

IN THE MATTER OF THE REAL ESTATE SERVICES ACT
SBC 2004, C. 42 as amended
AND IN THE MATTER OF
WEI QING (WENDY) YANG (159561) and
WENDY YANG PERSONAL REAL ESTATE CORPORATION (159561PC)

REASONS FOR DECISION REGARDING SANCTION

Date of Hearing:	May 25, 2021 (the Sanction Hearing was conducted in writing only)
Discipline Hearing Committee:	S. Heath (chairperson) M. Chan (member) Y. Amlani (member)
Counsel for RECBC:	D. McKnight N. Krueger
Counsel for Respondent:	J. Scouten
Court Reporter:	Not applicable.

A. INTRODUCTION

1. This Discipline Committee (the "Committee") reconvened to hear submissions on sanctions and enforcement expenses (the "Sanction Hearing"), based on its determining earlier that the Respondent, Ms. Yang, committed professional misconduct and conduct unbecoming a licensee, within the meaning of section 35(1) and (2) of the RESA (the "Liability Decision"). The Committee adopts its terminology from the Liability Decision.
2. The Committee must make an order under RESA section 43(2) to impose one or more discipline penalties. Such discipline penalties may include an order requiring payment under RESA sections 44(1) and (2) concerning expenses in relation to the investigation and the discipline hearing.
3. The Committee held the Sanction Hearing in writing, and the parties provided their written submissions as follows:

- a. on May 14, 2021, the Council provided submissions on sanction and expenses;
- b. on May 17, 2021, the Respondents provided response submissions; and
- c. on May 21, 2021, the Council provided a reply.

B. EVIDENCE

4. **Previous evidence.** The Committee received evidence, made findings of fact, and made findings of professional misconduct and conduct unbecoming a licensee during the Liability Hearing. The Committee considered such evidence, findings and determinations from the Liability Hearing to decide sanctions under RESA section 43, and enforcement expenses under sections 43(2)(h) and 44(1) and (2).

5. **Supplemental evidence.** The Committee considered supplemental evidence provided by the parties during the Sanction Hearing. The Council provided evidence with respect to Enforcement Expenses of \$229,819.41, which may be summarized as follows:

- a. Investigation expenses (based on an hourly rate of \$100 permitted by s. 4.2(a) of the Regulation): \$5,250;
- b. Legal services (involving three external counsel for the liability hearing, and two external counsel for the sanction hearing, at various hourly rates ranging from \$250 to \$400, plus GST and PST): \$179,144;
- c. Administrative expenses (for 12 days of liability hearing): \$19,500 plus \$6,250 (for decision-writing);
- d. Disbursements by external counsel (excluding reporter and transcript costs, but including copying, process servers, and interpreter fees): \$7,726.62; and
- e. Court reporter, transcript and related costs (plus GST): \$17,198.79.

With respect to decision-writing time of the Committee, Council refers to RECBC Bylaw 3-8(3), which allows a hearing committee to claim a fixed fee (\$625) for each 7-hour day spent preparing a written decision.

6. **Specific findings of conduct warranting sanction:** The Committee's findings of professional misconduct (and concurrent conduct unbecoming) may be summarized as follows:

- a. Professional misconduct respecting the Bxxxxxxx Property:
 - i. failing to advise the sellers that the property could not be listed for 60 days after cancellation;
 - ii. failing to cancel the listing within a reasonable time;
 - iii. failing to provide a copy of the cancellation form to the sellers.

(Liability Decision para. 43.)

- b. Professional misconduct respecting the Gxxxxxxx Property:
 - i. in the Contract of Purchase and Sale, improperly listing herself and Mr. Sxxxx as seller's agents, and Mr. Lx as buyer's agent despite a dual agency agreement (Liability Decision para. 59);
 - ii. failing to disclose the members of the Team on the Contract of Purchase and Sale (Liability Decision para. 60);
 - iii. failing to disclose to the buyer the full amount of commission payable to New Coast (Liability Decision para. 63).
- c. Professional misconduct respecting the XXXX Sxxxxx Property:
 - i. allowing the Contract of Purchase and Sale to improperly list her as seller's agent and Mr. Zxxxx as buyer's agent despite a dual agency agreement (Liability Decision para. 78);
 - ii. failing to disclose the members of the Team on the Contract of Purchase and Sale (Liability Decision para. 79).
- d. Professional misconduct respecting the Lxxxxx Property:
 - i. misusing an amendment form to change the expiry date for the listing contract (Liability Decision para. 100); and
 - ii. failing to provide real estate services only on behalf of New Coast Realty (Liability Decision para. 101).
- e. Professional misconduct respecting the Gxxxxx Property:
 - i. failing to provide services only on behalf of New Coast Realty; and
 - ii. failing to provide accurate brokerage listing information.
(Liability Decision para. 154.)
- f. Professional misconduct and conduct unbecoming respecting the Wxxxxxxx Property by falsifying the Wxxxxxxx Amendment Form in order to amend the Wxxxxxxx Listing Contract, and failing to provide the form to New Coast Realty (Liability Decision para. 147 and 150).
- g. Professional misconduct and conduct unbecoming respecting the Sxxxxx Property by failing to provide transaction documents to New Coast Realty promptly (Liability Decision paras. 140, 144, and 148).
- h. Professional misconduct and conduct unbecoming respecting various other properties (i.e., the Lxxxxxxx, Sxxxxxxx, Fxxxxx, Dxxxxx, Txxxxx, Gxxxxxxx, Rxxxx, and Kxxxxxxx Properties):
 - i. amending listing contracts to expire early without the consent of New Coast Realty;

- ii. photocopying the signature of the managing broker for each listing; and
- iii. failing to provide copies of the forms to New Coast Realty.

(See Liability Decision paras. 141, 142, and 144.)

C. STATUTORY AUTHORITY

7. RESA authorizes and mandates discipline penalties under section 43(1)(a), (2) and (2.1):

Discipline orders

43 (1) After a discipline hearing, the discipline committee must

- (a) act under this section if it determines that the licensee has committed professional misconduct or conduct unbecoming a licensee, or
- (b) in any other case, dismiss the matter.

(2) If subsection (1) (a) applies, the discipline committee must, by order, do one or more of the following:

- (a) reprimand the licensee;
- (b) suspend the licensee's licence for the period of time the committee considers appropriate or until specified conditions are fulfilled;
- (c) cancel the licensee's licence;
- (d) impose restrictions or conditions on the licensee's licence or vary any restrictions or conditions applicable to the licence;
- (e) require the licensee to cease or to carry out any specified activity related to the licensee's real estate business;
- (f) require the licensee to enrol in and complete a course of studies or training specified in the order;
- (g) prohibit the licensee from applying for a licence for a specified period of time or until specified conditions are fulfilled;
- (h) require the licensee to pay amounts in accordance with section 44 (1) and (2) [*recovery of enforcement expenses*];
 - (i) require the licensee to pay a discipline penalty in an amount of
 - (i) not more than \$500 000, in the case of a brokerage or former brokerage, or
 - (ii) not more than \$250 000, in any other case;

(j) require the licensee to pay an additional penalty up to the amount of the remuneration accepted by the licensee for the real estate services in respect of which the contravention occurred.

(2.1) A discipline penalty imposed under subsection (2) (i) may be imposed for each contravention.

8. RESA section 43(3) also allows an order to provide that in the event of a licensee's non-compliance, the Committee may suspend or cancel the licensee's licence.

9. RESA section 44(1) authorizes the Committee to require, by order, that a licensee "pay the expenses, or part of the expenses, incurred by the real estate council in relation to either or both of the investigation and the discipline hearing to which the order relates." Enforcement expenses are subject to maximum amounts set under section 4.2 of the *Real Estate Services Regulation*, B.C. Reg. 506/2004.

D. RELEVANT PRINCIPLES

10. The Council has published *Sanction Guidelines* (the "Guidelines") that set out the principles that Discipline Committees will generally follow when deciding on disciplinary penalties. The Guidelines do not fetter the discretion of any Discipline Committee, but serve to enhance transparency, consistency of approach, and fairness. The Committee has considered the principles set out in the Guidelines.

11. As set out in section 2.1.1 of the Guidelines, sanctions serve specific purposes, all of which have an overarching goal of protecting the public:

- a. denouncing misconduct, and the harms caused by misconduct;
- b. preventing future misconduct by rehabilitating specific respondents through corrective measures;
- c. preventing and discouraging future misconduct by specific respondents through punitive measures (i.e., specific deterrence);
- d. preventing and discouraging future misconduct by other licensees (i.e., general deterrence);
- e. educating respondents, licensees and the public about rules and standards; and
- f. maintaining public confidence in the real estate industry.

12. As set out in the Guidelines, the Committee may apply the following principles:

- a. use corrective sanctions where appropriate (section 2.2);
- b. consider proportionality (sections 2.3 and 2.4), meaning that the nature and severity of sanctions are proportional to the seriousness of the misconduct, resulting harms, the degree of responsibility or blameworthiness of the licensee, and the totality of the misconduct;

- c. account for progressive discipline (section 2.5), where a licensee's prior discipline record shows, for example, misconduct of an identical or similar nature;
- d. consider suspension and fine effectiveness in specific contexts (section 2.6);
- e. prevent profit from wrongdoing (section 2.7), e.g., to achieve a genuine deterrent effect; and
- f. consider if misconduct justifying a lengthy suspension justifies cancellation (section 2.8).

13. Also as set out in the Guidelines (section 3.1), the Committee may consider a variety of mitigating and aggravating factors, based on factors set out in such tribunal cases as *Law Society of British Columbia v. Ogilvie*, 1999 LSBC 17, and *Law Society of British Columbia v. Dent*, 2016 LSBC 05. Such factors may include the following:

- a. the respondent's age and experience;
- b. the respondent's discipline history;
- c. the nature and gravity of the misconduct, including
 - i. if the misconduct involved fraud, dishonesty or deception;
 - ii. the vulnerability of affected persons, or the general public, e.g., due to lower sophistication, or to a relationship of trust;
 - iii. if the misconduct involved the respondent engaging in misconduct knowing of, willfully blind to, or reckless of rules or standards, including where the respondent received warnings from the Council or others;
 - iv. if the respondent demonstrably and reasonably relied on competent advice (e.g., legal advice); and
 - v. the duration, number of instances, or any pattern of misconduct, e.g., isolated, or repeated, pervasive or systemic;
- d. if and to what extent the respondent obtained or attempted to obtain a financial benefit, or other advantage, from the misconduct;
- e. the extent of harm or consequences to clients, other persons, or the general public;
- f. if the respondent has, prior to or during investigation,
 - i. acknowledged and accepted responsibility for misconduct, or
 - ii. voluntarily taken measures to compensate or mitigate impacts on others, or to avoid recurrence of the misconduct;

- g. if the respondent concealed or attempted to conceal misconduct from, or mislead, affected persons, or other persons, including where the respondent has acted to frustrate, delay or undermine investigations by the Council;
- h. the impact that different forms of corrective, preventative or punitive sanctions might have on a respondent, and how those impacts might achieve specific purposes, e.g., by depriving a respondent of benefits of misconduct, by otherwise deterring a respondent from future misconduct, by deterring others from future misconduct, and maintaining public confidence in the profession and the disciplinary process;
- i. the impact of criminal or other sanctions or penalties, if any, relating to the same conduct; and
- j. the proportionality of sanctions, including parity with sanctions previously imposed for similar misconduct in similar circumstances.

E. SUBMISSIONS

14. While the Committee will summarize some key points, the Committee reviewed all submissions.

E.1 The Council's key submissions

15. The Council raised two key points. First, respecting shortcomings in documentation, Ms. Yang consistently deflected responsibility to other members of the Team, while also testifying that she completed, witnessed and signed relevant forms as the designated agent.

16. Second, Ms. Yang, who knew she would not be permitted to take listings to her new brokerage once she left New Coast Realty, forged her managing broker's signature on eleven documents to steal the listings and keep the commission. The Council submitted that the most aggravating factor in this case was that Ms. Yang "committed fraud, not once, but eleven times...." The Council also said Ms. Yang's actions were not the product of a single mistake or single transaction, but a series of deliberate actions; that her obtaining consent of clients to transfer files was of no consequence where their consent was not an informed consent, since she had not told them she forged Mr. Rxxxxxxx's signature; and Ms. Yang's dishonest conduct illustrated a lack of good character.

17. The Council suggested the Committee should cancel Ms. Yang's licence, order her to pay enforcement expenses of \$229,819.41, and prohibit her from applying for a licence for five years and until she paid enforcement expenses. The Council referred to several sanction cases as precedents.

18. With respect to enforcement costs, Council submitted evidence of expenses relating to its need to prepare for and conduct twelve days of hearing in October 2020, November 2020, and January 2021. Activities included extensive document production,

direct-examination and cross-examination of ten witnesses, a Chinese interpreter, a Punjabi interpreter, and lengthy submissions.

19. With respect to on enforcement expenses, the Council referred to reasons of the Discipline Committee in *Jacob Giesbrecht Siemens* (June 1, 2020), where that committee said as follows:

[61] The RESA uses the term “expenses” instead of the term “costs”. This choice of wording by the legislature, as well as the specifics of section 4.2 of the *Real Estate Services Regulation*, BC Reg 506/2004 (the “Regulation”), sets the RESA apart from “costs” systems used by courts.

[62] Enforcement expenses are a matter of discretion. A discipline committee will ordinarily order expenses against a licensee who has engaged in professional misconduct or conduct unbecoming a licensee. Orders for enforcement expenses serve to shift the expense of disciplinary proceedings from all licensees to wrongdoing licensees. They also serve to encourage consent agreements, deter frivolous defenses, and discourage steps that prolong investigations or hearings.

[63] The practice of discipline committees under the RESA has been to allow the Council to establish enforcement expenses through a schedule summarizing such expenses, subject to the Committee requesting that the Council provide further documentation, either at the request of the Respondent or as part of the Committee’s own discretion. The practice of discipline committees has also been to assess reasonableness of enforcement expenses by examining the total amounts in the context of the duration, nature, and complexity of the hearing and its issues. While a discipline committee may reduce any award of enforcement expenses to account for special circumstances, such as where the Council fails to prove one or more allegations corresponding to a significant and distinct part of a liability hearing, no such special circumstances arise in this case.

20. After ordering that Mr. Siemens pay enforcement expenses of \$26,000, the committee also observed as follows:

[67] The Committee recognizes that the enforcement expenses are a large sum compared to the monetary sanction. However, unlike monetary sanctions, which are based in part on the nature of the respondent’s misconduct, enforcement expenses are based on the resources the Council reasonably expends to address misconduct, including the expense of an investigation and the greater expenses arising from a discipline hearing.

21. On appeal (FST-RSA-20-A005(a)), the Financial Services Tribunal declined to interfere with the order for expenses in *Siemens*, as the outcome fell within a range of reasonable outcomes. The FST did however express that a more well-developed analysis of relevant factors (e.g., the total amount in the context of the duration, nature and complexity of the hearing) would have been helpful:

[131] In the present case, the Committee, while exercising its discretion to order the Appellant to pay enforcement expenses at less than full indemnity, did not provide any rationale for doing so. Further, the Committee recited the practice of discipline committees assessing the reasonableness of enforcement expenses by examining the total amounts in the context of duration, nature and complexity of the hearing and its issues but failed to set out its own assessment of those factors. While the Committee might well have undertaken this assessment, it did not expressly set out how it had determined the reasonableness of the enforcement expenses. In line with the expectations set out in *Vavilov*, it would have been helpful to both the Appellant and the FST for the Committee's exercise of its discretion to have been supported by a more well-developed analysis of the factors it set out as relevant to that exercise of discretion. This is particularly the case considering the short length of the hearing and the significant enforcement expenses incurred.

[132] The Committee stated that it considered the submissions of the parties and concluded that the expenses submitted by the RECBC reflected reasonably necessary expenses. Although perhaps less than ideal, I have determined that the absence of more fulsome reasons does not render the Committee's exercise of its discretion unreasonable. Considering the parameters of the legislation and regulations which anticipate full or partial indemnification and set maximum rates for enforcement expenses, and the exercise of the Committee's discretion in ordering less than full indemnification, the order, while large, is within a range of reasonable outcomes and sufficiently transparent and justified.

22. With respect to the reasonableness of enforcement expenses sought given the context of the duration, nature and complexity of the hearing, the Council submitted that the hearing was both lengthy and complex, involving six different complaint files, more than thirteen transactions, and that even with an Agreed Statement of Facts (ASOF), the evidence portion of the hearing taking place over two weeks, with ten witnesses. Council submitted that the ASOF did not simplify the hearing due to Ms. Yang's counsel engaging in extensive cross-examination of all witnesses. As stated by the Council, "While Ms. Yang has the right to proceed to a hearing to challenge Council's investigation and prosecution... Ms. Yang should not be allowed to operate with impunity of the costs consequences when she is unsuccessful. In keeping with the FST direction in *Siemens*, Council submits that the cost of prosecuting Ms. Yang at the hearing should not be borne by innocent members of the profession."

E.2 Ms. Yang's key submissions

23. Ms. Yang submitted, through legal counsel, that findings against Ms. Yang fall under two broad and distinct heads: first, her failure to act with reasonable care and skill, and to make proper disclosure of certain matters; and second, Ms. Yang forging

documents at the time she was departing from New Coast Realty in late January and early February of 2016.

24. Respecting her failures to make proper disclosure, Ms. Yang submitted that the Committee did not find that her failure to disclose in any instance was intended to conceal matters from her clients, or aimed at extracting money from them. As part of her addressing individual matters, Ms. Yang submitted as follows:

- a. No evidence established that naming all team members in listing and sale contracts was an express requirement under the Council's Rules or had been subject to alerts or notices sent to licensees by the Council, such that the failure to list all team members would have been a more serious matter.
- b. Similarly, no record shows New Coast Realty's managing broker or others responsible for reviewing contract documents ever communicating any concerns to Ms. Yang about her failing to list all team members in the contract documents. This indicated that the brokerage itself did not consider a failure to name all team members as a matter serious enough to require corrective steps.

Accordingly, the "gravamen" of Ms. Yang's misconduct in failing to name all team members was her not "adjusting as quickly as she should have" to a newly identified disclosure issue, and not a cavalier disregard of her professional responsibilities.

25. Respecting her forging the signature of the managing broker, Ms. Yang asserted she freely acknowledged that her actions were wrong, and has demonstrated sincere remorse. She submitted her actions were foolish and wrong, and an aberration in her professional history. She also submitted that her forging listing amendments and failing to provide disclosure or documents promptly at the time of her departure from New Coast Realty constituted "a cluster of related wrongful acts, carried out in rapid succession, as part of a clumsy attempt to retain the listings of her existing clients...." Accordingly, it would be incorrect to view her actions as involving eleven separate and unrelated acts of fraud.

26. Ms. Yang admitted her actions were seriously wrong, but added that she was being "strong-armed" by her employer to "bend to his will" in agreeing to highly onerous terms. She acted out of anger, and her effort was "quickly defeated" when New Coast Realty reversed the listing changes, took the listings back and reassigned them to other agents. Accordingly, Ms. Yang derived no financial benefit from the exercise. Additionally, she submitted that the forged amendment forms all involved clients that Ms. Yang or members of the Team had sourced, and that she made no effort to transfer listings resulting from "leads" provided by New Coast Realty.

27. Finally, Ms. Yang erred in verifying that her licence application had been processed before setting up a new listing with her new brokerage. Ms. Yang suggested that this was not an instance of misconduct deserving of serious sanction.

28. Ms. Yang referred to statements of sanction principles, and to the Sanction Guidelines. In applying these principles to the case, Ms. Yang submitted as follows:
- a. The matters of reasonable care and skill fall at the low end of the spectrum of “gravity” – the errors involved lack of diligence in a team setting without dishonesty or nefarious motives, she derived no financial gain, and her clients were not harmed or injured in any way.
 - b. The matters of her forging signatures on amendment forms occurred over a brief span of time, i.e., three days at the end of January 2016, and “ultimately” no person suffered any harm and she derived no financial benefit.

29. Ms. Yang noted no disciplinary history before or after period in which the events occurred. Specifically, she has had no discipline issues in the 5½ year period since the last of the incidents in this case. Accordingly, her misconduct was of an isolated nature and not a symptom of an underlying dishonest disposition or character.

30. With respect to precedents cited by the Council, Ms. Yang submitted that this case was not like *Behroyan* (2020), which involved deceptive dealing by a licensee aimed at extracting money from a client for himself. Ms. Yang did not abuse her clients’ trust or attempt to enrich herself at clients’ expense. Cancellation of Ms. Yang’s licence would be excessive and needlessly punitive.

31. With respect to enforcement expenses, Ms. Yang submitted that the Council’s overarching theory was that Ms. Yang engaged in a sustained scheme or pattern of dishonest practices aimed at taking advantage of her vulnerable clients, at their expense. The Council failed to make that claim out. Enforcement expenses are a “lawsuit in itself” which should be addressed separately and on its own, and not at the tail end of submissions on penalty.

E.3 The Council’s reply

32. Council replied that Ms. Yang has made bald assertions on evidence without referring to transcripts of the Liability Decision. Furthermore, the Committee’s findings in the Liability Decision were directed at breaches of the Act and the Rules, and not at possible aggravating circumstances that the Committee may now consider. Council submitted, in its overview of its reply, the following aggravating factors (with reference to provisions of the Sanction Guideline):

- a. “Ms. Yang’s significant experience in the industry and her significant experience relative to members of her team (s. 3.1.1(a));
- b. “the nature and gravity of Ms. Yang’s misconduct, including the fact that:
 - i. “her conduct was unethical, fraudulent, dishonest and deceptive (s. 3.1.1(c)(i));

- ii. “her conduct affected people who were vulnerable due to their language and health barriers (s. 3.1.1(c)(ii));
 - iii. “she engaged in misconduct while knowing or, wilfully blind to, or reckless of, rules, standards and risks to others (s. 3.1.1(c)(iii)),
 - iv. “she breached the RESA and Council’s Rules despite training about the same from her managing broker (i.e. by way of the policies or emails) (s. 3.1.1(c)(iii));
 - v. “she committed multiple acts of misconduct in 2016 (i.e. the duration and number of instances warrant serious sanction) (s. 3.1.1(c)(v)); and
 - vi. “the repetitious nature of her misconduct gives rise to an alarming pattern of behaviour (s. 3.1.1(c)(v));
- c. “Ms. Yang’s misconduct was motivated by her desire to maximize her commissions (i.e. financial gain) (s. 3.1.1(d)); and
 - d. “in addition to the harm caused to Ms. Yang’s clients (e.g. feelings of betrayal and broken trust), by committing conduct unbecoming a licensee, Ms. Yang’s misconduct undermines the public’s trust in real estate professionals, which amounts to harm to the general public (s. 3.1.1(e)).”

33. Council also submitted, among others, that Council did not submit that Ms. Yang had engaged in eleven separate and unrelated acts of fraud. Rather, she “put pen to paper eleven different times in respect of eleven different transactions. That means, eleven times she decided to forge Mr. Rxxxxxxx’s signature for personal gain.” Her conduct was not in the heat of the moment, but calculated and deliberate. The Council also noted that Ms. Yang represented to each of her clients that the brokerage manager had agreed to allow them to transfer the listings, such that she “lied to her clients to get their commission.” With respect to asserted lack of harm, Council noted her ignoring harm to the public, and to New Coast Realty, Metro Edge, the Real Estate Board of Greater Vancouver (REBGV) and anyone involved in the commission dispute.

34. With respect Ms. Yang comparing enforcement expenses in *Behroyan*, Council noted that *Behroyan* involved three days of hearing on liability in respect of a single transaction, a one-day hearing on sanctions, and a reconsideration hearing. Council submitted the enforcement expenses sought were reasonable and appropriate given a twelve-day hearing, that Ms. Yang sustained her denial of the facts giving rise to the allegations, and that the ASOF only set out facts relating to the transactions. Finally, Council’s practice has consistently been to determine enforcement expenses together with penalty, that Council prepared fulsome submissions on the issue of enforcement expenses, and that Ms. Yang was reasonably expected to do the same.

F. PENALTY DECISION

35. The Committee addressed Ms. Yang's conduct in terms of the two grouping of misconduct identified by both the Council and Ms. Yang:

- a. first, various breaches of the Rules, including failures to exercise reasonable care and skill (the "Contravening Conduct"); and
- b. second, her attempts to take listings when she left New Coast Realty, which included her using photocopies of the managing broker's signature and failing to provide transaction documents to New Coast Realty (the "Dishonest Conduct").

36. Although Ms. Yang failed, with respect to the Contravening Conduct, to comply with a variety of requirements under the Rules, the Committee's concerns focused on Ms. Yang's dishonesty in misusing photocopies of the managing broker's signature, and concealing this misuse from New Coast Realty through nondisclosure. The Committee recognized that the circumstances included the following aggravating and mitigating factors:

- a. The Respondent's five years of experience as a licensee before the conduct at issue was enough that the Committee could not conclude a lack of experience as a mitigating factor. To the contrary, she knew or ought to have known of her obligations.
- b. The Respondent does not have any history of complaints or contraventions, and she has not been subject to any complaints or alleged contraventions for more-than-five-year period after the latest conduct at issue in early 2016.
- c. With respect to the nature and gravity of the Contravening Conduct, while some of the Respondent's contraventions were less serious in nature, such as her failing to disclose the members of the Team – failures that New Coast Realty did not see fit to correct – Ms. Yang's contraventions constitute a pattern that make her collective practice contraventions somewhat more serious in nature.
- d. With respect to the nature and gravity of the Dishonest Conduct, the Committee is satisfied that the nature and gravity of her contraventions was serious in nature. However, the Committee viewed the seriousness of her misconduct as less serious than what the licensee did in the *Behroyan* (2020). The Respondent was not attempting to profit at the expense of any sellers. The Respondent did, however, still act dishonestly when she knowingly misrepresented the consent of New Coast Realty in order to retain multiple listings (and by extension, potential commissions) that legally belonged to New Coast Realty. And while the Respondent's misuse of the managing broker's signature occurred during a limited

window of time, the Committee cannot ignore that her conduct involved multiple misuses of that signature.

37. With respect to the Bxxxxxxx Property, the Committee agreed the Respondent did not have any reason to think that the sellers intended to relist their property. However, with respect to all the Contravening Conduct, including misconduct relating to the Bxxxxxxx Property, the Respondent failed to fulfil her responsibilities as a licensee. The Committee did not consider the busyness of her practice as a mitigating factor. Ms. Yang blamed others for matters that she was responsible for overseeing, and appeared to show a disregard for her responsibilities. One mitigating factor, however, was the lack of clear rules relating to how licensees must manage or supervise teams. The Committee also agreed with Respondent's counsel that the Respondent's conduct based on her mistaking when the Council would transfer her licence to Metro Edge did not deserve serious sanction.

38. With respect to the Dishonest Conduct, which was clearly the most serious misconduct, the Committee agrees that the Dishonest Conduct did not result in financial harm to sellers. The Committee also accepts that the Respondent only attempted to transfer listings that she or her team had sourced, and not listings resulting from leads provided by New Coast Realty. The Committee does not, however, agree with the Respondent's counsel that no person suffered any harm. To the contrary, the Respondent acted to secure financial benefit at the expense of New Coast Realty, even though her attempts were ultimately unsuccessful.

39. After considering all the circumstances, including the cases provided by the parties, the Committee ultimately concluded that the following sanctions are warranted by the Respondent's misconduct taken as a whole:

- a. a suspension of one (1) year;
- b. that she be prohibited from acting as an unlicensed assistant during the licence suspension period; and
- c. a requirement that the Respondent successfully complete the following courses during her period of suspension:
 - i. the Council's Real Estate Trading Services Remedial Education course;
 - ii. the Real Estate Institute's Ethics in Business Practice course (REIC2600).

The Committee concluded that these sanctions will adequately fulfil the purposes set out in section 2.1.1 of the Guidelines, including denouncing the misconduct, deterring of future misconduct by the Respondent, deterring similar misconduct by other licensees, and maintaining public confidence in the real estate industry.

40. The Committee did consider whether its sanctions should take the form of a fine, but noted a reference in the Sanction Guidelines to a principle articulated by a tribunal

of the Law Society of British Columbia that a suspension is more suitable to address serious misconduct than a fine (Guideline s. 2.6.2, citing *Law Society of British Columbia v. Ngyen*, 2016 LSBC 21 at para. 42).

G. ENFORCEMENT EXPENSES

G1. The purpose and discretionary nature of enforcement expenses

41. If a Discipline Committee determines that a licensee has committed professional misconduct or conduct unbecoming a licensee, it may order that the licensee “pay the expenses, or part of the expenses, incurred by the real estate council in relation to either or both of the investigation and the discipline hearing to which the order relates” (RESA section 44(1)), subject to maximum amounts prescribed by regulation (RESA section 44(2)).

42. In *Jacob Giesbrecht Siemens* (2020 CanLII 63581), a Discipline Committee set out a detailed analysis of the enforcement expense regime under the Act. No part of the reasoning of the Discipline Committee in *Siemens* was considered unreasonable by the Financial Services Tribunal on appeal (FST-RSA-20-A005(a)), apart from noting that the Discipline Committee in *Siemens* did not assess enforcement expenses in the context of the duration, nature or complexity of the hearing and its issues.

43. The FST noted in *Siemens* that the enforcement expenses were “more than five times the amount of the penalty awarded against him” (at para. 126). However, the FST also noted that the order was less than full indemnification, and although large, the order for enforcement expenses fell within a range of reasonable outcomes given that the legislation and regulations anticipate full or partial indemnification and set maximum rates for enforcement expenses (at para. 132).

44. This is not a case where the Committee has ordered a fine against the Respondent. However, even if it were, a comparison between the amount of enforcement expenses and the amount of any fine would only be relevant insofar as the comparison might reflect on whether the hearing time was somehow excessive given the matters at issue. But where the duration of a hearing was not excessive, then subject to the discretion of the Committee to reduce enforcement expenses due to divided success, the amount of enforcement expenses will not be unreasonable due simply to the expenses exceeding some multiple of an ultimate fine amount.

45. The Committee agrees with the analysis set out in *Siemens*, especially at paragraphs 61 to 63 as set out above. Orders for enforcement expenses are a matter of discretion, and serve many purposes, including shifting the expense of disciplinary proceedings from all licensees to wrongdoing licensees, encouraging consent agreements, deterring frivolous defences, and discouraging steps that prolong investigations or hearings. As also addressed in *Siemens*, the Committee has discretion to order expenses at less than full indemnity.

G2. When a Discipline Committee may address enforcement expenses

46. The Respondent's counsel suggested that the Committee address enforcement expenses on its own, meaning as a matter discrete from sanctions. The Committee advised, however, in the Liability Decision, that it would be addressing orders under section 43(2) of the Act *and* expenses under section 44(1) of the Act. The Council provided evidence of its expenses accordingly, and the Respondent did not seek to adjourn the matter of enforcement expenses. The Respondent did not specifically address any of the sums sought by the Council as enforcement expenses.

G3. Elements of enforcement expenses

47. A Discipline Committee considered the regime of enforcement expenses under the Act in some detail, in the matter of *Shahin Behroyan* (2020 CanLII 36926). Although as of this writing, that decision is under appeal to the FST, that decision refers to some notable features of the expense regime that are clear from the face of the legislation.

48. First, the Act uses the term "expenses" instead of the term "costs", which allows the Discipline Committee to deviate from the "costs" system of the Supreme Court of British Columbia.

49. Second, the power of a Discipline Committee under section 44(1) of the Act to order that a respondent pay "the expenses, or part of the expenses, incurred by the real estate council" authorizes a Discipline Committee to order a partial or full indemnity, subject to the regulations setting maximum amounts pursuant to section 44(2).

50. Third, section 4.2 of the *Real Estate Services Regulation*, BC Reg 506/2004 (the "Regulation") sets out maximums for specific types of expenses, which might be categorized by stage and by role in the process:

Council investigation expenses ("Investigation Expenses"):

- a. "investigation expenses" (Reg. 4.2(a)): maximum \$100/hour for each investigator;
- b. expenses for "an audit" during an investigation leading to a hearing (Reg. 4.2(b)): maximum \$150/hour (Council employee) or \$400/hour (any other case);
- c. legal counsel, or more precisely, "reasonably necessary legal services" (Reg. 4.2(c)): maximum \$150/hour (Council employee) or \$400/hour (any other case);
- d. disbursements relating to "legal services to the real estate council" (Reg. 4.2(d)): the actual amount of the disbursements;
- e. other reasonably-incurred expenses "arising out of... an investigation leading up to a hearing" (Reg. 4.2(i)): the actual amount incurred;

Council hearing expenses (“Prosecution Expenses”):

- f. legal counsel, or more precisely, “reasonably necessary legal services” (Reg. 4.2(c)): maximum \$150/hour (Council employees) or \$400/hour (any other case);
- g. disbursements relating to “legal services to the real estate council” (Reg. 4.2(d)): the actual amount of the disbursements;
- h. for witnesses attending at the request of the Council (Reg. 4.2(f), (g), and (h)): \$50/day or partial day (non-expert) or \$400/hour (expert), and reasonable travel and living expenses;
- i. other reasonably-incurred expenses “arising out of a hearing” (Reg. 4.2(i)): the actual amount incurred;

Discipline Committee hearing expenses (“Committee Expenses”):

- j. administrative expenses for each full or partial day of hearing (Reg. 4.2(e)): maximum \$1,000 (one member), \$1,500 (three members), or \$2,000 (four or more members);
- k. disbursements relating to “legal services to... the discipline committee” (Reg. 4.2(d)): the actual amount of the disbursements;
- l. for witnesses attending at the request of the Discipline Committee (Reg. 4.2(f), (g), and (h)): \$50/day or partial day (non-expert) or \$400/hour (expert), and reasonable travel and living expenses; and
- m. “other expenses, reasonably incurred, arising out of a hearing” (Reg. 4.2(i)): the actual amount incurred.

Section 4.2 notably contemplates specific expenses of a Discipline Committee, including “administrative expense” based on hearing days and the number of members; up to the actual disbursements for legal services to that Discipline Committee; and up to the actual amount incurred for “other expenses, reasonably incurred, arising out of a hearing”. The reference to “other expenses” would appear to capture any expense for decision-writing under Bylaw 3-8(3). However, the Committee need not decide this point definitively, or address the time it took to draft this decision, given its decision below to award a fixed amount that falls short of a full indemnity.

51. Fourth, although a Discipline Committee may address some types of enforcement expenses based on expenses actually incurred (such as external legal counsel fees, and legal-services-related disbursements), subject to limits under the Regulation, a Discipline Committee may also accept expenses based on a tariff or deemed rate. Proof of actual expenses may, with respect to some categories, require an impractical amount of evidence and hearing time. For example, proof of actual investigation expenses relating to a particular investigator would involve not only the investigator’s personal salary, but also the value of his or her personal benefits, and some proportion of overhead expenses of the Council, such as support staff and office

space, allocated to each investigator and further to each matter. A Discipline Committee has in practice accepted some expenses based on “tariff” rates up to the maximum amount in the Regulation, e.g.,

- a. investigation expenses (Reg. 4.2(a)) at a rate of \$100 per hour for each investigator;
- b. internal audit expenses (Reg. 4.2(b)(i)) at a rate of \$150 per hour for an auditor “regularly employed by the real estate council”;
- c. administrative expenses for each full or part day of hearing (Reg. 4.2(e)) at a rate of \$1,000, \$1,500, or \$2,000 for committees consisting of one, three, or four or more members, respectively;
- d. internal legal counsel fees for investigation or prosecution purposes (Reg. 4.2(c)(i)) at a rate of \$150 per hour for a lawyer “regularly employed by the real estate council”; and
- e. non-expert witness fees (Reg. 4.2(f)) of \$50 for each day or partial day.

52. Fifth, where a Discipline Committee has determined that a licensee has committed professional misconduct or conduct unbecoming a licensee, it will ordinarily order that the licensee pay enforcement expenses. A Discipline Committee may, however, order only partial indemnity for a variety of reasons. A Discipline Committee may also reduce its award of enforcement expenses to account for special circumstances, such as partial success by the Council, or said another way, the divided success of the parties. The Committee notes that the Act only provides for awards of enforcement costs to the Council and against a licensee, and not *vice versa*.

53. The Discipline Committee in *Behroyan* referred to *Ontario (College of Physicians and Surgeons of Ontario) V. Shamess*, 2019 ONCPSD 47, where a discipline committee considered the following factors when exercising discretion respecting costs:

- a. the nature of the misconduct,
- b. any settlement offer made in writing, and the date in terms of the offer,
- c. the member’s failure to acknowledge any error or to act reasonably unprofessionally to avoid a hearing,
- d. the relative success of the parties,
- e. the costs of the investigation and hearing,
- f. the nature of the member’s defence, and
- g. the impact of the cost order on the member’s ability to continue to practice.

These factors highlight the discretionary nature of enforcement expenses. With respect to item (b), however, neither the Regulation nor the Rules provide for consequences relating to the Council or a licensee failing to accept an offer of a consent order.

G4. Enforcement expenses in this case

54. This is a proper case for the discipline committee to order that the Respondent pay enforcement expenses.

55. Given the number of listings relevant to the Respondent's misconduct, the Committee accepts that the time spent by investigators during the investigation was reasonable. Similarly, given the number of issues at the hearing, the total time spent by legal counsel, and length of the hearing, was reasonable. No hearing time was wasted. Indeed, a Discipline Committee must generally recognize that the Council and its lawyers have latitude to decide how to investigate and prosecute a case, and will conclude only in exceptional cases that an investigation was excessive, or that any part of a hearing and its related expenses was unnecessary.

56. The Council claimed expenses for three external legal counsel. The Committee has no doubt that, for a hearing of this size and complexity, the total hours worked by three counsel to prepare the case was reasonable. Preparing for the case would have included negotiating and drafting the Agreed Statement of Facts, arranging and preparing witnesses, preparing chief-examination, preparing cross-examination, organizing documentary evidence, researching relevant precedents, and drafting various submissions. The fact of three counsel does not, by itself, indicate an unreasonable amount of work; legal counsel, especially external counsel, may be expected to delegate tasks to associates within their firm. The Discipline Committee was concerned, however, about the Respondent bearing the full expense in this case. While responsibility for enforcement expenses is not a sanction, and should be borne at least in part by a wrongdoing licensee, the Discipline Committee had concerns about the member's ability to carry on practice after her suspension, should she be ordered to pay expenses on a full-indemnity basis. Additionally, the evidence is unclear as to what extent the Council's pre-hearing expenses related to allegations that the Council dropped at the time of hearing. On the basis that pre-hearing expenses would have addressed such matters to some degree, the Discipline Committee also reduced recoverable expenses on the basis of divided success. Finally, the Committee also considered its conclusions that some of the Respondent's misconduct was less serious in nature, and that the Respondent did not engage in any behaviour deserving of rebuke during the investigation or the hearing process.

57. In all the circumstances, the Committee decided to exercise discretion to order enforcement costs of \$150,000. This order amounts to about 65 percent of total enforcement costs claimed by the Council. The Committee decided that this amount achieves the goal of shifting an appropriate portion of enforcement expenses to the Respondent. This order does not impugn the jurisdiction of any Discipline Committee to order enforcement costs on a full-indemnity basis in appropriate cases, e.g., where a licensee might have engaged in objectionable conduct during an investigation or a hearing, or where the amount of the enforcement costs or the cancellation of licence alleviates any concerns about the licensee's ability to resume practice.

H. DISCIPLINE ORDER

58. The Committee orders as follows:

- a. Ms. Wei Qing (Wendy) Yang be suspended for one (1) year.
- b. Ms. Wei Qing (Wendy) Yang be prohibited from acting as an unlicensed assistant during the licence suspension period.
- c. Ms. Wei Qing (Wendy) Yang, at her own expense, register for and successfully complete the Council's Real Estate Trading Services Remedial Education Course, and the Real Estate Institute's Ethics in Business Practice course, within one (1) year from the date of this decision.
- d. Ms. Wei Qing (Wendy) Yang pay enforcement expenses to Council in the amount of \$150,000 within one (1) year from the date of this decision.
- e. If Ms. Wei Qing (Wendy) Yang fails to comply with any of the terms of the decision as set out above, the Council may suspend or cancel their licence without further notice pursuant to section 43(3) and 43(4) of the RESA.

I. RIGHT OF APPEAL

59. The Respondent has a right to appeal to the Financial Services Tribunal under RESA section 54(1)(d). The Respondent will have 30 days from the date of this sanction decision: see *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Dated at VANCOUVER, BRITISH COLUMBIA this 29th day of July 2021.

FOR THE DISCIPLINE HEARING COMMITTEE

“SANDRA HEATH”

S. Heath
Discipline Hearing Committee
Chairperson

“MAGGIE CHAN”

M. Chan
Discipline Hearing Committee Member

“YASIN AMLANI”

Y. Amlani
Discipline Hearing Committee Member