

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

AND

ROSS CHONN
(currently unlicensed)

REASONS FOR DECISION REGARDING SANCTION

Date of Hearing:	June 21, 2021 (the Sanction Hearing was conducted in writing only)
Discipline Hearing Committee:	S. Heath (Chair) N. Nicholson (member) R. Hanson (member)
Counsel for RECBC:	John A. McLachlan Nicole Wong
Counsel for Respondent:	Ross Chonn, appearing on his own behalf
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, Mr. Chonn, committed professional misconduct and conduct unbecoming a licensee, within the meaning of section 35(1) and (2) of the RESA, as set out in the Committee’s decision in May 2021 (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 June 4, 2021, the Council provided submissions on sanction; and

- b. on June 10, 2021, the Council provided evidence respecting enforcement expenses.

The Respondent did not provide written submissions on sanction and expenses, despite the Committee setting submission deadlines on May 21, 2021. More specifically, and in response to an e-mail from the Committee's chair dated June 7, 2021, reminding him that his deadline for providing submissions had been June 4, 2021, Mr. Chonn advised by return e-mail, "ok, just want to give you notice that I'm putting together my civil action against you now. thank you!" Mr. Chonn did not provide any other materials relevant to sanction or enforcement expenses.

B. EVIDENCE

4. The Committee received evidence, made findings of fact, and made findings of professional misconduct and conduct unbecoming a licensee during the Liability Hearing. The Council relied on those findings for purposes of sanction. The Council also provided evidence with respect to Enforcement Expenses of \$51,563.45.
5. As noted above, the Respondent did not provide any further evidence relating to sanction.

C. PRIOR FINDINGS OF MISCONDUCT

6. The Committee will not repeat its findings, which are set out in the Liability Decision. As the Council summarized (which the Committee has paraphrased), the Respondent committed professional misconduct and concurrent conduct unbecoming, which included his contravening the following provisions:
 - a. RESA s. 7(3)(a) by acting outside of his brokerage (see Liability Decision para. 91);
 - b. RESA s. 7(3)(b) by accepting remuneration from persons other than his brokerage (see Liability Decision para. 91);
 - c. Rule 3-2(1)(b) and Rule 3-2(2) by failing to provide trading records to his managing broker and failing to keep his managing broker aware of the real estate services he was providing (see Liability Decision para. 93);
 - d. Rule 3-3 by failing to meet duties to his clients (see Liability Decision paras. 92-115), which contravened duties included
 - i. acting in the best interests of the client;
 - ii. advising the client to seek independent professional legal advice on matters outside of the expertise of the licensee;
 - iii. disclosing to the client all known material information respecting the real estate services;
 - iv. taking reasonable steps to avoid any conflict of interest; and
 - v. promptly and fully disclosing any conflict to the client;

- e. Rule 3-4 by failing in his duty to act honestly and with reasonable care and skill (see Liability Decision paras. 116-119);
- f. Rule 5-4 by failing to promptly deliver a copy of the signed acceptance to each of the parties (see Liability Decision para. 95);
- g. Rule 5-10 by failing to explain and adequately disclose the nature of his representation as a designated agent and as a limited dual agent (see Liability Decision paras. 120-129); and
- h. Rule 5-11 by failing to disclose material information to the client (see Liability Decision paras. 130-134).

D. 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 (the "Regulation").

E. 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 5. 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.

F. SUBMISSIONS

14. While the Committee will address some key points, the Committee fully reviewed the Council's submissions.

F.1 The Council's key submissions

15. The Council submitted that the Committee should order the following:
- a. that Mr. Chonn's licence be cancelled, and that he be prohibited from reapplying for a period of five years from the date of the order, and only upon his satisfying all other requirements, including remedial education, meeting licence restrictions, and payment of a discipline penalty and enforcement expenses;
 - b. a discipline penalty of \$13,250, "based on the remuneration accepted for the real estate services in respect of which the contraventions occurred", within twelve (12) months from the date of the order;
 - c. that Mr. Chonn, at his own expense, register for and successfully complete
 - i. The Real Estate Trading Services Remedial Education Course, as provided by the Sauder School of Business at the University of British Columbia; and
 - ii. The REIC2600 Ethics in Business Practice course, as provided by the Real Estate Institute of Canada;

- d. that Mr. Chonn's licence include a condition requiring enhanced supervision by a managing broker for a period of not less than twelve months following any re-licensing; and
- e. enforcement expenses (of \$51,563.45), within twelve months from the date of the Order.

The Council also noted that Mr. Chonn has surrendered his licence. However, the Council referred to the Discipline Decision in *Kim (re)*, 2020 CanLII 36927 (RECBC), where a licensee voluntarily relinquished his licence, but the committee nonetheless ordered his licence suspended for three months. In *Kim (re)*, a Discipline Committee considered *College of Nurses of Ontario v. Dumchin* (2016), 130 O.R. (3d) 602, 2016 ONSC 626 (Ont. Sup Ct., Div. Ct.) ("*Dumchin*"), and ultimately concluded that its jurisdiction under section 43(2) of the Act included a jurisdiction to order a notional cancellation or suspension of a former licensee's license, even though the former licensee has relinquished his licence by other means (at para. 53).

16. Prior to September 30, 2016, the Act limited monetary penalties to \$20,000 in the case of a brokerage or former brokerage, and to \$10,000 in any other case. However, as of September 30, 2016, the Legislature amended, *inter alia*, section 43(2)(i) of the Act, to allow for monetary penalties of up to \$500,000 in the case of a brokerage or former brokerage, and up to \$250,000, in any other case. The Sellers initially entered a listing agreement with the Sellers after September 30, 2016, more specifically on October 12, 2016, and the conduct at issue occurred in January 2017 and afterwards.

17. With respect to the Respondent's age and experience, the Council submitted that Mr. Chonn had been involved in real estate in some capacity since 1992, and had "more than enough experience to know better than to breach his fundamental fiduciary duty of honesty and good faith."

18. Although the Respondent lacks a disciplinary history, the Council submitted that this was offset by the nature and gravity his conduct. Here, the Sellers were unaware of the extent of Mr. Chonn's conflict of interest, and they were never fully compensated for the sale of the Property as set out in the Contract. Mr. Chonn's conduct also harmed the reputation of the real estate industry in general, as evidenced by the inability of Fair Realty to open an office in the interior, due to the damage to its reputation inflicted by Mr. Chonn.

19. Council submitted that the Respondent did not attempt to mitigate the situation. He lacks remorse and insists that others are to blame for the circumstances of this case. Council submitted that Mr. Chonn's behaviour during investigation and the hearing should be considered an aggravating factor.

20. Council submitted that the facts do not support corrective measures, which may be justified where misconduct arises from ignorance, a misunderstanding about rules or standards, or a lapse of judgment. Instead, the facts warrant disciplinary measures, as Mr. Chonn acted deliberately and flagrantly flaunted the RESA and the Rules.

21. Council referred to section 3.6.1 of the Guidelines, which sets out factors that support cancellation of licensure:
- a. the misconduct involves a significant departure from rules or standards;
 - b. the misconduct is criminal or quasi-criminal in nature;
 - c. the misconduct involved serious harm;
 - d. the likelihood of recurrence is high;
 - e. circumstances show the licensee is “ungovernable” by the Council as a regulatory body; or
 - f. circumstances show the licensee is unsuitable as a licensee, e.g., due to conduct involving dishonesty, an abuse of trust, violence, or a persistent lack of insight.

22. The Council referred the Committee to various cases as precedents for cancellation of licensure, as well as to cases as precedents for disciplinary penalties. Specifically, the Council sought cancellation notwithstanding the Respondent having surrendered his licence. With respect to a fine of \$13,250, Council submitted that disgorgement of the \$13,250 would provide an adequate reprimand while also taking Mr. Chonn’s financial situation into account. The Council also wished to avoid additional consumer harm where Mr. Chonn was continuing to pay a vendor take-back mortgage to the Sellers.

23. With respect to enforcement expenses, the Council provided evidence with respect to Enforcement Expenses of \$51,563.45, as follows:

- a. Investigation expenses (based on an hourly rate of \$100 permitted by s. 4.2(a) of the Regulation): \$0.00.
- b. Legal services (based on two external counsel for both the liability hearing and the sanction hearing, at hourly rates of \$325 and \$175 respectively, plus taxes): \$40,952.80.
- c. Administrative expenses (for 3 days of hearing): \$4,500, plus further expenses (for decision-writing): 1,250*
- d. Witness attendance at the liability hearing: \$100;
- e. External Counsel Disbursements (plus taxes): \$2,597.91;
- f. Other costs (e.g., couriers, reporting services, and transcription, plus taxes): \$2,162.74.

* With respect to decision-writing time of the Committee, Council refers to RECBC Bylaw 3-8(3), which allows a hearing committee to claim fixed fees for decision-writing.

F.2 The Respondent's key submissions

24. As set out above, the Respondent did not provide any submissions.

G. SANCTION DECISION

25. The Committee accepted the merits of the Council's submissions, as set out in its written submissions and as outlined above, as a proper basis for the Committee granting the disciplinary orders sought by the Council, but subject to specific changes set out herein. Additionally, the Respondent failed to contest the Council's submissions. The Committee agreed with the various aggravating factors identified by the Council, and that grounds for cancellation existed.

26. Ultimately, the Respondent's flagrant disregard for the RESA and the Rules, and his behaviour during the hearing process, warranted notional cancellation, along with a prohibition against his reapplying for licensure for a substantial period of five years.

27. The Committee also concluded the Respondent's conduct warranted an additional fine of \$10,000, atop the "disgorgement" fine sought by Council. As the Council noted in its submissions, the case law suggests that the Respondent's misconduct was serious enough to lead to a higher penalty than the \$13,250 sought by Council. The Committee declined to accept the Respondent's vendor take-back mortgage to the Sellers as sufficient reason to limit the amount of the monetary sanction. The Committee notes that a fine totalling \$23,250 is lenient, given the Respondent's conduct and the range of sanctions now available under the Act.

28. With respect to enhanced supervision, the Committee concluded a period of twelve months was insufficient, and that twenty-four months was needed to protect the public. The Council provided enhanced supervision conditions, which the Committee accepted and has attached as **Schedule A** to these reasons. These conditions are subject to the period being twenty (24) months, and also subject to other changes necessitated by the replacement of the Council with the BC Financial Services Authority. For example, once changes to the RESA come into force pursuant to the *Finance Statutes Amendment Act, 2021*, S.B.C. 2021, ch. 2, references to the Council in the conditions should be deemed to refer to the BC Financial Services Authority.

29. Accordingly, the Committee orders as follows:

- a. that the Respondent's licence be (notionally) cancelled;
- b. that the Respondent pay a discipline penalty of \$23,250, to be paid within three (3) months of the date of this order;
- c. that the Respondent, at his own expense, register for and successfully complete
 - i. the *Real Estate Trading Services Remedial Education Course*, as provided by the Sauder School of Business at the University of British Columbia; and
 - ii. The REIC2600 *Ethics in Business Practice* course, as provided by the Real Estate Institute of Canada;
- d. that the Respondent be prohibited from applying for licensing until after

- i. five (5) years from the date of this order;
 - ii. the Respondent has refrained from acting as an unlicensed assistant for a period of five (5) years prior to re-licensing;
 - iii. the Respondent has successfully completed the remedial courses specified in this order; and
 - iv. the Respondent have paid both the discipline penalty and the enforcement expenses ordered by Committee (as addressed further below); and
- e. that the Respondent's licence, following any re-licensing, include a condition requiring enhanced supervision by a managing broker for a period of not less than twenty-four (24) months.

30. The Committee concluded these sanctions will 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.

H. ENFORCEMENT EXPENSES

H1. The purpose and discretionary nature of enforcement expenses

31. 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)).

32. 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 expressly assess enforcement expenses in the context of the duration, nature or complexity of the hearing and its issues. The FST noted, however, that the Discipline Committee had ordered less than full indemnification, and that the expenses awarded 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).

33. In *Siemens*, the Discipline Committee set out the following general principles (at paras. 61-63):

[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.

34. 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.

H2. Elements of enforcement expenses

35. The expense regime under the Act has some notable features. 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.

36. 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).

37. 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).

38. 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. In practice, Discipline Committees accept 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.

39. 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*.

40. Finally, enforcement expenses are discretionary. A Discipline Committee may consider any factors it deems relevant, including the nature of the misconduct, the licensee's failure to acknowledge any error, and the relative success of the parties.

H3. Enforcement expenses in this case

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

42. The Committee also accepts that the total time spent by legal counsel, and length of the hearing, was reasonable. No hearing time was wasted.

43. The Council was entirely successful. Given the legislation and the Regulation authorize full indemnification (within specific constraints as set out in Regulation s. 4.2), and given the Respondent's conduct during the hearing process – the Committee found the Respondent uncooperative, belligerent, and argumentative – the Committee elected to award enforcement expenses on a full indemnity basis. Accordingly, the Committee awards enforcement expenses of \$51,563.45. This is an appropriate case where the Committee should shift enforcement expenses to the Respondent.

I. DISCIPLINE ORDER

44. The Committee orders as follows:

- a. that the Respondent's licence be (notionally) cancelled;
- b. that the Respondent pay a discipline penalty of \$23,250, to be paid within three (3) months of the date of this order;
- c. that the Respondent, at his own expense, register for and successfully complete
 - i. the *Real Estate Trading Services Remedial Education Course*, as provided by the Sauder School of Business at the University of British Columbia; and
 - ii. The REIC2600 *Ethics in Business Practice* course, as provided by the Real Estate Institute of Canada;
- d. that the Respondent pay enforcement expenses to Council in the amount of \$51,563.45, within twelve (12) months from the date of this order;
- e. that the Respondent be prohibited from applying for licensing until after
 - i. five (5) years from the date of this order;
 - ii. the Respondent has refrained from acting as an unlicensed assistant for a period of five (5) years prior to re-licensing;
 - iii. the Respondent has successfully completed the remedial courses specified in this order; and
 - iv. the Respondent have paid both the discipline penalty and the enforcement expenses ordered by Committee (as addressed further below);
- f. that the Respondent's licence, following any re-licensing, include a condition requiring enhanced supervision by a managing broker for a period of not less than twenty-four (24) months, substantially pursuant to the terms set out in **Schedule A**.

J. RIGHT OF APPEAL

45. 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 4th day of August 2021.

FOR THE DISCIPLINE HEARING COMMITTEE

“SANDRA HEATH”

S. Heath
Discipline Hearing Committee
Chairperson

“NEAL NICHOLSON”

N. Nicholson
Discipline Hearing Committee Member

“RUTH HANSON”

R. Hanson
Discipline Hearing Committee Member

Attachments:

Schedule “A” – Enhanced Supervision Conditions

Enhanced Supervision Conditions

- 1) Ross Chonn (“Mr. Chonn”)’s licence will be restricted to a brokerage acceptable to the Council (the “Brokerage”) for a period of not less than twelve (12) months following any licence re-instatement or re-licensing after the successful completion of all discipline orders in Council file #16-729 (the “Enhanced Supervision Period”).
- 2) During the Enhanced Supervision Period, Mr. Chonn must remain under the direct supervision of a managing broker of the Brokerage who is acceptable to the Council, and who has confirmed in writing to the Council that they have read these conditions, is aware of their duties under these conditions, and agrees to accept these duties (the “Managing Broker”).
- 3) These conditions are in addition to Mr. Chonn’s and the Managing Broker’s obligations under the Real Estate Services Act (“RESA”), and the Regulations, Rules and Bylaws made under the RESA (together, the “Legislation”). The Council and Mr. Chonn have agreed upon these additional conditions of supervision. The Managing Broker may impose their own additional conditions to ensure that Mr. Chonn meets his obligations under the Legislation.
- 4) Mr. Chonn must keep the Managing Broker informed weekly, or more frequently as required, of the real estate services that he is providing and other real estate-related activities that he is engaging in by providing written status reports (the “Status Reports”) to the Managing Broker that include, for each matter, as applicable:
 - a. the names of the principals and their agents;
 - b. the locations of the properties;
 - c. a description of services provided;
 - d. the status of the matter;
 - e. scheduled dates (e.g., closing dates and dates for waiver or satisfaction of conditions precedent);
 - f. funds paid and received; and
 - g. any other information relevant to the matter.
- 5) To ensure that Mr. Chonn meets his obligations under these conditions and the Legislation, the Managing Broker must meet with Mr. Chonn on a weekly basis, or more frequently as required, to discuss the following:
 - a. the most recent Status Report;
 - b. any practice issues identified by the Managing Broker or Mr. Chonn;

- c. the appropriate course of action for addressing any identified practice issues and/or whether appropriate steps have been taken to address previously identified practice issues; and
 - d. confirm Mr. Chonn's attendance at or completion of any educational or training opportunities recommended by the Managing Broker.
- 6) Mr. Chonn must consult with the Managing Broker in advance of taking any action on matters in respect of which there are questions or concerns regarding compliance with the Legislation, other applicable legislation, or the Brokerage's policies and procedures.
- 7) In addition to providing the Brokerage with all records required under the Legislation, Mr. Chonn must provide the Brokerage with all records created in connection with the provision of real estate services regardless of whether such records are associated with a specific transaction, including records of listing presentations, appraisals, competitive market analyses, correspondence, and referrals.
- 8) Mr. Chonn must obtain the Managing Broker's approval before presenting documents prepared by Mr. Chonn to principals or their agents for execution.
- 9) Mr. Chonn must provide to the Managing Broker all documents signed by Mr. Chonn's principals, and the Managing Broker must review all such documents.
- 10) Within 30 days before the end of the Enhanced Supervision Period, or within 14 days after the Managing Broker ceases to be the Managing Broker, whichever is earlier, the Managing Broker must provide a final report (the "Report") to the Council confirming in relation to the Enhanced Supervision Period, or during the period in which Managing Broker acted as Managing Broker under these conditions, as applicable:
 - a. that Mr. Chonn has provided real estate services under their direct supervision;
 - b. that Mr. Chonn's activities have been carried out competently and in compliance with these conditions, the Legislation, all other applicable legislation (to the best of the Managing Broker's knowledge having made reasonable inquiries), and in accordance with Brokerage's policies and procedures, or alternatively, providing details of non-compliance;
 - c. that they have reviewed all transactions in which Mr. Chonn has provided real estate services, and that all documents relevant to the transactions are contained in the appropriate deal file and kept at the Brokerage;
 - d. they have met with Mr. Chonn on a weekly basis, or more frequently as required, to discuss the matters specified under these conditions; and
 - e. the number of real estate transactions that Mr. Chonn has conducted and details regarding the principal(s), the agency offered, and any dealings with unrepresented parties.

- 11) The Report will be reviewed by the Council, who will determine if the Enhanced Supervision Period has provided an adequate opportunity to observe or remediate Licensee's real estate services practices and if not, will so advise the Managing Broker and Mr. Chonn, and Mr. Chonn may elect to:
 - a. continue with enhanced supervision until the Council is satisfied by further evidence that the required period and purpose of enhanced supervision has been met; or
 - b. have his licence suspended until a further order is made by the Council under section 43(4) or (5) of the RESA.
- 12) The Managing Broker must immediately report to the Council anything of an adverse nature with respect to Mr. Chonn's real estate services, including
 - a. failure of Mr. Chonn to observe these conditions, the requirements of the Legislation or all other applicable legislation; and
 - b. complaints received by the Brokerage, including the nature of the complaint, the parties involved, and how the complaint was resolved.
- 13) Mr. Chonn may have no unlicensed assistant(s) during the Enhanced Supervision Period.
- 14) If the Managing Broker is absent from the Brokerage:
 - a. for more than one week but less than one month, the Managing Broker may delegate their duties to another managing broker or an associate broker who confirms their agreement to accept the supervision duties under these conditions to the Council in writing; or
 - b. for more than one month, Mr. Chonn must notify Council immediately and approval from the Council for a successor managing broker to supervise Mr. Chonn must be sought as set out in paragraph 16 of these conditions.
- 15) If for any reason the Managing Broker is unable to perform any of the duties imposed herein, they must immediately advise Council.
- 16) If there is a change in the managing broker of the Brokerage, the former managing broker and Mr. Chonn must immediately notify Council in writing. If Council determines that the successor managing broker is acceptable as a managing broker for the purposes of these conditions, they will be provided with a copy of these conditions and will be asked to confirm in writing to the Council that they have read these conditions, are aware of their duties under these conditions, and agrees to accept these duties. If that managing broker fails to provide such confirmation within 14 days of becoming a managing broker at the Brokerage, they will be deemed to be unable or unwilling to perform the duties set out in these conditions.
- 17) An alleged breach of these conditions may result in action under section 43 of the RESA, further disciplinary action and/or any other permitted action under RESA or other applicable legislation.