

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

AND

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

REASONS FOR DECISION REGARDING LIABILITY

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

A. INTRODUCTION

1. The hearing was conducted before a Discipline Hearing Committee (the “Committee”) of the Real Estate Council of British Columbia (the “Council”) pursuant to section 42 of the *Real Estate Services Act*, R.S.C. 2004, c. 42 (“*RESA*” or the “Act”) to consider whether Kevindeep Singh Bratch (“Mr. Bratch”) or Bratch Realty Ltd. (the “Brokerage”) (collectively the “Respondents”)

- (a) committed professional misconduct within the meaning of s. 35(1) or (3) of the Act, or
- (b) committed conduct unbecoming a licensee within the meaning of s. 35(2) or (3) of the Act.

2. As Mr. Bratch was at all material times the sole officer and director of the Brokerage, which is a corporation, his committing professional misconduct or conduct unbecoming a licensee may also amount to the Brokerage also committing professional misconduct or conduct unbecoming a licensee pursuant to pursuant to s. 35(3) of the Act.

3. This matter relates to Mr. Bratch, a licensee, who approached allegedly financially vulnerable individuals, all facing foreclosure on their homes, and presenting them with a rent-to-own scheme (the “RTO Scheme”) which he completed through the Brokerage.

4. Under the RTO Scheme, Mr. Bratch and his wife, or a company controlled by his wife (the “Buyers”), would buy homes from individuals (collectively the “Owners”) at prices substantially below the homes’ assessed values; rent the homes back to the Owners at higher-than-market rental rates pursuant to tenancy agreements; and provide the Owners with an option to buy their homes back within a set time and at a set price, pursuant to option agreements. If the Owners failed to buy back their homes, or if they defaulted in any way under their tenancy agreements, the options would end, all monies paid by the Owners would remain with the Buyers, and the Buyers would keep the homes.

5. While the RTO Scheme is not illegal, the Council alleges the RTO Scheme was disadvantageous to the Owners, and in some cases, the Owners did not receive independent legal advice or separate agency representation, and either believed that Mr. Bratch was acting on their behalf, or were at least confused as to his role in the transaction. The Council alleges professional misconduct and/or conduct unbecoming a licensee.

6. The Council also alleges other breaches of Rules, relating to:

- (a) Mr. Bratch failing to make proper disclosure of an interest in trade on the Properties, namely that the Buyers were him and his wife, his wife, or a company controlled by his wife; and
- (b) Mr. Bratch and the Brokerage making false and misleading statements when they indicated on a Brokerage Activity Report that the Brokerage only completed four deals within a specific time period, when it completed ten deals.

7. The hearing addressed the RTO Scheme in the context of three properties:

- (a) a property on RXXXXX Avenue in Maple Ridge, B.C. (the “RXXXXX Property”);
- (b) a property on SXXXXXXXXXX Place in Pitt Meadows, B.C. (the “SXXXXXXXXXX Property”); and
- (c) a property on LXXXXXX Road in Richmond, B.C. (the “LXXXXXX Property”)

(collectively, the “Properties”).

B. ORDER IN URGENT CIRCUMSTANCES

8. On November 14, 2017, the Discipline Committee suspended the licenses of Mr. Bratch and the Brokerage, pending completion of an investigation and a discipline hearing, pursuant to section 45(1) of the Act.

C. ISSUES

9. The issues before the Committee are set out in an Amended Notice of Discipline Hearing dated October 26, 2020 (the “Notice”). The issues may be divided into two groups:

- (a) Professional misconduct or conduct unbecoming issues relating to the RTO Scheme (paragraphs 1 and 5), and
- (b) professional misconduct issues relating to contraventions of specific Real Estate Rules (paragraphs 2, 3 and 4).

1. Professional misconduct and/or conduct unbecoming

10. The professional misconduct and/or conduct unbecoming allegations are as follows (with boldface emphasis added):

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

- a. [the RXXXXXX Property];
- b. [the SXXXXXXXXXX Property]; and
- c. [the LXXXXXX Property]

(together, the “Properties”), **you**,

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

- g. **knew or ought to have known that the owners relied on your advice and self identification as a realtor** with expertise in foreclosure matters when entering into the contracts related to the Properties

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

...

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

11. With respect to Notice paragraphs 1 and 5, section 35(1) of the Act defines “professional misconduct” as conduct where a licensee

- (a) **contravenes this Act, the regulations or the rules;**

...

- (g) **makes or allows to be made any false or misleading statement in a document** that is required or authorized to be produced or submitted **under this Act.** (emphasis added)

Pursuant to section 35(1)(d), “professional misconduct” includes where a licensee “demonstrates incompetence in performing any activity for which a licence is required”. Incompetence may, however, overlap with a contravention of Rule 3-4, which requires that a licensee providing real estate services act “honestly and with reasonable care and skill”.

12. Section 35(2) of the Act defines “conduct unbecoming a licensee” as conduct “that, in the judgment of a discipline committee,

- “(a) is contrary to the best interests of the public,

- “(b) undermines public confidence in the real estate industry, or

- “(c) brings the real estate industry into disrepute.” (emphasis added)

Conduct need only satisfy one or more of the conditions to be conduct unbecoming a licensee.

13. Under section 35(3) of the Act, a brokerage may commit professional misconduct or conduct unbecoming a licensee based on the conduct of a partner, officer, director, or controlling shareholder:

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

2. Other Professional misconduct

14. The other professional misconduct allegations relating to each of the Properties are as follows (with boldface emphasis added):

- 2. **You committed professional misconduct** within the meaning of section **35(1)(a)** of the RESA, while acting as the managing broker of the Brokerage, in or about the time period of July 2015 to December 2017, **when purchasing the**

Properties from the owners, you failed to make proper disclosure of an interest in trade on the Properties as follows:

- a. regarding the RXXXXX Property, you did not indicate on the Disclosure of Interest Form that XXX BC, a company of which your wife was a director, was acquiring the property;
- b. regarding the SXXXXXXXXXX Property you failed to complete and provide a Disclosure of Interest Form indicating you and your wife were acquiring the property; and
- c. regarding the LXXXXXX Property, you failed to indicate on the Disclosure of Interest Form that your wife, Ms. TXXXXX, was acquiring the property

in contravention of Rule 5-9(1) [*Disclosure of Interest in Trade*], **Rule 3-1(1)** [*business of brokerage carried out competently*] and **Rule 3-4** [*reasonable care and skill*].

15. The “professional misconduct” allegations relating to a Brokerage Activity Report are as follows (with boldface emphasis added):

3. You committed professional misconduct within the meaning of section **35(1)(a)** and **35(1)(g)** of the RESA, as the managing broker of the Brokerage, in that you

- a. **made a false or misleading statement in the Brokerage Activity Report** dated March 23, 2017, for the time period ending November 30, 2016, **by indicating that the Brokerage completed four deals**, but the Brokerage records indicate that it actually completed ten deals in the relevant time period

in contravention of **Rule 3-1(1)** [*business of brokerage carried out competently*], **Rule 3-1(3)** [*ensure trust accounts and records of the brokerage are maintained in accordance with the Act, Regulations, Rules and Bylaws*], and **Rule 3-4** [*act honestly, with reasonable care and skill*].

4. The Brokerage committed professional misconduct within the meaning of section **35(1)(a)** and **35(1)(g)** of the RESA in that the Brokerage

- a. **made a false or misleading statement in the Brokerage Activity Report** dated March 23, 2017, for the time period ending November 30, 2016, **by indicating that the Brokerage completed four deals**, but the Brokerage records indicate that it actually completed ten deals in the relevant time period

in contravention of **Rule 7-7(1)(c)** [*requirement to file Brokerage Activity Report with the Council in accordance with the bylaws*] and **Rule 3-4** [*act honestly, with reasonable care and skill*]. (emphasis added)

16. The Real Estate Rules (the “Rules”) require, in summary,

- (a) that managing brokers carry out the business of the brokerage competently in accordance with the Rules and the Bylaws (Rule 3-1(1)(b)), and ensure records are maintained in accordance with the Rules and the Bylaws (Rule 3-1(3)(a));

- (b) that licensees act honestly and with reasonable care and skill (Rule 3-4);
- (c) that licensees disclose they or “associates” are directly or indirectly acquiring real estate (Rule 5-9); and
- (d) that brokerages file brokerage activity reports, completed in accordance with the bylaws (Rule 7-7(1)(c)).

For ease of reference, the relevant Rules provide as follows:

Managing broker responsibilities

3-1 (1) *Supervision* – A managing broker must

- (a) be actively engaged in the management of their related brokerage,
- (b) **ensure that the business of the brokerage is carried out competently and in accordance with the Act, regulations, rules and bylaws,** and
- (c) ensure that there is an adequate level of supervision for related associate brokers and representatives and for employees and others who perform duties on behalf of the brokerage. (emphasis added)

(3) *Accounts and records* – A managing broker must

- (a) **ensure** the trust accounts and **records** of the brokerage **are maintained in accordance with** the Act, regulations, **rules and bylaws,** and
- (b) ensure proper management and control of documents and other records related to licensing and regulatory requirements.

...

Duty to act honestly and with reasonable care and skill

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

...

Disclosure of interest in trade

5-9 (1) If, under a trade in real estate,

- (a) **a licensee is to** directly or indirectly **acquire real estate,** or
- (b) **an associate** of a licensee **is to** directly or indirectly **acquire real estate** and the licensee is providing real estate services to the associate,

the licensee must make a disclosure in accordance with this section to the owner of the real estate.

(2) As an example of indirect acquisition, subsection (1) applies if a licensee or associate intends to acquire real estate currently owned by another person through acquisition by a third party who is subsequently to dispose of the real estate to the licensee or associate.

... (4) **Disclosure under this section must**

(a) **be made** promptly, but in any case **before any agreement for the acquisition** or disposition is entered into, and

(b) **be in a form approved by the council.**

(5) **The disclosure must contain** the following information:

(a) the name of the person to whom disclosure is being made;

[...]

(c) an indication that the licensee is licensed under the *Real Estate Services Act* and, as applicable, that the licensee or an associate of the licensee to whom the licensee is providing trading services is acquiring or disposing of the real estate;

(d) in the case of an acquisition or disposition by an associate of the licensee, **the name of the associate and a description of the licensee's relationship** with the associate;

.... [(e), (f) and (g) omitted]

[Note: Rule 5-7 defines an "associate" for purposes of Part 5, Division 2 as including a spouse or family partner of an individual licensee, and a corporation in respect of which the licensee, or a spouse or family partner of the licensee, holds not less than 5% of its capital or is entitled to receive not less than 5% of its profits.]

Annual financial statements, accountant's report and brokerage activity report

7-7 (1) A brokerage must, within 120 days after the end of each fiscal year of the brokerage, file with the council

(a) financial statements for that fiscal year,

(b) an accountant's report respecting that fiscal year, completed in accordance with the bylaws, and

(c) **a brokerage activity report** respecting that fiscal year, completed **in accordance with the bylaws.** (emphasis added)

17. Various Rules require compliance with Bylaws. Bylaw section 4-10 requires the filing of an annual brokerage activity report that includes, pursuant to Bylaw s. 4-10(2)(f), "the approximate number of transactions of each type of business as described in paragraphs (e)(i) to (v)" [including "(i) residential sales"] "that the brokerage has been involved with during the fiscal year...."

D. PROCEDURAL ISSUES

18. Mr. Bratch was self-represented. At the outset of the hearing, the Committee confirmed with Mr. Bratch that he had an opportunity to obtain legal advice and legal counsel.

19. Outside of the hearing, one member of the Committee viewed public information on the Internet related to matters before the Committee, specifically Mr. Bratch's Twitter feed, and the homepage of a website through a link on that Twitter feed. The Committee brought this to the attention of the parties. On December 2, 2020, the Committee advised the parties of this event, and that this information would not influence the Committee's decision, which would be based on the evidence put before the Committee at the hearing. The parties took no issue with this

occurrence, given the Committee's assurance the information viewed by the one Committee member would not form part of the Committee's decision-making.

E. BURDEN OF PROOF AND EVIDENCE

1. The burden and standard of proof

20. Under section 43 of the *Act*, the Committee may determine that either or both Respondents committed professional misconduct or conduct unbecoming a licensee, or dismiss the matter.

21. The burden of proof is on the Council to demonstrate that a Respondent has committed professional misconduct or conduct unbecoming a licensee. The standard of proof is, as in every civil case, the balance of probabilities. The balance of probabilities means that the Committee must be satisfied, based on the evidence that is sufficiently clear, convincing and cogent, that the occurrence of an event was more likely than not: *F.H. v. McDougall*, 2008 SCC 53 esp. at paras. 40 and 46.

2. The evidence that the Committee may accept

22. As an administrative tribunal, the Committee is not bound by court rules of evidence, in the absence of any statutory provision to the contrary, and it may consider evidence it considers relevant: *Wilson v. Esquimalt and Nanaimo Railway Company Co.*, [1922] 1 A.C. 202 (P.C.) [B.C.]; *Kane v. The Board of Governors (University of British Columbia)*, [1980] 1 S.C.R. 1105; *Hale v. B.C. (Superintendent of Motor Vehicles)*, 2004 BCSC 1358 at para. 23. The Committee may, however, draw upon principles underlying court rules of evidence to exclude or assess evidence.

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

F. FINDINGS OF FACT

1. The evidence before the Committee

24. The Council provided a Book of Documents (Exhibit 1, Volumes 1 and 2) consisting of documents relating to

- (a) each of the three Properties;
- (b) the order in urgent circumstances;
- (c) miscellaneous documents, such as the Brokerage Activity Report at issue in Notice paragraphs 3 and 4;
- (d) interview transcripts of
 - (i) Mr. Bratch,
 - (ii) Mr. JXXXXXX DXXXX BXXXXX ("Mr. BXXXXX"), then the common law spouse of Ms. KXXXXX DXXXXXX ("Ms. DXXXXXX") and the son of Mr. FXXX DXXXX BXXXXX ("Mr. BXXXXX Sr."), the latter two being the legal

owners of the SXXXXXXXXXX Property (but with Mr. BXXXXX and Ms. DXXXXX being its beneficial owners, or the “SXXXXXXXXXX Owners”);

(iii) Mr. CXXXXXXXX MXXXX (“Mr. MXXXX”), the named executor of his mother’s estate which owned the LXXXXX Property (collectively the “LXXXXX Owners”); and

(e) an agreed statement of facts (“Agreed Facts”).

25. The Council called three witnesses:

(a) Mr. RXXXXX DXXXXX (DXX) HXXXXX, senior investigator with the Council, respecting the Council’s investigative file, including documents and evidence relating to the RXXXXX Property and the SXXXXXXXXXX Property;

(b) Mr. MXXXX; and

(c) Ms. MXXXXXXXX CXXX, senior auditor with the Council, respecting her collecting the deal files, and the Brokerage’s records and the Brokerage Activity Report.

26. Mr. Bratch tendered some documents, consisting of two emails, and their attachments, relating to the LXXXXX Property. Mr. Bratch sent one email with attachments, dated August 9, 2017, to a notary public. The notary public responded by recommending that Mr. Bratch consult a lawyer. Mr. Bratch sent a later email with attachments, dated August 9, 2017, to a law firm. Mr. Bratch provided a printout of the “contact” page of that law firm, CXXXXXXXX FXXX MXX & RXXX LLP. The Committee received these documents as Exhibit 2.

27. Mr. Bratch called two witnesses:

(a) himself, and

(b) Mr. BXXXXX.

28. Council investigators were not able to obtain statements from BXXXXX and GXXXXX GXXXXX, the owners of the RXXXXX Property (the “RXXXXX Owners”). The Council relied on documentary evidence relating to the RXXXXX Property, as authenticated by a Council investigator, Mr. HXXXXX.

2. Factual determinations

29. **Overview:** Most of the facts relating to the Properties and the RTO Scheme are not in dispute. Furthermore, the legality of Mr. Bratch’s conduct, apart from the standards and rules applied by the Council to licensees, is not at issue. As the Council noted in its earlier submissions, the issue is “whether Mr. Bratch, in all his conduct with these individuals, upheld the professional standards expected of him as a real estate professional.”

30. At the outset, the Council quoted the following recommendation from the Report of the Independent Advisory Group on Conduct and Practices in the Real Estate Industry in British Columbia (June 2016) (the “IAP Report”) at page 43:

The Real Estate Council increase its proactive detection and deterrence efforts for licensees who engage in, aid, or abet aggressive marketing and sales practices that targets vulnerable members of the public.

31. As part of that recommendation, the IAP Report noted as follows (IAP Report at page 43):

The public has a heightened distaste for any misconduct that targets vulnerable British Columbians, for example, new immigrants, seniors, less sophisticated real estate market participants, and unrepresented individuals.

In a market environment where licensees are aggressively soliciting listings and transactions are completed in a matter of days, sellers do not have the benefit of a 'cooling off period' for sober reflection. Licensees focused on sales volumes may add to a sense of urgency and impulsive seller behaviour.

In this environment the Real Estate Council must focus additional resources, including timely consumer alerts, on preventing and disciplining aggressive and predatory marketing practices that target vulnerable individuals.

32. Given that matters involve three separate properties, involving an RTO Scheme with several components, the Council's key grounds for alleging wrongdoing were summarized by the Council in its closing submissions:

11. The Council submits and the evidence shows, that **Mr. Bratch's conduct constitutes conduct unbecoming due to the following factors:**

- a. the individuals were financially vulnerable;
- b. they were desperate to keep their family homes;
- c. they were facing imminent loss of their homes to foreclosure;
- d. the terms of the RTO Program were disadvantageous to the individuals in numerous respects;
- e. the individuals believed Mr. Bratch was acting on their behalf, or at the very least they were confused as to his role in the transaction;
- f. the individuals did not receive independent legal advice or separate agency representation from any other real estate licensee; and
- g. Mr. Bratch, Ms. TXXXXX and/or XXX BC stood to profit from the RTO Program and the homeowners took on the majority of the risk.

12. The Council's primary mandate is protection of the public. The type of **conduct that Mr. Bratch engaged in puts consumers at risk**, specifically those who are less sophisticated real estate market participants. His 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.

13. The evidence shows that Mr. Bratch's conduct also amounts to professional misconduct for **his failure to take reasonable care and skill in each of his dealings with these homeowners**. Mr. Bratch claims that he was not representing any of the homeowners as his own clients and therefore did not owe them any duty of care. The evidence will show that Mr. Bratch's relationships with these individuals changed over time and thus left the homeowners confused as to whether Mr. Bratch was really

looking out for them or not. **Regardless of whether these individuals were not Mr. Bratch's clients, the evidence shows that he nonetheless failed to take the reasonable care and skill expected of a real estate licensee, in his dealings with each of them.** (emphasis added)

33. As set out above, the Council also alleges professional misconduct
- (a) for Mr. Bratch failing to make proper disclosure of his interests in trade regarding the Properties; and
 - (b) for Mr. Bratch and the Brokerage making false or misleading statements in the Brokerage Activity Report dated March 23, 2017.
34. The Committee has determined facts in accordance with the evidence set out below. Where the Committee has described a factual dispute, the Committee has determined facts in accordance with its conclusions set out below.
35. **The Respondents:** Mr. Bratch was licensed as a trading representative between 2006 and October 30, 2017, and was managing broker for the Brokerage from September 12, 2011 to October 30, 2017.
36. The Brokerage was first licenced in 2011 and provided trading, rental, and strata property management services. At all material times, Mr. Bratch was the sole officer and director of the Brokerage.
37. At all material times, the Brokerage website stated Mr. Bratch was an accredited mortgage broker, in addition to a licensed realtor and managing broker.
38. Mr. Bratch was registered as a sub-broker with the Financial Institutions Commission from July 7, 2016 to July 6, 2018, and listed with Bratch Mortgage Corporation, which was listed as a mortgage broker. Bratch Mortgage Corporation is a corporation incorporated on May 11, 2016. Mr. Bratch is the sole owner and director of Bratch Mortgage Corporation.
39. **Other persons:** At all material times, Mr. Bratch was married to Ms. MXXXXXX TXXXXX . Ms. TXXXXX was therefore an "associate" of Mr. Bratch within the meaning of Rule 5-7, for purposes of Part 5, Division 2 of the Rules.
40. At all material times, Ms. TXXXXX was the sole director of a numbered company, XXXXXX B.C. Ltd. As Mr. Bratch testified, XXX BC was his wife's company. The Discipline Committee infers that at all material times, Ms. TXXXXX was at least a substantial shareholder, if not the sole shareholder, of XXX BC. XXX BC was therefore an "associate" of Mr. Bratch within the meaning of Rule 5-7, for purposes of Part 5, Division 2 of the Rules.
41. **The RXXXXX Property:** In or about April 2016, the RXXXXX Owners owned the RXXXXX Property as their family home. Their bank was foreclosing on the RXXXXX Property.
42. As of July 1, 2016, the RXXXXX Property was assessed by B.C. Assessment with a total value of \$603,000. Save and except the RXXXXX Brochure as hereinafter defined, Mr. Bratch did not present any evidence that the RXXXXX Property had a substantially different market value.
43. In or about April 2016, and as admitted during cross-examination, Mr. Bratch initially acted as a mortgage broker for the RXXXXX Owners, by trying to find them re-financing.

44. According to Mr. Bratch, the RXXXXX Owners and Mr. Bratch then spoke about a rent-to-own scenario. In or about April 2016, Mr. Bratch provided the RXXXXX Owners with a Rent to Own Program Brochure, entitled "Rent to Own Program (1 Year Program)" (the "RXXXXX Brochure"):

- (a) The RXXXXX Brochure referred to a "program" involving a "lease providing you with the option to buy the home.";
- (b) The RXXXXX Brochure listed the "Current Value" of the RXXXXX Property as \$400,000;
- (c) The RXXXXX Brochure listed a \$30,000 "Upfront payment" and three options for "monthly rent" options of \$2,200, \$2,300 and \$2,500 per month; and
- (d) The RXXXXX Brochure listed, "Six reasons rent to own works for you".

45. *The RXXXXX Sale Agreement:* On April 26, 2016, the RXXXXX Owners entered an agreement (the "RXXXXX Sale Agreement") to sell the RXXXXX Property to XXX BC for \$370,000.

46. The purchase was at approximately \$233,000 under assessed value.

47. As documented in the RXXXXX Sale Agreement, Mr. Bratch acted as agent for XXX BC, and the RXXXXX Owners were not represented. However, on April 26, 2016, the RXXXXX Owners and Mr. Bratch signed a Working with a Realtor (Designated Agency) Form acknowledging a "customer relationship" between the RXXXXX Owners and Mr. Bratch. The Disclosure of Remuneration form also lists the RXXXXX Owners, instead of XXX BC, under "Part A: Client Information".

48. On a Disclosure of Interest in Trade form dated April 26, 2016, Mr. Bratch did not indicate XXX BC as an "associate", or his relationship with XXX BC, although he did indicate he was providing real estate services to Ms. TXXXXX as an "associate", whom he described as his wife.

49. The sale was conditional on the RXXXXX Owners entering into a tenancy agreement with XXX BC on or before May 7, 2016.

50. *The RXXXXX Tenancy Agreement:* The RXXXXX Owners entered into a tenancy agreement dated May 7, 2016 (the "RXXXXX Tenancy Agreement"), where they agreed to rent the RXXXXX Property for \$2,500 per month for one year, from June 1, 2016 to May 31, 2017.

51. *The RXXXXX Option Agreement:* On May 6, 2016, the RXXXXX Owners entered into an option agreement with XXX BC dated May 6, 2016 (the "RXXXXX Option Agreement"):

- (a) *Forfeiture of option, through any default of lease terms:* The RXXXXX Option Agreement provided to the RXXXXX Owners the right to purchase the RXXXXX Property, "provided that the Tenants live up to all other terms of their lease agreements with Owner/Manager. A default by Tenants of the lease agreement at any point during this term will result in automatic revocation of this option."
- (b) *Forfeiture of option, if recorded:* The RXXXXX Option Agreement provided, "The recording of this option or any memorandum thereof will result in the automatic revocation of this option, and all monies paid to Owner by Tenants shall be retained by Owner as liquidated damages" (the RXXXXX No Recording Clause").
- (c) *Forfeiture of \$30,000 fee, if option not exercised:* The RXXXXX Option Agreement provided for a \$30,000 fee for the option as follows: "The Tenants, [the RXXXXX Owners], have paid \$30,000 in nonrefundable option consideration. If the Tenants exercise this option, then this amount will be applied towards the

purchase of the Property. In the event that the Tenants do not exercise this option, all monies paid will remain with the Owner as nonrefundable option consideration” (the “RXXXXX Property Deposit”).

- (d) *Forfeiture of rental credits, if option not exercised:* The RXXXXX Option Agreement provided that for each month of rent the RXXXXX Owners paid under the RXXXXX Tenancy Agreement, they would earn a credit of \$500 towards the purchase of the RXXXXX Property, but that “In the event that Tenants are unable or unwilling to exercise this option, Tenants understand and agree that such monthly credits are not refundable and shall be considered as having been paid as additional nonrefundable option consideration.”

52. No party registered the RXXXXX Option Agreement against title to the RXXXXX Property. The clause that effectively prevented the RXXXXX Owners from recording their option was disadvantageous, as no third-party buyer would have notice of any option. If the purchaser sold the property to a third-party buyer, the RXXXXX Owners would have no recourse for recovering the property.

53. The \$30,000 option consideration corresponds to the difference between the purchase price of \$370,000, and the value of the RXXXXX Property (for purposes of the RTO Scheme) at \$400,000.

54. *Advice to the RXXXXX Owners about them obtaining legal advice:* Mr. Bratch agreed during cross-examination that the RXXXXX Sale Agreement did not contain any clause respecting legal advice.

55. Mr. Bratch stated in an interview, and he also testified, that he advised the RXXXXX Owners to obtain legal advice verbally, but agreed that he did not advise them in writing. Unfortunately, the RXXXXX Owners did not testify at the hearing as to whether Mr. Bratch did advise them verbally that they should obtain independent advice. The Committee does not accept that Mr. Bratch advised the RXXXXX Owners to obtain legal advice before they executed the various agreements.

56. Mr. Bratch asserted during his testimony that the RXXXXX Owners would have obtained independent legal advice when they went to a conveyancing lawyer. However, the conveyancing document was executed by a notary public, not a lawyer. In addition, independent legal advice should have been suggested to the RXXXXX Owners prior to them executing the various agreements, and not at the time of conveyance.

57. *Events after the sale under the RTO Scheme:* On June 7, 2016, the RXXXXX Owners transferred title to the RXXXXX Property to 102 BC.

58. On August 29, 2016, XXX BC transferred title to the RXXXXX Property to Mr. Bratch and Ms. TXXXXX.

59. On December 17, 2016, Mr. Bratch served the RXXXXX Owners with a 10-day notice to end tenancy for unpaid rent for December 1, 2016.

60. On April 21, 2017, the Residential Tenancy Branch granted full possession of the RXXXXX Property to Ms. TXXXXX, ending the RXXXXX Tenancy Agreement.

61. On April 27, 2017, the RXXXXX Owners filed a Notice of Civil Claim against Mr. Bratch, Ms. TXXXXX and XXX BC for, among other things, specific performance of the RXXXXX Option

Agreement, and the setting aside of the transfer of the RXXXXX Property from XXX BC to Mr. Bratch and Ms. TXXXXX as a fraudulent conveyance.

62. In October 2017, the RXXXXX Owners were evicted from the RXXXXX Property.

63. The RXXXXX Owners entered into a settlement agreement with Mr. Bratch, Ms. TXXXXX and XXX BC (the "RXXXXX Settlement"). On December 14, 2017, pursuant to the RXXXXX Settlement, Mr. Bratch and Ms. TXXXXX sold the RXXXXX Property back to the RXXXXX Owners for \$375,000.

64. On January 31, 2018, the RXXXXX Owners sold the RXXXXX Property to a buyer for \$685,000.

65. **The SXXXXXXXXXXXXX Property:** In or about February 2016, the SXXXXXXXXXXXXX Owners resided in the SXXXXXXXXXXXXX Property as a family home. The SXXXXXXXXXXXXX Owners were facing financial difficulties, and due to default on their mortgage on the SXXXXXXXXXXXXX Property, a bank had obtained an Order Nisi. Mr. BXXXXX testified that he was unemployed at the time, but was formerly a compliance officer for a regulatory authority, the B.C. Securities Commission.

66. As of July 1, 2016, the SXXXXXXXXXXXXX Property was assessed by B.C. Assessment with a total value of \$869,000. Save and except for the SXXXXXXXXXXXXX Brochure as hereinafter defined, Mr. Bratch did not present any evidence that the SXXXXXXXXXXXXX Property had a market value that was substantially different.

67. Sometime between March and July 2016, the SXXXXXXXXXXXXX Owners received an unsolicited advertisement in the mail outlining Mr. Bratch's specialization in foreclosure matters.

68. Mr. BXXXXX met with Mr. Bratch. Their initial discussion did not involve Mr. Bratch attempting to locate financing for Mr. BXXXXX. Mr. Bratch raised the RTO Scheme. Initially, Mr. Bratch said he had a team of investors he works with, and he would see if he could find an investor. Subsequently, Mr. Bratch advised that he was not able to find an investor, but asked if Mr. BXXXXX would sell to him and his wife personally. In or about July 2016, Mr. Bratch provided him with a Rent to Own Program Brochure, entitled "Rent to Own Program (1 Year Program)" (the "SXXXXXXXXXXXXX Brochure"):

- (a) The SXXXXXXXXXXXXX Brochure referred to a "program" involving a "lease providing you with the option to buy the home."
- (b) The SXXXXXXXXXXXXX Brochure listed the "Current Value" of the SXXXXXXXXXXXXX Property as \$765,000;
- (c) The SXXXXXXXXXXXXX Brochure listed a \$50,000 "Upfront payment" and three options for "monthly rent" options of \$4,000, \$4,100 and \$4,300 per month; and
- (d) The SXXXXXXXXXXXXX Brochure listed, "Six reasons rent to own works for you".

69. *The SXXXXXXXXXXXXX Sale Agreement:* On July 14, 2016, the legal owners of the SXXXXXXXXXXXXX Property entered an agreement (the "SXXXXXXXXXXXXX Sale Agreement") to sell the SXXXXXXXXXXXXX Property to Mr. Bratch and Ms. TXXXXX for \$715,000.

70. The purchase was at approximately \$154,000 under assessed value.

71. As documented in the SXXXXXXXXXXXXX Sale Agreement, Mr. Bratch acted as agent for himself and Ms. TXXXXX, and the SXXXXXXXXXXXXX Owners were not represented. The Brokerage did not have a Working with a Realtor form completed on file for the SXXXXXXXXXXXXX Property.

72. Mr. Bratch did not complete and provide to the Sellers any Disclosure of Interest in Trade form for the purchase of the SXXXXXXXXXXXX Property.

73. The sale was conditional on the "Sellers" entering into a tenancy agreement on or before August 19, 2016.

74. *The SXXXXXXXXXXXX Tenancy Agreement:* The SXXXXXXXXXXXX Owners entered into a tenancy agreement dated September 6, 2016 (the "SXXXXXXXXXXXX Tenancy Agreement"), where they agreed to rent the SXXXXXXXXXXXX Property for \$4,300 per month for one year, from September 7, 2016 to September 30, 2017.

75. *The SXXXXXXXXXXXX Option Agreement:* On September 6, 2016, Ms. DXXXXXX entered into an option agreement with Mr. Bratch and Ms. TXXXXX dated September 6, 2016 (the "SXXXXXXXXXXXX Option Agreement"):

- (a) *Forfeiture of option, through default of lease terms:* The SXXXXXXXXXXXX Option Agreement provided Ms. DXXXXXX the right to purchase the SXXXXXXXXXXXX Property, "provided that the Tenants live up to all other terms of their lease agreements with Owner/Manager. A default by Tenants of the lease agreement at any point during this term will result in automatic revocation of this option."
- (b) *Forfeiture of option, if recorded:* The SXXXXXXXXXXXX Option Agreement provided in part that: "The recording of this option or any memorandum thereof will result in the automatic revocation of this option, and all monies paid to Owner by Tenants shall be retained by Owner as liquidated damages" (the "SXXXXXXXXXXXX No Recording Clause").
- (c) *Forfeiture of \$50,000 fee, if option not exercised:* The SXXXXXXXXXXXX Option Agreement provided for a \$50,000 fee for the option as follows: "The Tenants, [Ms. DXXXXXX] have paid \$50,000 in nonrefundable option consideration. If the Tenants exercise this option, then this amount will be applied towards the purchase of the Property. In the event that the Tenants do not exercise this option, all monies paid will remain with the Owner as nonrefundable option consideration" (the "SXXXXXXXXXXXX Property Deposit").
- (d) *Forfeiture of rental credits, if option not exercised:* The SXXXXXXXXXXXX Option Agreement provided that for each month of rent Ms. DXXXXXX paid under the SXXXXXXXXXXXX Tenancy Agreement, she would earn a credit of \$500 towards the purchase of the SXXXXXXXXXXXX Property, but that: "In the event that Tenants are unable or unwilling to exercise this option, Tenants understand and agree that such monthly credits are not refundable and shall be considered as having been paid as additional nonrefundable option consideration."

76. No one registered the SXXXXXXXXXXXX Option Agreement against title to the SXXXXXXXXXXXX Property.

77. The \$50,000 option consideration corresponds to the difference between the purchase price of \$715,000, and the value of the SXXXXXXXXXXXX Property (for purposes of the RTO Scheme) at \$765,000.

78. *Advice to the SXXXXXXXXXXXX Owners about them obtaining legal advice:* The SXXXXXXXXXXXX Sale Agreement provided that the agreement was subject to conditions including the following:

“Subject to the Seller obtaining **legal advice satisfactory to the Buyer or Seller** concerning this contract of Purchase and Sale on or before August 19, 2016.” (emphasis added)

79. Mr. Bratch testified that he had copied and inserted this provision. His testimony did not clarify what advice “satisfactory to the Buyer or Seller” means.

80. Mr. BXXXXX advised the Council during an interview that he and his wife did not obtain any legal advice. During his testimony, however, Mr. BXXXXX agreed that he had 37 days between the contract date and subject removals to seek whatever advice he needed to seek. Mr. BXXXXX also testified that Mr. Bratch made clear that when he was going to be the purchaser with his wife, Mr. BXXXXX would have the ability or option to have another realtor represent them. Mr. BXXXXX later clarified that: “it was very clear to me that he, as the realtor in this transaction, was representing both myself and himself.” In other words, Mr. Bratch was on both sides of the deal. When asked about Mr. Bratch’s status under the SXXXXXXXXXXXX Sale Agreement, Mr. Bratch agreed that “it just maybe clarifies the legality that you weren’t officially the realtor for the seller....”

81. The Book of Documents includes an addendum to the SXXXXXXXXXXXX Sale Agreement, but the addendum is unsigned. Mr. Bratch agreed during his testimony that the SXXXXXXXXXXXX Owners had not signed off on the addendum.

82. *Events after the sale under the RTO Scheme:* On October 19, 2017, Mr. BXXXXX sent Mr. Bratch an email stating that he and Ms. DXXXXXX were still working towards buying the SXXXXXXXXXXXX Property back. He advised that: “When we first signed this deal I expressed concern as to whether or not... [we] would be able to execute the re purchase option after just one year, to which you assured me, and I quote, “I’m not a monster, I’m here to make a return on my investment, if you can’t buy it back after one year I would extent it [sic] another year”. [...] [We] are hopeful that you will honour this agreement and allow us to continue to rent the property and purchase it back at an additional 7% return to you.”

83. Mr. Bratch did not extend the SXXXXXXXXXXXX Option Agreement after discussions with Ms. DXXXXXX. Ms. DXXXXXX continued to rent the SXXXXXXXXXXXX Property on a month-to-month basis until December 2018, when Mr. BXXXXX and Ms. DXXXXXX vacated the SXXXXXXXXXXXX Property.

84. Mr. Bratch and Ms. TXXXXX continue to own the SXXXXXXXXXXXX Property. Mr. Bratch resides on that property. Its assessed value on July 1, 2019 was \$971,000.

85. **The LXXXXXX Property:** The LXXXXXX Property was owned by the estate of BXXXXXXXXX MXXXX (the “Estate”). Ms. MXXXX passed away in February 2014. Her son, Mr. MXXXX, was her sole executor. In the spring of 2017, Mr. MXXXX was experiencing financial hardship and having trouble keeping up with mortgage payments. A bank to whom the Estate owed approximately \$392,000 had commenced foreclosure proceedings, and on August 24, 2017, the bank had obtained an order for conduct of the sale of the LXXXXXX Property.

86. As of July 1, 2016, the LXXXXXX Property was assessed by B.C. Assessment with a total value of \$2,175,700.

87. In the spring of 2017, Mr. MXXXX received unsolicited mail from Mr. Bratch stating he was a foreclosure specialist. Mr. MXXXX approached Mr. Bratch, and discussed his situation with Mr. Bratch. Mr. Bratch told Mr. MXXXX he was related to Mr. MXXXX’s old neighbour, the GXXXX. As a result of the discussion, Mr. MXXXX felt he could trust Mr. Bratch.

88. As Mr. MXXXX indicated in an interview, and confirmed in his testimony, he had not previously been involved in any real estate deals.

89. Mr. Bratch said he was going to find short-term financing to pay off the mortgage on the LXXXXXX Property, but in July 2017, he said he could not find financing, due to the incomplete probate of the estate. Mr. Bratch suggested a rent-to-own arrangement. Mr. Bratch sent to Mr. MXXXX an e-mail attaching various agreements under the RTO Scheme.

90. *The LXXXXXX Sale Agreement:* On July 17, 2017, Mr. MXXX entered an agreement (the "LXXXXXX Sale Agreement") to sell the LXXXXXX Property to Mr. Bratch and Ms. TXXXXX for \$500,000. However, the LXXXXXX Property was still owned by the Estate, and probate was incomplete.

91. The purchase was for approximately 25 percent of the assessed value of the LXXXXXX Property in the previous year.

92. As documented in the LXXXXXX Sale Agreement, Mr. Bratch acted as agent for himself and Ms. TXXXXX, and Mr. MXXXX was not represented. However, Mr. MXXXX signed a Working with a Realtor (Designated Agency) Form acknowledging a "customer relationship" between himself and Mr. Bratch. The Disclosure of Remuneration form also lists Mr. MXXXX, instead of Ms. TXXXXX, under "Part A: Client Information".

93. Mr. Bratch completed a Disclosure of Interest in Trade form for the purchase of the LXXXXXX Property. He disclosed that he was acquiring real estate, but he did not mention his wife, Ms. TXXXXX, anywhere on the form.

94. The sale was conditional on Mr. MXXXX entering into a tenancy agreement on or before July 31, 2017. Mr. Bratch did not draft in any subject clause relating to probate.

95. An addendum dated July 31, 2017 resulted in the removal of subject clauses from the LXXXXXX Sale Agreement.

96. *The LXXXXXX Tenancy Agreement:* Mr. MXXXX entered into a tenancy agreement dated July 17, 2017 (the "LXXXXXX Tenancy Agreement"), where he agreed to rent the LXXXXXX Property for \$4,000 per month, until December 31, 2017.

97. *The LXXXXXX Option Agreement:* On July 17, 2017, Mr. MXXXX signed an option agreement with Mr. Bratch and Ms. TXXXXX dated July 17, 2017, commencing on August 31, 2017 and expiring December 31, 2017 (the "LXXXXXX Option Agreement"):

- (a) *Forfeiture of option, through default of lease terms:* The LXXXXXX Option Agreement provided to Mr. MXXXX the right to purchase the LXXXXXX Property for \$600,000, "provided that the Tenants live up to all other terms of their lease agreements with Owner/Manager. A default by Tenants of the lease agreement at any point during this term will result in automatic revocation of this option, resulting in this option agreement becoming null and void."
- (b) *Forfeiture of option if recorded:* The LXXXXXX Option Agreement provided in part that, "The recording of this option or any memorandum thereof will result in the automatic revocation of this option, and all monies paid to Owner by Tenants shall be retained by Owner as liquidated damages" (the LXXXXXX No Recording Clause").

- (c) The LXXXXXX Option Agreement did not provide for any nonrefundable option consideration.
 - (d) *Forfeiture of rental credits, if option not exercised:* The LXXXXXX Option Agreement provided that for each month of rent Mr. MXXXX paid under the LXXXXXX Tenancy Agreement, he would earn a credit of \$750 towards the purchase of the LXXXXXX Property, but that: "In the event that Tenants are unable or unwilling to exercise this option, Tenants understand and agree that such monthly credits are not refundable and shall be considered as having been paid as additional nonrefundable option consideration."
98. In addition to the remarkable sale price of \$500,000, the Committee notes that the price for re-purchasing the LXXXXXX Property in four months' time was \$600,000.
99. *Mr. MXXXX's state of mind:* As Mr. MXXXX testified:
- (a) The LXXXXXX Property was important to him. It was his family home for much of his life. After his mother passed, Mr. MXXXX moved back into the LXXXXXX Property in January 2015.
 - (b) During the summer of 2017, when the redemption period would expire, Mr. MXXXX was not employed, and his credit [score] was terrible due to earlier mistakes that affected his credit.
 - (c) When Mr. MXXXX approached Mr. Bratch, he told Mr. Bratch how important it was for him to keep the house, and disclosed his financial situation. Mr. Bratch told him they could look at some "B lenders" for short-term financing, but when that financing "fell through," Mr. MXXXX's view was that: "...it was crunch time, so to speak. Right? It was getting close to the date of what the bank had told me and then he [Mr. Bratch] said something about a rent-to-own. I'm like, 'I don't want to get rid of my house.'"
 - (d) Mr. MXXXX indicated he was fearful at the time. Mr. MXXXX's own words were as follows:
 - "Q. Well, so what was your state of mind at the time? I mean you said to me you thought you were going to get financing, and then that fell through and then it was crunch time, and that was around the time the redemption period was about to end with the bank of Nova Scotia, is that right?"
 - "A. Yeah, that's right, and I mean, he put, you know, Kevin [Bratch] pulled on those strings, like, 'Oh, you know what? They're going to take your key, they're going to change the locks.' All of those things, and you know, 'we gotta move fast.' And like, you know, so year, there was a place of – I was operating in a place of fear, right? At that time."
 - (e) At one point, Mr. MXXXX described the situation as, "like 60 seconds left on the clock in the fourth quarter."
 - (f) In response to a question about whether Mr. Bratch explained the risk of getting into this type of arrangement, Mr. MXXXX testified,
 - A. No, I mean, like I said to – like I alluded with RXX earlier, the language was like this is the best case scenario, this is what you have

to do in order to make sure that the bank doesn't take your home. You know, really villainizing the bank and portraying himself as a – you know, I don't want to sound dramatic, but as a savior, if you will, for lack of a better term.

- (g) During cross-examination by Mr. Bratch, in response to questioning about the period in which Mr. MXXXX had opportunity to review the documents before subject removal, Mr. MXXXX testified as follows:

A. Yeah, [ten days] to review the documents. Sure, absolutely. But, you know, like at the same time, I mean like I said, I – Kevin, you introduced yourself and our relationship in my mind as per the language that I heard from you was that you're in my corner, not on the other side of the table with me, right? You're on my side of the table is how I got into this relationship.

100. *Advice to Mr. MXXXX about legal advice:* The LXXXXXX Sale Agreement provided that the agreement was subject to conditions including the following:

“Subject to the Seller obtaining legal advice satisfactory to the Buyer or Seller concerning this contract of Purchase and Sale on or before July 31, 2017.”

101. The LXXXXXX Option Agreement provided as follows,

“All parties to this Option Agreement have obtained independent legal advice pertaining to this Option Agreement.”

However, Mr. Bratch knew that Mr. MXXXX had not obtained independent legal advice about the Option Agreement prior to signing the Option Agreement. As Mr. MXXXX testified:

- (a) Mr. Bratch did not take Mr. MXXXX through the paragraphs of the LXXXXXX Sale Agreement. Mr. Bratch specifically did not talk to Mr. MXXXX about getting legal advice, except with respect to probate. Mr. Bratch also did not talk to Mr. MXXXX about his not acting for Mr. MXXXX; Mr. MXXXX testified that he thought Mr. Bratch “was acting on my behalf. That that's – I'm walking into this, like Kevin [Bratch], is in my corner, he is not somebody who, who is on the other side of the table in an agreement. He is on my side of the table in an agreement, is the perception that I had coming into this whole relationship.”
- (b) While Mr. MXXXX initialed a box indicating a “customer relationship” on a Working with a Realtor (Designated Agency) form, Mr. Bratch did not speak to Mr. MXXXX about being his realtor. Mr. MXXXX testified that, “He's – in my mind, he is my realtor. It was initial here, sign here, initial here, sign here.”
- (c) Mr. MXXXX did not obtain independent legal advice prior to signing the LXXXXXX Option Agreement, or prior to the subject removal date of July 31, 2017. Mr. Bratch did not ever direct him to any lawyer or law firm for the purpose of obtaining legal advice on the RTO Scheme. Mr. MXXXX testified that, “if he was telling me to like obtain legal advise [sic] prior to signing then I would have said, okay, give me some time and I'll hand this off to a lawyer, right? It just wasn't the case, not to my recollection.” Mr. Bratch did arrange for Mr. MXXXX to contact a lawyer for the conveyancing on August 9, 2017.

- (d) Mr. MXXXX did not understand the meaning of the LXXXXXX No Recording Clause.
- (e) Mr. MXXXX did not obtain legal advice before executing the various agreements as he felt he could trust Mr. Bratch. With respect to Mr. Bratch finding short-term financing for Mr. MXXXX, Mr. MXXXX said he believed that Mr. Bratch was “looking out for my best interest and that’s the best way to go...”
- (f) While Mr. Bratch did refer Mr. MXXXX to legal counsel, this did not occur until after they signed the agreements relating to the RTO Scheme. As Mr. MXXXX testified, “You never introduced me to CXXXXXXX MXX FXXX & RXXX to, like, look at any of the contracts, Kevin, you introduced them to me to initiate my probate....”

102. After someone from Scotia Bank called Mr. MXXXX to advise that he might want to get a lawyer to look at what he had signed, Mr. MXXXX obtained legal advice from a law firm in August 2017. Legal counsel advised him, in part, that he would not get financing for something he was not even on title on anymore, and that he should not go through with the RTO Scheme.

103. The Committee is satisfied that had Mr. MXXXX received legal advice earlier, he might have realized the disadvantageous aspect of the RTO Scheme. His testimony was instructive on this point:

“A. Yeah, so my plan was to fix my credit and then, and then get financing through Kevin, right? But lo and behold, like the thing that – like that totally went over my head, is how am I going to get a half a million bucks or just over, 600, how am I going to get \$600,000.00 to finance a property that I am not longer on the title on anyway? Right? That’s where the disconnect was and that’s what, that’s what the – when I finally did call a lawyer because Scotia told me to, that’s what they said to me, ‘you’re not going to get financing for something you’re not even on the title on anymore’, and I’m like fu- -- pardon – my[,] I won’t say it but.”

104. Mr. MXXXX did not complete the LXXXXXX Sale Agreement. On September 13, 2017, Mr. Bratch and Ms. TXXXXX filed a Notice of Civil Claim against Mr. MXXXX, personally and as executor of the Estate, seeking specific performance or damages. As shown by a title search for the LXXXXXX Property, Mr. Bratch and Ms. TXXXXX also filed a Certificate of Pending Litigation (BOD Tab 68). Mr. MXXXX testified that due to that “lien” on the LXXXXXX Property, financing was an impossibility.

105. On November 6, 2017, Mr. MXXXX filed a Response to Civil Claim, asserting among other things that Mr. Bratch breached a duty of care and a fiduciary duty to Mr. MXXXX, that the LXXXXXX Sale Agreement was unconscionable, and that it was unenforceable as Mr. MXXXX was not legally entitled to sell the LXXXXXX Property.

106. On December 12, 2017, Mr. MXXXX, Mr. Bratch and Ms. TXXXXX dismissed the legal action by way of consent order.

107. **The Brokerage Activity Report:** Mr. Bratch signed, and the Brokerage filed, a Brokerage Activity Report dated March 23, 2017 (the “Activity Report”). In response to the question, “Indicate below the approximate number of transactions the brokerage has been involved with during the past fiscal year:”, Mr. Bratch and the Brokerage indicated “4” Residential sales.

108. As Ms. CXXX testified, the Activity Report indicating four sales was substantially inaccurate, and should have reflected ten (10) sales. The details of her conclusions, and a list of

the Brokerage's actual transactions, are also reflected in an affidavit of Ms. CXXX sworn October 25, 2017.

109. Mr. Bratch testified to his receiving accounting advice that he only had to report deals that had trust funds involved. He also testified that he also read the document "as it stated and from my interpretation of the document that's what I concluded..." He agreed, however, that he did not contact the Council's professional standards advisor.

G. FINDINGS ON MISCONDUCT AND CONDUCT UNBECOMING

1. The Brokerage Activity Report (Notice paras. 3 and 4)

110. The Notice alleges a false or misleading statement in the Activity Report, pursuant to which Mr. Bratch contravened **Rule 3-1(1)** [*business of brokerage carried out competently*], **Rule 3-1(3)** [*ensure trust accounts and records of the brokerage are maintained in accordance with the Act, Regulations, Rules and Bylaws*], and **Rule 3-4** [*act honestly, with reasonable care and skill*]. One issue is therefore professional misconduct based on Mr. Bratch contravening the Rules (RESA s. 35(1)(a)), or based on his making or allowing to be made any false or misleading statement in a document required under the Act (RESA s. 35(1)(g)).

111. The Committee determines that Mr. Bratch made, or allowed to be made, a false or misleading statement in the Activity Report. Mr. Bratch thereby contravened Rules 3-1(1), Rule 3-1(3), and Rule 3-4. On these grounds, Mr. Bratch committed professional misconduct. The required disclosure is not limited to transactions involving trust funds. The Activity Report form clearly refers to "transactions the brokerage has been involved with..." and does not refer only to transactions involving trust funds.

112. The Notice alleges a false or misleading statement in the Activity Report, pursuant to which the Brokerage contravened **Rule 7-7(1)(c)** [*requirement to file Brokerage Activity Report with the Council in accordance with the bylaws*] and **Rule 3-4**. Another issue is whether there was professional misconduct by the Brokerage based on the Brokerage contravening the Rules (RESA s. 35(1)(a)), or by its making or allowing to be made any false or misleading statement in a document required under the Act (RESA s. 35(1)(g)).

113. The Committee determines that the Brokerage, by filing the Activity Report with a false or misleading statement, failed to file with the council a brokerage activity report completed in accordance with the bylaws. The Brokerage thereby contravened Rule 7-7(1)(c) and Rule 3-4. The Brokerage committed professional misconduct under both s. 35(1)(a) and (1)(g) of RESA.

2. Disclosures of Interest in Trade (Notice para. 2)

114. In relation to each of the RXXXXX, SXXXXXXXXXXXX and LXXXXXX Properties, Mr. Bratch failed to make proper disclosure of an interest in trade, pursuant to which failures Mr. Bratch contravened **Rule 5-9(1)** [*Disclosure of Interest in Trade*], **Rule 3-1(1)** [*business of brokerage carried out competently and in accordance with the Act, regulations, rules and bylaws*] and **Rule 3-4** [*reasonable care and skill*].

115. Rule 5-9(1) requires "a disclosure in accordance with this section to the owner of the real estate". Rule 5-9(4) requires that disclosure "be in a form approved by the council. Rule 5-9(5)(d) requires, in the case of an acquisition by an "associate" of the licensee, the name of the associate and a description of the licensee's relationship with the associate.

116. With respect to the RXXXXX Property, Mr. Bratch did provide a Disclosure of Interest in Trade Form. But although he listed his wife, Ms. TXXXXX, as an "associate", he failed to disclose

the actual corporate buyer, XXX BC, as an associate, or the nature of his relationship with XXX BC. Mr. Bratch contravened Rules 5-9(1) (as the disclosure, although in correct form, was not in accordance with Rule 5-9(1)); contravened 3-1(1); and contravened 3-4. Mr. Bratch committed professional misconduct by contravening the Rules (RESA s. 35(1)(a)).

117. With respect to the SXXXXXXXXXXXX Property, Mr. Bratch failed to provide a Disclosure of Interest in Trade Form to the SXXXXXXXXXXXX Owner. He contravened Rule 5-9(1); contravened Rule 3-1(1), by failing to ensure the business of the brokerage was carried out in accordance with the bylaws; and contravened Rule 3-4, by failing to provide real estate services with reasonable care and skill. Mr. Bratch committed professional misconduct by contravening the Rules (RESA s. 35(1)(a))

118. With respect to the LXXXXXX Property, Mr. Bratch did provide a Disclosure of Interest in Trade Form, and although he listed himself as acquiring the real estate, he failed to list his wife, Ms. TXXXXX, as an associate. Mr. Bratch contravened Rules 5-9(1) (as the disclosure, although in correct form, was not in accordance with Rule 5-9(1)); contravened Rule 3-1(1); and contravened Rule 3-4. Mr. Bratch committed professional misconduct by contravening the Rules (RESA s. 35(1)(a)).

3. The RTO Scheme (Notice para. 1)

(a) The scope of the issues relating to Rule 3-4

119. The Council submitted that Mr. Bratch's duty to act honestly and with reasonable care and skill under Rule 3-4 was not limited to his "clients", and at a minimum Mr. Bratch should have ensured that the RXXXXX, SXXXXXXXXXXXX and LXXXXXX Owners were "properly informed by real estate licensees and lawyers," through further steps to ensure these homeowners "understood the risks involved and had their own independent representation, not advice as he was not an impartial party." The Council submitted that Mr. Bratch "[310] (b) ... did not take any sufficient steps to ensure these consumers were well informed of the risks they were taking when entering into the RTO Program", and "(h) ...failed to ensure the parties properly understood his role", given his initial role as mortgage broker relating to the RXXXXX and LXXXXXX Properties, and given Mr. BXXXXX's confusion about his role.

120. The Council also submitted in closing submissions that Mr. Bratch contravened Rule 3-4 by [a] including clauses as contractual clauses without assessing their relevance and meaning; [c] including a subject to legal advice condition (respecting the SXXXXXXXXXXXX and LXXXXXX Properties) that he was unable to clearly explain; [d and e] misidentifying his clients on Disclosure of Remuneration Forms (respecting the RXXXXX Property and the LXXXXXX Property; [f] misidentifying Mr. MXXXX as the seller of the LXXXXXX Property when he knew that the Estate owned the property; and [g] his failing to include a subject to probate clause in the MXXXX Contract of Purchase and Sale (collectively the "Additional Issues").

121. Mr. Bratch did not, in his closing submissions, raise any lack of procedural fairness respecting the Additional Issues. Indeed, with respect to his allegedly careless or unskillful use of contractual clauses, including the legal advice condition, he addressed the issue by submitting that he used terms "directly off of webforms".

122. However, apart from procedural fairness, which Mr. Bratch did not raise, section 40 of the Act requires that the Council issue a notice of a discipline hearing, and the notice must (under s. 40(2)(a)) "describe the nature of the complaint or other matter that is to be the subject of the discipline hearing. The Notice does not address the Additional Issues. Accordingly, the Committee

declines to address the Additional Issues. The Committee does not express any view on whether the Council may address the Additional Issues through further proceedings under the Act, based on the Committee's findings.

123. The Committee will now address issues of professional misconduct and conduct unbecoming in relation to each of the Properties, beginning with the LXXXXXX Property. However, its general comments about the RTO Scheme in the context of the LXXXXXX Property also apply to the other properties, except where the Committee refers to distinguishing factors.

(b) The LXXXXXX Property

124. The Committee determines that the Council has proven each of the facts alleged in Notice paragraphs 1(a) to (g) in relation to the LXXXXXX Property. Although Mr. MXXXX was critical of Mr. Bratch while testifying, the Committee accepts Mr. MXXXX was generally a reliable witness.

125. In addition to its factual findings, the Committee is satisfied:

- (a) that Mr. MXXX was unsophisticated in real estate matters, and was in a vulnerable position;
- (b) that Mr. MXXXX trusted Mr. Bratch, who had initially acted as a mortgage broker for Mr. MXXXX;
- (c) that Mr. Bratch's role became adverse when he began discussing the RTO Scheme with Mr. MXXXX;
- (d) The RTO Scheme involved terms highly disadvantageous to Mr. MXXXX, and highly advantageous to Mr. Bratch;
- (e) Mr. MXXXX did not have any agency or legal representation when discussing, executing, and agreeing to the removal of subject clauses under RTO Scheme agreements; and
- (f) Despite the RTO Scheme involving real estate, such that Mr. Bratch might have been reasonably perceived as acting in his role as a licensee, Mr. Bratch did not clarify his role, and did not recommend that Mr. MXXXX obtain independent representation or legal advice.

126. Mr. MXXXX was under financial and time pressure. He trusted Mr. Bratch, due partly to Mr. Bratch having acted for him to search for short-term financing. In that situation, Mr. Bratch persuaded Mr. MXXXX to agree to the RTO Scheme. While not every aspect of the RTO Scheme is inherently undesirable, different elements combined to make the arrangement highly disadvantageous to Mr. MXXXX. For example, under the RTO Scheme, Mr. Bratch was to acquire the LXXXXXX Property for about one-quarter of its assessed value, and if the unemployed owner failed to repay a substantially larger sum within four months, or breached any terms of the tenancy, Mr. MXXXX would lose (and the buyers would keep) the whole of the equity. Similarly, as the Council submitted, an inability to register an option on title meant that the purchasers, in this case Mr. Bratch and Ms. TXXXX, could transfer the property to a new owner who could receive title without notice of the option. These observations also apply to the other Properties, to the extent that buyers bought the properties under the RTO Scheme at reduced values.

127. **Professional misconduct:** The Committee is satisfied that in the circumstances, Mr. Bratch owed a duty of honesty, reasonable skill and care to Mr. MXXXX, pursuant to Rule 3-4. Mr. Bratch should have at least clarified his role as adverse to Mr. MXXXX, and recommended that

Mr. MXXXX obtain independent legal advice. He did not. The Committee determines that Mr. Bratch contravened Rule 3-4, and committed professional misconduct.

128. The Council refers to Rule 3-4 in terms of Mr. Bratch failing to act with reasonable care and skill. The Committee is satisfied that Mr. Bratch owed a duty of care to owners.

129. Here, Mr. MXXXX came to believe, due to Mr. Bratch's initial assistance to look for short-term financing, that Mr. Bratch was on his side, and not on the other side of the table. When they began discussing the RTO Scheme, that situation changed. In closing submissions, Mr. Bratch described himself as wearing different hats: "So I provide homeowners with the different options and again I do wear the different hats. So I would be wearing a mortgage broker's hat, a real estate agent's hat and during that time you're allowed to be a licensed as a mortgage broker and a real estate agent at the same time." The problem as it relates to the LXXXXXX Property is that as a mortgage broker, Mr. Bratch was acting for an owner, but under the RTO Scheme, he was in an adverse position. Mr. Bratch knew he had switched to a different and adverse role. While Mr. Bratch did not have a duty to point out all the substantial risks of the RTO Scheme to Mr. MXXXX, he had a duty to clarify his adverse position, and expressly recommend that Mr. MXXXX seek the independent advice of a licensee or a lawyer.

130. **Conduct unbecoming:** Apart from professional misconduct, the Committee is satisfied that Mr. Bratch committed conduct unbecoming a licensee. The Council referred to various tribunal decisions relating in substance to "conduct unbecoming" which the Committee need not summarize. The Council may clearly address conduct, including "off-duty" conduct, where it engages any of the factors listed under s. 35(2)(a) to (c). The Council provided the following closing submissions, which we quote in full:

"304. Mr. Bratch's conduct through the three separate RTO Programs constitutes conduct unbecoming because it targets members of the public who are in stressful positions, have limited options and feel pressured into agreeing to any terms to keep their family homes. This conduct puts the general public at risk, who are inclined to trust the professional expertise of a real estate professional in making a difficult decision.

305. In these circumstances, Mr. Bratch was looking to make an investment and was driven by profit. The homeowners were driven by the desire to keep their homes. The RTO Program involved complex documents and confusing terms that benefitted Mr. Bratch, his wife and her company and while putting the homeowners at immense risk.

306. At minimum Mr. Bratch should have ensured that these parties were informed by real estate licensees and lawyers. Given his position as the expert and licensed professional in these transactions, it was imperative on him to take further steps to ensure that these homeowners understood the risks involved and had their own independent representation; not his advice as he was not an impartial party.

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.

131. For clarity, the Council submitted elsewhere that all three elements under RESA s. 35(2) were engaged, such that his conduct was contrary to the best interests of the public, undermines public confidence in the industry, and brings the real estate industry into disrepute.

132. With respect to the LXXXXXX Property, the Committee agrees with the Council's submissions. A licensee acting to enter into a business relationship with Mr. MXXXX, as Mr. Bratch did here, in the absence of his first clarifying his role and expressly recommending that Mr. MXXXX obtain independent advice, is (a) contrary to the best interests of the public, (b) undermines public confidence in the real estate industry, and (c) brings the real estate industry into disrepute. Mr. Bratch's conduct falls squarely within the IAP Report's reference to "misconduct that targets vulnerable British Columbians, for example... less sophisticated real estate market participants, and unrepresented individuals."

(c) The SXXXXXXXXXXXX Property

133. The mechanics of the RTO Scheme relating to the SXXXXXXXXXXXX Property are similar to the mechanics relating to the LXXXXXX Property, although differences include a significant option fee of \$50,000, and a purchase price of \$715,000, significantly below the assessed value as at July 1, 2016 of \$869,000.

134. The Committee is, however, divided as to the status of Mr. BXXXXX as a vulnerable owner. Mr. BXXXXX negotiated the terms of the RTO Scheme with Mr. Bratch on behalf of the SXXXXXXXXXXXX Owners.

135. A Committee majority accepts that, in all the circumstances including the financial circumstances of the SXXXXXXXXXXXX Owners, the SXXXXXXXXXXXX Owners were vulnerable owners. A Committee minority is satisfied at that the SXXXXXXXXXXXX Owners were not vulnerable owners, based on Mr. BXXXXX's expertise, experience, and the circumstances of the matter, including Mr. BXXXXX's evidence that "I knew what I was getting into".

136. Although Mr. BXXXXX agreed that he (and implicitly his partner) had opportunity to obtain legal advice, and did not, Mr. Bratch's role was still ambiguous. Mr. BXXXXX testified that Mr. Bratch was not "officially" their realtor, but was also of the view that Mr. Bratch was "representing both myself and himself". The entire Committee was satisfied that Mr. Bratch knew or ought to have known that Mr. BXXXXX had no agency or legal representation, and knew or ought to have known that Mr. BXXXXX was relying on Mr. Bratch as a licensee.

137. **Professional misconduct:** The entire Committee is satisfied that in the circumstances, Mr. Bratch owed a duty of honesty, reasonable skill and care to the SXXXXXXXXXXXX Owners, pursuant to Rule 3-4, which included a duty to clearly clarify his role. Accordingly, the entire Committee determines that Mr. Bratch contravened Rule 3-4 and committed professional misconduct by contravening that duty.

138. A Committee majority is satisfied that in the circumstances, Mr. Bratch owed a duty pursuant to Rule 3-4 to advise them to obtain independent legal advice. The Committee majority determines that Mr. Bratch contravened Rule 3-4, and committed professional misconduct by contravening that duty. A Committee minority accepts that the SXXXXXXXXXXXX Owners, as represented by Mr. BXXXXX, were sufficiently sophisticated and aware that they had the opportunity to obtain such advice. Mr. Bratch did not breach his duty to advise them to obtain independent legal advice.

139. **Conduct unbecoming:** Given all the circumstances, the Committee was unable to conclude that Mr. Bratch's conduct, as it related to the SXXXXXXXXXXXX Property, met any of the

criteria under s. 35(2) of the Act, i.e., that Mr. Bratch's conduct "(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". The SXXXXXXXXXXXX Owners were more sophisticated, and had an opportunity to obtain legal advice. The evidence of Mr. BXXXXX was that he knew what he was getting into. In these circumstances, the Council did not establish conduct unbecoming a licensee to the satisfaction of the Committee.

The RXXXXX Property

140. The RXXXXX Owners did not appear as witnesses before the Committee. Accordingly, the Council primarily relied on documentary evidence about the RTO Scheme as it applied to the RXXXXX Property, and Mr. Bratch's conduct as it applied to the RXXXXX Property.

141. The mechanics of the RTO Scheme relating to the RXXXXX Property are similar to the mechanics relating to the LXXXXXX Property, although notable differences include an option fee of \$30,000, and a purchase price of \$370,000, significantly below the assessed value of \$603,000, as at July 1, 2016.

142. With respect to the vulnerability of the RXXXXX Owners, the RXXXXX Owners did not provide any evidence about the extent to which they trusted Mr. Bratch or otherwise viewed him as acting in their interests. The RXXXXX Owners did not raise any such issues in their Notice of Civil Claim against XXX BC, Mr. Bratch or Ms. TXXXXX. However, they were clearly facing a bank foreclosure against the RXXXXX Property. Mr. Bratch initially acted as a mortgage broker for the RXXXXX Owners, by trying to find them re-financing.

143. Although Mr. Bratch testified that he advised the RXXXXX Owners to obtain legal advice, there was no such clause noted in any documentation as between the parties to make sure the RXXXXX Owners were aware and understood this. Further, Mr. Bratch himself was unsure of the meaning of some clauses in the agreement at the hearing.

144. **Professional misconduct:** Mr. Bratch owed a duty of honesty, reasonable skill and care to the RXXXXX Owners, pursuant to Rule 3-4. Mr. Bratch should have at least clarified his role as adverse to the RXXXXX Owners, and recommended that they obtain independent legal advice. He did not. The Committee determines that Mr. Bratch contravene Rule 3-4, and committed professional misconduct.

145. **Conduct unbecoming:** Given all the circumstances, as with the SXXXXXXXXXXXX Property, the Committee was unable to conclude that Mr. Bratch's conduct, as it related to the RXXXXX Property, met any of the criteria under s. 35(2) of the Act. Based on the evidence before the Committee, the Council did not establish conduct unbecoming a licensee to the satisfaction of the Committee.

FURTHER MATTERS

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

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

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

Dated at VANCOUVER, BRITISH COLUMBIA this 30th day of April 2021.

FOR THE DISCIPLINE HEARING COMMITTEE



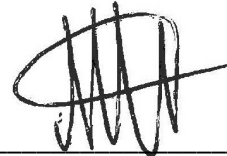
Name: Yasin Amlani

Discipline Hearing Committee Chair



Name: Robert Gialloredo

Discipline Hearing Committee Member



Name: Sukh Sidhu

Discipline Hearing Committee Member

LIST OF EXHIBITS

- Exhibit 1 - RECBC – Book of Documents, Volumes 1 and 2
- Exhibit 2 - Emails and attachments