr. Zubko and two other realtors working together, against the interests of Mr. Zubko's clients, with the intention of allowing Mr. Zubko to circumvent the commission provisions of the listing agreements he had entered into with his clients.
22. In short, Mr. Zubko sought, in each of the eight transactions, to obtain larger commission payments than that which his listing agreements allotted to him, at his clients' expense. This occurred in each of the eight transactions at issue in this hearing, and I will refer to these as the "commission deals" in my reasons.
23. In two of the eight transactions, Mr. Zubko's surreptitious and illegal activities went beyond simply seeking to obtain a higher commission for himself at the expense of his clients.
24. Rather, in those two transactions, Mr. Zubko not only sought to obtain a higher commission for himself at the expense of his clients, but he also arranged for individuals personally close to him (his [family member] and a friend from high school) to enter into contracts to purchase listings Mr. Zubko had listed, with the purpose of then assigning those contracts of purchase and sale for a higher price. At the same time, Mr. Zubko sought to convince his seller clients to lower the price they had agreed to in the contracts of purchase and sale held by Mr. Zubko's close acquaintances, thereby increasing any profit his personal acquaintances may realize on the assignment of the contract and purchase and sale.
25. In sum, Mr. Zubko sought to allow his close personal acquaintances to turn a profit on the assignment of contracts of purchase and sale, at the expense of Mr. Zubko's clients. I will refer to the additional aspect of these two transactions as the "assignment deals".
26. A review of the individuals involved in Mr. Zubko's activities follows.

The Licensees

27. Mr. Zubko's high school acquaintance, [Licensee 1], was also licensed as a realtor. [Licensee 1] initially worked, commencing in 2011, as a realtor at One Percent Realty with Mr. Zubko. At the time of the transactions referenced in the Notice of Hearing, [Licensee 1] was licensed with [Brokerage 1] ("[Brokerage 1]").
28. [Licensee 2] became licensed as a real estate agent in 2016. [Licensee 2] was acquainted with Mr. Zubko as a result of being the cousin of Mr. Zubko's wife, [Individual 1]. Mr. Zubko would regularly see [Licensee 2] at family functions.

Friends and Family

29. [Buyer 1] is an individual who was friends with, and well known to Mr. Zubko, [Individual 1], and [Licensee 1], dating to their high school days.
30. [Buyer 2] [redacted] is Mr. Zubko's [family member]. Mr. Zubko would regularly see [Buyer 2] at family functions. [Buyer 2] was also well known to [Licensee 1] through Mr. Zubko.

Mr. Zubko's Plan

31. The agency Mr. Zubko was a part of, One Percent Realty, operates by offering sellers a lower rate of commission than other brokerages. Commissions paid by sellers to One Percent Realty licensees are often paid at a flat fee. In general terms, One Percent Realty attracts seller clients who are seeking to sell their property at a lower transaction cost.
32. Mr. Zubko observed, since he began working at One Percent Realty, that licensees acting for buyers were at times reluctant to show properties listed by One Percent Realty due to the fact that the buyer agents would also receive a reduced commission.
33. Mr. Zubko further observed that on most offers made on his One Percent Realty listings by other brokerages, the buyer agents would seek to include a term that required the seller to pay an increased commission to the buyer's agent. Mr. Zubko observed that a common proposed split set out in those offers was 3.5% on the first \$100,000 and 1.5% on the balance of the purchase price.
34. As a result of his observations, Mr. Zubko approached [Licensee 1] and [Licensee 2] with a plan.
35. Mr. Zubko's plan was as follows:
 - Mr. Zubko would refer unrepresented buyers who were interested in Mr. Zubko's listings to [Licensee 1] or [Licensee 2];
 - [Licensee 1] and [Licensee 2] would, in making an offer on Mr. Zubko's listing on behalf of the referred and previously unrepresented buyer, require in that offer an increased buyer's agent commission as discussed above;
 - Upon the completion of the purchase and sale transaction, [Licensee 1] and [Licensee 2] would share the increased buyer's commission with Mr. Zubko.
36. The reason that Mr. Zubko proposed this plan to [Licensee 1] and [Licensee 2] was to increase the amount of commission that would be payable on the sale of the properties by involving a second brokerage in the transaction.
37. As it was Mr. Zubko's plan, it was agreed between Mr. Zubko, [Licensee 1], and [Licensee 2], that Mr. Zubko would receive the majority of the increased commission.
38. [Licensee 1] paid Mr. Zubko portions of the commissions he earned in respect of transactions at issue in this matter by way of bank draft on April 1, 2016 (\$7,000); July 9, 2016 (\$2,112); and August 18, 2016 (\$10,264.63).

39. As set out in the Notice of Hearing, there were eight transactions in which Mr. Zubko's plan was executed. A summary of those transactions follow.

The Transactions

[Property 1]

40. The parties have agreed to all of the following facts.
41. In December 2015, Mr. Zubko received an inquiry about listing a bare land lot located at [Property 1], Squamish (“[Property 1]”). The inquiry came from [Client 1], the son of the owner of [Property 1], who held a power of attorney with respect to that property.
42. Mr. Zubko, on December 30, 2015, provided [Client 1] with a Comparative Market Analysis of [Property 1], and recommended a listing price of \$410,000, placing it at approximately \$27.70 per square foot. In the Comparative Market Analysis, Mr. Zubko identified a number of other bare land lots as comparable to [Property 1]. The prices per square foot on those properties ranged from \$19.02 (an active listing at the time) to \$76.56 (a listing which had been sold and was described as in the Comparative Market Analysis as an “Outstanding building lot with tremendous views of the mountains”).
43. Mr. Zubko then sent a listing contract to [Client 1] on January 6, 2016.
44. The rear of [Property 1] is sloped, into a riparian area. Mr. Zubko, on his own initiative, made inquiries regarding what impact the slope on [Property 1] would have on the sale price of the property. Mr. Zubko obtained an estimate, on January 7, 2016, of between \$178,000 and \$195,000 to construct a retaining wall on [Property 1], and provided that estimate to [Client 1] that same date. Mr. Zubko noted that he felt that it would be best to obtain a further estimate from another company for comparison.
45. On February 6, 2016, Mr. Zubko obtained a further preliminary estimate which indicated that site preparation of [Property 1], including clearing of trees, excavation and building of retaining walls would cost approximately \$250,000. This second estimate was not provided to [Client 1].
46. Neither estimate obtained by Mr. Zubko was requested by either [Client 1] or a potential buyer.
47. The Multiple Listing Contract (“[Property 1] MLC”) between Mr. Zubko (as designated agent and on behalf of One Percent Realty) and [Client 1] is dated January 11, 2016, but the parties agree that the contract was in fact signed on January 6, 2016. The listing price for [Property 1] was \$399,000, \$11,000 less than the amount suggested by Mr. Zubko after completing the Comparative Market Analysis.
48. The [Property 1] MLC further indicated that the commission due to the listing brokerage would be a flat fee of \$6,000 along with a \$995 administrative fee, plus GST. The [Property 1] MLC provided that the buyer's agent/brokerage would receive \$3,000 of the listing brokerage's commission. Of note, the [Property 1] MLC was subsequently amended to provide that the commission for the listing brokerage would be a flat fee of \$3,995, plus a percentage fee of 3.5% on the first \$100,000 and 1.35% on the balance (the “amended [Property 1] MLC”)

49. The [Property 1] MLC contains standard clauses as were present in the Real Estate Board of Greater Vancouver multiple listing contracts at that time. Clause 7 set out that Mr. Zubko was designated by the listing brokerage to act as the sole agent of the seller. Clause 8 of the [Property 1] MLC further indicated that Mr. Zubko would act as the agent of only the seller with respect to [Property 1] except where the seller consented to limited dual agency. Schedule A to the [Property 1] MLC further provided that Mr. Zubko would engage in a number of further actions in relation to the sale of [Property 1].
50. In sum, the [Property 1] MLC set out that Mr. Zubko had a duty to sell [Property 1] in a manner that served the best interests of [Client 1].
51. Also on January 6, 2016, [Client 1] signed a "Working With a Realtor (Designated Agency)" form. That form is provided to buyers or sellers of real estate who are working with a licensee to provide the buyers or sellers with information regarding the nature of their relationship with a licensee. The Working With a Realtor document specifically provides information regarding limited dual agency, as it was permitted in 2016. In signing the Working With a Realtor document, [Client 1] was acknowledging that he was entering into a client relationship with Mr. Zubko.
52. Prior to [Property 1] being listed for sale, Mr. Zubko had contacted [Licensee 1], to request that [Licensee 1] act as an agent for a buyer, [Buyer 2].
53. [Buyer 2] had learned about [Property 1] from Mr. Zubko, and he was interested in entering into a contract for the purchase of [Property 1], with a view to assigning that contract to a third-party purchaser for a profit. Both Mr. Zubko and [Licensee 1] were aware of [Buyer 2's] intentions in this regard at the outset of their dealings with him.
54. Negotiations between [Buyer 2] and [Client 1] commenced on January 9, 2016, in the form of a contract of purchase and sale for [Property 1], which was prepared by [Licensee 1] (the "[Property 1] CPS"). Again, this was prior to [Property 1] having been publicly listed for sale.
55. On that same January 9, 2016 date, [Client 1] signed a "Fee Agreement Seller Pays (Buyer Represented Seller Not Represented)" document, which indicated that, in respect of [Property 1], where [Licensee 1] was the designated agent for [Buyer 2] "and/or nominee", [Client 1] would agree to pay the buyer's brokerage a fee of 3.5% on the 1st \$100,000 and 1.35% on the balance, including the \$3,000 offered on MLS.
56. [Buyer 2's] initial offer for [Property 1], as set out in the [Property 1] CPS, was \$325,000. [Client 1] countered in the amount of \$375,000, and the parties eventually reached agreement on a sale price of \$350,000, on January 12, 2016. The deposit to be paid on the [Property 1] CPS was \$5,000.
57. [Client 1] was not aware of the fact that Mr. Zubko had any connection to [Licensee 1], let alone that they had previously been business partners. [Client 1] was also not aware that [Buyer 2] was Mr. Zubko's [family member]. Further, [Client 1] was not aware of the fact that it was Mr. Zubko who had brought [Property 1] to [Buyer 2's] attention, or that Mr. Zubko had communicated with [Licensee 1] and [Buyer 2] about the possible assignment of the [Property 1] CPS in advance.
58. Of note, [Property 1] was publicly listed for sale by that date, having been listed on January 11, 2016.

59. The [Property 1] CPS called for a completion date of February 15, 2016, and identified the buyer as “[Buyer 2] and or nominee”, the seller as [Client 1], the seller’s agent as Mr. Zubko, and the buyer’s agent as [Licensee 1]. Included in the terms of the [Property 1] CPS was that the seller agrees to pay the buyer’s agent a selling commission of 3.5% on the 1st \$100,000 and 1.35% on the balance.
60. Also on January 12, 2016, [Client 1] sent to Mr. Zubko, at Mr. Zubko’s request, a form of authorization which would enable [Buyer 2] to make applications to the District of Squamish. [Buyer 2] did not, at any point, make any applications to the District of Squamish in relation to [Property 1].
61. On January 20, 2016 a potential assignee, represented by licensee [Licensee 3], made an offer on the assignment of the [Property 1] CPS.
62. However, on January 21, 2016, [Licensee 3] wrote to [Licensee 1], with a copy to Mr. Zubko, and indicated that her clients had determined that [Property 1] could not be subdivided due to a district storm pipe coming through the right side of the property, and that the property would not support sufficient square footage to justify the purchase due to the fact of the ravine/riparian area at the rear of the property, which, in the client’s view, made 75% of the lot more or less useless for building. [Licensee 3] included the email from her clients detailing their concerns with [Property 1] in the email to [Licensee 1] and Mr. Zubko. [Licensee 3] further noted that:

I have another party interested in writing, however, Andre has first right of refusal for a back up offer, he mentioned he has clients, please let me know before I contact my other buyers.
63. That same day, January 21, 2016, [Licensee 1], at Mr. Zubko’s direction, wrote to Mr. Zubko and indicated that he had made inquiries about the development potential of [Property 1] and discovered problems. The problems identified in [Licensee 1]’s January 21, 2016 email were in fact simply copied from the email [Licensee 3]’s clients had provided to her earlier that day.
64. [Licensee 1] had, in fact, not made any inquiries into the development potential of [Property 1]. The information he provided to Mr. Zubko was nothing more than a “cut and paste” from the email from [Licensee 3]’s clients. The only change to the email was that unlike [Licensee 3]’s clients, who had concluded that they were no longer interested in proceeding with a purchase of [Property 1], [Licensee 1] suggested that a renegotiation of the [Property 1] CPS may be required.
65. Mr. Zubko provided [Licensee 1]’s email to [Client 1]. In doing so, while Mr. Zubko was aware of the fact that [Licensee 1] had not made any inquiries as described in his email, Mr. Zubko was of the belief that the concerns identified by [Licensee 3]’s clients were accurate.
66. [Client 1] was not aware that Mr. Zubko had instructed [Licensee 1] to send the January 21, 2016 email.
67. Pursuant to the [Property 1] CPS, removal of subjects was January 29, 2016. However, on that date, [Buyer 2] and [Client 1] executed an addendum extending subject removal to February 20, 2016.

68. [Buyer 2] and [Client 1] executed a further addendum to the [Property 1] CPS on February 11, 2016, extending the subject removal date once again, to March 10, 2016. The February 11, 2016 addendum included an agreement between the parties to dramatically reduce the purchase price of [Property 1] from \$350,000 to \$175,000.
69. Prior to [Client 1] agreeing to reduce the price to \$175,000, Mr. Zubko had advised [Client 1] that \$175,000 was a fair price for [Property 1], due to its purportedly reduced feasibility for development. Mr. Zubko did not, at any point, suggest to [Client 1] that he attempt to solicit other offers which were closer to the listing price.
70. Of note, the price of \$175,000 would price [Property 1] at approximately \$11.84 per square foot, significantly below any of the other lots noted by Mr. Zubko in his Comparative Market Analysis.
71. [Buyer 2] found another purchaser for the assignment of the [Property 1] CPS, and, on February 17, 2016, entered into an assignment for the [Property 1] CPS to [Buyer 3], with a purchase price of \$335,000 (the "[Property 1] Assignment"). The subject removal date for the [Property 1] Assignment was February 24, 2016.
72. [Buyer 3] had learned of [Property 1] when he had attended the One Percent Realty office in Squamish and had spoken to Mr. Zubko about available lots. Mr. Zubko had informed [Buyer 3] about [Property 1], and had indicated that it was not very good because it was deep in the back. [Buyer 3] had determined to view the property himself in order to determine whether he could build on it.
73. In negotiating the [Property 1] Assignment, [Buyer 3] dealt with Mr. Zubko rather than [Licensee 1] (who was, ostensibly, [Buyer 2's] agent). [Buyer 3]'s discussions with Mr. Zubko regarding the negotiation of the [Property 1] Assignment occurred after [Client 1] had agreed to the February 11, 2016 price reduction to \$175,000.
74. The [Property 1] Assignment set out that [Buyer 2] agreed to pay a commission of 2% on the first \$100,000, and 1.125% on the balance of the purchase price to [Licensee 1]'s brokerage. However, no commission was ultimately paid by [Buyer 2] on the assignment.
75. Mr. Zubko continued to have conversations with [Client 1] regarding the setback and other building requirements for [Property 1], on February 22 and 23, 2016. While [Buyer 3] and [Buyer 2] had already entered into the [Property 1] Assignment at that time, the subjects had yet to be removed.
76. On February 23, 2016, Mr. Zubko provided a bank draft of \$5,000 (also dated February 23, 2016), from his personal bank account, to [Licensee 1]'s brokerage, in order to pay the deposit due by [Buyer 2] under the [Property 1] CPS. [Buyer 2] subsequently repaid the deposit amount to Mr. Zubko on February 29, 2016. The withdrawal and subsequent replacement of the \$5,000 is apparent from a review of Mr. Zubko's personal bank account records.
77. [Client 1] was not aware of the fact that Mr. Zubko had personally paid the deposit on the [Property 1] CPS by loaning that money to [Buyer 2].

78. On February 24, 2016, [Buyer 3] removed subjects on the [Property 1] Assignment. That same day, [Buyer 2] removed subjects from the [Property 1] CPS, although he had until March 10, 2016 to do so.
79. [Client 1], again, was not aware that [Buyer 2] was completing the purchase of [Property 1] at a price of \$175,000 when he had already assigned it for \$335,000. Nor was [Client 1] aware that Mr. Zubko had dealt with [Buyer 3] in arranging the assignment, or that both [Buyer 2] and [Buyer 3] removed their subjects on the same date.
80. Upon the completion of the [Property 1] sale, Mr. Zubko completed a sales report form to the Real Estate Board of Greater Vancouver. On that form Mr. Zubko indicated that the selling price of the property was \$350,000.
81. On March 15, 2016, the District of Squamish issued a Property Tax Certificate indicating an assessed value of \$416,000 for [Property 1] (for the 2015 tax year). In January 2017, [Property 1] was assessed by BC Assessment at \$198,000 for the 2016 tax year.
82. The sale of [Property 1] closed on March 15, 2016, with title transferred to [Buyer 3] and his wife.
83. [Brokerage 1] received a commission of \$4,512.50, of which it paid \$4,262.50 to [Licensee 1]. Mr. Zubko also received commission of \$3,595 from his brokerage, out of the \$3,995 total commission received by One Percent Realty. Mr. Zubko has denied receiving any of the approximately \$160,000 profit [Buyer 2] would have received from the [Property 1] Assignment.
84. In total, [Client 1] paid commissions of \$8,932.88 including GST. This amounts to \$1,588.13 more than would have been payable under the [Property 1] MLC (\$7,344.75).
85. [Buyer 3] ultimately was able to build a large home, nearly 5,000 square feet, on [Property 3]. The building site did not require levelling, nor was a retaining wall built during construction.
86. Both BCFSA and Mr. Zubko, in preparation for the hearing of this matter, obtained appraisals of [Property 1].
87. BCFSA's appraisal was completed by [Appraiser 1]. [Appraiser 1] produced two reports, one dating from 2019 (the "2019 [Appraiser 1] Appraisal") and one from 2024 (the "2024 [Appraiser 1] Appraisal"). [Appraiser 1] indicated that each of the reports was produced per the Canadian Uniform Standards of Professional Appraisal Practice of the Appraisal Institute of Canada.
88. In the 2019 [Appraiser 1] Appraisal, [Appraiser 1] indicated that he had reviewed historical Google street view images and site plan data of [Property 1] dating to January 12, 2016, and that he understood the property to have, at that time, been a vacant site characterized by mature vegetation, trees, and forest under-growth. [Appraiser 1] indicated that he had also attended the site and taken photographs on May 25, 2019 (the [Buyer 3] house having been constructed by that point in time). He noted that he had not completed a technical investigation such as an environmental review, a site or building survey, or investigations into the bearing qualities of the soil.
89. [Appraiser 1] reviewed other lot sales in the Squamish area that he considered to be as similar as possible to [Property 1], for the period of September 2015 through March 2016. In doing so, he

noted that based on those comparables, [Property 1] was worth between \$349,000 and \$375,000. After considering the marketing and sale of [Property 1], [Appraiser 1] concluded that as of January 12, 2016, the estimated value of [Property 1] was \$350,000.

90. In January of 2024, BCFSA sought an updated report from [Appraiser 1]. [Appraiser 1] was specifically requested to describe observations of the rear portion of [Property 1], including any notable or unusual features pertaining to the slope of the property, and to indicate if those observations affected the conclusions set out in the 2019 [Appraiser 1] Appraisal.
91. [Appraiser 1] attended [Property 1] on February 16, 2024, and took photographs of the rear portion of the property, which, from the photographs, can be seen to slope into a ravine. [Appraiser 1] described, in his February 23, 2024 report, the fact that the rear of [Property 1] slopes into a ravine, significantly on the west side of the property, and that the house that had been built on the property had a slightly irregular footprint following the natural edge of the ravine. [Appraiser 1] concluded that:

The ravine is considered to be both positive and negative in terms of the Property's market value. The slope creates unusable site areas while the privacy and views of the forest are considered desirable. The requirement for a Riparian Area Development Permit is an additional development cost but the \$150 application fee and the \$2,800 Riparian Area Assessment fee are considered nominal. The cost to install the observed small wood tie retaining work is considered to be nominal. Overall the development costs associated with building next to the ravine appear to have been nominal.

92. [Appraiser 1] reviewed the comparables he had identified in his 2019 report and noted that he had adjusted the value of two of the comparables in a downward fashion by 5% due to the fact that although they had forest views, and they had no ravine. He concluded that this downward adjustment on the comparables in fact provided further support for his conclusion that [Property 1] had a value of \$350,000 in January 2016. [Appraiser 1]'s conclusion was based on the extraordinary assumption and limiting condition that there were no easements, rights of way, or charges which would have adversely affected [Property 1]'s value.
93. Mr. Zubko also obtained an appraisal of [Property 1], which report was completed on February 16, 2024 by [Appraiser 2], an accredited appraiser. In his report [Appraiser 2] estimated that the value of [Property 1] as of January 12, 2016 was approximately \$170,000, based on the extraordinary assumption that a purchaser would discount the value of [Property 1] based on the cost to create a level building site in the range of \$150,000 to \$170,000. [Appraiser 2] noted that:

The estimated costs to bring the site to a reasonably level status is estimated to be \$175,000 based on similar assignments and quotations from contractors I have seen on other lots. This is an estimate only and the appraiser is not an expert in this field. However a reasonable purchaser will consider these additional costs which could also include a geotechnical report, riparian creek area study and retaining walls. An adjustment was made for this....Note there is a lack of truly similar sales and to this end dated sales were used and large adjustments were made...The above comparable sites had some excavation completed when the subdivisions were completed.

94. Two of the comparator properties selected by [Appraiser 2] were the same as those selected by [Appraiser 1]. [Appraiser 2] concluded that those properties were superior to [Property 1] as they would not require the \$175,000 “cost to cure” that he had estimated for [Property 1]. Having applied the “cost to cure” of [Property 1] to those comparable property sales, [Appraiser 2] concluded that the market value of [Property 1], as of January 2016, was \$170,000.

[Property 2]

95. On February 4, 2016 Mr. Zubko entered into a multiple listing contract (the “[Property 2] MLC”) to sell a property located at [Property 2], Squamish, BC (“[Property 2]”), with a listing price of \$569,000. Mr. Zubko was identified on the [Property 2] MLC as the designated agent with One Percent Realty. [Individual 2] and [Individual 3] [collectively, Client 2] were the owners of [Property 2]. [Client 2] and Mr. Zubko also signed a “Working With a Realtor” document, indicating that [Client 2] [was] entering into a client relationship under “Designated Agency” with Mr. Zubko.
96. The [Property 2] MLC provided that One Percent Realty’s commission would be \$6,000, plus a \$995 administration fee and GST.
97. The [Property 2] MLC was subsequently amended to provide that One Percent Realty’s commission would be \$3,995 plus 3,255% on the 1st \$100,000 and 1.25% on the balance, plus GST (the “Amended [Property 2] MLC”).
98. Just three days later, on February 7, 2016, [Client 2] entered into a contract of purchase and sale to sell [Property 2] to [Buyer 4] and [Buyer 5] for \$560,000 (the “[Property 2] CPS”). On the [Property 2] CPS, Mr. Zubko is identified as the seller’s agent, with [Licensee 1] identified as the buyer’s agent. One of the terms of the [Property 2] CPS was that [Licensee 1]’s brokerage would be paid a commission in the amount of 3.255% on the 1st \$100,000 and 1.25% on the balance.
99. Despite [Licensee 1] being identified as the buyer’s agent, [Buyer 4 and Buyer 5] primarily worked with Mr. Zubko in their dealings with [Property 2]. [Licensee 1] provided minimal agency representation to [Buyer 4 and Buyer 5] regarding the transaction.
100. While [Licensee 1] did receive the subject removal addendum and the deposit required by the [Property 2] CPS from [Buyer 4 and Buyer 5], [Buyer 4 and Buyer 5], in providing the addendum and deposit to [Licensee 1], were under the impression that [Licensee 1] in fact worked with Mr. Zubko as part of Mr. Zubko’s real estate team.
101. The sale of [Property 2] closed on March 14, 2016. [Licensee 1]’s brokerage, [Brokerage 1], received a commission of \$9,005, of which it paid \$8,755 to [Licensee 1]. A commission of \$3,952.14 was paid One Percent Realty as the listing brokerage, which in turn paid Mr. Zubko \$3,552.14.
102. The total amount of commission paid by [Client 2] in respect of the sale of [Property 2] was \$13,605. This was \$6,260.25 more commission than would have been payable under the original [Property 2] MLC, which would have been \$7,344.75.

[Property 3]

103. On April 13, 2016, Mr. Zubko, as a designated agent and on behalf of One Percent Realty, entered into a multiple listing contract (the “[Property 3] MLC”) to sell a property located at [Property 3] in Squamish, with a listing price of \$839,000. At that time the seller client, [Client 3], and Mr. Zubko signed a “Working With a Realtor” document indicating that [Client 3] was entering into a client relationship under designated agency with Mr. Zubko.
104. The [Property 3] MLC provided that the commission due to One Percent Realty would be 1% of the final sale price plus a \$995 administration fee and GST. The [Property 3] MLC further provided that One Percent Realty, as the listing brokerage, would give the cooperating (buyer’s) brokerage a commission equivalent to 0.5% of the final sale price of the property.
105. The [Property 3] MLC was subsequently amended to provide that the commission to One Percent Realty would be 0.5% of the final sale price, plus 3.255% on the 1st \$100,000 plus 1.125% on the balance of the sale price, plus a \$995 administration fee and GST (the “Amended [Property 3] MLC”).
106. [Buyer 4 and Buyer 5], who had been the buyers for [Property 2], became interested in buying [Property 3].
107. Once again, [Buyer 4 and Buyer 5] were under the impression that [Licensee 1] worked with Mr. Zubko as part of his real estate team. [Buyer 4 and Buyer 5] again dealt primarily with Mr. Zubko in respect of the [Property 3] transaction.
108. On April 13, 2016, [Client 3] and [Buyer 4 and Buyer 5] entered into a contract of purchase and sale on [Property 3] for the purchase price of \$850,000 (the “[Property 3] CPS”). Mr. Zubko was identified in that document as the seller’s agent, with [Licensee 1] identified as the buyer’s agent. The [Property 3] CPS contained a term setting out that the seller agreed to pay [Brokerage 1] a commission of 3.255% on the 1st \$100,000 plus 1.125% on the balance of the sale price.
109. The sale of [Property 3] closed on August 10, 2016. [Brokerage 1] received a commission of \$11,692.50, of which it paid \$11,442.50 to [Licensee 1]. [Licensee 1], in turn, paid \$10,264.63 of that amount to Mr. Zubko by way of an August 18, 2016 bank draft.
110. Commission of \$5,245 was paid to One Percent Realty, which in turn paid Mr. Zubko a commission of \$4,845.
111. The total amount of commission paid by [Client 3] was \$17,784.38. This was \$7,814.63 more in commission than what would have been payable under the original [Property 3] MLC.

[Property 4]

112. On September 12, 2016 Mr. Zubko entered into a multiple listing contract (the “[Property 4] MLC”) to sell a property located at [Property 4], Coquitlam (“[Property 4]”). Mr. Zubko was identified on the [Property 4] MLC as the designated agent for One Percent Realty. [Individual 4] and [Individual 5] were the owners of [Property 4] (the “[Client 4]”). [Client 4] and Mr. Zubko also signed a “Working With a Realtor” document, indicating that [Client 4] [was] entering into a client relationship under “Designated Agency” with Mr. Zubko.

113. The [Property 4] MLC provided that the commission due to One Percent Realty would be 1% of the final sale price plus a \$995 administration fee and GST. The [Property 4] MLC provided that One Percent Realty, as the listing brokerage, would give the cooperating (buyer's) brokerage a commission equivalent to 0.5% of the final sale price of [Property 4].
114. The [Property 4] MLC was subsequently amended to provide that the commission to One Percent Realty would be 0.5% of the final sale price, plus 3.255% on the 1st \$100,000 plus 1.1625% on the balance of the sale price, plus a \$995 administration fee and GST (the "Amended [Property 4] MLC").
115. On September 18, 2016, [Client 4] entered into a contract of purchase and sale (the "[Property 4] CPS") to sell [Property 4] to [Buyer 6] and [Buyer 7] (the "[Property 4] buyers") for \$890,000. In the [Property 4] CPS Mr. Zubko is identified as the seller's agent, with [Licensee 1] identified as the buyer's agent.
116. Also on September 18, 2016, [Client 4] entered into a "Fee Agreement Seller Pays" agreement with [Licensee 1]'s new brokerage, [Brokerage 2] ("[Brokerage 2]"), which indicated that they agreed to pay [Brokerage 2] a fee of 3.255% on the 1st \$100,000 plus 1.1625% on the balance of the sale price. This agreement increased the total amount of commission payable by [Client 4] above what was provided for the [Property 4] MLC.
117. Despite being identified as the [Property 4] buyer's agent, it was not [Licensee 1] who prepared the [Property 4] CPS on their behalf. Rather, Mr. Zubko did so. Mr. Zubko in fact completed all of the following documents for the [Property 4] transaction including:
- An addendum to the [Property 4] CPS;
 - A fee agreement, filled out in [Licensee 1]'s name;
 - A property disclosure statement;
 - A land title search;
 - A "Working With a Realtor" form, filled out in [Licensee 1]'s name;
 - A "Disclosure of Remuneration" form, filled out in [Licensee 1]'s name; and
 - An identify information record form.
118. After completing the above documents, Mr. Zubko emailed them to [Licensee 1]. Of note, in a September 25, 2016 email to [Licensee 1], Mr. Zubko indicated that he was providing [Licensee 1] with the "package for this deal", and that [Licensee 1] would have to sign some documents including the Working With a Realtor and the Disclosure of Remuneration forms.
119. Mr. Zubko specifically admits that he provided real estate services to both [Client 4] (his clients) and the [Property 4] buyers. He further admits that while [Client 4] [was] under the impression that the [Property 4] buyers had their own realtor, namely [Licensee 1], the [Property 4] buyers were in fact under the impression that Mr. Zubko was acting for them, and that [Licensee 1] simply worked with Mr. Zubko.
120. [Licensee 1] signed the documents, and completed further documentation such as forms required by Fintrac. [Licensee 1] then coordinated what was required for subject removal as Mr. Zubko had left on vacation.

121. The sale of [Property 4] closed on December 12, 2016. [Brokerage 2] received commission of \$12,432, of which it paid \$12,132 to [Licensee 1]. [Licensee 1] gave Mr. Zubko \$10,007.50 of that commission, by way of a bank draft dated December 16, 2016.
122. Commission of \$5,455 was paid to One Percent Realty as listing agent, which in turn paid Mr. Zubko \$5,055.
123. The total amount of commission paid was \$8,370.60 more than what would have been payable under the [Property 4] MLC, which would have been \$9,915.

[Property 5]

124. On July 25, 2017, Mr. Zubko entered into a multiple listing contract (the “[Property 5] MLC”) to sell a property located at [Property 5] in Squamish (“[Property 4]”) for a listing price of \$819,000. Mr. Zubko was identified on the [Property 5] MLC as the designated agent for One Percent Realty. [Client 5] was the owner of [Property 5]. [Client 5] and Mr. Zubko also signed a “Working With a Realtor” document, indicating that [Client 5] was entering into a client relationship under “Designated Agency” with Mr. Zubko.
125. The [Property 5] MLC provided that the commission due to One Percent Realty, as the listing brokerage, would be 1% of the final sale price plus a \$995 administration fee and GST, with the cooperating (buyer’s) brokerage to receive a commission of 0.5% of the final sale price.
126. The [Property 5] MLC was subsequently amended to provide that the commission due to the listing brokerage would be 0.5% of the final sale price, plus 3.255% on the 1st \$100,000 plus 1.1625% on the balance of the sale price, plus a \$995 administration fee and GST (the “Amended [Property 5] MLC”).
127. Also on July 25, 2017, [Licensee 1] emailed Mr. Zubko indicating that [Licensee 1] had a client interested in [Property 5] and asking for a viewing. [Licensee 1]’s client was [Buyer 1], the high school friend of Mr. Zubko and [Licensee 1].
128. Mr. Zubko, [Licensee 1], and [Buyer 1] had in fact discussed [Property 5] prior to Mr. Zubko signing the [Property 5] MLC. Mr. Zubko, [Licensee 1], and [Buyer 1] were all aware that [Buyer 1] was not in fact interested in purchasing [Property 5], and was not in a financial position to do so.
129. [Client 5], the seller of [Property 5], was not, at any point prior to the completion of the sale of [Property 5], aware of any connection between Mr. Zubko, [Licensee 1], or [Client 5].
130. On July 26 and 27, 2017, written offers and counter-offers were exchanged between [Licensee 1] (on behalf of [Buyer 1]) and Mr. Zubko (on behalf of [Client 5]). An offer was eventually accepted on July 27, 2017, with the parties entering into a contract of purchase and sale, with [Buyer 1] “and/or nominee” listed as the buyer, in the amount of \$807,000 (the “[Property 5] CPS”), with subject removal on August 16, 2017. Mr. Zubko is listed as the seller’s agent, and [Licensee 1] is listed as the buyer’s agent.

131. Mr. Zubko did not explain the effect of the wording “and/or nominee” to [Client 5]. Of note, although the [Property 5] CPS indicates that the property had been viewed by the buyer on July 25, 2017, [Buyer 1] did not, at any point, view [Property 5].
132. [Client 5] entered into a “Fee Agreement Seller Pays” agreement with [Brokerage 2], in which he agreed to pay [Brokerage 2] a commission of 3.25% on the 1st \$100,00 and 1.1625% on the balance. [Licensee 1] signed that agreement as [Buyer 1]’s agent in respect of the [Property 5] purchase.
133. The intention was for [Buyer 1] to enter into a contract of purchase and sale and then attempt to assign the property at a profit. The restriction on assignment of contract clause in the [Property 5] CPS was crossed out and agreed to by both [Client 5] and [Buyer 1], although [Client 5] says Mr. Zubko did not explain the effect of this and that he did not understand that the [Property 5] CPS could be assigned.
134. The plan of [Buyer 1] attempting to assign the property at a profit was to be done with both Mr. Zubko and [Licensee 1]’s knowledge. Mr. Zubko admits that he did not advise [Client 5] that [Buyer 1] intended to assign the [Property 5] CPS.
135. Prior to August 7, 2017, [Buyer 8] expressed an interest in [Property 5] to Mr. Zubko. Mr. Zubko provided [Buyer 8]’s information to [Licensee 1]. [Client 5] was not aware of the fact that Mr. Zubko had referred [Buyer 8] to [Licensee 1].
136. On August 7, 2017 [Licensee 1] drafted an assignment of contract of purchase and sale assigning the [Property 5] CPS from [Buyer 1] to [Buyer 8] for the price of \$845,000 (the “[Property 5] Assignment”). On August 10, 2017, an addendum to the [Property 5] Assignment was signed which called for subject removal on August 15, 2017.
137. On August 14, 2017, [Buyer 1] and [Client 5] entered in a purchase and sale addendum in which [Client 5] agreed to reduce the sale price on [Property 5] from \$807,000 to \$797,000. [Client 5] was not aware that, at the time he agreed to that price reduction, [Buyer 1] had already assigned the [Licensee 1] CPS for the price of \$845,000.
138. In advance of that price reduction, Mr. Zubko had advised [Client 5] that [Buyer 1] had obtained a house inspection on [Property 5] that had revealed that the house required new windows, and that [Client 5] ought to lower the price as a result.
139. Mr. Zubko admits that he was aware, when he informed [Client 5] of the above, that no professional house inspection had in fact taken place.
140. [Buyer 8] obtained a bank draft to pay the deposit on the [Property 5] Assignment on August 13, 2017, and, on August 15, 2017, removed subjects on the [Property 5] Assignment.
141. [Licensee 1] wrote to Mr. Zubko on August 16, 2017 to inform him that [Buyer 1] had removed subjects on the [Property 5] CPS and provided [Buyer 1]’s deposit on the [Property 5] CPS that same date.
142. The money for [Buyer 1]’s deposit came from Mr. Zubko, through his spouse, [Individual 1], by way of an August 16, 2016 bank draft. Mr. Zubko states that he was repaid by [Buyer 1].

143. Mr. Zubko reported the [Property 5] sale price to the Real Estate Board of Greater Vancouver as \$797,000.
144. The sale of [Property 5] to [Buyer 8] closed on September 27, 2017. [Brokerage 2] received commission of \$11,352.62, of which it paid \$11,052.62 to [Licensee 1]. [Licensee 1] paid [Individual 1] \$2,007.50 of that commission by way of bank draft dated October 20, 2017.
145. One Percent Realty received commission of \$4,980, which in turn paid \$4,580 to Mr. Zubko. The total commission paid by [Client 5] was \$7,736 more than was payable under the [Property 5] MLC.
146. [Buyer 1] did not pay any commission to [Licensee 1] on the assignment.
147. Mr. Zubko denied receiving any of the profit [Buyer 1] would have obtained from the [Property 5] Assignment.

[Property 6]

148. On January 6, 2017, Mr. Zubko entered into a multiple listing contract (the “[Property 6] MLC”) regarding a property located at [Property 6] in Squamish (“[Property 6]”). Mr. Zubko was listed on the [Property 6] MLC as the designated agent for One Percent Realty. [Client 6] was the owner of [Property 6]. [Client 6] and Mr. Zubko also signed a “Working With a Realtor” document, indicating that [Client 6] was entering into a client relationship under “Designated Agency” with Mr. Zubko.
149. The [Property 6] MLC provided that the commission to One Percent Realty, as the listing brokerage, would be \$6,000 plus a \$995 administration fee and GST, for a total of \$7,344.75. One Percent Realty would give the cooperating (buyer’s) brokerage \$3,000 of its commission.
150. The [Property 6] MLC was subsequently amended to provide that the commission due to One Percent Realty as the listing brokerage would be \$3,995 plus 3.225% on the 1st \$100,000 plus 1.3% on the balance and GST (the “Amended [Property 6] MLC”).
151. On March 27, 2017, [Client 6] entered into a contract of purchase and sale to sell [Property 6] to [Individual 6], [Individual 7], [Individual 8] and [Individual 9] (the “[Buyer 9]”) for \$529,000 (the “[Property 6] CPS”).
152. Although [Licensee 2] was listed as the buyer’s representative on the [Property 6] CPS, Mr. Zubko had in fact prepared the contract on behalf of [Buyer 9]. Of note in this respect, the [Property 6] CPS shows that there was some negotiation between the parties prior to the price of \$529,000 being reached.
153. [Licensee 2] did not act for the buyers other than in the limited capacity to get documents and collect the deposit.
154. Also on March 27, 2017, [Client 6] entered into a “Fee Agreement Seller Pays” agreement with [Licensee 2]’s brokerage, [Brokerage 1], in which [Client 6] agreed to pay [Brokerage 1] a fee of 3.255% on the 1st \$100,000, plus 1.3% of the balance of the purchase price. [Licensee 2] was listed as the designated agent of [Buyer 9] with respect to the purchase of [Property 6].

155. Mr. Zubko provided services in this transaction not only to [Client 6], but also to [Buyer 9]. [Client 6] was under the impression that [Licensee 2] was representing [Buyer 9], and was not aware that Mr. Zubko was in fact also acting for [Buyer 9].
156. Contrary to [Client 6]'s understanding, [Buyer 9] was under the impression that Mr. Zubko was acting for them with respect to their purchase of [Property 6]. [Buyer 9] was under that impression due to the fact that they never met [Licensee 2], did not have any contact with [Licensee 2], and exclusively dealt with Mr. Zubko regarding the purchase of [Property 6].
157. It was not until June 25, 2017, when [Buyer 9] attended [Property 6] in order to obtain a set of keys when both [Buyer 9] and [Client 6] came to realize that they were each relying on Mr. Zubko as agent.
158. On June 29, 2017, [Client 6] wrote to Mr. Zubko and alleged that he was acting as agent for both himself as the seller, and for [Buyer 9] as the buyer in respect of the purchase and sale of [Property 6]. In his text message to Mr. Zubko, [Client 6] indicated that he felt that Mr. Zubko had behaved in a disreputable and dishonest manner, and requested that Mr. Zubko return commission to him in the amount of \$7,500.
159. In a June 30, 2017 reply to [Client 6], Mr. Zubko indicated that he was only the listing agent, and that [Buyer 9] had their own realtor. Mr. Zubko suggested that [Buyer 9] was confused about his role in the transaction as he had "opened the door for them so many times".
160. As noted above, and contrary to his June 30, 2017 text message, Mr. Zubko now admits that he provided real estate services to both [Client 6] and to [Buyer 9].
161. The sale of [Property 6] closed on July 6, 2017. [Brokerage 1] received a commission of \$8,832, of which it paid \$8,382 to [Licensee 2]. One Percent Realty received commission payment of \$4,226, which in turn paid \$4,017.30 to Mr. Zubko. The total amount of commission paid by [Client 6] was \$6,366.15 more than what would have been payable under the [Property 6] MLC.
162. After the closing of the [Property 6] sale, [Licensee 2] gave Mr. Zubko \$6,800 of the commission he received from the sale of [Property 6].
163. [Client 6] made a complaint to the former RECBC about [Licensee 2] and Mr. Zubko on July 11, 2017. [Client 6] specifically complained that Mr. Zubko had concealed that he had acted as dual broker for the seller and buyer, and that Mr. Zubko had collected additional commission from [Licensee 2].

[Property 7]

164. On April 18, 2017, Mr. Zubko entered into a multiple listing contract (the "[Property 7] MLC") to sell a property located at [Property 7] in Squamish ("[Property 7]"), for \$710,000. [Client 7] was the owner of [Property 7]. Mr. Zubko signed the [Property 7] MLC as designated agent for One Percent Realty. [Client 7] and Mr. Zubko also signed a "Working With a Realtor" document, indicating that [Client 7] was entering into a client relationship under "Designated Agency" with Mr. Zubko.

165. The [Property 7] MLC provided that the commission payable to One Percent Realty, as the listing agent, would be 1% of the final sale price, plus a \$994 administration fee and GST, with the cooperating (buyer's) brokerage to receive a commission equal to 0.5% of the final sale price of the property.
166. The [Property 7] MLC was later amended to provide that the commission to One Percent Realty, as the listing brokerage, would be 0.5% of the balance of the purchase price, 3.255% on the 1st \$100,000 and 1.3% on the balance of the sale price, plus a \$995 administration fee.
167. On April 21, 2017, [Individual 10] and [Individual 11] (the "[Buyer 10]") entered into a contract of purchase and sale with [Client 7] to purchase [Property 7] for \$706,000 (the "[Property 7] CPS"). [Licensee 2] was listed as the representative for [Buyer 10].
168. [Client 7] also entered into a "Fee Agreement Seller Pays" with [Licensee 2]'s brokerage, [Brokerage 1], on April 21, 2017. In that agreement [Client 7] agreed to pay [Brokerage 1] 3.255% on the 1st \$100,000 and 1.3% on the balance of the purchase price. [Licensee 2] was again listed as the designated agent for [Buyer 10] in that agreement.
169. Despite the above, [Licensee 2] was not, in fact, acting for [Buyer 10]. Rather, he provided only limited services such as submitting documentation and collecting the deposit.
170. [Buyer 10] were under the impression that Mr. Zubko was their representative with respect to their purchase of [Property 7]. They were under this impression due to the fact that they never met [Licensee 2] or had any contact with him, and in fact dealt exclusively with Mr. Zubko.
171. Mr. Zubko in fact admits that he was acting for [Buyer 10]. He admits that he prepared the [Property 7] CPS on their behalf, and in fact provided services to both [Client 7] and [Buyer 10] in respect of the [Property 7] transaction.
172. The sale of [Property 7] closed on June 30, 2017, with [Brokerage 1] receiving commission of \$11,133, of which it paid \$10,683 to [Licensee 2]. One Percent Realty received a commission of \$4,525, which in turn paid \$4,441.25 of that amount to Mr. Zubko. Subsequent to the closing of the [Property 7] sale, [Licensee 2] gave Mr. Zubko \$9,080 of the commission he had received from the sale of [Property 7].
173. The total amount of commission paid by [Client 7] exceeded the amount agreed to in the [Property 7] MLC by \$7,983.15.

[Property 8]

174. On October 4, 2017, Mr. Zubko entered into a multiple listing contract (the "[Property 8] MLC") to sell a property located at [Property 8] in Squamish ("[Property 8]") for \$558,800. Mr. Zubko signed the [Property 8] MLC as designated agent for One Percent Realty. [Individual 12] and [Individual 13] (the "[Client 8]") were the owners of [Property 8]. [Client 8] and Mr. Zubko also signed a "Working With a Realtor" document, indicating that [Client 8] were entering into a client relationship under "Designated Agency" with Mr. Zubko.
175. The [Property 8] MLC provided that the commission due to One Percent Realty, as the listing brokerage, upon the sale of [Property 8] would be \$6,000 plus a \$995 administration fee and

GST. The commission due to the cooperating (buyer's) brokerage was a portion of the listing brokerage was \$3,000.

176. The [Property 8] MLC was subsequently amended to provide that the commission to One Percent Realty, as the listing brokerage, would be \$3,995 plus 3.225% on the 1st \$100,000, plus 1.5% on the balance and GST (the "Amended [Property 8] MLC").

177. On October 10, 2017, [Individual 14] and [Individual 15] (the "[Buyer 11]") entered into a contract of purchase and sale to purchase [Property 8] for \$561,000 (the "[Property 8] CPS").

178. Also on October 10, 2017, [Client 8] entered into a "Fee Agreement Seller Pays" with [Licensee 2]'s brokerage, [Brokerage 1]. [Client 8] agreed to pay [Brokerage 1] 3.225% on the 1st \$100,000 and 1.5% on the remaining balance of the purchase price. [Licensee 2] is listed as the designated agent of [Buyer 11] on that agreement.

179. [Licensee 2] was listed on the [Property 8] CPS as the buyer's representative, despite the fact that his involvement with [Buyer 11] was largely limited to having a telephone call with them to discuss the terms of the offer and sending them documents for signature (which documents Mr. Zubko had prepared). [Buyer 11] never met [Licensee 2], and were unclear as to who their agent was in respect of the purchase of [Property 8].

180. Mr. Zubko prepared the [Property 8] CPS for [Buyer 11]. Further, Mr. Zubko admits that he provided real estate services to both [Client 8] and [Buyer 11] with respect to the [Property 8] transaction.

181. The sale of [Property 8] completed on November 29, 2017. [Brokerage 1] received a commission of \$10,140, of which it paid \$9,665 to [Licensee 1]. One Percent Realty received a commission payment of \$4,161.15, which in turn paid \$3,949.20 to Mr. Zubko. The total commission paid by [Client 8] was \$7,671.45 more than it would have been under the original [Property 8] MLC.

182. Although [Licensee 2] had intended to give Mr. Zubko the majority of the commission he received for the purchase of [Property 8], he decided not to do so because by the time the transaction had been completed, he had been informed that RECBC had commenced an investigation.

The Investigation

183. RECBC began investigating Mr. Zubko, [Licensee 1], and [Licensee 2] in the fall of 2017.

184. Once aware of the investigation, Mr. Zubko arranged a meeting with [Licensee 1] and [Buyer 1], with a view to aligning their version of events. At that meeting both Mr. Zubko and [Licensee 1] deleted emails and records relevant to the transactions at issue.

185. Mr. Zubko attended for an interview with RECBC on November 30, 2017. At that interview Mr. Zubko made a number of untrue statements, including:

- That the buyers of [Property 8] were "a hundred percent" represented by [Licensee 2];
- That he did not expect to receive any of the commission received by [Licensee 2] in respect of the [Property 8] sale;
- That he did not receive any of [Licensee 2]'s commission for any of the transactions;

- That there was no agreement that [Licensee 2] would provide Mr. Zubko with any of his commissions;
- That he had no contact with the buyers of [Property 7];
- That he had no contact with the buyers of [Property 4];
- That he did not refer deals to [Licensee 1];

186. Mr. Zubko subsequently, in an early December 2017 telephone call with the owner of One Percent Realty, [Individual 16], informed [Individual 16] that he had created transaction documents with [Licensee 2]'s name on them as buyer agent when [Licensee 2] had not in fact acted as the buyer's agent. Mr. Zubko further informed [Individual 16] that [Licensee 2] had remitted commissions he had received in those transactions to Mr. Zubko.

187. Shortly after that call, [Individual 16] terminated Mr. Zubko's licence with One Percent Realty and reported the call to RECBC.

188. On January 11, 2018, Mr. Zubko wrote to RECBC and indicated that he had received payments from [Licensee 2] and [Licensee 1]. However, Mr. Zubko reiterated the untrue statement that [Licensee 1] had not paid Mr. Zubko any portion of his commissions. Mr. Zubko also indicated that he did not have any contact information for [Buyer 2], which was untrue.

189. [Buyer 2] was ultimately interviewed by RECBC on March 13, 2018. At that interview [Buyer 2] took the position that he had met [Licensee 1] through a work colleague, that he had dealt with [Licensee 1] throughout the [Property 1] transaction, and that he had not only not dealt with Mr. Zubko but that he in fact did not know who Mr. Zubko was.

190. Mr. Zubko did not, during the investigation process, admit his relationships with either [Buyer 2] or [Buyer 1]. Nor did he admit that [Individual 1] had provided the funds for the [Property 5] deposit.

191. BCFSA did not learn of Mr. Zubko's relationship with [Buyer 2] until December 2023, when it obtained records, including a picture of Mr. Zubko and [Buyer 2] at a family birthday party.

192. The investigation into this matter continued and, on September 17, 2019, RECBC wrote to Mr. Zubko's then legal counsel requesting further information. On February 26, 2020, Mr. Zubko's then legal counsel provided a response to that request, including providing some banking documents. The February 26, 2020 response:

- Falsely denied any connection between Mr. Zubko and [Buyer 2] in respect of the [Property 1] transaction;
- Redacted information from the banking documents which, once unredacted, would show the linkage between Mr. Zubko and the deposit placed on [Property 1] by [Buyer 2]. BCFSA did not obtain the unredacted banking documents from Mr. Zubko in this respect until February 2024.

193. BCFSA sought banking records from Mr. Zubko. Eventually, BCFSA filed a petition for disclosure of certain bank records with the Supreme Court, and obtained an order in that regard on November 4, 2022. Those banking records showed that [individual 1] had obtained the bank draft for [Property 5] in August 2018.

Relevant Law

194. Section 35 of RESA⁵ sets out that:

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;

...

(c) does anything that constitutes wrongful taking or deceptive dealing;

...

(e) fails or refuses to cooperate with an investigation under section 37 [*investigation by council*] or 48 [*investigations by 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.

(2) A licensee commits conduct unbecoming a licensee if the licensee engages in conduct that, in the judgment of the superintendent,

(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.

(3) 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).

195. Section 35(1)(c) of RESA refers to wrongful taking or deceptive dealing. Deceptive dealing is defined at section 1 of RESA as follows:

"deceptive dealing", in relation to a person providing real estate services as a licensee, means any of the following:

(a) an intentional misrepresentation, by word or conduct, or in any other manner, of a material fact in relation to real estate services, or in relation to a trade in real estate to which the real estate services relate, or an intentional omission to disclose such a material fact;

(b) a course of conduct or business that is intended to deceive a principal about the nature of the real estate services, or about the nature of a trade in real estate to which the real estate services relate;

(c) an artifice, agreement, device or scheme to obtain money, profit or property by illegal means;

(d) a promise or representation about the future that is beyond reasonable expectation and not made in good faith;

⁵ RESA has undergone amendments since the date of the allegations in this matter. The provisions relating to professional misconduct that are relevant are those that existed at the time of the alleged misconduct.

196. Section 37(4) of RESA provides that a person who was under investigation must not withhold, destroy, conceal or refuse to provide any information or thing reasonably required for the purposes of an investigation.

197. Rule 3-3^{6,7}, “Duties to Clients”, sets out that 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:

(a) act in the best interests of the client;

(b) act in accordance with the lawful instructions of the client;

...

(i) take reasonable steps to avoid any conflict of interest;

...

(j) without limiting the requirements of Division 2 [Disclosures] of Part 5 [Relationships with Principals and Parties], if a conflict of interest does exist, promptly and fully disclose the conflict to the client

198. Rule 3-4⁸ sets out that when providing real estate services, a licensee must act honestly and with reasonable care and skill.

199. Rule 5-10⁹, “Disclosure of representation and relationship in trading services” provides that:

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;
(b) as applicable,

(i) that the licensee, or a related licensee, is or expects to be providing trading services to or on behalf of any other person, in any capacity, in relation to the same trade in real estate,

(ii) that the licensee, or a related licensee, is or expects to be receiving remuneration relating to trading services referred to in subparagraph (i) from any other person, and

⁶ The Real Estate Services Rules have undergone amendment on a number of occasions since the allegations in this matter, including over the period of time in which the transactions at issue occurred. The parties have agreed that it is appropriate to rely on the Rules as they existed in the September 28, 2017 consolidation.

⁷ Now section 30 of the *Real Estate Services Rules*.

⁸ Now section 33 of the *Real Estate Services Rules*.

⁹ Now section 54 of the *Real Estate Services Rules*.

(iii) the nature of the licensee's relationship, or the relationship of the related licensee, with any person referred to in subparagraph (i) or (ii)

Reasons and Decision

The Transactions

Items 1 and 4 of the Notice of Hearing – Did Mr. Zubko engage in professional misconduct with respect to each of the transactions as it relates to the commission deals.

200. In short, I find that the evidence set out in the ASF clearly demonstrates that Mr. Zubko committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(c) of RESA in respect of each of the eight transactions set out in the Notice of Hearing, each of which is summarized above.
201. Mr. Zubko has admitted that he conceived of the commission deals. The evidence is clear that Mr. Zubko in fact engaged in the commission deals, by amending the MLCs with his clients such that they would have to pay him a higher rate of commission, and having his clients enter into "Fee Agreement Seller Pays" deals which would have his clients pay a commission to buyer's agents above and beyond that which was called for in the MLCs.
202. Further the evidence is clear that Mr. Zubko in fact received additional commission payments from [Licensee 1] and [Licensee 2], which money ultimately came out of Mr. Zubko's client's pockets, but was paid, illicitly, to Mr. Zubko. Mr. Zubko did not disclose those additional payments to his clients, which was both dishonest, contrary to rule 3-4 of the Rules, and constitutes a failure to disclose remuneration, contrary to rule 5-11 of the Rules.
203. There can be no doubt that in conceiving of and then entering into the commission deals, Mr. Zubko was not acting in the best interests of his clients as required by Rule 3-3(a). Again, the result of the commission deals was that Mr. Zubko was in fact taking money from his clients, without their knowledge. Clearly, in doing so, Mr. Zubko was also not acting honestly as required by Rule 3-4.
204. Similarly, Mr. Zubko was not acting honestly in respect of providing real estate services when he arranged for either [Licensee 1] or [Licensee 2] to prepare contracts and other documents which indicated that either [Licensee 1] or [Licensee 2] was the buyer's agent, when in fact Mr. Zubko was the person primarily responsible for providing real estate services to the buyers.
205. In general terms, Mr. Zubko referred the buyers to either [Licensee 1] or [Licensee 2] in each of the transactions. However, that was not the extent of his interactions with the buyers.
206. For example, in the [Property 2] and [Property 3] transactions the buyers primarily worked with Mr. Zubko in their purchase dealings, to the point that the buyers simply assumed that [Licensee 1] was noted as their agent on documentation due to the fact that [Licensee 1] was a member of Mr. Zubko's real estate team. In the [Property 4] transaction, Mr. Zubko specifically drafted the CPS, and essentially all of the documentation required on behalf of the buyers, although [Licensee 1] was ostensibly their realtor and identified as such. Mr. Zubko also drafted the CPS on the part of the buyers in the [Property 6] transaction, but listed [Licensee 2] as the buyer's agent on that document.

207. As I have set out above, Mr. Zubko's pattern in this regard continued throughout each of the 8 transactions.
208. Turning to the agency and conflict of interest issue, the evidence before me makes clear that in none of the 8 transactions set out in the Notice of Hearing did Mr. Zubko inform his seller clients that he was in fact in a conflict of interest as a result of the commission deals and the assignment deals.
209. Rather, in each of the transactions, Mr. Zubko's seller clients were under the impression he was acting solely in their best interests, as he was required to do as a result of their agency relationship. They were incorrect, as Mr. Zubko had in fact purposefully placed himself in a conflict of interest in order to further his goals as described above in the commission deals and assignment deals. This was dishonest behaviour on Mr. Zubko's part, contrary to Rule 3-4.
210. Simply put, rather than taking reasonable steps to avoid any conflict of interest as he was required to do by Rule 3-3(j), Mr. Zubko intentionally put himself in a conflict of interest in each of the transactions, due to the fact that he was seeking to make more money off of his clients through the commission deals. Mr. Zubko knew he was in this conflict of interest position in each of the transactions, and did not disclose that fact to his clients, contrary to Rule 3-3(j).
211. Further, as noted above, Mr. Zubko did not disclose to his seller clients that he was also acting in an agency position in respect of the buyer clients. Mr. Zubko's failure to do so was in violation of Rule 5-10.
212. I have no difficulty concluding that Mr. Zubko's development of and execution of the commission deals was deceptive dealing as defined at section 1 of RESA. Mr. Zubko clearly intended to deceive his seller clients about the nature of his relationship with the buyer clients in the transactions, and he in fact sought to deceive some of the buyer clients as well, who were under the impression that he was in fact their real estate agent acting exclusively on their behalf.
213. Further, I am satisfied that Mr. Zubko's involvement in the commission deals was in fact a scheme to obtain money through an illegal means, that is, by acting in a manner that was contrary to RESA and the Rules, as set out above.
214. I acknowledge, in reaching this conclusion, that Mr. Zubko argued that it was not appropriate to characterize the commission deals as a "scheme", due to the fact that those transactions only occurred eight times over the period of more than one year, while Mr. Zubko was generally involved in 35 transactions per year. In sum Mr. Zubko submitted that the commission deals constituted only a small part of his business, and ought not to be considered to be a "scheme to make a whole bunch of extra money".
215. With respect, I do not consider RESA to require, in order that an action on the part of a licensee to be characterized as deceptive dealing in the form of a scheme, that the licensee's action account for a certain percentage of a licensee's total transactions, or reach a threshold amount of money.
216. Rather, I consider the definition under section 1 of RESA to make clear that any scheme to obtain money, profit, or property by illegal means constitutes deceptive dealing. I accept, as submitted by BCFS, that the standard definition of a scheme would encompass what I consider to have

been Mr. Zubko's plan to extract additional money in the form commissions to which he would not have otherwise been entitled through the commission deals.

Item 2 of the Notice of Hearing - Did Mr. Zubko engage in professional misconduct with respect to the [Property 1] transaction?

217. I find that Mr. Zubko engaged in professional misconduct within the meaning of section 35(1)(a) and 35(1)(c) in respect of the [Property 1] transaction.

218. With respect to section 35(1)(a), it is necessary to first review the rules which are applicable in this case.

219. As will be set out in further detail below, it is clear that Mr. Zubko's actions in respect of the [Property 1] transaction were repeatedly conducted not in the best interests of his client, [Client 1], and in fact in conflict to [Client 1]'s interests. Further, Mr. Zubko clearly did not act honestly with [Client 1].

220. I again have no difficulty concluding that Mr. Zubko engaged in deceptive dealing, contrary to section 35(1)(c) in respect of his conduct in the [Property 1] transaction. Simply put, on the evidence before me, Mr. Zubko was engaged in a scheme to obtain money, in the form of an increased commission, by means which were contrary to the law as set out in RESA and the Rules. On its face, Mr. Zubko's actions in using [Licensee 1] to increase the commission payable to both [Brokerage 1] and One Percent Realty, at the expense of his client, clearly constitute deceptive dealing.

221. Further, I consider, on all of the evidence, that Mr. Zubko's actions in assisting [Buyer 2] to earn a profit on the assignment of the [Property 1] CPS was deceptive dealing. Mr. Zubko did not inform [Client 1] of his relationship with either [Licensee 1] or [Buyer 2]. I consider that his failure to do so was clearly the intentional omission of a fact that would have been material to [Client 1].

222. I further consider that, on all of the evidence, Mr. Zubko's actions in respect of assisting [Buyer 2] to earn a profit on the [Property 1] CPS assignment constitutes the conduct of business in a manner intended to deceive [Client 1]. I consider the evidence to make clear that Mr. Zubko, rather than acting on [Client 1]'s behalf, was in fact acting on [Buyer 2's] behalf, with a view to ensuring that [Buyer 2] obtained a profit on the [Property 1] CPS assignment. Simply put, while the documents that Mr. Zubko signed with [Client 1] suggested that Mr. Zubko was acting solely on [Client 1]'s behalf, that was not true regarding the true nature of the services Mr. Zubko was providing.

223. I turn to a consideration of each of the subsections set out at item 2 of the Notice of Hearing.

Item 2(a) of the Notice of Hearing

224. Mr. Zubko's duty in respect of [Property 1], under Rule 3-3, was to act in the seller, [Client 1]'s, best interests. The [Property 1] MLC specifically indicated that Mr. Zubko was the sole agent of the seller, [Client 1]. There was no agreement to limited dual agency as it was permitted in 2016.

225. I find that Mr. Zubko did not act in [Client 1]'s best interests. Far from it.

226. Rather, even prior to listing [Property 1] for sale publicly, Mr. Zubko had contacted [Licensee 1] to request that [Licensee 1] act as a buyer's agent for [Buyer 2]. [Buyer 2's] interest in [Property 1] was not the result of his own research, or mere happenstance. Rather, Mr. Zubko had told [Buyer 2] about the property.
227. In sum, I accept that Mr. Zubko arranged with [Licensee 1], for a buyer Mr. Zubko personally knew, [Buyer 2], to enter into a contract of purchase and sale on [Property 1], for the express purpose (unknown to [Client 1] but known to Mr. Zubko and [Licensee 1]) of assigning the [Property 1] CPS at a higher price than that which Mr. Zubko would obtain for [Client 1] on the sale of [Property 1].
228. The facts before me, as agreed to in the ASF, are that [Buyer 2] had learned about [Property 1] from Mr. Zubko, and that [Buyer 2] was interested into entering into a contract for the purchase of [Property 1] with a view to assigning that contract to a third party for a profit. Further, it is agreed that Mr. Zubko and [Licensee 1] were aware of [Buyer 2's] intention in that regard.
229. I note that the ASF did not specifically indicate that by informing [Buyer 2] of [Property 1], Mr. Zubko had the intention of placing [Buyer 2] in a position which would enable him to make a profit on the assignment of the contract. Rather, the ASF says that Mr. Zubko was "aware of" or "knew of" [Buyer 2's] "intention" in that regard.
230. I do not consider that I am bound to accept only the facts as set out in the ASF.
231. Here, in the circumstances, I consider it reasonable to make an inference that Mr. Zubko was not simply "aware" of [Buyer 2's] intention to assign the [Property 1] CPS for a profit.
232. Rather, I consider the evidence to support a conclusion that Mr. Zubko brought [Property 1] to [Buyer 2's] attention specifically with a view towards [Buyer 2] being able to assign a [Property 1] CPS for a profit.
233. To be clear, having reviewed all of the agreed facts and the documentary evidence in this case, I am of the view that it is more likely than not that the intention on [Buyer 2's] part to assign the [Property 1] CPS for a profit was not an intention that [Buyer 2] arrived at simply on his own accord. I consider that [Buyer 2's] intention in this regard was likely an intention suggested and conceived of by Mr. Zubko.
234. I note, in reaching this conclusion, that there is no evidence before me to indicate that [Buyer 2] would have had any particular knowledge of [Property 1] without Mr. Zubko providing that knowledge to him.
235. In fact, I consider the evidence before me to show that any real knowledge regarding [Property 1], the value of that property, and the possibility of assigning a CPS on that property, lay solely with Mr. Zubko.
236. I note that prior to Mr. Zubko contacting [Licensee 1] to request that he represent [Buyer 2], Mr. Zubko had already completed a comparative market analysis of [Property 1]. Further, it was Mr. Zubko who had obtained an estimate regarding the potential cost of installing a retaining wall at [Property 1].

237. Given those facts, I consider it to be far more likely than not that it was Mr. Zubko, and not [Buyer 2], who was the individual with knowledge regarding [Property 1], and the value of that property, and whether a contract of purchase and sale on [Property 1] would be able to be assigned at a profit.
238. Arranging for a personal acquaintance to be in position to make a profit on the purchase and assignment of a property, at the expense of one's own client, is clearly not acting in the best interests of the client as required by Rule 3-3.
239. Further, it is clear that in making the arrangements he did with [Licensee 1] and [Buyer 2] regarding the assignment of the [Property 1] CPS, and in failing to disclose those arrangements to [Client 1], including Mr. Zubko's personal relationships with not only [Licensee 1] but more importantly [Buyer 2], Mr. Zubko was not acting honestly in providing his real estate services to [Client 1], contrary to Rule 3-4.
240. Given my findings above, I am satisfied that the allegations set out at item 2(a) of the Notice of Hearing have been proven.

Item 2(b) of the Notice of Hearing

241. I consider the evidence to support a conclusion that Mr. Zubko arranged for [Licensee 1] to prepare the [Property 1] CPS on behalf of [Buyer 2] when he knew that [Buyer 2] was not intending to complete the purchase. Again, I consider Mr. Zubko's actions in this regard did not involve acting honestly or with reasonable care and skill towards [Client 1], contrary to Rule 3-4, and to therefore constitute professional misconduct as contemplated by section 35(1)(a) of RESA.
242. In reaching this conclusion, I note that Mr. Zubko has admitted in the ASF that he knew [Buyer 2's] intention was to assign the [Property 1] CPS for a profit. Even if I were not of the view that I have set out above, that is that [Buyer 2's] intention was in fact one that was suggested to him by Mr. Zubko, the fact remains that Mr. Zubko did not inform [Client 1] even of his awareness of [Buyer 2's] intention in that regard.
243. Surely an honest realtor working on behalf of his client, who was specifically aware that a prospective purchaser of the client's property was of the view that, if accepted, that purchaser would be able to assign their CPS for a profit, would inform their client of those facts.
244. Even more to the point, I consider that a realtor acting with reasonable care and skill in providing their client with advice on the sale of their property would, having the awareness that Mr. Zubko did regarding a prospective purchaser's intention, inform his client of that fact. I consider that such information would undoubtedly have an effect on the client's contract negotiations. To simply not inform one's client of the type of information Mr. Zubko had regarding [Buyer 2's] intentions falls well short of acting with reasonable care and skill.
245. Finally, I note that there is no question that the sole reason that [Licensee 1] was acting on [Buyer 2's] behalf, including in the preparation of the [Property 1] CPS, was done at the request of Mr. Zubko.
246. Considering all of the above, I find that the allegations set out at item 2(b) of the Notice of Hearing have been proven on a balance of probabilities.

Item 2(c) of the Notice of Hearing

247. The fact that Mr. Zubko had [Licensee 1] email him a cut and paste copy of [Licensee 3]'s email regarding the alleged problems with [Property 1], as though it were [Licensee 1]'s email and that the enquiries described in that email had been performed by [Licensee 1] or his clients, when in fact they were from and by a potential assignee for the [Property 1] CPS, was dishonest behaviour contrary to Rule 3-4.
248. I also consider Mr. Zubko's intention in having [Licensee 1] send that email to clearly be contrary to Mr. Zubko acting in the best interests of his client. While it may well be that Mr. Zubko believed that the concerns identified by [Licensee 3]'s clients were accurate, Mr. Zubko knew that [Licensee 1] had not conducted those enquiries.
249. Further, I consider that acting in the best interests of his client would have required Mr. Zubko to perform further inquiries of his own regarding build feasibility on [Property 1]. Rather than undertaking such inquiries, Mr. Zubko simply chose to advise [Client 1], on or around the time the [Licensee 1] CPS addendum was signed, that a price of \$175,000 (a reduction from the \$350,000 initially agreed upon between [Client 1] and [Buyer 2]) was fair due to the reduced feasibility for building on [Property 1].
250. In my view, Mr. Zubko's failure to undertake any further reasonable inquiry on behalf of his client, and rather to simply point his client to the concerns identified in the [Licensee 3]/[Licensee 1] email, was more likely than not due to Mr. Zubko's intention of ensuring that [Buyer 2] was able to assign the [Property 1] CPS at a profit.
251. I consider that, given Mr. Zubko's apparent belief regarding building concerns and site preparation of [Property 1], it would have been apparent to Mr. Zubko by the time he had received the [Licensee 3]/[Licensee 1] email that the only possible way for [Buyer 2] to assign the [Property 1] CPS at a profit would be if [Client 1] reduced the price that had been agreed upon in the [Property 1] CPS.
252. In sum, I consider the evidence to show that it is more likely than not that Mr. Zubko had [Licensee 1] send the January 21, 2016 [Licensee 3]/[Licensee 1] email in order to convince [Client 1] that a price reduction on the [Property 1] CPS was required in order for the deal to complete.
253. I do not consider that Mr. Zubko undertook that action with [Client 1]'s best interests in mind.
254. I find that the allegations set out at item 2(c) of the Notice of Hearing have been proven on a balance of probabilities.

Item 2(d) of the Notice of Hearing

255. For the same reasons as above, I consider it to be clear that Mr. Zubko failed to act in the best interests of his client when he advised him, on or about February 11, 2016, based on the [Licensee 3]/[Licensee 1] email, to accept a significantly reduced sale price and to amend the [Property 1] CPS to reflect that reduction.

256. Again, I consider that acting in his client's best interest would have required Mr. Zubko to make some type of inquiry into the accuracy of the concerns referred to in the [Licensee 3]/[Licensee 1] email prior to recommending a \$175,000 price reduction to his client.
257. In reaching this conclusion, I consider it to be notable that Mr. Zubko's own Comparative Market Analysis had concluded that an appropriate listing price for [Property 1] was \$410,000. More tellingly, however, is that even after Mr. Zubko took steps on January 7, 2016 to determine what the cost would be of placing a retaining wall on [Property 1] (he received an estimate of between \$178,000 and \$195,000), [Buyer 2] signed the [Property 1] CPS for a purchase price of \$350,000 on January 12, 2016.
258. Again, I have found above that Mr. Zubko conceived of the plan to have [Buyer 2] enter into a CPS for [Property 1] and then to assign that CPS at a profit. There is no evidence before me to suggest that Mr. Zubko's plan, and [Buyer 2's] intention in that respect, had changed by the parties entering into the [Property 1] CPS on January 12, 2016.
259. Given that Mr. Zubko had already obtained a quote regarding the potential construction of a retaining wall with a cost of upwards of \$175,000 by the time the [Property 1] CPS was signed, I am of the view that Mr. Zubko continued to believe, as of that date, that a purchase price of \$350,000 would still allow the [Property 1] CPS to be assigned at a profit and satisfy [Buyer 2's] intentions.
260. While I accept that the concerns identified in the [Licensee 3]/[Licensee 1] email, that being the existence of a storm pipe coming through the right side of the property, and the limited building area were likely in fact believed by Mr. Zubko, I note that it was only really the existence of the storm pipe that could be considered new information to Mr. Zubko as of January 21, 2016.
261. The fact that, as was set out in the [Licensee 3]/[Licensee 1] email, [Property 1] sloped into a ravine at the rear of the property was well known to Mr. Zubko at the time [Buyer 2] signed the [Property 1] CPS. Again, at the time the [Property 1] CPS was signed at a price of \$350,000, Mr. Zubko had already obtained a quote regarding the construction of a retaining wall to create more buildable space on [Property 1].
262. In my view, it is extremely unlikely that Mr. Zubko was of the view that the existence of a storm pipe coming through [Property 1] further reduced the value of the property by \$175,000.
263. Nevertheless, Mr. Zubko encouraged [Client 1] to accept a price reduction in that amount, based on no other new information than the [Licensee 3]/[Licensee 1] email.
264. I note that there is no evidence before me that Mr. Zubko made any further inquiries as to what type of reduction in price ought to be associated with the new information of the storm pipe on the property. The evidence does not suggest that Mr. Zubko conducted a further market appraisal, or obtained the services of a certified appraiser. Rather, the evidence is simply that Mr. Zubko passed on the concerns set out in the [Licensee 3]/[Licensee 1] email to [Client 1], and that Mr. Zubko advised [Client 1] that \$175,000 was a fair price for [Property 1].
265. In reaching this conclusion, I acknowledge that there is additional evidence before me regarding what an appropriate price for [Property 1] would have been in early 2016.

266. The 2019 [Appraiser 1] Appraisal, which estimated the value of [Property 1] as of January 2016 at \$350,000, and the 2024 [Appraiser 1] Appraisal confirming that valuation, based on the assumption that there were no easements, rights of way or charges which would have adversely affected [Property 1]'s value. There is also the 2024 [Appraiser 2] Appraisal, which estimated the value of [Property 1] in 2016 as \$170,000, based on the assumption that it would cost \$175,000 to bring the [Property 1] site to a reasonably level building site status.
267. In considering the importance of those appraisals, it is important to note that the allegation against Mr. Zubko was that he induced or advised [Client 1] to reduce the price on [Property 1] to \$175,000 when he knew or ought to have known that the reduced price was less than the fair market value.
268. While there is a debate amongst the appraiser experts regarding the appropriate valuation on [Property 1] as at January 2016 based on the amount of site preparation required, I consider the reality of the circumstances to be that even if I accept that Mr. Zubko was of the view that some site preparation was likely to be required in order to build on [Property 1], it is clear that Mr. Zubko still considered, at the time the Amended [Property 1] CPS was entered into by [Client 1] and [Buyer 2] on February 11, 2016, that [Buyer 2] would be able to make a profit on the assignment of the Amended [Property 1] CPS at that amended \$175,000 price.
269. I reach this conclusion given the fact that the evidence is that Mr. Zubko's intention (along with [Buyer 2's]) was that [Buyer 2] would enter into a CPS on [Property 1] with a view to making a profit.
270. I consider that given his intention for [Buyer 2] to make a profit, even if Mr. Zubko was of the view that the price on [Property 1] needed to be reduced from the \$350,000 amount set out in the [Property 1] CPS, it is clear that Mr. Zubko likely knew that \$175,000 was less than fair market value for [Property 1]. In my view, if Mr. Zubko had not had that knowledge, he would not have recommended that price point to [Client 1].
271. As it turns out, Mr. Zubko was in fact correct in his assessment that [Buyer 2] would be able to turn a profit on the Amended [Property 1] CPS, given that [Buyer 3] purchased the assignment on [Property 1] for \$335,000 a matter of days after [Client 1] agreed to the Amended [Property 1] CPS.
272. I find that the allegations set out at item 2(d) of the Notice of Hearing have been proven on a balance of probabilities.

Item 2(e) from the Notice of Hearing

273. Mr. Zubko made [Buyer 3] aware of [Property 1]. While [Buyer 3] determined on his own that he could build on the lot, and while [Licensee 1] prepared the assignment of the [Property 1] CPS, the negotiation regarding the [Property 1] Assignment was done between [Buyer 3] and Mr. Zubko.
274. I consider that in negotiating the assignment of the [Property 1] CPS, which was a transaction between [Buyer 2] and [Buyer 3], Mr. Zubko placed himself in a conflict of interest, contrary to Rule 3-3(i), given that he ought to have been representing the interests of [Client 1] throughout the sale process, not those of [Buyer 2] or [Buyer 3]. I consider further that the fact that Mr.

Zubko did not disclose his conflict of interest to [Client 1], Mr. Zubko was also in breach of Rule 3-3(j).

275. Finally, given that Mr. Zubko was not only aware of the assignment of the Amended [Property 1] CPS, but he was also aware that the assignment price was for \$160,000 more than the price [Client 1] had agreed to in the Amended [Property 1] CPS, there was a duty on Mr. Zubko to inform [Client 1] of those facts. Mr. Zubko's failure to do so was a failure to act honestly when providing real estate services.

276. Given the above, I find that the allegations set out at item 2(e) of the Notice of Hearing have been proven on a balance of probabilities.

Item 2(f) from the Notice of Hearing

277. The fact that Mr. Zubko obtained a bank draft from his own personal account, and provided the funds to pay the deposit on the Amended [Property 1] CPS is, in my view, a clear conflict of interest.

278. Mr. Zubko's duty was to his client, [Client 1]. In spite of that duty, Mr. Zubko provided the funds to enable [Buyer 2] to complete the Amended [Property 1] CPS, thus enabling [Buyer 2] to obtain the profits from the [Property 1] Assignment. Mr. Zubko's actions in this regard were not in the best interests of [Client 1], contrary to Rule 3-3(a), and were clearly in conflict with [Client 1]'s interests, in violation of Rule 3-3(j), and constituted a failure to take any reasonable steps to avoid a conflict of interest, in violation of Rule 3-3(i).

279. Mr. Zubko's funding of [Buyer 2's] deposit payment clearly does not constitute acting honestly and with reasonable care and skill towards his client, in violation of Rule 3-4. I note further that Mr. Zubko's actions in this regard are clearly a course of conduct that constitutes deceptive dealing, contrary to section 35(1)(c) of RESA, in that Mr. Zubko's actions served to continue to deceive [Client 1] about the nature of the [Property 1] transaction.

280. I find that the allegations set out at item 2(f) of the Notice of Hearing have been proven on a balance of probabilities.

Item 2(g) from the Notice of Hearing

281. Finally, I find the evidence to show that Mr. Zubko failed to act honestly, contrary to Rule 3-4, when he knowingly allowed the false representation to be made on the [Property 1] CPS and [Property 1] Assignment.

282. Specifically, those documents identify [Licensee 1] as [Buyer 2's] designated agent, when in fact Mr. Zubko acted as an agent to [Buyer 2] on both the CPS and Assignment.

Item 3 of the Notice of Hearing - Did Mr. Zubko engage in professional misconduct with respect to the [Property 5] transaction?

283. Similar to my conclusions regarding [Property 1], I have no difficulty finding that Mr. Zubko engaged in professional misconduct within the meaning of section 35(1)(a) and section 35(1)(c) in respect to the [Property 5] transaction.

284. As will be set out in further detail below, it is clear that Mr. Zubko's actions in respect of the [Property 5] transaction were repeatedly conducted not in the best interests of his client, [Client 5], and in fact in conflict to [Client 5]'s interests. Further, Mr. Zubko clearly did not act honestly with [Client 5].

285. I again have no difficulty concluding that Mr. Zubko engaged in deceptive dealing, contrary to section 35(1)(c) in respect of his conduct in the [Property 5] transaction. It is again clear that Mr. Zubko was engaged in a scheme to obtain money, in the form of an increased commission, by means which were contrary to the law as set out in RESA and the Rules. On its face, Mr. Zubko's actions in using [Licensee 1] to falsely act as the buyer's representative in order to increase the commission payable, at the expense of his client, clearly constitute deceptive dealing.

286. Further, I consider, on all of the evidence, that Mr. Zubko's actions in assisting [Buyer 1] to earn a profit on the assignment of the [Property 5] CPS was deceptive dealing. Mr. Zubko did not inform [Client 5] of his prior relationships with either [Licensee 1] or [Buyer 1]. I consider that his failure to do so clearly constituted the intentional omission of facts that would have been material to [Client 5], and was done with the intention of deceiving [Client 5].

287. I turn to a consideration of each of the subsections set out at item 3 of the Notice of Hearing.

Item 3(a) of the Notice of Hearing

288. The evidence is clear that Mr. Zubko, while ostensibly acting as agent for [Client 5], had in fact entered into an arrangement with [Licensee 1], and [Buyer 1], for the purpose of inducing [Client 5] to enter into a contract of purchase and sale on [Property 5], with a view to that [Property 5] CPS being assigned by [Buyer 1] to another individual at a profit.

289. In sum, Mr. Zubko was not, in signing the [Property 5] MLC, seeking to act in the best interests of [Client 5] as required by Rule 3-3(a). Rather, I consider that Mr. Zubko was seeking to ensure that the [Property 5] CPS entered into by [Buyer 1] could be turned over for a profit. Such an intention was of no benefit to [Client 5], and certainly not in [Client 5]'s best interest.

290. I further consider that Mr. Zubko's actions in working with [Licensee 1] and [Buyer 1] to turn over the [Property 5] CPS to an assignee for a profit, constituted a failure to act honestly, contrary to Rule 3-4.

291. As a result, I consider that Mr. Zubko's actions as described in item 3(a) of the Notice of Hearing constitute professional misconduct as contemplated by section 35(1)(a) of RESA.

Item 3(b) of the Notice of Hearing

292. I find that Mr. Zubko was not acting honestly when he arranged for [Licensee 1] to prepare the [Property 5] CPS on [Buyer 1]'s behalf. I consider that Mr. Zubko in fact knew at the time [Licensee 1] prepared the [Property 5] CPS that [Buyer 1] was not intending to complete the purchase, and in fact did not have the financial ability to complete the purchase and sale transaction.

293. Mr. Zubko's action in this regard is a breach of Rule 3-4.

Item 3(c), 3(d), 3(e) of the Notice of Hearing

294. Once again, it is clear on the evidence that Mr. Zubko failed to act honestly when he represented to [Client 5] that [Buyer 1] had carried out a home inspection which indicated that the windows on [Property 5] needed to be replaced.
295. In fact, no home inspection had been carried out. Mr. Zubko was aware of that fact when he represented to [Client 5] that an inspection had been carried out. As a result, there can be no doubt that the representation to [Client 5], that a home inspection had revealed that [Property 5] needed new windows, was untrue.
296. Further, I consider the evidence to show that in making that representation to [Client 5], Mr. Zubko was not acting in the best interests of his client, contrary to the requirements of Rule 3-3(a).
297. Rather, I consider that more likely than not Mr. Zubko made the representations regarding the home inspection with the intention of getting [Client 5] to agree to lower the price previously agreed to in the [Property 5] CPS. I note in reaching that conclusion that Mr. Zubko informed [Client 5] of the alleged home inspection just prior to the [Client 5] CPS Amendment being signed on August 14, 2017.
298. Given the timing, I am satisfied that it is more likely than not that Mr. Zubko's false representations regarding the home inspection served to induce [Client 5] to lower the selling price of [Property 5] from \$807,000 to \$797,000.
299. Prior to inducing [Client 5] to lower the selling price of [Property 5] to \$797,000, Mr. Zubko was aware of the fact that [Buyer 1] and [Buyer 8] had already agreed to an assignment of the [Property 5] CPS at a value of \$845,000.
300. Mr. Zubko's actions in this regard were contrary to his duty to act in the best interests of his client (Rule 3-3(a)); and contrary to his duties to avoid a conflict of interest and to disclose any such conflict of interest to his client (Rule 3-3(i) and 3-3(j)).

Item 3(f) of the Notice of Hearing

301. When [Licensee 1] provided Mr. Zubko with the money for [Buyer 1]'s payment of the deposit on the [Property 5] CPS, that money did not in fact come from [Buyer 1]. Rather, the money came from Mr. Zubko, in that his wife, [Individual 1] obtained a bank draft and provided the deposit funds to [Buyer 1] on August 16, 2017.
302. That Mr. Zubko arranged for his wife to provide the buyer of [Property 5] with the deposit funds for the [Property 5] CPS clearly placed Mr. Zubko in a conflict of interest with his client, [Client 5], contrary to Rule 3-3(i). There is no evidence before me which would indicate that, given that he was aware of his conflict of interest, Mr. Zubko promptly and fully disclosed the conflict to [Client 5].
303. Rather, Mr. Zubko admits that, consistent with his actions throughout his dealings with [Client 5], he did not inform [Client 5] of that conflict; just as he had not informed [Client 5] that he knew [Buyer 1] on a personal level, that he had communicated with [Licensee 1] and [Buyer 1] regarding the possible assignment of the [Property 5] CPS in advance of [Buyer 1] making an

offer on [Property 5], that he knew that [Buyer 1] was not in fact willing or able to purchase [Property 5], and that he knew [Buyer 1] had assigned the [Property 5] CPS at the time he suggested a price reduction to [Client 5].

304. In sum, Mr. Zubko's failure to disclose the conflict of interest created by having [Individual 1] provide the money for the deposit to [Buyer 1] was simply a continuation of Mr. Zubko's ongoing deceitful and conflicted behaviour towards his client. Mr. Zubko's actions in this regard were again consistent with his general failure to comply with Rule 3-3(j), and his failure to act honestly, contrary to Rule 3-4.

Item 3(g) of the Notice of Hearing

305. The allegation at item 3(g) of the Notice of Hearing is that Mr. Zubko made a false representation when he identified [Licensee 1] as the named buyer's ([Buyer 1]'s) agent on the assignment document when [Licensee 1] in fact did not provide agency representation to [Buyer 1], and/or in fact acted upon direction from Mr. Zubko.

306. The evidence before me, as set out in the ASF, falls short of proving the above noted allegation.

307. The parties agree, however, that an appropriate finding would be that "Mr. Zubko permitted the contract of purchase and sale for [Property 5] to identify [Licensee 1] as the buyer's agent when he knew he was also providing agency to the named buyer [Buyer 1]."

308. Mr. Zubko brought [Property 5] to [Buyer 1]'s attention. He communicated with [Buyer 1], in advance of [Buyer 1] entering into the [Property 5] CPS, about [Buyer 1] assigning the [Property 5] CPS for a profit.

309. I am satisfied that in taking those actions, Mr. Zubko was providing agency representation to [Buyer 1]. I therefore consider that Mr. Zubko, in permitting the [Property 5] CPS to only identify [Licensee 1] as [Buyer 1]'s agent, when Mr. Zubko was in fact also providing agency representation to [Buyer 1], caused Mr. Zubko to fail to act honestly in providing real estate services, contrary to Rule 3-4. This failure to act honestly in providing real estate services had a direct effect on Mr. Zubko's client, [Client 5], who surely would have benefited from Mr. Zubko honestly ensuring that the [Property 5] CPS indicated that he was also providing agency services to [Buyer 1].

The Investigation

310. As set out above, section 37(4) of RESA provides that a person who was under investigation must not withhold, destroy, conceal or refuse to provide any information or thing reasonably required for the purposes of an investigation.

311. Further, section 35(1)(e) provides that a failure to cooperate with an investigation under section 37 constitutes professional misconduct on the part of a licensee.

312. Finally, section 35(1)(g) of RESA provides that a licensee commits professional misconduct if they make or allow to be made any false or misleading statement in a document that is required or authorized to be produced or submitted under RESA.

313. I consider that, when his activities are viewed as a whole, Mr. Zubko did not cooperate with the section 37 investigation into this matter.
314. First, I note that Mr. Zubko has specifically admitted that he met with [Licensee 1] and [Buyer 1] once he learned that the transactions were under investigation by the regulator, and that he (and [Licensee 1]) deleted emails that were relevant to the transactions.
315. I consider that the only reasonable inference that can be made, on that evidence, is that Mr. Zubko deleted those emails in order to prevent the regulator from having access to them in the course of its investigation. I am satisfied that in deleting the emails in question, Mr. Zubko specifically sought to withhold, destroy, or conceal the emails required by the regulator for the purposes of its investigation, contrary to section 37(4) of RESA.
316. Second, I consider the evidence to show that Mr. Zubko, in meeting with [Licensee 1] and [Buyer 1] with a view of aligning their stories for the regulator's investigator, was engaged in an activity that was intended to provide false or misleading information to the regulator's investigation. In sum, I do not consider that there would have been any need to meet in order to "align the version of events that they would tell the Council investigator"¹⁰ if Mr. Zubko, [Licensee 1], and [Buyer 1] simply intended to provide the investigator with the information required for the investigation. Rather, I consider the purpose of that meeting was likely to develop a plan as to what information the parties ought to provide to the investigator, and what information they ought to withhold.
317. I consider Mr. Zubko's actions in this regard to be contrary to his duties under section 37(4) of RESA.
318. Third, I consider that Mr. Zubko, while at times responsive to the inquiries made of him by the regulator, provided a number of false or misleading statements to the regulator, both verbally and in writing over the course of its investigation, contrary to both the requirements of section 37(4) and section 35(1)(g) of RESA.
319. In reaching this conclusion I note that Mr. Zubko has admitted he made a number of false statements to RECBC at a November 30, 2017 interview, including his denial of having received any of [Licensee 2]'s commissions, his denial that he had any contact with the buyers in [Property 7] or [Property 4], and his denial of having referred any deals to [Licensee 1], and others as set out in paragraph 185 above.
320. I consider it to be clear that Mr. Zubko knew, at the time he made them, that those statements were false. I find that in making those false statements, Mr. Zubko was in breach of his duty under section 37(4) not to withhold, destroy, conceal or refuse to provide any information required by the regulator's investigation.
321. Mr. Zubko also admitted that in a January 11, 2018 letter to RECBC, he had reiterated the false statement that [Licensee 1] had not paid Mr. Zubko any portion of his commissions. Mr. Zubko also falsely claimed, in that same January 11, 2018 letter, that he did not have any contact information for [Buyer 2]. I again consider that in doing so Mr. Zubko was in breach of his duties

¹⁰ Para. 144 of the ASF.

pursuant to section 37(4), in that he was concealing information required by the regulator in the investigation.

322. Mr. Zubko further continued to deny any connection to [Buyer 2], including to deny, in a February 26, 2020 letter, to having advised [Buyer 2] with respect to [Property 1]. I consider that in allowing his then legal counsel to make that denial in the February 26, 2020 letter to the regulator, Mr. Zubko was allowing a false or misleading statement to be made in a document that is required or authorized to be produced or submitted under RESA.

323. I consider it to be of note that Mr. Zubko did not, until entering into the ASF, admit the nature of his relationship with [Buyer 2], that being that [Buyer 2] was his [family member]. In fact, it was only after BCFSa obtained records in December 2023 which showed a photograph of Mr. Zubko and [Buyer 2] together at a family birthday party, that the nature of the relationship between the two became clear to the regulator.

Conduct Unbecoming

324. Mr. Zubko's conduct in respect of the commission and assignment deals is clearly of the type that falls within each of the categories set out at section 35(2) of RESA.

325. This type of conduct has an effect not only on the clients who Mr. Zubko was supposed to be serving, but on the public and the real estate industry as a whole.

326. Mr. Zubko was not, at any time, in any of the transactions, engaged in conduct that was in the best interest of the public. Rather, he was acting in a way that would undermine public confidence in the real estate industry and bring the real estate industry into disrepute.

327. I consider it to be apparent that in each of the transactions at issue, Mr. Zubko was seeking to serve his own financial interests, at the expense of clients, and the public.

328. I note, in reaching this conclusion, that Mr. Zubko suggested in his submissions that in referring unrepresented buyers to either [Licensee 1] or [Licensee 2], he was simply reacting to the situation that he knew would come to pass, that is that outside agents would want to renegotiate for a higher commission. Mr. Zubko submitted that he had simply determined that it would be more reasonable to refer unrepresented buyers to people he knew.

329. I reject this submission.

330. If Mr. Zubko had simply provided a list of real estate licensees that he knew in order for those unlicensed buyers to obtain real estate services, there would be no issue.

331. On the evidence before me, I consider that rather than simply making a referral, Mr. Zubko was actively seeking to increase the commissions he received. This was done at the expense of his seller clients, and for Mr. Zubko's benefit.

332. In my view, this activity was clearly contrary to the best interests of the public. Mr. Zubko's conduct was self-interested. Both sellers and buyers in the transactions believed that Mr. Zubko was their designated agent, that he was acting exclusively in their interests, when in fact he was

focused on manipulating circumstances to ensure that he received the highest possible commission payment at the expense of those he was supposed to be representing.

333. I note that this is not a situation in which Mr. Zubko simply negotiated the highest possible commission for himself and signed a contract to that effect. These transactions involved Mr. Zubko actively acting for both sellers and buyers in the same transaction, in order to increase his commission payment, without telling either party that he was doing so and where each party believed that Mr. Zubko was acting exclusively in their interest.
334. Mr. Zubko's actions in this regard undermines public confidence in the real estate industry and brings the industry into disrepute, as it will cause buyers and sellers to have concern that licensees are simply acting in a self-interested manner, rather than representing the interest of their clients.
335. Similarly, I consider that the assignment deals were transactions which were orchestrated by Mr. Zubko for the purpose of earning money at the expense of the public, rather than in the best interests of the public.
336. The evidence before me is that Mr. Zubko actively sought to encourage his seller clients, [Client 1] and [Client 5], to lower the sale prices of their properties, in order that the buyers, who Mr. Zubko brought into the deals and who were Mr. Zubko's close personal acquaintances, could achieve larger profits on their assignments.
337. In my view, the reasonable conclusion to draw from the above is that Mr. Zubko was acting in the best interests of his [family member], and his friend [Buyer 1], rather than the best interests of his clients or the public.
338. The fact that Mr. Zubko was actively attempting to have his seller clients lower their prices in order that Mr. Zubko's close personal acquaintances could earn more significant profits is clearly the type of activity that undermines public confidence in the real estate industry and brings the industry into disrepute. Once again, this is activity that would indicate to the public that licensees are simply acting in a self-interested manner, rather than representing the interests of their clients.
339. I note, in setting out the above, that in their submissions the parties referred to whether or not Mr. Zubko received profits from the assignment deals.
340. There is no direct evidence before me, in the form of admissions or documentary evidence, which demonstrates that Mr. Zubko shared in the profits made by [Buyer 2] and [Buyer 1] on the assignment deals. Mr. Zubko explicitly denies receiving any of those profits. While it may be that inferences could be made in that regard, I do not consider it necessary for me to consider that matter further at this time. For the purposes of determining whether or not Mr. Zubko engaged in conduct unbecoming, I do not consider it to be necessary to make a finding as to whether Mr. Zubko did in fact share in the assignment scheme profits. As set out above, Mr. Zubko's involvement in the assignment deals, whether he shared in the profits from those deals or not, constitutes conduct unbecoming.
341. The parties may wish to make further arguments on that subject at the sanctions portion of this hearing.

Conclusion

342. I find that the evidence before me demonstrates that Andre Zubko and Zubko PREC committed professional misconduct within the meaning of section 35(1)(a), section 35(1)(c), section 35(1)(e), and section 35(1)(g). The specific findings are as follows.

343. I find that Andre Zubko and Zubko PREC committed professional misconduct within the meaning of section 35(1)(a) [with respect to the Rules set out in Schedule "1" of the Notice of Hearing, and 35(1)(c) of the RESA with respect to the following trades in real estate in British Columbia:

- a) [Property 1] on or about January 12, 2016;
- b) [Property 2] on or about February 8, 2016;
- c) [Property 3] on or about April 13, 2016;
- d) [Property 4] on or about September 12, 2016;
- e) [Property 5] on or about July 26, 2017;
- f) [Property 6] on or about March 27, 2017;
- g) [Property 7] on or about April 21, 2017; and
- h) [Property 8] on or about October 10, 2017

(each, a "Transaction" and collectively the "Transactions"), as follows:

- i. Mr. Zubko conceived and entered into an arrangement with either [Licensee 1] (properties identified in subparagraphs a - e above) or [Licensee 2] (properties identified in subparagraphs f- h above) to circumvent the commission provisions of the listing agreement and to obtain remuneration to which he was not entitled;
- ii. Mr. Zubko prepared, or arranged for [Licensee 2] or [Licensee 1] to prepare, contracts and other documents identifying [Licensee 2] or [Licensee 1] as the buyer's agent when Mr. Zubko was the person primarily providing real estate services to the buyer as the buyer's agent;
- iii. Mr. Zubko failed to take reasonable steps to avoid conflicts of interest by providing agency representation to the buyer and the seller and failed to promptly and fully disclose those conflicts of interest and the nature of his representation to the buyer and seller;
- iv. Mr. Zubko advised or permitted the seller to enter into a written commission agreement with [Licensee 2]'s or [Licensee 1]'s brokerage, in order to pay a higher rate of commission than that provided in the listing agreement, relying on the false representation that [Licensee 2] or [Licensee 1] was the buyer's agent;
- v. Mr. Zubko received remuneration from [Licensee 1] and [Licensee 2] which was not disclosed to his clients.

344. I further find that Andre Zubko and Zubko PREC committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(c) of RESA with respect to the [Property 1] Transaction, as follows:

- a. In or about January 2016, while acting as the agent for the seller of the [Property 1] Property, Mr. Zubko conceived of and entered into an arrangement with [Licensee 1], who was purporting to act as the agent for the named buyer, [Buyer 2], for the purpose of inducing the seller to enter into a contract of purchase and sale for the [Property 1] Property knowing the intention of [Buyer 2] was to try to assign the contract of purchase and sale to another individual at a higher price;
- b. On or about January 9, 2016, Mr. Zubko arranged for [Licensee 1] to prepare a contract of purchase and sale for [Property 1] on behalf of the named buyer, [Buyer 2], when he knew that [Buyer 2] was not intending to complete the purchase;
- c. On or about January 21, 2016, Mr. Zubko asked [Licensee 1] to send an email which indicated [Licensee 1] had made inquiries about the development potential of the [Property 1] Property when:
 - i. Mr. Zubko knew [Licensee 1] had not made such inquiries but rather another agent acting for a potential assignee had represented that she made the inquiries; and
 - ii. the representations in the [Licensee 1] email were intended to induce the seller to reduce the sale price agreed in the Contract of Purchase and Sale;
- d. On or about February 11, 2016, Mr. Zubko advised the seller, based on the email of [Licensee 1] referenced above, to accept a reduced sale price and an amendment to the contract of purchase and sale changing the price from \$350,000 to \$175,000;
- e. On or about February 17, 2016, Mr. Zubko arranged for [Licensee 1] to prepare an assignment of the contract of purchase and sale assigning the contract at a purchase price of \$335,000 to [Buyer 3] and Mr. Zubko did not advise the seller he was aware of the assignment and the property was now being sold for \$335,000 to the assignee;
- f. On or about February 23, 2016, Mr. Zubko obtained a bank draft drawn on his personal account and provided it for the deposit owed by [Buyer 2] under the contract of purchase and sale for the purpose of ensuring [Buyer 2] as the named buyer, fulfilled the terms of the contract so that the assignment of the [Property 1] Property could proceed to the benefit of [Buyer 2], despite Mr. Zubko being agent for the seller; and
- g. Mr. Zubko was aware of a false representation in the contracts of purchase and sale and the assignment documents which identified [Licensee 1] as the buyer/assignor's agent when he did not solely provide agency to the buyer/assignor but Mr. Zubko also provided agency to the buyer/assignor, [Buyer 2].

345. I find that Andre Zubko PREC committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(c) of RESA with respect to the [Property 5] Transaction, as follows:

- a. In or about July 2017, while acting as the agent for the seller of [Property 5], Mr. Zubko conceived of and entered into an arrangement with [Licensee 1], who was purporting to act as the agent for the named buyer, [Buyer 1], for the purpose of inducing the seller to enter into a contract of purchase and sale for [Property 5] knowing the intention of [Buyer 1] was to try to assign the contract of purchase and sale to another individual at a higher price; and
- b. On or about July 26, 2017, Mr. Zubko arranged with [Licensee 1] for the preparation of a contract of purchase and sale for [Property 5] on behalf of [Buyer 1] when he knew [Buyer 1] was not intending to complete the purchase;
- c. Mr. Zubko represented to the seller of [Property 5] that the named buyer, [Buyer 1], had carried out a home inspection and the home required new windows when:
 - i. [Buyer 1] had not carried out a home inspection;
 - ii. Mr. Zubko knew the representations regarding the results of a home inspection were untrue; and
 - iii. The representation was intended to cause the seller to reduce the sale price of [Property 5];
- d. On or about August 14, 2017, relying on the misrepresentation regarding a home inspection, Mr. Zubko advised the seller to accept a price reduction on the sale price of [Property 5] from \$807,000 to \$797,000;
- e. Prior to the seller agreeing to reduce the sale price Mr. Zubko was aware [Buyer 1] had assigned [Property 5] to an assignee for the purchase price of \$845,000 and Mr. Zubko did not advise the seller of this fact;
- f. On or about August 16, 2017, Mr. Zubko arranged for his spouse, [Individual 1], to provide a bank draft for the deposit owed by [Buyer 1] under the contract of purchase and sale for the purpose of ensuring [Buyer 1] as the named buyer fulfilled the terms of the contract so that the assignment of [Property 5] could proceed to the benefit of [Buyer 1], despite Mr. Zubko being agent for the seller; and
- g. Mr. Zubko permitted the contract of purchase and sale for [Property 5] to identify [Licensee 1] as the buyer's agent when he knew he was also providing agency to the named buyer [Buyer 1].

346. I also find that Andre Zubko and Zubko PREC committed professional misconduct within the meaning of sections 35(1), 35(1)(e) and 35(1)(g) of RESA, and contravened section 37(4) of RESA as follows:

- a. Mr. Zubko made an agreement that [Licensee 1] and [Buyer 1] would provide false or misleading statements to the Council during its investigation of the matters identified in paragraphs 344 through 346 above;
- b. Mr. Zubko made false or misleading statements to the Council during its investigation of the matters identified in paragraphs 344 through 346 above; and
- c. Mr. Zubko deleted some emails related to the Transactions identified in paragraph 344 above so that they would not be available to the Council or the BCFSA during the investigation.

347. Finally, I find that Andre Zubko and Zubko PREC committed conduct unbecoming a licensee within the meaning of sections 35(2)(a), 35(2)(b) and 35(2)(c) of the RESA, when they engaged in the conduct set out paragraphs above.

Sanctions

348. I retain jurisdiction to determine issues of sanctions and expenses, and will hear evidence and submissions from the parties concerning orders under section 43(2) of RESA, and expenses under section 44(1) of RESA, and any other actions available to the Superintendent.

349. The parties may make submissions to the Hearings Division regarding the method of sanctions hearing.

350. Once I have arrived at a decision on sanctions issues, I will issue additional reasons (a “Decision on Sanctions & Expenses”) that will form a part of this decision, make an order under section 43(2) of RESA, and make such other orders under RESA as I may deem appropriate.

351. Once an order has been made under Part 4, Division 2 of RESA, Mr. Zubko will have a right to appeal to the Financial Services Tribunal under section 54(1)(e) of the RESA. Mr. Zubko will have 30 days from the date of the sanction decision to file an appeal: *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at Kelowna British Columbia, this 2nd day of July, 2024

“Original signed by Andrew Pendray”

Andrew Pendray
Chief Hearing Officer