

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

IN THE MATTER OF

AND

ISMAIL JAMAL JINNAH
(145588)

REASONS FOR DECISION REGARDING LIABILITY

[These Reasons have been redacted before publication.]

Date of Hearing: April 8 - 15, 2024, and written submissions received on May 3, 23 and 31, 2024.

Counsel for BCFSFA: Meredith MacGregor

Counsel for the Respondent: Self-Represented

Hearing Officer: Thelma O'Grady

Introduction

1. On October 23, 2023, the BC Financial Services Authority ("BCFSA") issued, pursuant to section 40 of the *Real Estate Services Act* ("RESA"), a second amended notice of discipline hearing (the "Notice of Hearing") in relation to Ismail Jamal Jinnah.
2. This matter arises out of Mr. Jinnah's role in two separate but related real estate transactions. In one of those transactions, [Individual 2] purchased a detached home located at [Property 1], Surrey from the owner [Individual 1] (the "[Property 1]"). In the other transaction, [Individual 1] purchased the townhouse located at [Property 2], Surrey, owned by [Individual 2] (the "[Property 2]").
3. In general terms, the Notice of Hearing alleged that, while licensed as a representative under RESA, Mr. Jinnah committed professional misconduct and conduct unbecoming when he:
 - failed to disclose the nature of the representation that he was providing to [Individual 1] and [Individual 2];
 - failed to take reasonable steps to avoid any conflict of interest and failed to promptly and fully disclose the conflict of interest;
 - failed to act in the best interest of a client;
 - failed to act honestly and with reasonable care and skill and failed to disclose to a client all known material information; and
 - failed to promptly provide his managing broker with copies of all substantive records in relation to the real estate services.

4. The Notice of Hearing further alleges that Mr. Jinnah mischaracterized his relationship with [Individual 1] in a written statement to BCFSA and/or in interviews with BCFSA to conceal the conflict of interest, and that his actions amounted to conduct unbecoming.
5. This decision relates to whether the allegations set out in the Notice of Hearing (as alleged in BCFSA's Closing Submissions) have been proven by BCFSA.
6. The hearing of this matter proceeded by way of an oral hearing, followed by written submissions from the parties. BCFSA was represented by legal counsel. Mr. Jinnah was self-represented.

Notice of Hearing

7. In closing argument, counsel for BCFSA removed (struck through) various sections of the Notice of Hearing which I have chosen not to include in the allegations below but have included as footnotes. The allegations against Mr. Jinnah as alleged by BCFSA in its Closing Submissions are as follows:
 1. You committed professional misconduct within the meaning of section 35(1)(a) of the RESA while licensed as a representative of Blueprint Realty Inc./RE/MAX Blueprint Realty ("Blueprint Realty") in relation to a contract of purchase and sale dated June 24, 2015 respecting a property located at [Property 1], Surrey, BC (the "[Property 1]") and/or a contract of purchase and sale dated June 28, 2015 respecting a property located at [Property 2], Surrey, BC (the "[Property 2]") (collectively, the "Transactions"), in that:
 - a) before providing real estate services, you failed to disclose to [Individual 1] and/or [Individual 2] the nature of the representation that you would be providing and/or that you did provide, contrary to section 30(a) (then section 3-3(a)) [act in the best interest of the client], sections 33 and 34 (then section 3-4) [act honestly and with reasonable care and skill], and/or section 54 (then section 5-10) [disclosure of representation in trading services] of the Rules:
 - b) you failed to take reasonable steps to avoid any conflict of interest, contrary to section 30(i) (then section 3-3(i)) [take reasonable steps to avoid any conflict of interest] of the Rules and/or you failed to promptly and fully disclose the conflict of interest to [Individual 1] and/or [Individual 2] contrary to section 30(j) (then section 3-3(j)) [if a conflict of interest does exist, promptly and fully disclose the conflict of interest] of the Rules by, including but not limited to:¹
 - ii. acting in a client relationship with either [Individual 1] or [Individual 2] while having a personal relationship with the other;
 - iii. having personal relationships with [Individual 1] and [Individual 2] and failing to disclose the nature of these relationships to the other person;
 - iv. providing real estate services and/or mortgage broker services to [Individual 1] and/or [Individual 2] with respect to the Transactions without fully disclosing the conflict of interest; and/or²

¹ Allegation not pursued, 1(b)(i):
acting in a client relationship with both [Individual 1] and [Individual 2] with respect to the purchase and sale of the [Property 1] and/or of the [Property 2], without properly executing a Limited Dual Agency Agreement;

² Allegations not pursued, 1(b)(v) and 1(b)(vi):
having confidential information from your personal relationships and/or mortgage broker relationships with [Individual 1] and/or [Individual 2] and failing to disclose this to the other person; and

failing to fully disclose all the remuneration that you received or anticipated receiving from the Transactions to [Individual 1] and/or [Individual 2];

- vii. having an intimate relationship with [Individual 1] during the time period that you provided her real estate services;
 - c) you failed to act in the best interest of [Individual 1], contrary to section 30(a) (then section 3-3(a)) [act in the best interest of the client], you failed to act honestly and with reasonable care and skill, contrary to sections 33 and 34 (then section 3-4) [Duty to act honestly and with reasonable care and skill] and/or you failed to disclose to clients all material information, contrary to section 30(f) (then section 3-3(f)) [Failing to disclose know material information] of the Rules by, including but not limited to:
 - ii. ³failing to advise [Individual 1] of the risks of not providing a property disclosure statement; and/or
 - e) ⁴you failed to promptly provide the managing broker a copy of all substantive records in relation to real estate services provided, contrary to section 29(1) (then section 3-2(1)) [associate broker and representative responsibilities] of the Rules.
2. Further and in the alternative, you committed professional misconduct within the meaning of sections 35(1)(a)⁵ of the RESA when, in or about January 2015 to August 2015, while licensed as a representative of Blueprint Realty Inc./RE/MAX Blueprint Realty, you
- a) knew or ought to have known that [Individual 1] would rely on your advice both personal and professional;
 - b) you conducted yourself in a manner to lead [Individual 1] to believe you were acting in a client relationship;
 - c) used your personal relationship with [Individual 1] to pressure her to sell the [Property 1] to [Individual 2];
 - d) you intentionally did not disclose the nature of your relationships with [Individual 1] and [Individual 2] to the other person;
 - e) earned significant commission for your role in [Individual 1] and [Individual 2] exchanging houses; and/or,
 - f) described your relationships with [Individual 2] and [Individual 1] as customer relationships in the respective Working With a Realtor Forms when you knew or reasonably ought to have known that that you were in client relationships with one or both of [Individual 2] and [Individual 1].

contrary to sections 33 and 34 (then section 3-4) [Duty to act honestly and with reasonable care and skill], section 30(a) (then 3-3(a)) [act in the best interest of the client], and/or section 30(f) (then section 3-3(f)) [Failing to disclose know material information] of the Rules⁶.

3. Further and in the alternative, on or about each or all of July 23, 2021, September 29, 2021, and May 31, 2022, you committed professional misconduct within the meaning of sections 35(1)(a) and/or 35(1)(e) [fails or refuses to cooperate with an investigation] of RESA when you mischaracterized your relationship with [Individual 1], in a written statement to BCFSA and/or in

³ Allegation not pursued, 1(c)(i):
failing to advise [Individual 1] of the risks of accepting an offer to purchase [Property 1] without a plan to find another property

⁴ Allegation not pursued, 1(d):
you failed to advise [Individual 1] to seek independent professional advice at all or in a timely manner regarding the sale of [Property 1] and the purchase of [Property 2], contrary to section 30(d) (then section 3-3(d)) [advise client to seek independent professional advice] of the Rules;

⁵ Allegation not pursued, portion of 2:
and 35(1)(c) [Wrongful Taking or Deceptive Dealing]

⁶ Allegation not pursued, portion of 2:
and/or section 35(1)(c) [Wrongful taking or deceptive dealing] of the RESA

interviews with BCFSa to conceal a conflict of interest, contrary to section 37(4) of RESA (as it relates to section 35(1)(a)).

4. Further and in the alternative, on or about July 23, 2021, you committed professional misconduct within the meaning of section 35(1)(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] when you mischaracterized your relationship with [Individual 1] in a written statement to BCFSa to conceal a conflict of interest.
5. Further and in the alternative, you committed conduct unbecoming within the meaning of section 35(2) of RESA when you engaged in any or all of the conduct set out at paragraphs 1, 2, 3 and 4, contrary to the best interests of the public, undermining public confidence in the real estate industry, and/or bringing the real estate industry into disrepute.

Issues

8. The issues are:

- a) Did Mr. Jinnah commit professional misconduct within the meaning of section 35(1) of RESA? Specifically:
 - i. Did Mr. Jinnah fail to disclose the nature of the representation he would be providing, contrary to sections 5-10, 3-4, and 3-3(a) of the Rules as they were at the relevant time, as alleged in paragraph 1(a) of the Notice of Hearing?
 - ii. Did Mr. Jinnah fail to take reasonable steps to avoid any conflict of interest, and promptly and fully disclose the conflict of interest, contrary to section 3-3(i) and (j) of the Rules as they were at the relevant time, as alleged in paragraph 1(b) of the Notice of Hearing?
 - iii. Did Mr. Jinnah fail to act honestly and with reasonable care and skill, in the best interest of [Individual 1], and/or fail to disclose known material information contrary to sections 3-4, 3-3(a) and 3-3(f) of the Rules as they were at the relevant time, as alleged in paragraphs 1(c) and 2 of the Notice of Hearing?
 - iv. Did Mr. Jinnah fail to promptly provide the managing broker a copy of all substantive records contrary to section 3-2(1) of the Rules as they were at the relevant time, as alleged in paragraph 1(e) of the Notice of Hearing?
 - v. Did Mr. Jinnah fail to, or refuse to cooperate with an investigation contrary to sections 35(1)(a) and 35(1)(e) and contrary to 37(4) of RESA, as alleged in paragraph 3 of the Notice of Hearing?
 - vi. Did Mr. Jinnah make a false or misleading statement in a document required or authorized to be submitted contrary to section 35(1)(g) of RESA, as alleged in paragraph 4 of the Notice of Hearing?
- b) Did Mr. Jinnah commit conduct unbecoming within the meaning of section 35(2) of RESA as alleged in paragraph 5 of the Notice of Hearing?

Jurisdiction and Procedure

9. 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 BCFSa's Hearing Officers have been

delegated the statutory powers and duties of the Superintendent with respect to sections 42 through 53 of RESA.

10. 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 respondent, 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.
11. Evidence is generally considered as a matter of procedure⁷. 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 (CanLII).
12. 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 hearing. 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.
13. 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 and Evidence

14. The evidence and information in front of me included a significant number of documents, as well as evidence of a number of witnesses. BCFSA called the following witnesses: [Individual 1] (the complainant), [Individual 3] ([Individual 1]’s former tenant), [Managing Broker 1] (Mr. Jinnah’s former managing broker), and [Investigator 1] (a BCFSA investigator). Mr. Jinnah testified on his own behalf.
15. I have reviewed and considered all the evidence and information before me. The following is intended to provide context for my reasons.

Licensing History

16. Mr. Jinnah was first licensed as a trading representative under RESA in July 2012. He continued to be licensed at that level and in that category until March 2024, other than two periods of being unlicensed between July 5-13, 2016, and July 14 to December 19, 2018. In January 2015, Mr. Jinnah became licensed with the brokerage Blueprint Realty Inc., where he was licensed until July 2018. Mr. Jinnah was subsequently licensed with two other brokerages from December 2018 until December 2022 and from 2023 until early March 2024, when he surrendered his license.

⁷ *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119, para. 38.

17. The two transactions which are the subjects of this hearing are, in fact, the very first two real estate transactions up to that point in Mr. Jinnah's career as a real estate licensee.
18. Between October 2011 to October 2019, Mr. Jinnah was registered as a submortgage broker under the *Mortgage Brokers Act*.

Complaint and Investigation

19. The real estate transactions in this case were entered into on June 24, 2015, respecting [Property 1], and June 28, 2015, respecting [Property 2].
20. The complaint in respect of this matter was received by the Real Estate Council of British Columbia ("RECBC")⁸ in September 2018.
21. The majority of the investigation occurred in 2021.

Evidence

[Individual 1]'s Testimony

22. [Individual 1] is an insurance agent. Prior to the transactions at issue in this matter, she had been involved in four real estate transactions, two in Ontario and two in British Columbia. In all of her prior purchases and sales of real estate, she had worked with a realtor.
23. [Individual 1] purchased [Property 1] in 2001. In 2013, she separated from her husband, and purchased his interest in [Property 1].
24. In 2014, she joined a dating site where she met Mr. Jinnah. At first, they messaged over the site, and eventually in October 2014 they met in person. She explained that they would have dinner once a week, go for lots of drives, and walks in White Rock. She explained that he would usually bring dinner over, typically something he had prepared, and sometimes he would bring her a bottle of champagne. She testified that they were in an intimate relationship, and that from her perspective, she believed that they had a boyfriend/girlfriend relationship. [Individual 1] explained that the relationship lasted until July 2018.
25. [Individual 1] provided her phone records from the material times, which showed regular and lengthy conversations, usually at night.

The Agreement to Sell [Property 1]

26. [Individual 1] testified that in May 2015 she and Mr. Jinnah went on a camping trip in Port Moody for two nights. After that camping trip, Mr. Jinnah began speaking with her about selling [Property 1]. [Individual 1] recalled a phone conversation in which Mr. Jinnah told her that he had a buyer for her house, and she recalled that after the camping trip the sale of [Property 1] dominated their conversations. [Individual 1] recalled that he told her that:
 - for her age her debt was too much, and she should lower it;
 - her property taxes would be lower if she sold;

⁸ In August 2021, RECBC was integrated into BC Financial Services Authority.

- there would not be real estate development in her area for ten years;
 - that she didn't need a big house;
 - if interest rates dropped so would house prices;
 - [Property 2] would have better resale; and
 - [Property 1] would suit the buyer he had in mind ([Individual 2]) because they had an autistic son, and the property was conveniently located near a school.
27. [Individual 1] explained that he would continually try to persuade her to sell [Property 1], and she would push back. [Individual 1] testified to a "pro-con" list that she made showing her position and Mr. Jinnah's position. She wrote "feeling rushed" twice under her "no" column. [Individual 1] testified that Mr. Jinnah called her at one point and was yelling at her that [Individual 2] needed the house more than she did.
28. [Individual 1] testified to her journal entries from December 2014, February 2015, April 2015 and July 2015, and explained that at the time she was confused about the nature of her relationship with Mr. Jinnah. [Individual 1] highlighted an entry from July 2015 that stated, "He talked me into selling my house".
29. [Individual 1] explained that she was aware Mr. Jinnah was a realtor, and she trusted him because she felt safe with him and thought he was her boyfriend.
30. On June 1, 2015, [Individual 1] sent Mr. Jinnah an email with photographs of the basement suite in [Property 1]. She sent those to him because the suite was tenanted, and Mr. Jinnah wanted to see what the suite looked like. On June 3, 2015, [Individual 1] sent Mr. Jinnah an email with the subject line "[Individual 1] House Sale Documents", which attached, among other documents, a scan of her driver's licence and records relating to [Property 1] and her mortgage.
31. In early June 2015, Mr. Jinnah showed [Property 1] to [Individual 2]. [Individual 1] gave Mr. Jinnah access to the property for this.
32. Approximately a week later, [Individual 1] viewed [Property 2], accompanied by Mr. Jinnah. [Individual 1] stated that she told Mr. Jinnah that she did not like [Property 2]: it was small, had a north facing backyard, did not have sunshine, and she did not like the colours or carpet. She said that Mr. Jinnah dropped her off at home after and then came over with wine for her (he does not drink) and tried to soothe her. He said things like "trust me" and "this will work out for you".
33. On or about June 20, 2015, Mr. Jinnah took [Individual 1] to view three other properties. She said that they discussed these properties including how the properties met (or did not meet) her needs. One of the properties he showed her was in Langley, but Mr. Jinnah told her that it was out of her price range. Another townhouse that she looked at with Mr. Jinnah had a swimming pool in the complex, and Mr. Jinnah told her that those kinds of places usually have high strata fees and was probably not a good option. He also took her to view a townhouse in White Rock that [Individual 1] did not like. [Individual 1] testified that none of these properties were ideal for her, and it seemed like [Property 2] was the best option if she sold [Property 1].

34. On the following Monday, June 22, 2015, Mr. Jinnah advised [Individual 1] that he had a listing of a townhouse (which was [Property 2]) and that she had to decide now if she was going to sell [Property 1]. [Individual 1] agreed to sell. They went to The Keg for dinner.
35. [Individual 1] testified that she believed at this dinner she signed a listing agreement that included a commission percentage that she was to pay, although this agreement was not tendered into evidence. [Individual 1] says that she did not read it closely nor did Mr. Jinnah explain it to her.
36. [Individual 1] testified that they discussed that the commission would be higher than what was normally charged by realtors. She recalled that a typed written amount was crossed out and a handwritten amount was added. [Individual 1] explained that she understood at this time that Mr. Jinnah was acting as her real estate agent.
37. [Individual 1] testified that Mr. Jinnah did not provide her copies of documents she had signed.
38. [Individual 1] testified that Mr. Jinnah did mention getting another agent. She says that this occurred after June 22, 2015, when she thought he had "already taken the listing". [Individual 1]'s evidence is that this conversation was in the context of her asking many questions and Mr. Jinnah stating that she was being a "complicated client" and could get another realtor. [Individual 1] says that this was in the middle of the transaction, and she did not understand this to mean that Mr. Jinnah was not her agent. I find that this was not a genuine attempt by Mr. Jinnah to help [Individual 1] get independent advice, but a tactic by him to get her to comply with his plan.
39. [Individual 1] testified that she looked at other properties and gave Mr. Jinnah \$530,000 as a price for the sale of [Property 1]. She later agreed to the price of \$539,000 as suggested to her by Mr. Jinnah.
40. On the morning of June 24, 2015, Mr. Jinnah brought a comparative market analysis for [Property 1] to [Individual 1]'s workplace. The comparative market analysis indicated that it was prepared by Mr. Jinnah and noted that "This analysis was produced specifically for you and takes into account recent real estate data for properties comparable to your own...It is possible that your home has special features or improvements that haven't yet been taken into account. These could substantially alter the price range in which we will list your home. We can discuss such items in greater detail after you have been able to review the CMA. I have assisted many homeowners complete the sale of their home in a very reasonable time frame and plan to do so here". The comparative market analysis found that comparable properties were selling in the range of \$498,000 to \$512,000, and a price of \$502,000 was recommended.
41. [Individual 1] says that she did not consent to Mr. Jinnah providing that comparative market analysis to [Individual 2]. However, he did provide that to [Individual 2].
42. In the evening of June 24, 2015, Mr. Jinnah brought a sale offer to [Individual 1]'s house and went through it with [Individual 1]. The offer was from [Individual 2], and it offered to purchase [Property 1] for \$539,000, with a \$20,000 deposit payable to Mr. Jinnah's brokerage. [Individual 1] asked that the water purifier and sauna be excluded from the offer. [Individual 1] says that Mr. Jinnah then took the contract for purchase and sale document back to [Individual 2]. At that time, [Individual 2] added that the freezer in the laundry room be included but otherwise was agreeable.

43. Mr. Jinnah then brought the final version of the offer signed by [Individual 2] back to [Individual 1]'s house and told her that the house was sold. He told her that she just needed to include her freezer but "what else would she do with it". She says they briefly went through the offer again and she signed. Mr. Jinnah then opened a bottle of champagne for [Individual 1] to drink to celebrate and recommended that she call and tell her family. [Individual 1] testified that she was in shock, but she believed at this stage that her house was sold.
44. The contract of purchase and sale to sell [Property 1] had a completion date of September 30, 2015. The contract was subject to:
- [Individual 2] entering into an unconditional agreement to sell [Property 2] by September 15, 2015;
 - [Individual 2] obtaining financing by July 31, 2015;
 - [Individual 2] obtaining and approving an inspection by September 20, 2015;
 - [Individual 1] obtaining legal and accounting advice satisfactory to her on or before June 28, 2015; and
 - The parties had struck out a clause that required [Individual 2] to approve a property disclosure statement by September 15, 2015. The [Property 1] contract also included a clause that provided that "the Seller may deliver written notice to the Buyer requiring the Buyer to remove all conditions from the contract within 72 hours of the delivery of the notice ... Should the Buyer fail to remove all the conditions before the expiry of the notice period, the contract will terminate". [Individual 1] did not recall any conversations with Mr. Jinnah in respect of these conditions, although she did recall him telling her she could get legal advice on the contract.
45. [Individual 1] says she asked Mr. Jinnah why they had not completed a property disclosure statement, but Mr. Jinnah told her that it wasn't required, and that she could sell the house "as is where is".
46. The agency disclosure section of the contract indicated that each party had "No Agent", next to which each party had initialed. [Individual 1] testified that she did not understand what the "No Agent" meant, and she thought it may have been written that way because he was an agent for both parties.
47. [Individual 1] also testified she signed a Working With a Realtor ("WWR") form. The WWR form, dated June 24, 2015, sets out the options of a "client" or a "customer" relationship. [Individual 1] initialed "customer" on the WWR form when Mr. Jinnah provided it to her. In her testimony, she acknowledged that she did not understand the difference and relied on Mr. Jinnah to guide her selection.
48. The fee agreement signed by [Individual 1], dated June 24, 2015, provided that [Individual 1] would pay a fee of \$24,596 to Mr. Jinnah's brokerage for the sale.

The Agreement to Purchase [Property 2] and the Completion of the Sales

49. Within the next few days, on or around June 26, 2015, Mr. Jinnah arranged for [Individual 1] to view [Property 2] again. [Individual 1]'s daughter accompanied her on this showing. She recalls discussing the price with Mr. Jinnah, and she would have preferred to offer less than \$320,000 for [Property 2], but Mr. Jinnah told her that wasn't an option because [Individual 2] had purchased [Property 1] at [Individual 1]'s asking price.

50. Mr. Jinnah prepared a contract of purchase and sale dated June 28, 2015 for the purchase of [Property 2]. The purchase price was \$320,000, with a \$5,000 deposit payable to Mr. Jinnah's brokerage to be paid within 48 hours of subject removals. The contract of purchase and sale had a completion date of August 27, 2015. The agency disclosure section of this contract also indicated that each party had "No Agent", next to which both parties had initialed. The contract of purchase and sale was subject to:
- a new mortgage being made available to the buyer by July 31, 2015;
 - the buyer on or before August 7, 2015 obtaining and approving a property inspection report;
 - the buyer approving a property disclosure statement on or before July 30, 2015;
 - the buyer reviewing strata documents by July 31, 2015; and
 - the buyer and seller obtaining legal and accounting advice.
51. [Individual 1] explained that Mr. Jinnah took care of everything in the contract. He put in the terms and conditions, dates, price, deposit and other amounts. She says that he only reviewed the terms and conditions with her briefly. [Individual 1] did not understand at the time that the closing dates for the two transactions created a risk, such that she would have to complete on the purchase of [Property 2] without having access to the funds from the sale of [Property 1].
52. On June 28, 2015, [Individual 2] accepted the offer and signed the contract of purchase and sale to sell [Property 2].
53. The next day, on June 29, 2015, [Individual 1] signed a subject removal form with respect to the sale of [Property 1], which indicated that the condition of obtaining legal and accounting advice had been fulfilled. [Individual 1] says she did not get legal advice, and that Mr. Jinnah did not ask her whether she got legal advice.
54. Mr. Jinnah took care of all the subject removals. He brought them over and had [Individual 1] sign them. He did not explain each one. Mr. Jinnah did not advise her to get legal advice on any of the subject removals.
55. On July 4, 2014, [Individual 1] and [Individual 2] signed a form extending all subjects on the [Property 2] contract of purchase and sale to August 13, 2015. On or around July 13, 2015, an inspection report was prepared in relation to [Property 2], which [Individual 1] received.
56. On August 9, 2015, [Individual 1] and [Individual 2] signed an addendum to the contract of purchase and sale for [Property 1], moving up the completion date to August 27, 2015, which aligned the completion dates for the two sales.
57. After the inspection of [Property 1], at the request of [Individual 2], [Individual 1] was advised by Mr. Jinnah that she had to pay for a new furnace. She was surprised and because it was very close to the closing date, she followed Mr. Jinnah's advice and paid for a new furnace, which cost \$2,000 to \$2,500.
58. On August 13, 2015, [Individual 1] and [Individual 2] signed removal of subject clause forms, declaring that subjects in relation to the [Property 1] contract of purchase and sale, and the [Property 2] contract of purchase and sale, had been fulfilled.

59. [Individual 1] testified that Mr. Jinnah provided her with the [Property 2] strata documents while she was on her way to the lawyer's office to sign the conveyancing documents, and Mr. Jinnah told her that the lawyer would go over them with her. This was after she had already removed the subject relating to the review of strata documents. She said that he did not explain anything about the risks of this to her.
60. [Individual 1] also hired Mr. Jinnah to be her mortgage broker. [Individual 1] explained that one of the reasons Mr. Jinnah gave to [Individual 1] for selling her property was that she would have lower mortgage payments with the purchase of [Property 2]. However, [Individual 1]'s mortgage, after she bought the townhouse, was almost the same as when she was at [Property 1]. When owning [Property 1], she also had the benefit of collecting rental income, but she had no such benefit after moving into [Property 2].
61. [Individual 1] testified to feeling shame, embarrassment, depression and anxiety in the years after this transaction. [Individual 1] testified that she cannot believe that she let this happen and she feels that she was manipulated by Mr. Jinnah to sell her property.

[Individual 3]'s Testimony

62. [Individual 3] is a former tenant of [Individual 1] who rented the basement suite of [Property 1] from 2013 or 2014, until 2015. She lived in the basement suite while she attended college and worked part time. She is now friends with [Individual 1].
63. In her testimony, [Individual 3] explained that she had met Mr. Jinnah when she was living in the basement suite. While in her initial statement to BCFSA she said [Individual 1] introduced Mr. Jinnah as her boyfriend, on cross-examination she could not recall the specific term used – whether he was introduced as a friend or boyfriend. [Individual 3] testified that she could hear what, to the best of her knowledge, sounded like them having sex upstairs on the day that she first met Mr. Jinnah, and on later occasions while she was a tenant in the basement suite. She also explained that [Individual 1] told her about her relationship with Mr. Jinnah and how close she was with him.

[Investigator 1]'s Testimony

64. [Investigator 1] is a Senior Investigator at BCFSA. She has held that role since August 2021, and prior to that she had been an investigator with RECBC since 2018. [Investigator 1] was one of the investigators who investigated the complaint against Mr. Jinnah, and she prepared the investigation report at the end of the investigation.
65. [Investigator 1] provided evidence with respect to the records and information collected during the investigation, including the brokerage deal files for the sale of [Property 1] and [Property 2], and [Individual 2's] subsequent sale of [Property 1] in May 2016 when she resold the property for \$799,000. [Investigator 1] also provided evidence with respect to written statements from [Individual 1]'s daughters and her sister, with respect to their recollections of the relationship between [Individual 1] and Mr. Jinnah.
66. [Investigator 1] also provided evidence with respect to the statements provided by Mr. Jinnah in the course of the investigation, including a July 23, 2021 written statement, and interviews conducted on September 29, 2021 and May 31, 2022.

[Managing Broker 1]'s Testimony

67. [Managing Broker 1] is the managing broker of RE/MAX Blueprint Realty, the brokerage with which Mr. Jinnah was licensed at the material times. [Managing Broker 1] has been the managing broker of that brokerage since September 2014. He has been licensed under RESA since 2006.
68. [Managing Broker 1] did not recall speaking with Mr. Jinnah about the sale of [Property 1] or [Property 2], and he had no recollection of assisting with a comparative market analysis for [Property 1].
69. He explained that if an agent had a close personal relationship with a party to a transaction, the agent would be in a client relationship with them, and that once a client relationship is established, you cannot go back to being in a customer relationship as you would have obtained information about the client and built a relationship of trust.
70. [Managing Broker 1] gave, as an example of a typical customer relationship in 2015, the scenario where a listing agent had someone attend at an open house without an agent and wanted to make an offer on the property, or circumstances where there were two sophisticated parties who did not want representation (for example, in the context of land developments or commercial properties). [Managing Broker 1] explained that he felt it was critical to discuss the nature of the agency or relationship before any services were provided.
71. In July 2021, [Managing Broker 1] provided RECBC with the deal files for the sales of [Property 1] and [Property 2]. He testified it was all the documentation and correspondence that the brokerage had on these matters.
72. [Managing Broker 1] testified that in 2015, the brokerage's records were a hybrid of paper records and electronic records. He admitted that during the time of these transactions, the brokerage was in the midst of implementing a new document system.
73. Between the time the records were created in 2015, and the time that records were provided to RECBC in July 2021, the brokerage migrated its records from paper files to an electronic transaction management system. He testified that this involved hiring another company to scan existing hard copies into the new storage system.
74. The [Property 1] contract of purchase and sale he produced had a stamp stating "August 4, 2015". [Managing Broker 1] testified that the stamp would have been put there by the brokerage's conveyancer.
75. [Managing Broker 1] explained that the brokerage maintains a transaction record sheet for each transaction, which contains information relating to the commission, lawyer information, sellers, buyers, and other relevant information for the conveyancer. [Managing Broker 1] explained that the transaction record sheets prepared by Mr. Jinnah in relation to [Property 1] transaction was marked as having been received by the brokerage on August 6. He testified that this document contains all the relevant information for the conveyancer to send to the lawyer and input into the brokerage's management system.
76. On the transaction record sheet for the [Property 1] transaction, there are two handwritten notes. The first one states: "Agents must submit transactions to the office upon acceptance." [Managing Broker 1] identified the handwriting as that of the brokerage's conveyancer.

77. The second handwritten note is [Managing Broker 1]'s and say[s]: "All contracts must be submitted into office immediately 'upon acceptance' (with deal sheet)". [Managing Broker 1] explained that he would write that if someone did not submit the contracts to the brokerage in time.
78. [Managing Broker 1] did not recall being provided a copy of the [Property 1] contract of purchase and sale in June 2015.
79. [Managing Broker 1] also testified to the transaction record sheet for the [Property 2] sale, on which he had also written "All contracts due immediately "upon acceptance" (including deal sheet.)". The transaction sheet in respect of [Property 2] was marked as received August 6, and the contract of purchase and sale had been stamped by the brokerage as "Received Aug 4, 2015". The brokerage's title search for [Property 2] was dated August 4, 2015.
80. [Managing Broker 1] did not deny that it was possible that some documents in the deal file were misfiled or lost.

Mr. Jinnah's Testimony

81. Mr. Jinnah agreed that he met [Individual 1] on an online dating site, he considered her a very good friend, they spoke very frequently, they would typically meet once a week and they spent time at each others' homes, and he would often bring her wine or champagne. Mr. Jinnah acknowledged that he gave [Individual 1] gifts such as clothes and shoes, but he denied that he and [Individual 1] were in an intimate or romantic relationship at any point between 2015 to 2018. He gave evidence of details about his body and his health that she had not known about when he cross-examined her during the hearing. He gives this as evidence that there was no physical contact between them, and that they were only friends.
82. Mr. Jinnah admitted that from the time they met and at the material times in May and June 2015, they talked numerous times and for numerous hours including into the night (the records indicate that they spent over 1,050 minutes on the phone between May 31 and June 23, 2015 alone), but he said they did not discuss real estate. He testified that until June 2015, the topic of selling her home was never a subject of discussion, other than in January 2015 when he asked her if she was interested in selling her home because he was doing some research for somebody who wanted to build townhouses in her neighborhood. He said that by February 2015, he had told her that he would not be going through with the developers because he could not get agreement from her neighbours to even look at a proposal.
83. Mr. Jinnah testified that he knew that they had not discussed the sale of [Individual 1]'s home and purchase of [Property 2] prior to the creation of the contracts of purchase and sale by him, because he took notes about everything relating to real estate. He testified about a calendar that he put notes in. However, in cross examination, Mr. Jinnah admitted that he had given BCFSA all his notes, that they were all in the evidence, and that he did not have the calendar anymore, and he did not recall if he had the calendar when he wrote his first statement for the investigator in 2021.
84. Contrary to the statement that they never discussed real estate, Mr. Jinnah also testified that [Individual 1] would bring up real estate. However, he claimed that when she did, he would tell her "we cannot discuss this unless we have an agency agreement."
85. [Individual 1]'s evidence is that the topic of her selling her home became the main topic of conversation between the two of them after the camping trip in May 2015. It is not clear from Mr. Jinnah's evidence as to when they began talking about real estate. However, he did agree, in cross-

examination, that he asked [Individual 1] for photographs of her basement which she provided to him on June 1, 2015.

86. He says that she did this because she did not want her tenant to know that she was thinking of selling but he could show them if somebody were interested in her property. He says that she asked him to look out for somebody that might be interested in the property, but she was also saying, at the same time, that she did not want to sell her property.
87. On June 3, 2015, [Individual 1] sent Mr. Jinnah several emails with the subject line "[Individual 1] House Sale Documents", attaching a land title certificate, a picture of her driver's licence, a prior listing of [Property 1] from 2001, a receipt for the roof repair from 2013, the 2015 property assessment for [Property 1], and records also relating to [Individual 1]'s mortgage on [Property 1].
88. He says [Individual 1] agreed to show her property on June 3, 2015, again telling him that she did not want to sell the property. Mr. Jinnah then showed [Property 1] to [Individual 2]. Mr. Jinnah stated that he had met [Individual 2] in February 2015 when he was knocking on doors and she expressed that she was actively looking for a bungalow property, but the properties she had seen to that point were out of her price range.
89. On June 5, 2015, [Individual 2] emailed him mortgage documents in relation to [Property 2], a listing for [Property 2] from 2007, her bank statements, and the 2015 property assessment for [Property 2].
90. Mr. Jinnah denied having asked either [Individual 1] or [Individual 2] to send him their mortgage information and denied having knowledge of [Individual 1]'s and [Individual 2]'s financial circumstances before the first contract of purchase and sale despite having received this mortgage information. When faced with these emails in cross examination, he testified he did not know why they were sending him that information at that time, and that he did not read them at the time they were received.
91. He says that on June 6, 2015, he contacted [Individual 1] to tell her that [Individual 2] did not love the property, but it met her needs and she wanted to know what price [Individual 1] was seeking.
92. Mr. Jinnah says that on June 15, 2015, [Individual 1] called him to ask about the expenses to sell her property, and at that time he advised her what his commissions would be, which was 7% on the first \$100,000, and 4% on the balance. He says that she asked him if that commission was higher than most agents, and he told her that was correct, but he was working with a very difficult situation because she refused to make a MLS listing, and therefore, a lot of work would have to go into it without any guarantee of remuneration for him. He said that if [Individual 2] did not purchase [Property 1], he would have to go door knocking to find a buyer.
93. Mr. Jinnah says that he did not know why she refused to list her property. He asserted that he told her that if she listed her property, she would get more people interested and could receive more money, but he said that she did not want to proceed that way because she thought the market was soft.
94. He says that at that point she agreed to pay the commission as long as he got her the price she was looking for, which was \$530,000 plus the expenses. He says that she told him she was comfortable with a price of \$540,000, and he suggested going with \$539,900.
95. Mr. Jinnah agreed that he made over \$39,000 in commissions from the two sales (the total fees were \$24,596 for the sale of [Property 1], and \$15,800 for the sale of [Property 2]). Mr. Jinnah says that on

June 20, 2015, he spoke to [Managing Broker 1] to review the comparative market analysis (which he claims that [Managing Broker 1] helped him prepare), and [Managing Broker 1] told him that if they listed at \$540,000 nobody would buy it.

96. Mr. Jinnah says that he then advised [Individual 2] of the price, and she told him she would consider writing an offer.
97. In regard to [Individual 1] purchasing another property, Mr. Jinnah admitted that he provided [Individual 1] with approximately 20 listings, and he knew [Individual 1] was not keen on purchasing a strata property as a result of discussions he had with her about the properties she had seen.
98. He also admitted that he drove [Individual 1] to showings but claims that they did not discuss them. I find that it is inconceivable that they would not have discussed the real estate [Individual 1] was viewing while travelling to and from those showings.
99. Mr. Jinnah stated that the first conversation that he had with [Individual 1] about agency was on June 22, 2015 at dinner at The Keg, when he gave her forms that he claims were a blank contract and the WWR form. He testified that he told her at that time that if she wanted him to represent her, she would need to list the property on MLS. Mr. Jinnah asserts that [Individual 1] instead chose a customer relationship because he says that she did not want to list the property.
100. [Individual 1]'s evidence, as stated earlier, was that she believed that at this dinner Mr. Jinnah provided her with a listing agreement that included his commission percentage, but that he never provided her copies of the documents she had signed.
101. Mr. Jinnah delivered the comparative market analysis to [Individual 1] at her office on June 24, 2015, and later that day at around 5 pm he delivered her the offer from [Individual 2] to purchase [Property 1].
102. Mr. Jinnah testified that [Individual 1] understood the subjects in the contract and had time to seek legal advice. Mr. Jinnah says that he told [Individual 1] that if she decided not to sell, she could simply not remove the subjects and "that will automatically make this offer null and void".
103. Mr. Jinnah agreed that he arranged the appraisals of [Property 1] and [Property 2], as well as the mortgages for both [Individual 1] and [Individual 2].
104. Mr. Jinnah asserted that he provided his brokerage with the records in relation to the deals within 24 hours of the contracts being signed. Mr. Jinnah testified that on June 24, 2015, he slid signed documents in relation to the [Property 1] contract under the brokerage's door. Mr. Jinnah says that the next morning he went back to the brokerage and the documents were still there. Mr. Jinnah claims that he took the documents to [Managing Broker 1] to ask him whether anything needed to be changed, and [Managing Broker 1] told him to give it to the office conveyancer.
105. Mr. Jinnah says that he also hand delivered the signed documents in relation to the [Property 2] contract of purchase and sale, because he did not trust to send them to the brokerage by email.
106. In his interview with RECBC investigators, Mr. Jinnah had stated that he provided the brokerage with the contracts of purchase and sale after subject removal (in August 2015), but when confronted with this on cross-examination he stated that this was incorrect and that he had in fact slid the contracts under the brokerage's door within 24 hours of the contracts being signed.

Credibility

107. In *Yang (Re)*, 2021 CanLII 86355 (BC REC), the RECBC Hearing Committee stated (bolding added):

“The Committee considered the credibility of each of the witnesses, pursuant to the approaches set out in *Faryna v. Chorny*, 1951 CanLII 252 (B.C.C.A.) and *Bradshaw v. Stenner*, 2010 BCSC 1398, affirmed 2012 BCCA 296, at para. 186-187. For clarity, the Committee considered their testimony with a view to factors personal to the witnesses (e.g., **their ability to observe events, their firmness of memory, the consistency of their accounts, any motives to lie, and their demeanour**), and with a view to their **consistency with the testimony of other witnesses, the documentary evidence, and the “preponderance of probabilities** which a practical and informed person would readily recognize as reasonable in that place and in those conditions”: *Bradshaw* at para. 187.

108. The principle of credibility assessment is set out in *Bradshaw v. Stenner*, 2010 BCSC 1398 (CanLII) at para 186:

“... The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness’ evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness’ testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, [1951 CanLII 252 \(BC CA\)](#), [1952] 2 D.L.R. 354

(B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, [1997 CanLII 324 \(SCC\)](#), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. [356](#)).”

109. In assessing the evidence, both the credibility and the reliability of the witness may be considered. Credibility refers to the witness’ willingness to tell the truth as the witness believes it to be and reliability refers to the actual accuracy of the witnesses’ testimony.

110. Much of the oral evidence given by [Individual 1] and Mr. Jinnah is conflicting.

111. I appreciate it is difficult to recall events that occurred over eight years ago so we must also rely on contemporaneous documentation, phone and computer records. [Individual 1] produced such documentation and also corroborating evidence from her former tenant and her family members.

112. [Individual 1] was credible. Her evidence is generally consistent with the documentary evidence. [Individual 1]’s reliability was not perfect, but she was sincere in her efforts to recall the events, gave her best recollection and answered honestly when she did not recall.

113. Mr. Jinnah was not a credible or reliable witness. His testimony was unsupported by the documents and independent witnesses. While he briefly alluded to memory problems during the investigation, he answered most questions confidently during the investigation.

114. When giving his evidence in chief, Mr. Jinnah almost never said that he did not remember. But, during cross examination when clear evidence to the contrary was put to him, he blamed his memory.

115. He also claimed that both the investigation and the hearing helped remind him of facts he had earlier forgotten. He made confident statements claiming that he did not say certain things eight years earlier.
116. However, during the hearing, Mr. Jinnah's testimony was sometimes contradictory with the evidence he gave in the investigation and even his earlier testimony. During Mr. Jinnah's cross-examination, when presented with inconsistencies in his evidence, he asserted that he had dementia. He testified that he was diagnosed with dementia in 2010, or maybe 2012. He did not provide any medical records to support this diagnosis or any other cognitive issues.
117. With regards to his claims of having dementia, I find that Mr. Jinnah was self-serving and inconsistent with respect to the degree and the effects of his alleged condition on his recollections. He recalled matters that suited him. He also testified that, because of his dementia, he did not recall anything unless it was written down but then later resiled from that point.
118. I find that Mr. Jinnah gave false and misleading evidence throughout the investigation and at the hearing. These are some examples:
- the extent of his relationship with [Individual 1] – he continually downplayed how close they were and her reliance and trust in him;
 - he claimed he was not involved in her decision to sell her property and he asserted that they did not discuss real estate at all, however he clearly used his relationship with her to pressure her to sell;
 - he claimed he was not much involved with [Individual 1]'s search for her new property and did not know what she was looking for or why. He clearly provided her listings and took her to view properties;
 - he claimed that he never asked [Individual 1] or [Individual 2] for mortgage information, which they both independently provided to him and when confronted with that he claimed that he did not know why they sent it. He then testified that he received it but did not read it.
119. The extent of Mr. Jinnah's false and misleading evidence cannot be attributed to memory issues. Mr. Jinnah has picked and chosen which facts he remembers and those are facts that are favourable to his position.
120. I find that where [Individual 1]'s evidence is inconsistent with Mr. Jinnah's evidence, her evidence ought to be preferred.

The relationship between Mr. Jinnah and [Individual 1]

121. One of the key issues testified to in this case is whether or not Mr. Jinnah and [Individual 1] were in a romantic and sexual relationship beginning in late 2014, during the summer of 2015 when both real estate transactions occurred, and continuing through at least 2017. [Individual 1] gave evidence that they were. Mr. Jinnah consistently denied that and stated that they were "just friends".
122. I do not consider I need to make a determination as to whether [Individual 1] and Mr. Jinnah were in a sexual relationship at or around the time when the real estate transactions at issue occurred. What is clear is that [Individual 1] believed them to be in a romantic relationship. She unsubscribed from her dating app within a short time of meeting him.

123. The two agree on the following facts: they met through a dating app, they spent hours talking on the phone together, Mr. Jinnah frequently brought food and alcohol to dinners with [Individual 1], they went on walks and drives together. They would have excellent conversations about their lives, interests and children. Mr. Jinnah frequently gave gifts, such as shoes, to [Individual 1]. On one occasion, Mr. Jinnah gave clothes and a watch to [Individual 1]'s son-in-law to outfit him for his new job.
124. Documentary evidence of emails and phone records support the fact of this "relationship" as does evidence from [Individual 1]'s former tenant and her family members.
125. What is abundantly clear is that their "relationship" should have raised a number of red flags to Mr. Jinnah as to how he approached and rendered professional services to [Individual 1].
126. Mr. Jinnah and [Individual 1] were not in an arm's length professional transaction. I accept [Individual 1]'s evidence that she relied on Mr. Jinnah, and she trusted him to act in her best interest. She believed that Mr. Jinnah had expertise in real estate because Mr. Jinnah had told her that he did and that he had been a realtor for a while (It is likely that [Individual 1] may not have even known that this was actually Mr. Jinnah's first deal). [Individual 1] relied on both Mr. Jinnah's personal and professional advice.

Reasons and Decision

Applicable Law

127. Section 35(1) of RESA provides:

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

(a) contravenes this Act, the regulations under this Act [...] or the rules (...)

(e) fails or refuses to cooperate with an investigation under section 37 [investigations of licensees];

(...)

(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.

128. Section 35(2) of the RESA provides that:

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.

129. Section 3-3 of the Rules⁹ set out, among other things, that if a client engages a brokerage to provide real estate services to or on behalf of the client, the brokerage and its related licenses must:

(a) act in the best interest 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 those 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.

130. Section 3-4¹⁰ of the Rules sets out that when providing real estate services, a licensee must act honestly and with reasonable care and skill.

131. Section 3-2(1)¹¹ of the Rules provided that an associate broker or representative must promptly provide to the managing broker the original or a copy of all records referred to in any of the following sections that are in the possession of the associate broker or representative and that were prepared by or on behalf of the associate broker or representative, or received from or on behalf of a principal:

a) section 8-4 [*general records*];

b) section 8-5 [*trading records*];

c) section 8-6 [*rental property management records*];

d) section 8-7.1 [*strata management records*].

132. Section 37(4) of RESA states: “A person referred to in subsection (3)(a) must not withhold, destroy, conceal or refuse to provide any information or thing reasonably required for the purposes of an investigation under this section.”

Discussion

Issue 1: Did Mr. Jinnah commit Professional misconduct within the meaning of section 35 (1) of RESA?

Did Mr. Jinnah fail to disclose the nature of the representation he would be providing, contrary to section 5-10, 3-4, and 3-3(a) of the Rules as were at the relevant time, as alleged in paragraph 1(a) of the Notice of Hearing?

⁹ The numbering of the Rules was changed in 2021. Section 3-3 is now section 30 of the Rules, with some additional amendments.

¹⁰ Section 3-4 is now section 33 and 34 of the Rules.

¹¹ Section 3-2(1) is now section 29(1) of the Rules.

133. Section 5-10 of the Rules¹² required a licensee to provide disclosure of the nature of their representation prior to providing real estate services.
134. Page 13 of the Practice Standards Manual (at the relevant time) stated:
- “Disclosure of Representation and Relationship in Trading Services Section 5-10 of the Council Rules requires that a licensee must disclose the nature of the representation that the licensee will provide and whether, if applicable, the licensee or a related licensee is or expects to provide trading services to or on behalf of another person in relation to the same trade in real estate, or whether the licensee or related licensee expects to receive remuneration from another person in relation to the same trade in real estate. The disclosure is not required to be in writing, but it must be made before providing the trading services.
135. I find that Mr. Jinnah began providing real estate services to [Individual 1] on or about June 1, 2015, when he began advising her about selling [Property 1] and arranged the showing of it to [Individual 2] (including getting access to [Property 1]) and conducted the showing on June 3, 2015.
136. Mr. Jinnah and [Individual 1]’s evidence is consistent that they did not discuss the issue of agency at that time. They both agree that the first time the issue of agency arose was on or about June 22, or June 24, 2015. Mr. Jinnah testified that he provided [Individual 1] with a blank contract and a WWR at The Keg on June 21 or 22nd. According to [Individual 1], the first time she saw the WWR form was after the dinner at The Keg. That is consistent with the WWR form being dated June 24, 2015.
137. Regardless of whether the discussion on agency occurred on June 22 or June 24, by this time, Mr. Jinnah had provided most of the “trading services” set out in its definition in RESA.
138. On this point, [Individual 1] testified that if she had been advised to get legal advice regarding agency in early June, then she would have. By not discussing agency until there was an offer on the table, [Individual 1] was in a very difficult position as it was not practical to get legal advice at this stage, and Mr. Jinnah had already provided real estate services to her on her understanding that he was her agent.
139. The WWR form sets out the options of a “client” or a “customer” relationship. [Individual 1] initialed “customer” on the WWR form when Mr. Jinnah provided it to her. As noted above, in her testimony, she acknowledged that she did not really understand the difference and relied on Mr. Jinnah to guide her selection. [Individual 1] gave evidence that she thought she was in a “dual agency” agreement. With respect to agency, [Individual 1] initialed the contract where it says “no agency”. I accept [Individual 1]’s evidence that in the circumstances she understood that she was initialling “no agency” in the contract because Mr. Jinnah was acting as a “dual agent” for both her and [Individual 2].
140. During the investigation Mr. Jinnah claimed his role in these transactions was merely to bring the two parties ([Individual 1] and [Individual 2]) together so that they could buy each other’s homes. He claimed therefore that the “customer” relationship was correct. However, as noted above, he also had told [Individual 1] that his commission was higher than the norm because if [Individual 2] did not buy [Property 1] he would “have to go knocking on doors to find a buyer.”

¹² Section 5-10 of the Rules is now section 54 of the Rules.

141. Mr. Jinnah's own evidence at the hearing about how he explained customer and client relationships was confusing at best but likely wrong and misleading for [Individual 1] at the time of signing it. In any case, Mr. Jinnah's understanding was that he owed fiduciary obligations to [Individual 1]. He stated on cross-examination that he included certain subject terms in the contract because, for fiduciary reasons, they should be there.
142. Mr. Jinnah was adamant during cross examination that he understood the difference between "customer" and "client" at the time of the transaction and that he reviewed the WWR form carefully with [Individual 1]. He testified that [Individual 1] initialed "customer" as her choice, and that he was in fact in a "customer" relationship with [Individual 1]. However, during cross examination, he was shown a WWR form from the later real estate deal he was involved with when [Individual 2] subsequently resold [Property 1] within a year's time and made a profit. It was Mr. Jinnah's third real estate deal, and he testified he was definitely in a "client" relationship with [Individual 2]. When shown that "customer", not "client" was initialed by [Individual 2] on this WWR, he admitted that it was "a mistake".
143. [Managing Broker 1], Mr. Jinnah's managing broker at the time of these transactions, gave evidence that he told his agents that if a realtor had a close personal relationship with someone they were providing real estate services to, or if they had any dealings or information about an individual, then this would be a "client" relationship. Only if they had no information, could it be a "customer" relationship.
144. [Managing Broker 1] further gave evidence that if Mr. Jinnah had told him that he was in a romantic relationship or a close friendship with someone he was purporting to be in a customer relationship with, he thinks that he would remember that. However, he does not remember Mr. Jinnah doing so, and to the best of his knowledge, this conversation did not happen.
145. When establishing client relationships under RESA, BCFSA and its predecessor have looked to the conduct of the parties when establishing agency notwithstanding the WWR form.

Liu (Re), 2019 CanLII 37500 paras 8, 13, 18

146. The test is whether it is reasonable for the party asserting an agency relationship to infer from the conduct of the other party that he or she consented to an agency relationship.

Luminary Holding Corp v. Fyfe, 2021 BCSC 167, paras 119 - 120

147. On June 24, 2015, and June 28, 2015, [Individual 1] signed the WWR forms indicating a "customer" relationship, and the contracts which indicated "no agency". This did not alter the established client relationship. I find that either Mr. Jinnah did not fully understand the difference between a "client" and a "customer" relationship, or that he failed to consider the close personal relationship he was in with [Individual 1] at the time she signed the WWR form with him. Either way, Mr. Jinnah's conduct fell far short of the professional standards he was expected to uphold as a licensed realtor. It is important to note that terminating an already established client relationship midway through a deal requires a significant amount of care and caution. Once the client relationship is established, it cannot be undone without the clear consent of the party because the licensee has received information and trust has been built up.
148. I find that Mr. Jinnah's conduct prior to June 24, 2015, amounted to an implied agency and that he had established a client relationship with [Individual 1] on or around June 1, 2015. It is imperative for licensees to discuss agency before the real estate services are provided. I find that there was no

disclosure of the nature of this representation contrary to sections 5-10, 3-4 and 3-3(a) of the Rules as they were at that time.

Did Mr. Jinnah fail to take reasonable steps to avoid any conflict of interest, and promptly and fully disclose the conflict of interest, contrary to section 3-3(i) and (j) of the Rules as they were at the relevant time, as alleged in paragraph 1(b) of the Notice of Hearing?

149. In general terms the allegations against Mr. Jinnah under paragraph 1(b) of the Notice of Hearing are that he failed to take reasonable steps to avoid any conflict of interest and then failed to promptly disclose the conflict of interest to either client.
150. BCSFA argued that:
- Mr. Jinnah was in in client relationships with either [Individual 1] or [Individual 2] while having a personal relationship with the other and failed to disclose the nature of these relationships to the other person (however, no evidence was led as to Mr. Jinnah's personal relationship with [Individual 2]);
 - Mr. Jinnah was providing real estate services and/or mortgage broker services to [Individual 1] and/or [Individual 2] with respect to the transactions without fully disclosing the conflict of interest (while there was no rule against acting as both a realtor and mortgage broker on a transaction, knowledge of the financial situation of each of them did put Mr. Jinnah in a conflict);
 - Mr. Jinnah was having an intimate relationship with [Individual 1] during the time he provided her real estate services. As stated above – I decline to make a finding with respect to whether they were in a sexual relationship at the time of the real estate services, but I have found, nevertheless, that they were in a close personal relationship at the time.
151. I find that Mr. Jinnah pressured and manipulated [Individual 1] to sell [Property 1] and purchase [Property 2], and that he exploited [Individual 1]'s trust and reliance on him arising from their close relationship. He did this in order to earn himself an "above-market" commission on both the sales of [Property 1 and [Property 2].
152. Mr. Jinnah gave evidence that he charged a higher fee than most realtors to [Individual 1] because the transaction would require more work than other cases given that he was not in a client relationship with the parties. However, on cross examination, he admitted that it was less responsibility to be in a customer relationship as compared to a client relationship. Also on cross examination, he gave evidence that his fees were higher than other realtors because he did not want to diminish the value of his work.
153. When [Individual 1] said that she did not want to sell [Property 1], this is where the conversation and agency relationship should have ended. That is when Mr. Jinnah's interest (facilitating the sale and making the commission) diverged from [Individual 1]'s interest, which was not selling [Property 1]. The conflict would have been easily avoided if Mr. Jinnah simply stopped pressuring [Individual 1] to sell.
154. This is a unique situation because of the personal connection between these two individuals. Had this been two unconnected individuals, the homeowner could have simply stopped speaking to the licensee who had been providing real estate services. However, in this situation, Mr. Jinnah used his personal connection and the trust that [Individual 1] had in him to continue providing her extensive

real estate advice, showing her listings, and showing her [Property 2] with the aim to advance his own interest in making a sale and charging commissions at above-market rates, over [Individual 1]'s expressed interest in not selling [Property 1].

155. Mr. Jinnah's interest was to "facilitate" the transactions and make commission on the sale of both [Property 1] and [Property 2]. [Individual 1] did not want to sell [Property 1] and advised Mr. Jinnah of that multiple times. However, [Individual 1] was relying on Mr. Jinnah's advice, both personal and financial, and she believed that he was acting in her best interest. She testified that she was trying to follow his lead. I accept her evidence that she believed she did not need legal advice or other representation because she trusted that Mr. Jinnah was taking care of everything. In hindsight, this was not prudent, but it was coloured by the trust she placed in Mr. Jinnah as her close friend.
156. Mr. Jinnah's and [Individual 1]'s competing interests are clear right from their discussions in early June 2015, and throughout the transactions and the subject removal phase. Mr. Jinnah was interested only in the sales completing, while [Individual 1] repeatedly expressed that she did not want to sell. He convinced her to agree to an above-market commission. He told [Individual 1] that she could not make an offer for less than \$320,000 on [Property 2] because [Individual 2] had purchased [Property 1] at [Individual 1]'s asking price. Later, after the property inspection was done on [Property 1], he convinced her to pay for a new furnace. Both these actions facilitated the sale completing and also benefited [Individual 2] at the expense of [Individual 1]. Acting for both [Individual 1] and [Individual 2] at the same time, including with respect to the mortgage broker services (through which he obtained financial information about both [Individual 1] and [Individual 2]), was an additional conflict of interest committed by Mr. Jinnah.
157. Mr. Jinnah maintained at the hearing that there was no personal relationship between him and [Individual 1] and no conflict of interest, and therefore no disclosure was necessary. I find that clearly a conflict of interest arose in this matter, and I also find that Mr. Jinnah failed to disclose the conflict of interest to [Individual 1] as required by s. 3-3(j) of the Rules as they were at the relevant time.

Did Mr. Jinnah fail to act honestly and with reasonable care and skill, in the best interest of [Individual 1], and /or fail to disclose known material information, contrary to sections 3-4, 3-3(a) and 3-3(f) of the Rules as they were at the relevant time, as alleged in paragraphs 1(c) and 2 of the Notice of Hearing?
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158. I find that Mr. Jinnah's failure to disclose the nature of the real estate services to be provided, prior to providing such (as discussed above), was also contrary to the duty to act honestly and with reasonable care and skill, a failure to disclose all known material information, and contrary to [Individual 1]'s best interest. He had established a client relationship with [Individual 1] but allowed her to initial her choice to be a "customer" without her understanding the difference between a "customer" and a "client".
159. Mr. Jinnah's conflict of interest and failure to disclose the conflict of interest was also contrary to the duty to act honestly and with reasonable care and skill, and contrary to [Individual 1]'s best interest. Not only was Mr. Jinnah in a conflict of interest, but he used his position to advance his own interests over those of [Individual 1]. A realtor in an agency relationship, acting with reasonable care and skill and/or in the best interest of their client must advance the interest of their client and not use their position of trust and confidence to pressure them to act contrary to their clear wishes. Mr. Jinnah knew that he had established trust with [Individual 1]. As noted above, he used his close

relationship with [Individual 1] and the personal information that he had about her to pressure her into selling [Property 1], which advanced his own interests and those of [Individual 2].

160. BCFSA alleged in paragraph 1(c) of the Notice of Hearing that Mr. Jinnah failed to advise [Individual 1] of the risks of not providing a property disclosure statement (PDS) contrary to the best interests of the client. [Individual 1]’s stated that Mr. Jinnah told her that they were not going to do a PDS. Instead, they would sell the house “as is, where is”. BCFSA argued that because there was no PDS, [Individual 1] was obligated to repair the furnace at her expense before selling [Property 1].

161. I do not find that the lack of a PDS, in itself, created a risk to [Individual 1] in this circumstance. More problematic was Mr. Jinnah’s advice to [Individual 1] on the inspection report and the inspection clause. The [Property 1] contract included a subject clause providing for the buyer to obtain and approve, at their own expense:

“an inspection report against any defects whose cumulative cost of repair exceeds \$200 and which may adversely affect the property’s use or value. This condition is for the sole benefit of the Buyer. The Seller will allow access to the property on reasonable notice.”

162. This clause allowed [Individual 2] to get out of the contract if the results turned up a defect exceeding \$200. [Individual 2] could simply have decided not to remove the subject, and the deal would have collapsed. However, the subject did not require [Individual 1] to remedy the defect or purchase a new furnace for [Individual 2]. Mr. Jinnah failed to encourage [Individual 1] to obtain legal advice about the clause, and instead convinced her to spend \$2000 or \$2500 on a new furnace. In doing so, I find that Mr. Jinnah failed to act with reasonable care and skill and in the best interests of [Individual 1].

163. The PSM states:

“The public relies on a licensee’s expertise. Therefore, licensees should not act in situations where they are unable to render competent service.

164. The charges in paragraph 1(c) of the Notice of Hearing relate to Mr. Jinnah’s competence. The evidence at the hearing made it clear that there were significant competency issues throughout this transaction. I further find Mr. Jinnah made other errors in this transaction wherein he did not meet the standard of a real estate licensee’s duty of reasonable care and skill. Mr. Jinnah did not provide competent service when:

- a) Initially, the closing dates for both transactions were a month apart. [Individual 1] would have to close on the sale of [Property 2] without having the proceeds from the sale of her property. Mr. Jinnah did not ensure addendums to the [Property 1] contract were executed prior to [Individual 1] making an offer on [Property 2]. Furthermore, there was no certainty at that time that [Individual 2] would sign an addendum to align the completion dates;
- b) he took care of all subject removals and had [Individual 1] sign them without explaining them to her or advising her to seek legal advice about them; and
- a) he did not provide the [Property 2] strata documents to [Individual 1] until she was on her way to the conveyancing lawyer and after the subject to review them had been removed.

165. I find that Mr. Jinnah failed to provide competent services to [Individual 1], failed to disclose all known material information, and failed to act honestly and with reasonable care and skill and in the best interests of [Individual 1] contrary to sections 3-3(a), 3-3(f), and 3-4 of the Rules.

Did Mr. Jinnah fail to promptly provide the managing broker a copy of all substantive records contrary to section 3-2(1) of the Rules as they were at the relevant time, as alleged in paragraph 1(e) of the Notice of Hearing?

166. In general terms, one of the responsibilities of a licensee is that they must promptly provide their managing broker with the original or copy of the deal file.
167. Mr. Jinnah's managing broker, [Managing Broker 1], gave evidence that his brokerage expects to receive the deal file within 24 hours after it is signed.
168. Mr. Jinnah's evidence was that he remembers dropping off the hard copies of the [Property 1] contract and the [Property 2] contract at Blueprint's office within 24 hours of finalization. He testified he did it late on the evenings of signing, or in any case, by the following business day. He recalled that he slid the [Property 1] contract under the brokerage's front door. He further testified, that when he attended the office on the next business day, he found the contract on the floor of the office by the front door. He testified that he handed it to [Managing Broker 1] to review with him as it was his first deal. There is conflicting evidence between Mr. Jinnah and [Managing Broker 1] as to whether or not [Managing Broker 1] reviewed the contracts with Mr. Jinnah.
169. The investigator for BCFSA attempted to obtain all the file documents for these two transactions. She obtained documents from both Mr. Jinnah on July 23, 2021, and the brokerage on June 22 and 24, 2021. Neither source had a complete set of documents.
170. BCFSA argued that Mr. Jinnah did not submit the deal files promptly to the brokerage, and in fact did not submit the [Property 1] file until early August 2015 when he sent an email on August 3, 2015, enclosing a scan of the file.
171. Mr. Jinnah argued that the brokerage must have lost some of the documents during 2015 or since. [Managing Broker 1] did give evidence that while he does not know of any incidents of files going missing at the brokerage, the brokerage's document system transitioned between 2015 and 2021, and he did not deny that documents may have gone missing from the files.
172. I considered all of the documents in evidence as well as the oral testimony given by Mr. Jinnah and [Managing Broker 1]. I make the following observations:
- Neither Mr. Jinnah nor the brokerage were able to provide a complete file of the transactions. Mr. Jinnah stated he had a computer malfunction at some point after the transactions, and he lost some documents. [Managing Broker 1] stated that at the time of these transactions, the brokerage had a hybrid situation. There were some agents that submitted documents via paper, so they were handing hard copies in to the brokerage. The brokerage then moved over to a process where agents would scan the documents and submit them by email. He also testified that between 2015 and 2021, they migrated to a different storage system. At a later point, they hired a separate company to scan old paper files into the electronic system.
 - The oral evidence was contradictory as to whether or not Mr. Jinnah promptly provided the managing broker with all transaction record in relation to the two transactions. The brokerage records suggest that Mr. Jinnah failed to provide all documents immediately. However, [Managing Broker 1] admits that he has no personal recollection as to what occurred, and he relied on the written comments he made on the transaction record. Mr. Jinnah, during the

investigation, stated that the brokerage requested him to re-submit missing deal sheets, which is why he sent them by email in August 2015.

173. Due to this incomplete and conflicting evidence, I cannot prefer one version over another. I find that it is possible that the original hard copy versions of the contracts may have been lost during the transition of paper to electronic files during which the brokerage's paper files were scanned into a new information system.
174. Therefore, I find that the evidence put forward by BCFSA is inadequate to support a finding that Mr. Jinnah failed to promptly provide the managing broker with a copy of all substantive records contrary to section 3-2(1) of the Rules as they were at the relevant time.

Did Mr. Jinnah fail or refuse to cooperate with an investigation contrary to sections 35(1)(a) and/or 35(1)(e) and 37(4) of RESA, as alleged in paragraph 3 of the Notice of Hearing?

175. In general terms the allegations against Mr. Jinnah under paragraph 3 of the Notice of Hearing are that Mr. Jinnah failed or refused to cooperate with an investigation by mischaracterizing his relationship with [Individual 1] in a written statement and in two interviews with the investigator in order to conceal the conflict of interest.
176. Being truthful, honest and forthcoming with BCFSA is fundamental to its ability to effectively protect the public. Section 35(1)(e) of RESA provides that a licensee's failure or refusal to cooperate with an investigation under s. 37 of RESA is professional misconduct.
177. Section 37(4) of RESA states: "A person referred to in subsection (3)(a) must not withhold, destroy, conceal or refuse to provide any information or thing reasonably required for the purposes of an investigation under this section."
178. The decision of the Ontario Court of Appeal in *Law Society of Ontario v. Diamond*, 2021 ONCA 255 and cited with approval in *Guo (Re)*, 2023 LSBC 30, sets out the following principles:
- [66] The Ontario Court of Appeal in *Law Society of Ontario v. Diamond*, 2021 ONCA 255, at para. 50, set out the factors that must be considered where there is an allegation of failure to cooperate, as follows:
- (a) all of the circumstances must be taken into account in determining whether a licensee has acted responsibly and in good faith to respond promptly and completely to the Law Society's inquiries.
 - (b) good faith requires the licensee to be honest, open and helpful to the Law Society;
 - (c) good faith is more than an absence of bad faith; and
 - (d) a licensee's uninformed ignorance of their record-keeping obligations cannot constitute a "good faith explanation" of the basis for the delay."
179. On July 9, 2021, [Investigator 1], the investigator, sent Mr. Jinnah a letter explaining that BCFSA was investigating a potential conflict of interest due to Mr. Jinnah's relationship with [Individual 1] and/or [Individual 2].
180. On July 23, 2021, Mr. Jinnah replied in writing with a statement he said he created from his notes. In her testimony, [Investigator 1] highlighted the following parts of Mr. Jinnah's July 23, 2021 written statement, in which he stated:

- “Met [Individual 1] through a dating app in 2014 - We ended up being friends.
- Early 2015 I left message that I was trying to get listing from her neighbors for land developer and if she would be interested in selling
- In Feb I advised her neighbors declined to sale (sic) and developer was not looking to buy one property.
- No details of her reasons to sale (sic) were known to me and she declined any commitment to sale in writing.
- My friendship included personal chats about her family, work, her daughter’s purchase of real estate, her co-signing for her daughter’s purchase in Calgary, invitation to dinner, or coffee, she was also involved to dinner at my residence, and to help with yard work, I also borrowed some gardening equipment, and a guest for lunch at camping trip with friends. (sic)
- Friendship deteriorated after her phone call to a friend named [Individual 4] about my relationship with her, she acknowledged she made the call and was deeply sorry, she had no right. There has been no contact with her for the past 3 years (approximately).
- No implied client agency in both sellers/buyers
- Met [Individual 2] through canvassing in early Feb 2015.
- No involvement with her except her realtor. I have had two further deals with her after this transaction.”

181. This was Mr. Jinnah’s first explanation to the RECBC/BCFSA investigator, and I find that it dramatically downplayed his role in the sales of the two properties. His statement that he had “no details” of [Individual 1]’s reason for selling downplayed the fact that he and [Individual 1] were in regular discussions about the sale of [Property 1] including in respect of why she should sell the property. He in fact pressured [Individual 1] to sell her property and leveraged his personal relationship with her to make it happen. I also find that Mr. Jinnah’s statement that [Individual 1] was just “a guest for lunch at [a] camping trip with friends” downplayed the details of the camping trip in which I accept [Individual 1]’s evidence that she and Mr. Jinnah went on the weekend camping trip together.

182. I further find that Mr. Jinnah continued to downplay and mischaracterize his relationship with [Individual 1] during both the first and second interviews with the BCFSA investigator.

183. In the first interview held on September 29, 2021:

- Mr. Jinnah was asked: “walk us through your dealings with [Individual 1] from the beginning”, to which he stated, referring to his July 23, 2021 written statement, “I put down I met her in 2014. She’s an insurance adjuster or was an insurance adjuster. I met her in 2015 as a real estate client (my emphasis added) when I was canvassing her area and the reason for that was one land developer wanted to put some townhouses there and wanted me to find out if land was available because these are all older homes, and his specific need was three homes in a row in a certain block. That was January 28, 2015. In February 2015 I was told by the neighbours that they were not interested in selling ... but [Individual 1] wanted to sell her property, but she was not ready to list the property ... That was the only discussion. Then March [20]15, she called me again and wanted to find out if I had found a client for her and I said without a listing, it would be very difficult to market her property.”

- When expressly asked to define his relationship with [Individual 1], he stated that: “I met her online in 2014, which ended up into (sic) friendship. There was no discussion at that time of real estate nor did I ever knew (sic) that she wanted to sell her home. Anyways, I did not meet her at that time to be -- she knew that I was a realtor and a mortgage broker when she met me, but there was no discussion of real estate whatsoever at that time.”
- He further gave this statement: “We were just friends... she did help with the gardening, and she did come to dinner at the house and also I also met when her family wanted to go into real estate or when she was doing a mortgage for her daughter in Calgary, she wanted to ask me questions about it, but it was basically a friendship relationship”.
- When asked to clarify during the interview when he had a friendship relationship with [Individual 1], he explained that this began after she moved into [Property 2].

184. I find that these statements during the first interview downplayed the closeness of the personal relationship that Mr. Jinnah had with [Individual 1] which began months earlier than he stated at his interview, and well before she sold her home. As already discussed, at that point they were in a close relationship and had been having dinners, walks, drives and lengthy and frequent phone calls together, including discussions about real estate and selling [Property 1].

185. In the second interview held on May 31, 2022, Mr. Jinnah again stated that he was “Friends with her, it had nothing to do with the real estate part of. I did not discuss real estate with her at all. The real estate was not even part of that part of it. There was no communication as to what was going to happen, what her need was, absolutely nothing”. I find that this statement downplayed their relationship and was false and misleading. It is clear from the evidence at the hearing that there were many discussions between Mr. Jinnah and [Individual 1] about the sale of her home, what she was looking at to purchase, and “what was going to happen”.

186. I find that Mr. Jinnah’s evidence during his interviews was tailored to mislead RECBC/BCFSA, particularly on the relationship between him and [Individual 1], in order to conceal the conflict of interest. Mr. Jinnah’s conduct in the investigation was not truthful in keyways that do not relate to memory issues or the passage of time but reflect a deliberate concealment of the truth. I find that Mr. Jinnah’s statements to RECBC/BCFSA in his written statement and two interviews were not in good faith in the sense that they were not honest, open and helpful to RECBC/BCFSA. Thus, I find that Mr. Jinnah failed to cooperate with the investigation contrary to sections 35(1)(e) of RESA, and concealed information that was reasonably required for the investigation contrary to 37(4) of RESA, as alleged in paragraph 3 of the Notice of Discipline Hearing.

Did Mr. Jinnah make a false or misleading statement in a document required or authorized to be submitted contrary to section 35(1)(g) of RESA, as alleged in paragraph 4 of the Notice of Hearing?

187. Section 35(1)(g) of RESA provides that it is professional misconduct for a licensee to 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 this Act”.

188. At paragraph 120 of *Inglis (Re)*, 2018 CanLII 86666 (BC REC), the Discipline Hearing Committee found that an investigator is authorized by section 37 of RESA to require a licensee to answer inquiries relating to its investigation. At paragraph 121, the Committee found that the licensee’s response to the request was therefore a document authorized by RESA, and section 35(1)(g) was applicable to it.

189. Mr. Jinnah's July 23, 2021 written statement to RECBC was a document required and authorized by RESA. For the reasons noted above, I find that this written statement from Mr. Jinnah contained false and misleading statements and was therefore contrary to section 35(1)(g) of the RESA as alleged in paragraph 4 of the Notice of Hearing.

Issue 2: Did Mr. Jinnah commit conduct unbecoming within the meaning of section 35(2) of RESA as alleged in paragraph 5 of the Notice of Hearing?

190. Paragraph 5 of the Notice of Hearing states:

Further and in the alternative, you committed conduct unbecoming within the meaning of section 35(2) of RESA when you engaged in any or all of the conduct set out at paragraphs 1, 2, 3 and 4, contrary to the best interests of the public, undermining public confidence in the real estate industry, and/or bringing the real estate industry into disrepute.

191. In a Report from Council Newsletter dated October 2020, the RECBC provided the following guidance on conduct unbecoming:

"The scope of what constitutes conduct unbecoming is very broad and can capture a wide range of activities, including conduct that occurs outside work.

As a licensed professional you are expected to act with professionalism, integrity and honesty. Your actions and behavior on and off the job impact how the public views real estate professionals and also affects their confidence in the real estate industry."

192. Examples from other professional bodies, although not binding, can be illustrative in understanding the concept of conduct unbecoming in other regulated professions in British Columbia. For example, the *Legal Profession Act* defines conduct unbecoming as:

"conduct unbecoming the profession" includes a matter, conduct or thing that is considered, in the judgment of the benchers, a panel or a review board,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession.

193. The Law Society of British Columbia's Code of Professional Conduct, includes the following section on integrity:

"2.2-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honorably and with integrity.

Commentary

...

[2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favorably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[3] Dishonorable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action."

194. Case precedents involving conduct unbecoming are very fact specific. Some involve personal conduct outside the provision of real estate services. Some involve conduct in the context of real estate services that constitutes both professional misconduct as well as conduct unbecoming. The common thread between all the cases is that the professional in question engaged in conduct which cast a shadow upon their professional integrity and the integrity of the professional industry as a whole.

195. In *Bratch (Re)*, 2021 CanLII 92520, in finding that the licensee had committed conduct unbecoming, a Discipline Hearing Committee of RECBC accepted the following submissions made by RECBC:

307. Conduct of this nature undermines public confidence in the real estate agency, where real estate licensees can be seen as self-interested parties using their licence and professional membership to help them build trust with less knowledgeable or inexperienced real estate industry participants to make profits.

196. In *Parsons (Re)*, a decision of the RECBC Discipline Hearing Committee dated December 12, 2014, Mr. Parsons was found to have engaged in deceptive dealing when he:

- withheld facts from his client that were material to the decision to purchase the property, including an Engineer's report showing water ingress;
- failed to include subject to inspection clause;
- withheld material information about the property;
- assisted his client in preparing an unsuitable offer knowing she was in a vulnerable position;
- failed to advise her to seek independent legal advice;
- failed to disclose latent defect; and
- failed to avoid conflict of interest (his son was representing the seller).

The Committee found that Mr. Parsons engaged in conduct that undermined public confidence in the real estate industry and brought the real estate industry into disrepute when he failed, in a systematic manner and while in a conflict of interest, to represent his client's interests adequately or at all, and he knew or ought to have known that his client was in a highly vulnerable state due to her personal circumstances.

197. In regard to this case, I agree with counsel for BCFSa that conduct unbecoming is perhaps the most appropriate and encompassing charge for Mr. Jinnah's conduct.

198. Mr. Jinnah began providing [Individual 1] real estate services and formed an implied agency relationship with her at a time during which they were in a close relationship. He did not advise her to get legal advice on agency or warn her that he would not act in her best interests. [Individual 1] trusted him, relied upon him, and was reasonably left with the impression that Mr. Jinnah was looking out for her best interests. Rather than looking out for her best interest, Mr. Jinnah refused to accept that [Individual 1] did not want to sell her house. He pressured and manipulated her to essentially switch properties with [Individual 2]. Mr. Jinnah took advantage of [Individual 1] who, because she was in a close relationship with him and trusted him, was vulnerable. This type of behaviour can only be described as predatory.

199. In doing so, Mr. Jinnah charged [Individual 1] and [Individual 2] above-market commissions on this deal with very little explanation. [Individual 1] testified that she knew it was a higher commission, but she did not question it because Mr. Jinnah told her that he always charged more commission, and she was under the impression that he was her real estate agent and was looking out for her interests. However, in reality this was Mr. Jinnah's first real estate transaction, and he took no steps to market the property other than to show it to [Individual 2]. This is one of the many things that [Individual 1] did not fully question because she trusted Mr. Jinnah due to their personal relationship.
200. As discussed, Mr. Jinnah failed to act with reasonable care and skill and in the best interest of his client when he advised [Individual 1] to pay \$2,000 to \$2,500 for a new furnace, without instead urging her to seek legal advice on the matter. He further failed to act with reasonable care and skill and in the best interest of [Individual 1] when he allowed her to risk not having the proceeds from the sale of [Property 1] to close on the [Property 2] deal, he failed to explain the subject removals to her, and he did not provide her with the strata documents for [Property 2] until she was on her way to the conveyancing lawyer after she had already waived the subject.
201. The decision in *Bratch* provides some guidance for evaluating Mr. Jinnah's conduct. Mr. Bratch had previously established a trust relationship and took advantage of people during a financially vulnerable time. I accept in this case that due to their close relationship; [Individual 1] was financially and emotionally vulnerable. Mr. Jinnah used his knowledge of that vulnerability to advance his own interests.
202. I also accept that Mr. Jinnah's conduct caused [Individual 1] emotional harm in the form of anxiety, depression, shame and embarrassment for letting herself be coerced by Mr. Jinnah.
203. As noted above, I have found that Mr. Jinnah mischaracterized his relationship with [Individual 1] throughout the BCFSa investigation. He provided false and misleading information to conceal the conflict of interest. It was only during the hearing, particularly when confronted with [Individual 1]'s phone records, that he acknowledged a close personal relationship. I find that Mr. Jinnah's statements in his July 23, 2021 written statement and two interviews were a deliberate attempt by Mr. Jinnah to interfere with and mislead the investigative process.
204. Licensed realtors can make large commissions on the purchase and sale of real estate. Due to the importance of these transactions for individuals and for our economy, the government regulates this industry. Unlike many sales-based industries, individuals who provided real estate services must be licensed and must accord to a certain standard with the goal to protect the public. As the regulator, the Superintendent has every right to expect its licensees to be honest and forthcoming during investigations. Licensees intentionally misrepresenting facts to BCFSa for the purpose of deceiving the regulator about a potential breach of professional standards is entirely unacceptable.
205. I find that on the balance of probabilities, BCFSa has established that Mr. Jinnah's actions amounted to conduct unbecoming as alleged in paragraph 5 of the Notice of Discipline Hearing and contrary to section 35(2) of RESA. As in the *Parson's* case, Mr. Jinnah's conduct was contrary to the best interests of the public, undermined public confidence in the real estate industry, and brought the real estate industry into disrepute.

Conclusion

206. I find that Mr. Jinnah committed professional misconduct within the meaning of s. 35(1)(a) of RESA when he failed to disclose the nature of representation prior to providing real estate services to [Individual 1], contrary to sections 5-10, 3-4 and 3-3(a) of the Rules (as they were at the relevant time).

207. I find that Mr. Jinnah committed professional misconduct when he failed to take reasonable steps to avoid a conflict of interest, and failed to disclose the conflict of interest to [Individual 1], while he was in a position of trust and influence due to their existing relationship, contrary to sections 3-3(i) and (j) of the Rules as they were at the relevant time. I also find that he was in a conflict of interest with respect to mortgage broker services that he provided to both [Individual 1] and [Individual 2], through which he obtained financial information about both parties in the course of providing real estate services.

208. I find that Mr. Jinnah committed professional misconduct when he failed to act honestly and with reasonable care and skill and in the best interests of [Individual 1] when he:

- failed to disclose the nature of the real estate services to be provided to [Individual 1], prior to providing such; and
- failed to take reasonable steps to avoid a conflict of interest and used his close personal relationship with [Individual 1] to pressure her to sell [Property 1]

contrary to sections 3-3(a), 3-3(f), and 3-4 of the Rules as they were at the relevant time.

209. Further, Mr. Jinnah also failed to act honestly and with reasonable care and in fact acted in ways detrimental to [Individual 1] when he:

- advised [Individual 1] that she had to pay between \$2000 and \$2,500 for a new furnace, rather than urging her to seek legal advice on the matter;
- exposed [Individual 1] to a risk having to close on the sale of [Property 2] without having the proceeds from [Property 1];
- had [Individual 1] sign the subject removals without explaining them to her or advising her to seek legal advice about them; and
- delivered the strata documents to [Individual 1] just before the conveyance and after she had already waived the subject in relation to the strata documents

contrary to section 3-4 of the Rules as they were at the relevant time.

210. I find that Mr. Jinnah committed professional misconduct when he failed or refused to cooperate with an investigation by mischaracterizing his relationship in a written statement and in two interviews with the investigator in order to conceal his conflict of interest, contrary to sections 35(1)(e) and 37(4) of RESA.

211. I find that Mr. Jinnah made a false or misleading statement in a document required or authorized to be submitted contrary to section 35(1)(g) of RESA.

212. Finally, given Mr. Jinnah's conduct in all its entirety, as set out above, I find that Mr. Jinnah committed conduct unbecoming within the meaning of section 35(2) of RESA.

Sanctions

213. 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, at a date, time and place to be set.
214. BCFSA and Mr. Jinnah must advise the Hearing Coordinator by August 19, 2024 of any request for an in-person hearing is necessary respecting sanctions, and why an in-person hearing is necessary or desirable. If an in-person hearing is directed, the Hearing Coordinator will contact the parties to arrange a suitable hearing date. Unless an in-person hearing is directed, any further evidence will be received through affidavits, and submissions respecting sanctions will be received in writing. Subject to future directions, the parties must provide affidavit evidence and written submissions to the Hearing Coordinator and to each other as follows:
- BCFSA must provide any affidavits and written submissions by September 16, 2024.
 - Mr. Jinnah must provide any responding affidavits and written submissions by October 15, 2024.
 - BCFSA must provide any reply affidavits and written reply submissions by October 29, 2024.
215. Any party can apply to vary these dates, seek leave to cross-examine on an affidavit, or address other procedural matters.
216. Once I have arrived at a decision on sanction issues, I will issue additional reasons that will form part of this decision, make an order under section 43(2) of RESA, and make such other orders under RESA that I may deem appropriate.
217. Once an order has been made under Part 4, Division 2 of RESA, Mr. Jinnah will have the right to appeal to the Financial Services Tribunal under section 54(1)(e) of the RESA. Mr. Jinnah will have 30 days from the date of the sanction decision to appeal: *Financial Services Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at Vancouver British Columbia, this 12th day of August 2024

“Original signed by Thelma O’Grady”

Thelma O’Grady
Hearing Officer