

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

AND

ROSS CHONN  
(currently unlicensed)

**REASONS FOR DECISION ON LIABILITY**

Date of Hearing:	February 16-18, 2021
Discipline Hearing Committee (“Panel”):	S. Heath (chairperson) N. Nicholson (member) R. Hanson (member)
Counsel for RECBC:	John A. McLachlan Nicole Wong
Respondent:	Ross Chonn (self-represented)
Court Reporter:	Ms. R. Stinson

**A. INTRODUCTION**

1. The hearing was conducted pursuant to section 42 of the *Real Estate Services Act* (“RESA” or the “Act”) to consider whether the respondent listed above committed professional misconduct or conduct unbecoming within the meaning of RESA section 35(1) and 35(2).
2. The hearing arose as a result of a complaint made by Ms. Zxxxxxx (Jxxx) Wxxx (“Ms. Wxxx”), received July 12, 2017, in relation to the sale of the property at XXXX Cxxxxxx Highway, Clinton BC, which consisted of a retail market, accommodation, and storage.
3. The respondent, Mr. Chonn (“Mr. Chonn” or the “Respondent”) has been a licensee since 1992. From August 2015, he was licensed with One Percent Realty, and was a licensee when, on October 12, 2016, Ms. Wxxx and her husband, Mr. Zxx Fxx Lxx (“Mr. Lxx”), entered a listing contract with that brokerage. From February 9 to June 4, 2017, Mr. Chonn became licensed with another brokerage, Fair Realty.

**Preliminary Matters:**

4. Mr. Chonn is currently unlicensed. However, the Discipline Committee has jurisdiction over Mr. Chonn, pursuant to RESA section 34:

*Licensee includes former licensee*

34. For the purpose of this Part [Part 4 - Discipline Proceedings and Other Regulatory Enforcement], "licensee" includes a former licensee in relation to matters that occurred while the person was a licensee.

Council's **BOA**, Tab 17.

5. In pre-hearing correspondence, Mr. Chonn stated that he did not consent to the hearing and purported to set conditions for his appearing before the Committee, namely a fee of no less than \$100,000, and that he be free from any liability. But on the basis that the Council properly delivered the Amended Notice of Discipline Hearing to Mr. Chonn on December 22, 2020 and there was no reasonable basis to adjourn the hearing it proceeded. The Committee has jurisdiction to proceed with a discipline hearing, whether or not the licensee appears in person or by counsel, pursuant to section 42 of RESA. In fact, Mr. Chonn attended the hearing, without legal counsel.

**B. ISSUES**

6. The Amended Notice of Discipline Hearing ("Notice") set out the allegations against Mr. Chonn, as follows:

1. You committed professional misconduct within the meaning of sections 35(1)(a) and (d) and conduct unbecoming within the meaning of section 35(2) of the RESA between October 2016 and March 2017 in that you:
  - a. failed to name your brokerage at the time, One Percent Realty Ltd. ("One Percent Realty"), in the Contract of Sale and Purchase (the "Contract") and failed to submit both the Contract and remuneration in the form of commission to One Percent Realty with respect to the purchase and sale of your clients', Zxxxxxx Wxxx and Zxx Fxxx Lxx's (the "Sellers"), property at XXXX Cxxxxxx Hwy, Clinton, BC (the "Property"). In doing so, you provided real estate services separate from your brokerage at the time and accepted remuneration in relation to real estate services from a person other than your brokerage, contrary to section 7(3)(a) and section 7(3)(b) [Relationships between brokerages and other licensees] of the RESA;
  - b. failed to provide One Percent Realty with the relevant trading records, including the Contract and disclosure statements, and admitted that the Contract had been written "outside the brokerage", contrary to section 3-2(1) [Associate broker and representative responsibilities: records] and section 3-2(2) [Associate broker and representative responsibilities: keeping managing broker informed] of the Rules;

- c. failed to fully inform the Sellers of all material information and any conflicts of interest by:
  - i. acting as a dual agent and representing both the Sellers and the buyer, your wife, (the “Buyer”), without properly executing a Limited Dual Agency Agreement;
  - ii. failing to present the Sellers with a completed Disclosure of Interest in Trade form before an offer was prepared;
  - iii. failing to clearly inform the Sellers as to whether the \$13,250 was accurately characterized as a commission fee or a deposit to be returned to the Sellers;
  - iv. having the Sellers sign the signature page of the Contract without including the entire Contract or explaining the purpose of the document;
  - v. requesting an early move-in date which preferred your own interests to that of the Sellers; and
  - vi. failing to present the Sellers with the option to cancel the listing once it was clear there was a conflict of interest,  
contrary to section 3-3(a) [Duties to Clients: act in the best interests of the client], section 3-3(f) [Duties to Clients: disclose to the client all known material information], section 3-3(i) [Duties to Clients: take reasonable steps to avoid any conflict of interest] and section 3-3(j) [Duties to Clients: promptly and fully disclose a conflict of interest to the client] of the Rules;
- d. failed to advise the Sellers to seek independent professional advice about:
  - i. your interest in the Property, considering the fact that you were the listing agent and your wife was the Buyer;
  - ii. offering a vendor take back mortgage to a buyer with no credit history; and
  - iii. whether to cancel the listing or continue with the sale once it was clear there was a conflict of interest,  
contrary to section 3-3(a) [Duties to Clients: act in the best interests of the client] and section 3-3(d) [Duties to Clients: advise the client to seek independent professional advice] of the Rules;
- e. failed to act honestly and with reasonable care and skill by:
  - i. failing to ensure that all necessary documents were properly signed and witnessed;
  - ii. allowing for a discrepancy between the date the Contract was prepared and the date the Sellers actually signed the Contract; and

- iii. failing to disclose the exact nature of your remuneration to the Sellers, contrary to section 3-4 [Duty to act honestly and with reasonable care and skill] of the Rules;
- f. failed to promptly deliver a copy of the accepted offer to your brokerage, One Percent Realty, and the Sellers contrary to section 5-4 [Acceptance of offer] of the Rules;
- g. failed to prepare a Limited Dual Agency Agreement which would have set out your relationship to both the Sellers and the Buyer, therefore failing to fully disclose to the Sellers the nature of the representation that you were providing to the Buyer, contrary to section 5-10 [Disclosure of representation in trading services] of the Rules;
- h. provided a number of differing explanations for the commission received from the Sellers, first stating that instead of receiving commission directly, the purchase price was reduced, then suggesting to the Sellers that the commission be used as a deposit on the Property, and then stating that you were receiving a commission of \$13,250 on the Disclosure of Remuneration form. You failed to accurately disclose your actual commission to the Sellers contrary to section 5-11 [Disclosure of remuneration] of the Rules.

## C. STATUTORY PROVISIONS

### C.1 RESA Discipline Sections

#### 7. Section 35(1) of RESA defines professional misconduct:

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

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

8. Section 35(2) of RESA defines **conduct unbecoming** a licensee:

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

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

(Council's BOA, Tab 16)

## C.2 RESA and Rules relevant to alleged conduct

9. The allegations of professional misconduct relate to breaches of particular sections of RESA, the regulations or the Rules. Selections of the relevant sections are set out below.

10. With respect to obligations to the brokerage, RESA s. **7(3)** provides as follows:

*Relationships between brokerages and other licensees*

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

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

(b) **is not entitled to and must not accept remuneration** in relation to real estate services **from any person other than the brokerage** in relation to which they are licensed. (emphasis added)

11. Rule s. **3-2(1) and (2)** provides as follows:

*Associate broker and representative responsibilities*

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

(a) section 8-4 [general records],

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

(2) Keeping managing broker informed – An associate broker or representative must

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

(b) immediately notify the managing broker if a deposit referred to in section 3-1(4)(a) [anticipated stakeholder deposit] of these rules has not been received.

12. With respect to duties to the Sellers, Rule **3-3(a), (d), (f), (i) and (j)** provides as follows:

*Duties to clients*

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

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

...

(d) advise the client to seek independent professional advice on matters outside of the expertise of the licensee;

...

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

...

(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. (emphasis added)

13. Rule **3-4** (at the relevant time) provided as follows:

*Duty to act honestly and with reasonable care and skill*

3-4 When providing real estate services, a licensee must act honestly and with reasonable care and skill.

This provision has now been divided into Rules 3-4 (duty to act honestly) and 3-5 (duty to act with reasonable care and skill).

14. The current version of Rule 5-10, enacted on June 15, 2018, provides as follows:

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

(2) A disclosure made under subsection (1) must be in a form approved by the council and include the following information:

(a) the duties and responsibilities of licensees to clients and unrepresented parties;

(b) how to file a complaint about a licensee's conduct.

(3) ...

The prior version of Rule 5-10, in effect during the material period from October 2016 to March 2017, provided as follows:

[5-10] 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
  - (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).

15. Rule 5-11 provides as follows:

[5-11] (2) Subject to subsection (3), the licensee must promptly disclose to the client all remuneration paid or payable to the licensee's related brokerage in relation to the real estate services provided, and the disclosure must include all of the following:

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

(3) [*where trading services are provided to only one party*]

## **D. STANDARD OF PROOF, EVIDENCE AND CREDIBILITY**

### **D.1 Burden and Standard of Proof**

16. The Council must prove its case on a standard described as the "balance of probabilities". That is, in order to make a finding professional misconduct or conduct unbecoming, the Panel must find that it is more likely than not that the facts as alleged occurred. The evidence must be "sufficiently clear, convincing and cogent" to satisfy that test. The leading authority for this principle is *FH v McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41 (see Council's BOA, Tab 8, Paras. 40, 45 and 46).

### **D.2. The evidence that the Committee may accept**

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

*B.C. (Superintendent of Motor Vehicles)*, 2004 BCSC 1358 at para. 23. The Committee may, however, draw upon principles underlying court rules of evidence to exclude or assess evidence.

18. As a public authority, the Panel 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 Panel affords every respondent an opportunity to respond to the case against them by providing advance notice of the issues and the evidence, and an opportunity to present evidence and argument. The Panel must determine facts and decide issues set out in the Notice of Discipline Hearing, based on evidence. Panel members may, however, apply their individual expertise and judgment to how they evaluate or assess evidence.

### **D.3 Credibility**

19. As set out below, there were 5 witnesses who gave oral testimony. The Panel considered and assessed the credibility of the witnesses pursuant to the approach in *Faryna v Chorny*, 1951 CanLII 252 (BCCA)(Council's BOA, Tab 7, Page 357) and *Bradshaw v Stenner*, 2010 BCSC 1398, affd 2012 BCCA 296 (Council's BOA, Tab 4, Paras. 186 and 187). For clarity, the Panel considered their testimony with a view to factors personal to the witnesses (e.g., their ability to observe events, their firmness of memory, the consistency of their accounts, any motives to lie, and their demeanour), and with a view to their consistency with the testimony of other witnesses, the documentary evidence, and the “preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions”: *Bradshaw* at para. 187.

20. The Panel will address the substance of the testimony as part of its findings of fact below. There are factual issues upon which the testimony of Mr. Chonn differed from that of Ms. Wxxx or other witnesses or documentary evidence. For example, on the issues of alleged failure to disclose a material fact or a conflict of interest to a client, the Panel relied on oral testimony to determine the facts. On other issues, such as whether a limited dual agency agreement was filled out and provided to the client, the documentary evidence was the primary basis for the Panel to determine the facts.

21. The Panel found all four of the Council’s witnesses credible, consistent and confident in their testimony during direct- and cross-examination. Ms. Wxxx recalled key details and her evidence was consistent with documentary evidence. She was direct in her answers and did not speculate beyond her knowledge. The testimony of Mr. Chonn was, however, more problematic and lacked credibility, as addressed further below. In summary, Mr. Chonn was argumentative and defensive when presenting his evidence. He also laid blame on Ms. Wxxx without admitting any wrongdoing on his part, even where the documentation and Ms. Wxxx’s evidence was contrary.

## **E. FINDINGS OF FACT**

### **E.1. Evidence before the Panel**

22. The Council tendered a book of documents, marked for identification as Exhibit A, parts of which the Panel accepted as numbered exhibits. The Respondent also provided a book of



documents, but it consisted of one statement by the Respondent dated February 5, 2021, and several cases.

23. The Council called four witnesses: Ms. Wxxx, Mr. Lxx, Mr. Ixx Bxxxxx (the managing broker of One Percent Realty), and Mr. Bxx Wxxxxx (the managing broker of Fair Realty). The Respondent had opportunity to cross-examine the Council's witnesses.

24. The Respondent provided sworn testimony on his own behalf.

## **E.2 Summary of Documentary Evidence of the Transaction**

25. On October 12, 2016, the Sellers entered into an agreement with Mr. Chonn to list the Property and have Mr. Chonn act as their designated agent.

26. At the time of entering into this agreement, Mr. Chonn was an Associate Broker with One Percent Realty.

27. The Property had not sold as of January 2017.

28. Mr. Chonn prepared a Contract of Purchase and Sale dated January 27, 2017 ("Contract 1"), with his wife, Ms. Xxxxxxx Ax, as the buyer. Contract 1 was never fully executed by the parties.

29. Mr. Chonn subsequently prepared a Contract of Purchase and Sale dated January 31, 2017 ("Contract 2"), also with his wife as the buyer. Contract 2 contained the following terms:

- a. Price: \$250,000.00;
- b. Deposit: \$13,250.00, due within two business days of subject removal;
- c. Completion date: March 31, 2017;
- d. Possession date: April 1, 2017; and
- e. The purchase price included all inventory, but excluded personal belongings.

30. Three addendums were attached to Contract 2.

31. The first addendum was dated January 30, 2017 and inaccurately provided that it was further to a contract dated January 27, 2017 ("Addendum 1"). Addendum 1 included the following terms:

- a. the Sellers were to provide a \$220,000.00 vendor take-back mortgage;
- b. the "initial deposit" was increased to \$20,000.00, due upon completion on March 31, 2017;
- c. a "down payment" of \$10,000.00 would be made to the Sellers on or before 60 days following completion; and
- d. a breakdown as to the value of the land, building, goodwill and inventory:
  - i. Land and building \$180,000.00;
  - ii. Assets not for sale \$2,000.00;
  - iii. Goodwill of business \$38,000.00; and

iv. Inventory \$30,000.00.

32. The second addendum was dated February 6, 2017 ("Addendum 2"). Addendum 2 moved the completion date to March 5, 2017 and the "procession [sic] and adjustment date" to March 6, 2017.

33. The third addendum was dated February 6, 2017 ("Addendum 3"). Addendum 3 moved the completion date to March 6, 2017 and the "procession [sic] and adjustment date" to March 7, 2017. These changes were handwritten and initialed by the parties.

34. Mr. Chonn prepared the following forms for the sale of the Property, but never provided them to One Percent Realty:

- a. Contract 1 (dated January 27, 2017);
- b. Contract 2 (dated January 31, 2017);
- c. Addendum 1 (dated January 30, 2017);
- d. Addendum 2 (dated February 6, 2017);
- e. Addendum 3 (dated February 6, 2017);
- f. Disclosure of Remuneration; and
- g. Disclosure of Interest in Trade.

35. Mr. Chonn never prepared or provided the Sellers with a Dual Agency Agreement when he began representing his wife.

### **E.3 Summary of Ms. Wxxx's Evidence**

36. This is a summary of relevant portions of Ms. Wxxx's evidence.

37. Ms. Wxxx's evidence was that she chose Mr. Chonn to list her Property and she entered into an MLS listing from October 12, 2016 to April 30, 2017, for a price of \$250,000, on her own behalf and on behalf of her husband. Her evidence was that she had signed the MLS listing, but that some of the initials on the listing were not hers.

38. Her evidence was that in November 2016, when the Property was not getting any interest, and at Mr. Chonn's suggestion she agreed to an amendment to the listing agreement on November 17, 2017 which increased the commission, with the hope of attracting more offers.

39. Ms. Wxxx advised that in January, in a discussion with Mr. Chonn, she offered to provide a vendor take-back mortgage, and she asked whether Mr. Chonn was interested in purchasing the property. Her evidence was that a few days later Mr. Chonn called and told her he could buy the Property and that he would bring his wife, Ms. Ax to look at it. Some time after that, Ms. Wxxx spoke with Mr. Chonn's wife about prices.

40. Ms. Wxxx received the Contract 1 with Ms. Ax as the buyer, which indicated that Mr. Chonn was a Limited Dual Agent. Ms. Wxxx's evidence was that she did not understand she was entering into a limited dual agency, and she did not sign a limited dual agency agreement.

41. Ms. Wxxx's evidence was that with Contract 1 she received a Disclosure of Interest in Trade by email [Council's BOD, Tab 14, Page 10]. She also said that the vendor take-back mortgage associated with Contract 1 in the Addendum was prepared by Mr. Chonn, and he did not advise her to seek independent legal advice.
42. Ms. Wxxx's evidence was that Contract 1 was never finalized. Ms. Wxxx stated that she spoke with Ms. Ax who, in summary, said that she wanted the inventory included in the sale price and for the sale price to remain the same. After that conversation, Ms. Wxxx stated that she called Mr. Chonn and asked whether at this price she would still have to pay commission and he said no, she would not have to pay the commission.
43. Ms. Wxxx's evidence was that she received Contract 2 with portions of it blank but that the Addendum had details completed, and she signed the document. Mr. Chonn did not explain to her a number of the documents he provided.
44. In early February Ms. Wxxx learned that Mr. Chonn and his wife and two small children were living without power and water, and she agreed they could move in early which they did on Feb 7, 2017. Mr. Chonn asked to move the competition date early, and Ms. Wxxx agreed to Addendum 2, which moved the completion date to March 6, 2017. Ms. Wxxx lived with Mr. Chonn and his family until she moved out on March 6, 2017. Her evidence was that there was no discussion with Mr. Chonn about paying rent for that month.
45. Ms. Wxxx's evidence was that at some point after Mr. Chonn and his family moved in, he asked her to sign a receipt that she had received a deposit of \$13,250 from Ms. Ax. She signed the receipt but had not received the deposit [Council BOD, Tab 13, page 20].
46. As closing approached, Ms. Wxxx stated that the payment terms were altered so that \$10,000 was outside of the mortgage and was to be paid 60 days after completion. Her evidence was that this occurred because Mr. Chonn told Ms. Wxxx that the change was because the lawyer said the principal of the mortgage number had to change. Ms. Wxxx stated that the \$10,000 was to be paid within 60 days. Ms. Wxxx's evidence was that she did not receive this \$10,000, but later in her evidence she confirmed that she had received two amounts that totaled \$10,000 [Council BOD, Tab 13, page 21].
47. Ms. Wxxx deposed that she was asked about whether she had received the \$13,250 deposit that she had signed the receipt. Her evidence was that she called Mr. Chonn from the lawyer's office to ask about the deposit he told her that it would be paid. She asked if she should sign the closing documents and get paid later and he said yes. At the time of her testimony, she had not been paid the full \$20,000 deposit due at completion.
48. Ms. Wxxx received \$6,750 from her lawyer at closing.
49. Ms. Wxxx's evidence was that when the money was still outstanding, she asked Ms. Ax about it. She directed Ms. Wxxx to her husband. When Ms. Wxxx asked Mr. Chonn about the \$13,250, he told her that was his commission. Her evidence was that this made her very upset. Ms. Ax agreed to pay Ms. Wxxx \$3,250 in cash. Between this cash amount and the \$6,750 though her lawyer, Ms. Wxxx received \$10,000 of the total \$30,000 to be paid outside of the mortgage.

50. In cross examination, Ms. Wxxx stated that Ms. Ax told her she had given Mr. Chonn power of attorney and that everything went through him. She also gave evidence that she did sign a Working with a Realtor document [Council BOD, Tab 31, pages 29-30].

51. Ms. Wxxx came across to the Panel as credible and consistent. Her examination, cross examination and subsequent answers to the Panel's questions were consistent, logical and fit with the written documentation she was able to provide.

#### **E.4 The evidence of Mr. Lxx**

52. Mr. Lxx spoke through an interpreter and confirmed his wife has his Power of Attorney and he has never met or spoken to Mr. Chonn. He was brief and credible, but his evidence was not decisive as to any of the key factual elements of the decision.

#### **E.5 The evidence of Mr. Bxxxxx**

53. Mr. Bxxxxx was the Managing Broker for One Percent Realty, and thus for Mr. Chonn, from May 16, 2016 to Feb 7, 2017. During the time of these transactions Mr. Chonn was licensed with One Percent Realty. Mr. Bxxxxx stated that their files on this matter were brief: an MLS form dated October 12, 2016 and a related Property Disclosure Form, Individual Identification forms, and a Working with a Realtor Form.

54. Mr. Bxxxxx knew nothing else about the transactions. He was not aware of any other documents or the conflict. He is responsible for signing any Cancellation of Listing form and this case he had not done so, nor was there one in the file.

55. Mr. Bxxxxx also gave evidence on what documents should have gone through the brokerage and how the file should have been disclosed to the brokerage. The Panel did not, however, rely or need to rely on this evidence to ascertain Mr. Chonn's obligations under the Act and the Rules.

#### **E.6 The evidence of Mr. Wxxxxx**

56. Mr. Wxxxxx is retired but was the owner of Fair Realty at the time of these transactions. Mr. Chonn transferred his license to Fair Realty on February 9, 2017. He brought no listings with him. He was asked to leave Fair Realty and his license was surrendered on June 4, 2017.

57. Mr. Wxxxxx became aware of Ms. Wxxx when she called his for help and when he learned of her situation, he suggested she file a complaint. On Feb 22, 2017, Fair Realty instituted a policy whereby by Mr. Chonn had to submit all of his listings and contracts to the office before presenting them to clients because the office was receiving complaints about missing information, messy paperwork and deposit information being blank. After Fair Realty received a call from CRA to garnishee Mr. Chonn's wages for back payment of taxes, they terminated him. For completeness, Mr. Wxxxxx testified that he found it extremely difficult and in fact impossible to open an office in the interior due to the irreparable damage that Mr. Chonn did to the reputation of Fair Realty through his dealings in the community. The Panel did not, however, rely on this evidence to determine Mr. Chonn's conduct relating to the Property.

58. Mr. Wxxxxx was asked about the concept of a private sale. He was very clear that the contract was between a member of the public and the brokerage. There was no private sale.

59. Mr. Wxxxx gave evidence that Mr. Chonn attempted to sell the property again describing it as an attractive and thriving business and listing it for twice the price his wife paid for the "failing business".

#### **E.7 The evidence of Mr. Chonn**

60. **The substance of Mr. Chonn's testimony:** Mr. Chonn's version of events varied greatly throughout the discipline hearing. His evidence was that he was within his rights to take various actions as this was a "private deal". He also repeatedly stated that he was "only a witness" and the deal was between his wife and Ms. Wxxx. There were many contradictions in his testimony and many differences between his story and the testimonies of other witnesses.

61. In Mr. Chonn's previous communications with the Council, he stated that Ms. Wxxx agreed to pay him \$13,250.00 in commission. This is reflected in Mr. Chonn's May 9, 2017 letter to the Council, in which he writes:

"After about a week after the completion, Jxxx asked me where is her initial deposit of 20k, because all she received from her lawyer is only 4k plus, she asked me where is her money, I tried to explain to her that you have to talk to your lawyer not me, and then she found out that her lawyer paid the water bill twice, she was going to get a refund for that, but she still short exactly \$13,250.00, I told her that is the amount that she agreed to pay me and was credit for the purpose. she said I promise her not to charge her any commission or I have to pay for the inventory which was 30k." (emphasis added)

62. However, during cross-examination, Mr. Chonn stated on numerous occasions that he never asked for a commission, nor was he expecting a commission. In other previous correspondence he stated that he did not receive any compensation:

"Let it be known to all that I did not receive any compensation as agent from Zxxxxx Wxxx for any services rendered, as a real estate agent or as a limited dual agent, ending in a private sale.

I did not receive any valuable consideration, ever."

63. During cross-examination, Mr. Chonn's evidence was that he was not acting as a realtor with respect to the January 31, 2017 contract. However, the Disclosure of Remuneration form provided to the Council from Mr. Chonn's lawyer at the time, Mr. Sxxxx, indicates that Mr. Chonn was still acting as a realtor at January 31, 2017 and was expecting commission. The Disclosure of Remuneration, dated January 31, 2017, was filled out and signed by Mr. Chonn as the licensee, acknowledging an anticipated commission of \$13,250.00.

64. Mr. Chonn provided a number of reasons as to why he did not have certain documents with respect to the sale of the Property. When questioned about the lack of a Dual Agency Agreement, Mr. Chonn's evidence was that one had been signed but that "unfortunately, when [he] moved to Clinton, one box of files got dumped into the garbage". Somehow, this one document was lost, even though Mr. Chonn, through counsel, provided the Council with copies of the contract and other documents related to the purchase and sale of the Property. There

was no copy of a Dual Agency Agreement in any of the files the Council obtained from Mr. Chonn, Mr. Sxxxx, Mr. Wxxxxx, Mr. Bxxxxx or Ms. Wxxx.

65. The Panel asked Mr. Chonn questions with respect to the documents, in particular, asking if Mr. Chonn had copies of emails that confirmed what documents had been delivered to Ms. Wxxx. Mr. Chonn's response was that these emails had been accidentally erased when he changed brokerages.

66. Mr. Chonn was unable to provide evidence that these documents were ever provided to Ms. Wxxx. Mr. Chonn stated he may be able to search and find these documents. The Panel was satisfied that Mr. Chonn was given ample time by the Council to produce the relevant documents, first in 2017 when initially being investigated by the Council, and now more recently with respect to this hearing.

67. When pressed on further details with respect to the sale of the Property, Mr. Chonn continually shifted responsibility onto other people, claiming that he was "pushed into" purchasing the Property by Ms. Wxxx, that he was merely following the advice of Mr. Mxxxxx, and that Ms. Ax was responsible for the whole transaction. He maintains that Ms. Ax was responsible for the transaction, despite the fact that he continued to draft documents with respect to the sale, write correspondence on behalf of Ms. Ax, and have conversations and negotiations with Ms. Wxxx with respect to the Property. Mr. Chonn shifted the responsibility for dealing with the transaction onto Ms. Ax, while also claiming in his February 12, 2021 letter, that Ms. Ax had "no understanding of the operation of banking and business". Mr. Chonn could have called Ms. Ax as a witness but did not.

68. Mr. Chonn's credibility was also put into issue by his inconsistent statements about the profitability of the business on the Property. In a May 9, 2017 letter he stated that,

"... I saw the business went down quite fast, especially where they start building those super markets, in Clinton was even worse, there is not enough population to support 3 of the grocery stores, trying to complete each other to death..."

69. However, contrary to his May 9, 2017 statement, Mr. Chonn relisted the Property for \$499,000.00 only a few months after purchase with the following description:

"The grocery business on the property is record breaking, from the date that was starting to operate as grocery and automotive repairs, to today's date, it was exceeding 65 years in history, all the people knowing about the grocery here, it becomes a legend in the area, also created a long history of the relationship with the customer here, some of them have been buying from the store when they were kids, and now they are grandma and grandpas, so you are buying a piece of history site and business as well. In the summer time, there are thousands of tourist taking the picture of the business and store front, it also become a landmark of Clinton."

70. **The credibility of Mr. Chonn's testimony:** Mr. Chonn has provided a version of events that differs from that of Ms. Wxxx, Mr. Bxxxxx, and Mr. Wxxxxx. In particular, there is a dispute about what commission, if any, Mr. Chonn was owed, as well as a disagreement as to how

much information Mr. Chonn disclosed to the Sellers. There is a disagreement as whether there ever was a Dual Agency Agreement, the only evidence of which was Mr. Chonn's oral testimony.

71. After considering the principles of assessing credibility set out above, the Panel's conclusion is that Mr. Chonn's testimony was not credible, assessed on both a stand-alone basis and compared to the documents in evidence and the testimony of other witnesses. Mr. Chonn's version of events has varied greatly throughout the investigation, discipline and hearing process. He accepted no responsibility that any of his actions contravened his responsibilities as a licensee. In contrast to the evidence of the Council's witnesses, the story presented by Mr. Chonn was one that the Panel ultimately had to reject. The evidence provided by the other witnesses was more consistent, credible and believable.

#### **F. FACTUAL FINDINGS RELATING TO SPECIFIC ISSUES**

72. The Panel makes the specific factual findings below based on the documentary evidence and the Panel preferring the testimony of witnesses other than Mr. Chonn.

##### **F.1 Mr. Chonn acted outside his brokerage**

73. Mr. Chonn had been in a dispute with One Percent Realty concerning his commission and wanted to leave the brokerage.

74. Mr. Chonn failed to provide necessary forms relating to the Property to One Percent Realty. Mr. Chonn conducted the sale of the Property as a "private sale" in order to act outside of his brokerage.

75. Mr. Chonn did not inform One Percent Realty or the Sellers that he was acting outside of his brokerage.

76. On February 9, 2017, Mr. Chonn transferred his licence from One Percent to Fair Realty Ltd. ("Fair Realty").

77. Fair Realty did not receive any paperwork from One Percent Realty or from Mr. Chonn regarding the sale of the Property.

##### **F.2 Mr. Chonn took early possession**

78. Mr. Chonn and his family moved into the Property on February 7, 2017. At that time, the sale had not completed, and Ms. Wxxx continued to reside in the Property along with Mr. Chonn's family.

79. Mr. Chonn did not offer to pay the Sellers any rent, or provide any other form of consideration for he and his family moving in one month before completion. During cross-examination, Mr. Chonn admitted he knew this was wrong.

80. Ms. Wxxx moved out of the Property around the date of completion, March 7, 2017.

##### **F.3 Payments and the take-back mortgage**

81. The Sellers provided a take-back mortgage to the Buyer. As previously stated, the terms of the take-back mortgage were set out in Addendum 1:

- a. the Sellers were to provide a \$220,000.00 vendor take-back mortgage;
- b. the Sellers were to receive \$20,000.00 upon completion on March 31, 2017; and
- c. the Sellers were to receive a "down payment" of \$10,000.00 within sixty (60) days after completion.

82. The Buyer's lawyer informed Mr. Chonn that the Form B Mortgage required that the principal amount include both the \$220,000.00 take back mortgage as well as the \$10,000.00 lump sum. The principal amount was written as \$230,000.00.

83. Upon completion of the sale, the Sellers received \$6,750.00 from the Buyer's lawyer, rather than \$20,000.00 as set out in Addendum 1.

84. On March 8, 2017, the Buyer provided the Sellers with a further payment of \$3,250.00.

85. The Sellers did not receive \$10,000.00 within sixty (60) days after completion or at all.

86. The Buyer is still paying off the mortgage to the Sellers.

## **G. ANALYSIS AND REASONS**

### **G.1 Mr. Chonn acting outside his brokerage (RESA s. 7(3))**

#### (1) Breaches of RESA ss. 7(3)(a) and (b)

87. Mr. Chonn's actions and the documents produced clearly show he was providing real estate services to the Sellers. Section 7(3)(a) and (b) of the Act prohibits a representative from providing real estate services other than on behalf of the brokerage in relation to which they are licensed, and from accepting remuneration for real estate services from any person other than their brokerage.

88. In *Blake (Re)*, 2016 CanLII 92265 (BCREC) ["*Blake*"], three licensees consented to discipline orders relating to their breaching sections 7(3)(a) and (b) of the Act. Mr. Ross, an agent for the owner of property in Kelowna, and his son-in-law, Mr. Blake, agreed to purchase the property under a two-year rent-to-own arrangement, pursuant to which they would also receive commissions. Neither Mr. Ross nor Mr. Blake listed their respective brokerages on the contract, nor make their brokerages aware of the transaction, and accepted commissions that they did not disclose to their brokerages. A third licensee, Mr. Wager, later prepared an agreement to assign their contract of purchase and sale with a buyer, which making his brokerage aware of the assignment transaction. All three licensees consented to discipline based on their breaching, *inter alia*, s. 7(3)(a) of the Act. Both Mr. Ross and Mr. Blake consented to discipline based on their breaching s. 7(3)(b) of the Act.

89. At all material times, Mr. Chonn was licensed with either One Percent or Fair Realty. The Act prohibited Mr. Chonn from providing real estate services except on behalf of his brokerage. As alleged in Notice para. 1(a), Mr. Chonn contravened s. 7(3)(a) of the Act by his acting outside his brokerage to come to a private agreement with the sellers, which Mr. Chonn repeatedly said was his intent.

90. The Act also prohibited Mr. Chonn from accepting remuneration from the Sellers. Any commission should have been paid to Mr. Chonn's brokerage, which would have paid



remuneration to Mr. Chonn. As alleged in Notice para. 1(a), Mr. Chonn contravened s. 7(3)(b) of the Act by his accepting remuneration from persons other than his brokerage.

91. Mr. Chonn claimed that his failure to disclose the sale to One Percent Realty was due to prior disputes between himself and the brokerage. However, there is nothing in the Act, the Regulations, or Council Rules allows a breach of section 7(3)(a) or (b) of the Act in the case of a disagreement between agent and brokerage.

(2) Breaches of RR. 3-2 and 5-4

92. By acting outside the brokerage, Mr. Chonn also contravened a number of Council Rules.

93. Under Rule 3-2(1)(b) and Rule 3-2(2), Mr. Chonn should have provided trading records to his managing broker and should have kept his managing broker aware of the real estate services he was providing. Trading records include, pursuant to Rule 8-5, the contract of purchase and sale and any documents necessary for the brokerage to complete the Trade Record Sheet, including written disclosure statements. The Panel is satisfied that Mr. Chonn breached Rules 3-2(1)(b) and 3-2(2), as alleged in Notice para. 1(b).

94. Under Rule 5-4, a licensee who has obtained a signed acceptance of an offer to acquire or dispose of real estate must promptly deliver a copy of the signed acceptance to each of the parties to the trade in real estate and to the related brokerage of the licensee. (Council's BOA, Tab 23)

95. Mr. Bxxxx's evidence was that Mr. Chonn never provided One Percent Realty with a copy of the completed Contract 2. Mr. Wxxxx's evidence was that neither One Percent Realty nor Mr. Chonn provided Fair Realty with a copy of Contract 2. Mr. Wxxxx received a copy of Contract 2 from Ms. Wxxx after she approached him for assistance with respect to her issue with Mr. Chonn. The Panel is satisfied that Mr. Chonn breached Rule 5-4, as alleged in Notice para. 1(f).

**G.2 Mr. Chonn failing to meet duties to clients (R. 3-3)**

96. Rule 3-3 codifies various "fiduciary" duties that Mr. Chonn owed to the Sellers. Mr. Chonn's conduct engages several specific duties:

- a. *Acting loyally*: an over-arching duty to "act in the best interests of the client" (Rule 3-3(a));
- b. *Disclosing material information*: a duty to disclose to the client "all known material information respecting the real estate services, and the real estate and the trade in real estate to which the services relate" (Rule 3-3(f));
- c. *Avoiding and/or disclosing conflicts*: a duty to take reasonable steps to avoid any conflict of interest (Rule 3-3(i)) and a duty to disclose any conflict of interest (Rule 3-3(j));
- d. *Recommending independent professional advice*: a duty to advise a client to seek independent professional advice (on matters outside of the expertise of the licensee) (Rule 3-3(d)).

(1) Breach of RR. 3-3(a) and (f) (failure to disclose material information)

97. From the beginning of the relationship, Mr. Chonn failed to provide the Sellers with material information. The MLS Agreement and the Working with a Realtor form set out Mr. Chonn's role as the Sellers' designated agent. Mr. Chonn did not explain these documents to the Sellers, and he did not explain his duties to the Sellers arising out of the designated agency.

98. Mr. Chonn then provided the Sellers documents to sign without informing them of the contents or providing any explanation. Ms. Wxxx signed the documents assuming that they were necessary to complete the transaction, without reading the contents of the documents carefully.

99. Although Ms. Wxxx signed a Disclosure of Remuneration form, Mr. Chonn did not explain this document to Ms. Wxxx, or send it to his brokerage.

100. Notice para. 1(c)(iii) alleges that Mr. Chonn failed "to clearly inform the Sellers as to whether the \$13,250 was accurately characterized as a commission fee or a deposit to be returned to the Sellers..." While the Sellers might have originally been entitled to receive \$13,250 from the Buyer and also owe \$13,250 to Mr. Chonn, Mr. Chonn failed to disclose that he viewed the \$13,250 deposit as his commission fee. The evidence is conflicting as to whether Mr. Chonn remained entitled to a commission. Ms. Wxxx says that no commission was to be paid on account of the fact that she agreed to include inventory into the purchase price. Mr. Chonn initially told the Council that \$13,250.00 was his commission and that Ms. Wxxx decided to include the inventory in the purchase price as well as pay the commission. He now says that there was never any agreement for commission and that he never received any commission. After stating that he would waive his commission, Mr. Chonn did not disclose to the Sellers that he would still be taking the deposit as a commission. The Panel is satisfied that Mr. Chonn breached Rule 3-3(f).

101. Mr. Chonn's failure to provide material information and documents also breached Rule 5-4 due to his failing to provide the final version of Contract 2 to Ms. Wxxx, even after she had requested the document. Ms. Wxxx only received this document from her lawyer in May 2017, well after the sale had completed.

102. In *Forbes (Re)*, 2019 CanLII 37501 (BC REC) ["*Forbes*"], a licensee provided the complainant with various strata documents, including meeting minutes and financial statements, but failed to review or discuss these documents with the complainant. If he had done so, the complainant would have been made aware of a roof replacement project that was occurring on the property. The Consent Order Review Committee confirmed professional misconduct based on the licensee breaching both Rule 3-3(a) [best interests of the client] and 3-4 [reasonable care and skill]. Insofar as Mr. Chonn breached Rule 3-3(f), the Panel is also satisfied that Mr. Chonn breached Rule 3-3(a).

(2) Breach of R. 3-3(a), (i) and (j) (failure to avoid or disclose a conflict of interest)

103. Although the Sellers were aware that Mr. Chonn was selling the Property to his wife, they did not understand what it meant for Mr. Chonn to be acting as dual agent for both parties. Mr. Chonn failed to fully inform the Sellers of a conflict of interest. A client must be

fully informed in the event of a conflict of interest in order to make an informed decision as to whether to continue to be represented. As alleged at Notice para. 1(c)(i), Mr. Chonn acted as a dual agent and represented both the Sellers and the buyer – his wife – without properly executing a Limited Dual Agency Agreement that would have informed the Sellers of a conflict of interest bearing on his role as a licensee. The Panel is satisfied that Mr. Chonn breached Rule 3-3(j). Furthermore, by failing to prepare a Limited Dual Agency Agreement, Mr. Chonn failed to disclose the nature of the representation he was providing as a dual agent, as alleged at Notice para. 1(g). The Panel is satisfied that Mr. Chonn breached Rule 5-10.

104. Acting in the best interest of the clients includes obtaining informed consent from both parties that the agent will be acting for both seller and buyer and outlining the exact nature of the real estate services being provided: *Emam (Re)*, 2012 CanLII 26111 (REC BC) [“Emam”]. Insofar as Mr. Chonn breached Rule 3-3(j), the Panel is also satisfied that Mr. Chonn breached Rule 3-3(a).

105. Mr. Chonn also failed to take reasonable steps to avoid a conflict of interest when he requested an early move-in date.

106. Mr. Chonn's evidence is that he never asked Ms. Wxxx if his family could move into the Property early, even though he states that he was living in his office at the time without a proper kitchen and shower. According to Mr. Chonn, it was Ms. Wxxx who invited the family to stay at the Property one month early, even while she was still living there. Ms. Wxxx had known Mr. Chonn for approximately four months at the time he moved into the Property.

107. In contrast, Ms. Wxxx's evidence was that Mr. Chonn had asked her if they could move in early. The Panel is satisfied that Mr. Chonn asked to move in early. He moved in when Ms. Wxxx was still living the Property, without providing any compensation to the Sellers, or advise the Seller as her agent that she could request compensation.

108. On cross-examination, Mr. Chonn confirmed that as a realtor, he was aware of the consequences of this action. However, he never disclosed the conflict to either party, and did not take steps to mitigate the situation by paying rent or offering to pay rent for an early move-in.

109. As alleged at Notice para. 1(c)(v), Mr. Chonn failed to fully inform the Sellers of any conflicts of interest by requesting an early move-in date which preferred his own interests to the interests of the Sellers. The Panel is satisfied that Mr. Chonn breached Rule 3-3(i) [avoiding any conflict of interest] and Rule 3-3(j) [disclosing any conflict of interest]. Insofar as Mr. Chonn breached Rules 3-3(i) and (j), the Panel is also satisfied that Mr. Chonn breached Rule 3-3(a).

(3) Breach of R. 3-3(a) and (d) (failure to recommend independent professional advice)

110. Apart from a conflict of interest arising from Mr. Chonn's role as a dual agent, addressed above, Mr. Chonn also had personal interests conflicting with his duties, due to his personal relationship with the Buyer who was his wife, and his personal interest in her acquiring the Property for use as a residence. As asserted at Notice para. 1(d), Mr. Chonn failed to advise the Sellers to seek independent legal advice about cancelling the listing or continuing with the sale, and about the Sellers giving a take-back mortgage to a buyer with no credit history.

111. The *Emam* case illustrates the need for licensees to advise clients to seek independent advice. *Emam* involved a licensee acting for a buyer who failed to clarify that he would be acting for the seller, to advise that his services would be supplemented by the Seller's husband as a licensee, or to advise that the buyer obtain independent legal advice given the intermediary's apparent conflict of interest. The Consent Order Review Committee confirmed that Mr. Emam's actions breached Rules 3-3(1)(a), 3-3(1)(d), 3-3(1)(i) and 3-3(1)(j), among others.

112. Mr. Chonn should have advised the Sellers to seek independent professional advice about Mr. Chonn's continuing role, and about the Sellers' take-back mortgage to a buyer with no credit history. These were issues about which Mr. Chonn could not give impartial advice due to his personal interests. Ms. Wxxx was unaware of the extent of the risk she was taking by offering a mortgage to the Buyer and was unaware of the Buyer's financial situation. Mr. Chonn did not advise Ms. Wxxx to take any precautionary steps, like checking the Buyer's credit, and did not advise that she should obtain independent professional advice.

113. *Banga (Re)*, 2019 CanLII 122338 ["Banga"] demonstrates that specific circumstances surrounding a sale, such as the agent's interest in a property, must be disclosed to the seller. The licensee in *Banga* was also the builder and the owner-seller of the property for which he was the listing agent. The agent disclosed his status as the owner to unrepresented buyers, and offered them limited dual agency relationship, but he failed to disclose to them that his conflict of interest could not be resolved by a limited dual agency, and he failed to advise the Buyers to seek independent advice about their accepting an agency with someone who was a builder, seller, and listing agent. The Consent Order Review Committee confirmed discipline orders based on the licensee having breached Rule 3-3(1)(d), among other rules.

114. By Mr. Chonn's own admission, when asked by the Panel why he cancelled the listing rather than transfer it to Fair Realty, he stated that he could "see the complication from that listing" and did not want to carry on with it anymore. He stated that he approached a number of lawyers and notaries before finding Mr. Mxxxxx, who acted as Ms. Ax's lawyer with respect to the purchase. Despite this purported complication regarding the sale, there is no evidence that Mr. Chonn reached out to his brokerage for assistance, or that Mr. Chonn advised Ms. Wxxx to get independent legal or accounting advice. Specifically, with respect to the take back mortgage, both Mr. Bxxxxx and Mr. Wxxxxx highlighted the importance of adding in a clause to the contract with respect to obtaining independent legal advice, and that such a deal should be done with the guidance of the brokerage or a lawyer.

115. The Panel is satisfied that due to Mr. Chonn failing to advise the Sellers to obtain independent advice about matters concerning which his own ability to give advice was impaired by his conflicts of interest, Mr. Chonn breached Rule 3-3(d). Insofar as Mr. Chonn breached Rules 3-3(d), the Panel is also satisfied that Mr. Chonn breached Rule 3-3(a).

### **G.3 Failure to Act Honestly and with Reasonable Care and Skill (R. 3-4)**

116. The Council asserts at Notice para. 1(e) that Mr. Chonn failed to act honestly and with reasonable care and skill, contrary to Rule 3-4 at the time, by failing to ensure that all necessary documents were properly signed and witnessed; allowing a discrepancy between the date of

the Contract and the date the Sellers actually signed the Contract; and failing to disclose the exact nature of his remuneration to the Sellers. Notably, the current Rules now divide the duty to act honestly (Rule 3-4) and the duty to act with reasonable care and skill (Rule 3-5), but at material times, both duties arose under Rule 3-4.

117. Mr. Chonn drafted two contracts of purchase and sale respecting the Property. According to Ms. Wxxx, she was unclear as to why two separate contracts were required. Mr. Chonn provided her with these documents to sign without any clear explanation. Ms. Wxxx received blank copies of agreements to sign and did not receive full copies of these agreements until May 2017.

118. Failure to act with reasonable care and skill can include the drafting of a Contract of Purchase and Sale without a completion date, and with vague terms with respect to an agreement for sale: *Chester (Re)*, 2011 CanLII 34524 (BC REC) [*"Chester"*].

119. Mr. Chonn's failure to ensure that all necessary documents were properly executed, including contracts and disclosure forms, and his failure to disclose his commission (after agreeing to waive his commission in exchange for the Sellers providing inventory as part of the sale) breached his duty to act with reasonable care and skill under Rule 3-4.

#### **G.4 Failure to Disclose the Nature of the Representation (R. 5-10)**

120. Under Rule 5-10, a licensee must disclose whether or not he will represent the party as a client and must disclose the licensee's duties and responsibilities to the client. The form of this disclosure must be in writing.

121. An MLS Agreement and Working with a Realtor form were provided to the Sellers and signed by Ms. Wxxx. However, Mr. Chonn failed to ensure that Ms. Wxxx understood what this agreement meant. Ms. Wxxx had never used a realtor to complete the sale of a property before and was unclear on the duties that licensees owe to their clients. This was further complicated when Mr. Chonn began to represent his wife in the transaction.

122. An agent must disclose the nature of the representation being provided to both the seller and the buyer: *Yeung (Re)*, 2008 CanLII 75154 (BC REC) [*"Yeung"*]. The agents in *Yeung* were agents for the buyer, but failed to disclose to both their brokerage and to the sellers that they had entered into a separate agreement with the buyer to resell the property. The agents were found in breach of Rule 5-10.

123. Mr. Chonn failed to fully disclose to the Sellers the nature of the representation he was providing to Ms. Ax, the Buyer, which impacted the nature of the representation he was providing to the Sellers. Mr. Chonn informed the Sellers that his wife was interested in buying the Property, but he did not produce a signed Limited Dual Agency Agreement which would have clearly set out his relationship to both the buyer and the seller and made his role in representing both parties clear. No evidence shows that he explained the meaning of dual agency, or that the Sellers fully understood the extent to which Mr. Chonn was representing both parties.

124. Mr. Chonn emailed the MLS Listing Agreement and the Working with a Realtor Form to Ms. Wxxx. Ms. Wxxx's evidence is that Mr. Chonn neither explained his responsibilities as a

realtor beyond marketing the Property, nor described the contents of the listing contract or his role as a realtor.

125. During cross-examination, Mr. Chonn stated that he had explained the Working with a Realtor document to Ms. Wxxx. He said that he explained to Ms. Wxxx the "requirement from the Board, that this document had to be explained to her in detail". When asked about these requirements, Mr. Chonn elaborated that this meant he must give the best benefit to his client from his realty services. He also said that there were some compliance requirements with respect to money laundering and that he explained this to Ms. Wxxx, who signed the document.

126. The Working with a Realtor form sets out in clear detail the obligations that a real estate agent owes to their clients. With respect to a designated agency, the form informs clients of some of the duties of licensees acting pursuant to a designated agency, e.g., that a designated agent must

- a. "[p]rovide undivided loyalty to you (Client) by protecting your negotiating position at all times, and disclosing to you all known facts which may affect or influence your decisions. Your Designated Agent will not be able to disclose to you confidential information obtained from other clients";
- b. "[a]ct within the scope of the authority granted by you and obey all lawful instructions which you give the REALTOR to act on your behalf";
- c. "[m]aintain the confidentiality of your information (financial, legal, personal, etc.)...";
- d. "[u]se reasonable care and skill in performing all assigned duties in the role as agent"; and
- e. "[u]nless the brokerage and you agree otherwise the duties of your Designated Agent do not apply to the brokerage or any of its other REALTORS."

(Ex. 10 - Council's BOD, Tab 31, page 29)

127. With respect to a limited dual agency, the same form clarifies that a licensee "cannot be concerned exclusively with your interests in the transaction," and that, "Both the seller and the buyer or the competing buyers should fully consent to a limited dual agency arrangement in writing." The form informs clients of the following duties that a licensee owes on the context of a limited dual agency:

- a. "Deal with both parties impartially";
- b. "Have a duty of disclosure to both clients, except that:
  - i. "REALTOR must not disclose that the buyer/tenant is willing to pay a price or agree to terms other than those contained in the offer, nor disclose that the seller/landlord is willing to accept a price or terms other than those contained in the listing;
  - ii. ...

- iii. "REALTOR must not disclose the motivation of one Client to the other Client, unless one of the Clients has authorized such disclosure themselves;
- iv. "REALTOR must not disclose buyer/tenant's or seller/landlord's personal information to the other Client, unless authorized in writing"; and
- c. "Must disclose to the buyer/tenant any defects about the physical condition of the property that are known to the REALTOR".

(Ex. 10- Council's BOD, Tab 31, page 29)

128. Mr. Chonn did not fulfil his duty under Rule 5-10 when he sent the Working with a Realtor form to the Sellers by email, without doing more. Mr. Chonn did not witness Ms. Wxxx's signature, and based on Ms. Wxxx's evidence, the Panel is satisfied that Mr. Chonn did not explain the nature of his representation as either a designated agent or as a limited dual agent. Mr. Chonn breached Rule 5-10. Furthermore, when Mr. Chonn was cross-examined respecting the duties he owes to clients as a designated agent and as a limited dual agent, his answers lacked the level of detail the Panel expected from a real estate agent in the business since 1992.

129. Further, Ms. Wxxx denies that there was any explanation as to what the Working with a Realtor Form meant and that these documents were just emailed to her. Mr. Chonn's own evidence on this point was that he emailed the MLS Listing Agreement and the Working with a Realtor Form to Ms. Wxxx and that he did not actually witness Ms. Wxxx's signature.

#### **G.5 Failure to Disclose Remuneration (R. 5-11)**

130. Rule 5-11 requires that a licensee disclose to the client all remuneration received or anticipated to be received (by the licensee's related brokerage) that is not directly paid by the client (in relation to the real estate services provided). As was the case in *Hahn (Re)*, 2010 CanLII 56270 (REC BC), a failure to accurately disclose to the purchaser actual commission contravenes section 5-11.

131. The evidence was conflicting as to whether Mr. Chonn remained entitled to a commission. Ms. Wxxx has said since 2017 that no commission was to be paid on account of the fact that she agreed to include inventory into the purchase price.

132. As addressed above, the Panel finds that Mr. Chonn *failed to fully disclose his commission expectations*. In an email sent during the transaction, on February 2, 2017, Mr. Chonn forwarded an email to Ms. Wxxx from Mr. Mxxxx's office, in which he states that the commission is "nil".

133. Mr. Chonn initially told the Council that \$13,250.00 was his commission and that Ms. Wxxx decided to include the inventory in the purchase price as well as pay the commission. (Ex. 3 - Council's BOD, Tab 13, page 37) Yet Mr. Chonn now says that there was never any agreement for commission and that he never received any commission. This assertion fails to account for the Sellers receiving \$10,000 in total, compared to the \$30,000 amount to which they were entitled, with \$20,000 due upon completion, and \$10,000 due within 60 days after completion:

- a. Upon completion, the Sellers received \$6,750.00 from their lawyer. \$13,250.00 remained outstanding.
- b. Ms. Wxxx signed a receipt saying that a deposit of \$13,250.00 had been paid to the Sellers, after Mr. Chonn assured her that this amount would be paid to her at a later date.
- c. Ms. Wxxx did not receive \$13,250.00; she only received \$3,250.00 after confronting Mr. Chonn and Ms. Ax on March 8, 2017 and being told by Mr. Chonn that the \$13,250 was his commission.

134. Mr. Chonn's position at the hearing appears to be that he did not receive any commission, and that all unpaid sums are the responsibility of the Buyer. The Panel does not accept this position. The Panel finds that Mr. Chonn resiled from his agreement to waive his commission and withheld \$13,250 from the \$20,000, which resulted in the Sellers receiving only \$6,750 at completion. Mr. Chonn breached Rule 5-11 by failing to disclose his position that a commission was still payable, after advising the Sellers that he was waiving his commission.

#### **H. DECISION**

135. The Panel has determined that Mr. Chonn committed professional misconduct within the meaning of sections 35(1)(a) and (d), and conduct unbecoming within the meaning of section 35(2) of the Act, based on his contravening provisions of the Act and the Rules as set specified above, and on the basis that his conduct meets the criteria under s. 35(2) of the Act.

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

137. Once the Committee has made orders under Part 4, Division 2 of the RESA, the Respondent will have a right to appeal to the Financial Services Tribunal under section 54(1)(d)



of the RESA, within 30 days of the date of the penalty decision: *Financial Institutions Act*, RSBC 1996, ch. 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Dated at VANCOUVER, BRITISH COLUMBIA this 19th day of May 2021.

FOR THE DISCIPLINE HEARING COMMITTEE

“SANDRA HEATH”

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S. Heath

Discipline Hearing Committee  
Chairperson

“NEAL NICHOLSON”

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N. Nicholson  
Discipline Hearing Committee Member

“RUTH HANSON”

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R. Hanson  
Discipline Hearing Committee Member