

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

AND IN THE MATTER OF

**WEI (VICKY) WANG
(160830)**

AND

**VICKY WANG PERSONAL REAL ESTATE CORPORATION
(160830PC)**

DECISION ON SANCTION

[This Decision has been redacted before publication.]

Date of Hearing: Written Submissions

Counsel for BCFSA: Catherine Davies
BCFSA

Licensees: Self-Represented

Hearing Officer: Andrew Pendray

Introduction

1. In June of 2016, Wei (Vicky) Wang (“Ms. Wang”) and her personal real estate corporation¹, provided a loan of \$50,000 to a client in respect of the purchase of a property located at [Property 1], Richmond, B.C. (the “[Property 1]”).
2. In a May 16, 2023 decision, *Wang (Re)*, 2023 BCSRE 18 (the “liability decision”), I determined that Ms. Wang committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (“RESA”), when in respect of the [Property 1] purchase, she had contravened section 30(i) of the *Real Estate Services Act Rules* (the “Rules”) by failing to take reasonable steps to avoid any conflict of interest by providing that \$50,000 loan towards the purchase of [Property 1] to her client, and by failing to promptly and fully disclose that conflict of interest to the client as required by section 30(j) of the Rules.
3. This decision relates to the sanctions and orders to be issued in respect of the respondents’ conduct.
4. The hearing of the sanctions portion of this matter proceeded by way of written submissions.
5. In its submissions, BCFSA seeks the following orders, pursuant to section 43 of RESA:

¹ This decision will refer to Ms. Wang and her personal real estate corporation collectively as “the respondents”.

- That the respondents pay an administrative penalty of \$5,000;
 - That Ms. Wang enrol in and successfully complete the Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia, within three (3) months of the date of this Order;
 - That Ms. Wang enrol in and successfully complete the REIC2600 Ethics in Business Practice course offered by the Real Estate Institute of Canada, within six (6) months of the date of this Order; and
 - That Ms. Wang and Wang PREC are jointly and severally liable to pay investigation and hearing expenses incurred by BCFSA in the amount \$24,958.18 within two (2) months from the date of this Order, pursuant to section 44 of RESA and section 4.4 of the *Real Estate Services Regulation*.
6. Ms. Wang takes the position that the liability decision was wrongly decided, and that no sanctions or costs orders should be issued against the respondents.

Issues

7. The issue is the appropriate orders to be issued in respect of the respondents' conduct, as provided for by section 43 of RESA.

Preliminary Issues

8. Prior to turning to the merits of the case, there are preliminary issues raised in the respondents' submissions which must be addressed.

Submissions on Liability

9. Ms. Wang has provided a detailed written submission in this hearing. Much of her submissions involve a review of the liability portion of this hearing, and set out Ms. Wang's position on the liability decision. Ms. Wang has specifically made submissions indicating her disagreement on various findings in the liability decision.
10. As I indicated in the liability decision, once the sanction decision is issued and an order has been made under Part 4, Division 2 of RESA, Ms. Wang will have the right to appeal the finding of liability to the Financial Services Tribunal. Ms. Wang may also, pursuant to section 43(5) of RESA, apply for any orders issued in this decision to be varied or rescinded. I do not consider the sanctions portion of the disciplinary hearing to be an opportunity to appeal or vary the liability decision. As a result, I will not address Ms. Wang's submissions regarding the liability decision findings further in this decision.
11. Ms. Wang has also, in her submissions, raised procedural objections regarding the manner in which the liability portion of the hearing was conducted. Specifically, she has suggested that BCFSA's decision to issue a fifth amended Notice of Discipline Hearing, as well as BCFSA's reference to prior decisions in its submissions on liability constituted "bad faith" on the part of BCFSA legal counsel.
12. Having reviewed those allegations, I do not consider that they are entitled to any weight.
13. The fact that BCFSA issued an amended Notice of Discipline Hearing to correct an obvious error does not, in my view, demonstrate "bad faith", nor do I consider the issuing of that fifth amended Notice of Discipline Hearing to have created any procedural unfairness to Ms. Wang.

14. I note, in reaching this conclusion, that I initially allowed an adjournment of the hearing of this matter, on January 25, 2023, due to the fact that Ms. Wang had not been provided the fifth amended Notice of Discipline Hearing 21 days prior to the hearing, as required by section 40(3) of RESA. The hearing was rescheduled to commence on February 27 and 28, 2023. Ms. Wang then sought a further adjournment of the hearing prior to that date, in part due to what she suggested was the fact that she needed more time to prepare and to seek legal advice in respect of what she said were the new allegations created by the fifth amended Notice of Discipline Hearing.
15. In my reasons rejecting Ms. Wang's adjournment application, set out in *Wang (Re)*, 2023 BCSRE 8, I concluded that Ms. Wang had in fact long been aware that the previous version of the Notice of Discipline Hearing contained an error in that the allegations involving the loan provided to her client referred, in the Notice of Discipline Hearing, to the wrong property address. I noted that Ms. Wang had in fact, at a pre-hearing conference in November 2021, specifically indicated that she disagreed with the allegation that she had provided a personal loan to the client in respect of [Property 1], thereby demonstrating her awareness of the nature of the allegations against her.
16. I also reject Ms. Wang's submission that BCFSA legal counsel engaged in bad faith by referring to previous decisions regarding professional misconduct in its submissions. Ms. Wang has not provided any explanation as to how such a submission on the part of BCFSA legal counsel would constitute "bad faith", and I note that counsel was careful to point out in their submissions that previous decisions are not binding in any event. Ms. Wang's submission in this regard has no merit, and I reject it.

Reasonable Apprehension of Institutional Bias

17. Ms. Wang has also, in her submissions, argued that a "conflict of interest" exists in the decision-making process within BCFSA, given that Hearing Officers are in the employ of BCFSA. Ms. Wang suggests that this fact may lead to bias and an unfairness. I consider that Ms. Wang's submissions amount to an argument that there exists an institutional bias created by the use of Hearing Officers to adjudicate matters under the RESA.
18. I do not agree.
19. The test for whether there is a reasonable apprehension of bias at an institutional or structural level is objective, as stated in *Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36:

"... would a well-informed person, viewing the matter realistically and practically, have a reasonable apprehension of bias in a substantial number of cases?"
20. In general, Ms. Wang alleges in her submissions that Hearing Officers could be influenced in their decision making to "satisfy with [sic] the interest of BCFSA", and that:

...personal interest related to job opportunity, performance, salary, bonus, career development within the organization of BCFSA may affect the ability of...hearing officers and Chief Hearing officer to proceed a fair discipline procedure.

[reproduced as written]

21. The burden of proof is on the party raising the allegation. I do not consider Ms. Wang's allegation to meet that burden.

22. First, I note that there is no evidence to support Ms. Wang's allegation that Hearing Officers are "influenced" to make decisions that satisfy the interests of BCFSA.
23. Rather, I would note that BCFSA has in fact taken steps to maintain a separation between the investigative/prosecution functions of the Superintendent of Real Estate (the "Superintendent"), and the adjudication functions which are completed by Hearing Officers. Specifically, I note that:
- the prosecution and adjudication functions are separate and housed within different teams at BCFSA. The prosecution staff do not overlap with the adjudicators. The Chief Hearing Officer reports directly to the Vice President, Legal, whereas investigation staff and legal counsel responsible for prosecuting disciplinary matters are within the Compliance & Enforcement team under the Vice President, Compliance & Enforcement;
 - Hearing Officers do not have access to investigation or prosecution information or records, other than those submitted by the parties during a hearing or in pre-hearing submissions;
 - Hearing Officers are free to make their own decision based upon the record and submissions of the parties in any given case. Their decisions are made without the influence of any managers or executives at BCFSA, and the Hearing Officers are not influenced or incentivized to arrive at any particular outcome on a decision or type of case; and
 - Hearing Officer remuneration is not tied to the outcome of the matters on which they adjudicate.
24. In my view, the reality is that the institutional structure and disciplinary hearing process provided by BCFSA under RESA is specifically intended to ensure that parties are provided with a fair hearing and decision from an unbiased decision maker.
25. Regardless of the above, I consider the statutory scheme set out under RESA, which allows for the Superintendent to conduct investigations, hold hearings, and issue disciplinary penalties, which I believe also provides a full answer for any claim of institutional bias. My reasons for having reached this conclusion follow.
26. In *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, the Supreme Court of Canada considered the structure of B.C.'s Liquor Control and Licensing Branch. There, investigations were conducted by a senior inspector, following which a hearing was held and penalties were imposed by another senior inspector within the Branch. The parties had a right to appeal a decision of an inspector to the Liquor Appeal Board. The Court rejected the concerns expressed by Ocean Port about the makeup of the Liquor Appeal Board, explaining that:

20 ...It is well established that, absent constitutional constraints, the degree of independence required of a particular government decision maker or tribunal is determined by its enabling statute. It is the legislature or Parliament that determines the degree of independence required of tribunal members. The statute must be construed as a whole to determine the degree of independence the legislature intended.

...

22 However, like all principles of natural justice, the degree of independence required of tribunal members may be ousted by express statutory language or necessary implication... Ultimately, it is Parliament or the legislature that determines the nature of a tribunal's relationship to the executive. It is not open to a court to apply a common law rule in the face of clear statutory

direction. Courts engaged in judicial review of administrative decisions must defer to the legislator's intention in assessing the degree of independence required of the tribunal in question.

27. Although the Court in *Ocean Port* remitted the issue regarding the independence of the initial decision of the senior inspector to the B.C. Court of Appeal, the Court indicated that, in its view, a plurality of functions in a single administrative agency is not necessarily problematic, and that the overlapping of investigative, prosecutorial and adjudicative functions in a single agency is frequently necessary for a tribunal to effectively perform its intended role. The Court specifically noted that absent constitutional constraints, it would always be open to the legislature to authorize an overlapping of functions that would otherwise contravene the rule against bias: see *Ocean Port*, paragraphs 40-44.
28. At the re-hearing before the B.C. Court of Appeal, *Ocean Port Hotel Ltd. v. British Columbia (The General Manager, Liquor Control and Licensing Branch)*, 2002 BCCA 311, the court upheld the use of in-house senior inspectors to adjudicate issues, noting that under the *Liquor Control and Licensing Act*, the general manager could in fact have performed both functions of prosecutor and adjudicator and no complaint could be taken (although the statutory regime under that Act did contain right to a new hearing on appeal):

[9] The appellant has not placed any additional argument before us which persuades me to disagree with that provisional opinion. At the compliance stage the Branch discharged its duty of fairness to the appellant by giving it a fair opportunity to respond to the allegations and to speak to the penalty. I am persuaded that when compliance with the terms of a licence is in issue and regard is had to the entirety of the liquor licensing scheme, the full panoply of a quasi-judicial hearing, including a distinct separation between the presenter of the allegation and the decision-maker, is not required to conform to the principles of natural justice. At that point the general manager and his delegates are administering the licensing scheme. The Branch's decision to suspend is subject to an adjudication in the fullest sense by a *de novo* hearing before the Liquor Control Board whose members are independent of the general manager and thus the Branch.

[10] The potential for bias arising from the equal standing of the two senior inspectors who participated in the compliance hearing is inconsequential in this case. Both are delegates of the general manager. Under the **Act** the general manager could have performed both functions herself – marshalling the evidence and making a decision – and no complaint could be taken.
29. The B.C. Court of Appeal has subsequently affirmed, in *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119, that even in a situation where there was no longer the right of an appeal hearing on a *de novo* basis, absent constitutional constraints, it is open to the legislature to authorize overlapping functions that would otherwise contravene the rule against bias. The Court of Appeal noted that, under the *Liquor Control and Licensing Act*, the General Manager was enabled to delegate the task of adjudication concerning alleged infractions: see *Cambie Hotel*, para 66-70.
30. RESA contemplates that the Superintendent could perform the functions of investigating a licensee, marshalling the evidence, and making the decision on what discipline should be applied to that licensee if misconduct has been found. I consider it to be clear from the statutory scheme under RESA that the legislature authorized overlapping functions. Further, I consider that given the Superintendent's position as the chief executive officer of BCFSA, it would be expected by the legislature that the Superintendent would delegate those various functions to BCFSA staff. I note that RESA, at section 2.1(3), provides the Superintendent with the authority to make

delegations of “any” of his powers or duties under RESA. Further, I note that RESA does not impose any requirements on the degree of independence on the person delegated the hearing functions under Part 4 of RESA.

31. I consider that, similar to the *Liquor Control and Licensing Act*, RESA contemplates that the same person, the Superintendent, could exercise all functions. Given that RESA contemplates overlapping functions by the Superintendent, including through delegations to staff, I consider the legislation on its own is an answer to Mr. Wang’s allegations of institutional bias. In any event, as noted above, I also find that the institutional structure at BCFSA ensures the independence of Hearing Officers.
32. I therefore find that Ms. Wang has not met the burden of proving that there is institutional bias in this case.

Jurisdiction

33. Pursuant to section 2.1(3) of RESA the Superintendent may delegate any of its powers. The Chief Hearing Officer and Hearing Officers of the Hearings Department of BCFSA have been delegated the statutory powers and duties of the Superintendent with respect to sections 42 through 53 of RESA.

Background

34. The background to this matter is set out in the liability decision. I will not reproduce the entirety of that background and evidence here. Rather, the following is intended to provide context for my reasons.
35. The fifth amended Notice of Discipline Hearing issued against the respondents on January 13, 2023 alleged that:
 1. [Ms. Wang] committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that while licensed as a representative with [Brokerage 1] and acting as buyer’s agent in relation to the purchase of properties located on [Property 1] in Richmond, BC and on [Property 2] in Vancouver, BC:
 - a. [Ms. Wang] failed to avoid a conflict of interest when [she] provided the buyer a loan towards the deposit required under the contract of purchase and sale for the property located at [Property 1], contrary to section 30(i) [take reasonable steps to avoid any conflict of interest] (formerly s. 3-3(i) of the Rules;
 - b. [Ms. Wang] failed to advise the buyer that the loan towards the deposit referred to in para 1(a) above constituted a conflict of interest, contrary to section 30(j) [promptly and fully disclose conflict of interest to client] (formerly 3-3(j) of the Rules;

The Complaint

36. On October 10, 2017, the former Real Estate Council of British Columbia (RECBC)² received a complaint regarding Ms. Wang.

² RECBC integrated with BCFSA on August 1, 2021.

37. That complaint, brought by [Complainant 1] (the “client”), contained two allegations. First, the client alleged that Ms. Wang had failed to provide the client with a 55% commission rebate. Second, the client alleged that Ms. Wang had collected rental payment cheques but had failed to deposit those cheques on time.
38. The client specifically alleged that Ms. Wang had agreed to pay the client 55% of the commission Ms. Wang earned in respect of the client’s purchase of two properties, [Property 1], and a property at [Property 2], Vancouver, B.C. (the “[Property 2]”).

The [Property 1] Transaction and Loan

39. A contract of purchase and sale in respect of [Property 1] was executed on June 9, 2016. That contract sets out a purchase price of \$1,688,000 for the property, and calls for a deposit of \$90,000 to be paid by way of bank draft.
40. The completion date of the sale is identified as October 4, 2016.
41. Two Receipt of Funds Records were obtained from Ms. Wang’s brokerage in respect of [Property 1].
42. The first Receipt of Funds Record sets out that \$40,000 was received by bank draft, from the account of the client, on June 11, 2016. The Receipt of Funds Record sets out that the \$40,000 had been received for the purpose of paying the deposit for the purchase [Property 1]. Of note, the Receipt of Funds Records sets out, in the section for “Other details concerning receipt of funds”, that there were “two cheques together”. The \$40,000 was deposited in the trust account of the brokerage at which Ms. Wang worked.
43. The second Receipt of Funds Record sets out that \$50,000 was received, by bank draft, from the account of Ms. Wang, on June 11, 2016. The Receipt of Funds Record sets out that the \$50,000 had been received for the purpose of paying the deposit for the purchase [Property 1]. Of note, the Receipt of Funds Record sets out, in the section for “Other details concerning receipt of funds”, the following:

...loaning to the Buyer temporarily...

44. The \$50,000 was deposited in the trust account of the brokerage at which Ms. Wang worked.

Investigation

45. In investigating the complaint, RECBC investigators enquired with the client as to whether the \$50,000 had been lent to the client by Ms. Wang. The client’s husband indicated, in a December 29, 2017 email, that Ms. Wang had lent him the \$50,000 as he did not have the deposit ready at that time and was hesitant on making the purchase. The client’s husband indicated that Ms. Wang had offered to assist by lending the \$50,000.
46. Ms. Wang indicated at the liability portion of this hearing that she had not considered the \$50,000 a loan, but that the client had taken advantage of her when they requested the \$50,000 towards the deposit. Ms. Wang also, however, indicated that she had simply provided the money to the client due to their friendship. Ms. Wang noted that there had not been any written loan agreement in respect of the \$50,000, and that the money had in fact been returned to her by the client on June 29, 2016, well prior to the completion of the [Property 1] purchase.

47. Ms. Wang further indicated that she had not considered the provision of the \$50,000 to be a conflict of interest, and as such she had not informed the client that there was a conflict of interest present.

Liability Decision Findings

48. In the liability decision I concluded that the \$50,000 provided by Ms. Wang towards the deposit on [Property 1] was in fact a loan. In reaching that conclusion, I found the fact that Ms. Wang had, in 2016, noted that she was “loaning [the \$50,000] to the Buyer temporarily” was the most compelling evidence as to what her view was as to the nature of the transaction at the time it occurred:

[81] Again, in my view, the evidence from 2016 is compelling, and leads me to the conclusion that both Ms. Wang and the client knew that the \$50,000 was a loan. The fact that Ms. Wang described the money as being loaned to the client, and the fact that she asked for that money back from the client, in my view, makes clear that the \$50,000 was a loan, and not a gift.

[82] I note further that, even if I was to accept Ms. Wang’s submission that in order for the \$50,000 to be considered to be a loan, it is necessary that the loan have been provided in exchange for future repayment plus something more, the facts of this case lead me to the conclusion that there was, in this case, something more.

[83] Ms. Wang received a commission on the purchase of [Property 1]. In order to receive that commission, the purchase of that property had to complete. In order for the purchase to ever have had the chance to reach completion, the deposit on the property, as required by the contract of purchase and sale, would have had to have been paid.

[84] In my view, it is clear that in the absence of Ms. Wang’s provision of the \$50,000 towards the deposit, the contract and purchase of sale in respect of [Property 1] would not have gone forward, and Ms. Wang would then not have received a commission in respect of that purchase. In sum then, I consider it to be more likely than not that Ms. Wang provided the \$50,000 with a view to ensuring that she receive her commission upon the completion of the purchase of [Property 1].

49. I further concluded that regardless of whether Ms. Wang’s main reason for providing the loan was, as she claimed, not to ensure that the purchase of [Property 1] proceeded in order to ensure that she would receive her commission, but rather to simply help out the client who she considered a friend, the reality of the situation was that once Ms. Wang’s own money became part of the transaction, she had a personal financial interest beyond that which a licensee would normally have, and which created a conflict of interest. I concluded that:

[95] Given that the conflict of interest was created by Ms. Wang’s own actions, that is the lending of the \$50,000 for the purposes of paying the deposit on [Property 1], I find that it cannot be said that Ms. Wang took steps to meet the duty to her client by taking all reasonable steps to avoid any conflict of interest as required by section 30(i) of the Rules.

[96] I find that in failing to take all reasonable steps to avoid any conflict of interest as required by section 30(i), Ms. Wang contravened the Rules, and therefore can be found to have committed professional misconduct as contemplated by section 35(1)(a) of RESA.

50. Finally, I found that there was no evidence to indicate that Ms. Wang had disclosed the existence of the conflict that was created by the \$50,000 loan to the client. As such, I found that Ms. Wang contravened section 30(j) of the Rules, in that she failed to promptly and fully disclose to the client the fact that the loan of \$50,000 had created a conflict of interest. As Ms. Wang had been found to have contravened section 30(j) of the Rules, I further found that she committed professional misconduct as contemplated by section 35(1)(a) of RESA.

Applicable Law and Legal Principles

Applicable Law

51. Section 43(2) of RESA provides that if, after a discipline hearing, the Superintendent determines that the licensee has committed professional misconduct, the Superintendent 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 superintendent 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 of³
 - (i) not more than \$20 000, in the case of a brokerage or former brokerage, or
 - (ii) not more than \$10 000, in any other case.
52. Section 43(3) provides that an order under section 43(2) may provide that if the licensee fails to comply with the order, the licensee's licence may be suspended or cancelled pursuant to section 43(4), without further notice to the licensee or the opportunity to be heard.

³ In September 2016, RESA was amended to increase the available discipline penalties to not more than \$500,000 in the case of a brokerage or former brokerage, and not more than \$250,000 in any other case. However, as the misconduct in this matter occurred prior to these statutory amendments, the pre-amendment penalties are applicable.

General Principles Regarding Regulatory Sanctions

53. In general terms, the issuing of sanctions in relation to breaches of RESA is done with a view to the overarching goal of protecting the public.
54. I consider that sanctions may serve multiple purposes, including:
- denouncing misconduct, and the harms caused by misconduct;
 - preventing future misconduct by rehabilitating specific respondents through corrective measures;
 - preventing and discouraging future misconduct by specific respondents through penalizing measures (i.e. specific deterrence);
 - preventing and discouraging future misconduct by others (i.e. general deterrence);
 - educating registrants, other professionals, and the public about rules and standards; and
 - maintaining public confidence in the industry.
55. Administrative tribunals generally consider a variety of mitigating and aggravating factors in determining sanctions, largely based on factors which have been set out in cases such as *Law Society of British Columbia v. Ogilvie*, 1999 LSBC 17, and *Law Society of British Columbia v. Dent*, 2016 LSBC 5. In *Dent*, the panel summarized what it considered to be the four general factors, to be considered in determining appropriate disciplinary action:
- (a) **Nature, gravity and consequences of conduct**
- [20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?
- (b) **Character and professional conduct record of the respondent**
- [21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?
- (c) **Acknowledgement of the misconduct and remedial action**
- [22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?
- (d) **Public confidence in the legal profession including public confidence in the disciplinary process**
- [23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?
56. While the factors set out above are not binding on me, I find them to be of use in considering the appropriate penalty to be issued.

Discussion

The Misconduct

57. This was a single incident of misconduct. As BCFSa admits in its submissions, the conduct did not involve a particularly vulnerable client, and it was in fact the client who had initiated the loan request. There was no evidence before me that the client was affected negatively by the loan, nor was there any evidence of harm to the public generally.
58. However, I do not consider the nature of the misconduct can simply be disregarded, as Ms. Wang appears to suggest in her submissions.
59. Rather, I consider that actions taken by licensees which create a conflict of interest, and which are motivated by a desire to ensure a financial gain are the type of misconduct which trends towards the more serious end of the spectrum, and are of the type which require specific and general deterrence in order to ensure the protection of the public.
60. In the present case, the fact remains that Ms. Wang, in acceding to the client's request for the loan, placed herself in a conflict of interest with her client. She did not inform the client of that conflict, which placed the client in a situation of vulnerability, regardless of whether the client was particularly vulnerable on a general basis.
61. Further, as I indicated in the liability decision, I am of the view that Ms. Wang's action in providing the loan, while perhaps motivated to some degree by her friendship with the client, was also motivated by a desire to ensure that the purchase proceeded, thereby ensuring that she would receive a commission and accrue some financial gain. This type of activity, where the licensee is engaged in misconduct with an intention, whether it be the sole intention or not, of ensuring that licensee's financial gain, is in my view misconduct that is more than minor in its nature.
62. I acknowledge in setting out the above that Ms. Wang did experience some negative consequences as a result of the provision of the loan, in that she felt pressured into agreeing to provide a commission rebate to the client in order to ensure that the loan was repaid. I do not, however, consider that fact, or the fact that the client eventually commenced civil litigation against Ms. Wang in respect of the commission rebate to lessen the gravity of Ms. Wang's misconduct.
63. Again, Ms. Wang in agreeing to and providing the loan for the [Property 1] purchase, created the conflict, and in doing so put herself in a position where her own money became part of the transaction and which put her at odds with her client in respect of the repayment of that loan. While it is unfortunate that Ms. Wang felt pressure to offer the client a commission reduction, I would reiterate that the situation she found herself in was due to the fact that she placed herself in a conflict of interest to begin with.

Other Relevant Factors

64. Ms. Wang had five years of industry experience at the time of the [Property 1] misconduct, and there is no evidence before me to indicate that Ms. Wang had a discipline history with BCFSa or its predecessor regulators. Rather than being a mitigating factor, I consider this to constitute the lack of an aggravating factor.

Previous Sanctions Decisions and Consent Orders

65. As set out above, in determining the appropriate sanction, consideration should be given to disciplinary action that has been issued in similar cases. While prior disciplinary decisions and consent orders are not binding on me, they can be of assistance in determining a penalty that the public will have confidence in.
66. BCFSFA has referred to a number of previous consent orders and sanctions decisions which it submits are instructive. I have reviewed each of those. I note, in considering the prior consent orders, that I consider that a degree of caution must be taken when comparing an agreed upon penalty from a consent order to a penalty that is imposed subsequent to a discipline hearing, given that there are a myriad of reasons for a respondent or BCFSFA to agree to a consent order which may not be apparent from a review of that consent order.
67. With the above noted factors in mind, I turn to a review of the cases cited:

- *Gasser (Re)*, 2020 CanLII 103125 (BC REC): The licensee consented to pay a discipline penalty in the amount of \$5,000, as well as register and complete two remedial education courses, and pay enforcement expenses, as well as enhanced supervision conditions on her license for one year.

The licensee had acted as agent for the buyers of a property, and had provided the buyers with an interest free loan in the amount of \$10,000 for the deposit on the contract of purchase and sale. The buyers signed a promissory note, but did not ultimately complete the purchase, and the licensee did not demand repayment of the loan. The licensee indicated that it had never occurred to her that she was in a conflict, and that she had simply intended to assist her clients.

- *Kim (Re)*, 2020 CanLII 36927 (BC REC): Penalty of \$5,000 issued, as well as ineligibility to reapply for six months, completion of remedial education, enhanced supervision conditions upon relicensing, and payment of enforcement expenses.

The licensee had offered to loan his clients the shortfall in funds to purchase a property as a means of enticing the clients to make an offer in excess of their budget. He did not advise them that the loan could constitute a conflict of interest. Neither did he suggest that the clients seek independent legal advice regarding the loan offer, nor did he document the loan offer as a part of the offer to purchase. The clients' offer was not accepted. The clients subsequently made an offer on a different property and received a counteroffer. The counteroffer was higher than their budget allowed. In considering the counteroffer, the clients relied on the licensee's earlier loan offer associated with the first property. The clients acted on the counteroffer, but the licensee reneged on the loan offer and the clients had to find alternative financing.

The panel found that the licensee had created a conflict of interest by offering to lend money to the clients and becoming their creditor, which prevented the licensee from impartially carrying out his duty to advise the clients about the benefits and risk of the loan terms. The loan would also have provided the licensee with remuneration through loan interest, and would have increased his commission had the clients chosen to purchase a more expensive property than they could have otherwise afforded.

- *Hsiao (Re)*, 2019 CanLII 26022 (BC REC): the licensee and his personal real estate corporation agreed to pay a discipline penalty of \$5,000 and to pay enforcement expenses, and the licensee agreed to undertake remedial education.

The licensee, who was acting for three buyers attempting to purchase seven properties, issued personal cheques to the seller's solicitor to secure four of the property purchases while the buyers obtained bank drafts to pay the required deposits. The buyers ultimately

obtained the required bank drafts and the purchases completed. The licensee indicated that he had made an agreement with the seller that his personal cheques would not be cashed if the buyers failed to obtain the necessary bank drafts. The licensee admitted that the cheques had the potential to appear to be a loan, and to having committed professional misconduct in having failed to act with reasonable care and skill when they provided the personal cheques to the developer, contrary to rule 3-4 of the Rules.

- *Hachey (Re)*, 2015 CanLII 41250 (BC REC): the licensee agreed to pay a \$5,000 discipline penalty, enforcement expenses, and to undertake remedial education.

Hachey was acting as a limited dual agent, and loaned the buyer \$11,000 towards the down payment of a property, but did not document the terms of the loan, did not advise the buyer to seek professional advice, and failed to disclose that she was in a position of conflict of interest as a result of providing the loan to the buyer.

In addition to admitting to having committed professional misconduct in respect of failing to take reasonable steps to avoid the conflict of interest, and in failing to promptly disclose the conflict of interest, Hachey also admitted to having provided real estate services other than those for which she was licensed, and failing to properly document agreements.

Decision on Sanction

68. At the outset, it is necessary to point out that penalties must not be imposed purely for the purpose of being retributive or denunciatory. Rather, penalties may be imposed with the intention to encourage compliance with regulations in the future, with a view to specific or general deterrence, and with the intention of protecting the public: See *Thow v. BC (Securities Commission)*, 2009 BCCA 46, at para. 38.
69. As can be seen from the decisions and consent orders set out above, the level of administrative penalty for similar circumstances is relatively low. I note, however, the penalties imposed did constitute 50% of the maximum penalty available under the old RESA penalty regime, that being \$10,000.
70. I am of the view that both specific and general deterrence is required in order to ensure the protection of the public and to maintain public confidence in the real estate industry.
71. Here, while it is true that Ms. Wang's client was not a particularly vulnerable customer and was unlikely to be able to complete the transaction, the fact remains that when a licensee places themselves in a conflict by providing a loan to a client in order to enable a purchase, the licensee is creating a risk of significance for both parties. In providing a loan a licensee may be encouraging a buyer to make a purchase that they cannot in fact afford. The licensee may also be encouraging a buyer to make, or as in this case, complete, a purchase they in fact would not otherwise have made, with the goal of the licensee being to ensure that they are able to obtain a commission, or even the highest commission possible. The client and the licensee could also become adverse in interest over the repayment of the loan, without the parties having obtained independent legal advice.
72. In my view, it is clear that the provisions of such loans to buyer clients on the part of licensees creates an untenable conflict, and one which puts the public at risk. I consider that general deterrence in the form of an administrative penalty is required in order to prevent and discourage similar misconduct by other registrants, and to maintain public confidence in the industry.
73. Having reviewed the previous decisions and consent orders cited by BCFSA, I am satisfied that an administrative penalty of \$5,000 would be appropriate in the circumstances. I consider that a penalty of that amount, which is consistent with previous penalty amounts for similar

circumstances, is necessary to ensure specific and general deterrence, and the maintenance of public confidence in the industry.

74. Given Ms. Wang's ongoing position that she did not misconduct herself, and that the provision of the loan did not in fact create a conflict that needed to be disclosed to her client, I consider it to be clear that this is a case which, in addition to calling out for specific and general deterrence in the form of an administrative penalty, remedial education is required as a form of specific deterrence.
75. I note, in reaching this conclusion, that, as set out at paragraph 87 of the liability decision, RECBC had provided a newsletter to all licensees just 8 months prior to Ms. Wang's misconduct which specifically addressed the conflict of interest that was created by providing a loan to a buyer in order to assist on a purchase. In my view, given that fact, and having considered Ms. Wang's evidence at the liability portion of the hearing and in reading her written submissions, it is clear that further education is appropriate in the circumstances.
76. As a result, I accept the submissions of BCFSA and would order that Ms. Wang register for and successfully complete the Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia, and that she register for and successfully complete the REIC2600 Ethics in Business Practice course offered by the by the Real Estate Institute of Canada, within six (6) months of the date of this Order.

Enforcement Expenses

77. Sections 43(2)(h) and 44(1) and (2) of RESA provide that the Superintendent may, after determining a licensee has committed professional misconduct, require the licensee to pay the expenses, or part of the expenses, incurred by BCFSA in relation to either or both the investigation and the hearing to which the order relates. Pursuant to section 44(2)(a), amounts ordered under section 43(2)(h) must not exceed the applicable prescribed limit in relation to the type of expenses to which they relate, and may include the remuneration expenses incurred in relation to employees, officers or agents of BCFSA engaged in the investigation or hearing.
78. Section 4.4 of the *Real Estate Services Regulation* (the "Regulation") sets out the maximum amounts the Superintendent may order a licensee to pay under section 43(2)(h) in relation to various activities such as investigator costs, legal services costs, disbursements, administrative expenses for days of hearings, witness payments, and other expenses, reasonably incurred, arising out of a hearing or an investigation.
79. BCFSA has submitted a schedule of enforcement expenses, which identifies investigative costs, the hours incurred by in-house BCFSA legal counsel assigned to the respondents' case both in the lead up and at the hearing of this matter, as well as other administrative expenses, witness expenses, and other costs incurred in respect of the hearing of this matter. That schedule sets out that the total amount of the enforcement expenses is \$24,958.18.
80. In considering an order regarding enforcement expenses, the panel in *Siemens (Re)*, 2020 CanLII 63581 noted that:

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 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.

81. I agree that an order for enforcement expenses is a matter of discretion. In considering such an order, it is necessary to take into account the context of the duration, nature and complexity of the investigation process and the hearing process. I also consider it to be clear that sections 43(2)(h) and 44(1) of RESA specifically contemplate that the expenses of an investigation and hearing may be borne not by the regulator, but by the person who engaged in misconduct.
82. The expenses sought by BCFSA are significant. The majority of those expenses relate to legal preparation and expenses related to the liability hearing. Ms. Wang at no point took accountability or admitted to her misconduct. While that is of course her right, I note again that RESA clearly provides that the Superintendent may require the licensee to pay the expenses incurred in relation to either or both of the investigation and the discipline hearing. A risk that a licensee takes in not admitting to misconduct is that they will be faced with orders regarding enforcement expenses. That is the case here.
83. Having reviewed the expenses sought by BCFSA, I am largely satisfied that they are reasonable in the circumstances of this case. While the legal services hours may be more significant than would normally be expected in a case of this nature, I note that there were multiple pre-hearing conferences and adjournment applications in advance of the hearing.
84. I would, however, reduce the claimed expenses by \$2,000 in respect of BCFSA's claim for reimbursement under section 4.4(e) of the Regulation for administrative expenses related to the sanction hearing.
85. In making this reduction, I note that I do not consider section 4.4(e) of the Regulation to specifically contemplate the payment of administrative expenses for the purposes of a written submission process as was completed for the sanctions portion of this hearing.
86. Rather, section 4.4(e) of the Regulation specifically sets out that the Superintendent may order that an unlicensed person pay administrative expenses:

...for **each full or partial day of hearing**, administrative expenses of \$2 000

[emphasis added]

87. In my view, section 4.4(e)'s reference to a "full or partial day of hearing" makes clear that that section is intended to allow the Superintendent to order payment for administrative expenses related to the holding of an oral hearing, whether that be virtually or in person. There is, of course, no "full or partial day" of a hearing that proceeds by way of written submission, and it is unclear to me what the administrative expenses of holding a hearing by way of written submissions would be.
88. I note, in reaching this conclusion, that BCFSA has claimed expenses for legal services related to the preparation for the sanction portion of this hearing, pursuant to section 4.4(c)(i) of the Regulation. I consider that claimed expense to constitute the appropriate claim for expenses related to the sanctions hearing.
89. I therefore would exercise my discretion and reduce the total amount of enforcement expenses claimed by \$2,000. In all of the circumstances I am satisfied that the remaining enforcement expenses should be ordered, for a total of \$22,958.18.

Orders

90. Having found in *Wang (Re)*, 2023 BCSRE 18, that Ms. Wang committed professional misconduct within the meaning of section 35(1)(a) of RESA, when in respect of the [Property 1] purchase she contravened section 30(i) of the Rules by failing to take reasonable steps to avoid any conflict of interest by providing a \$50,000 loan to the client towards the purchase of [Property 1], and by failing to promptly and fully disclose that conflict of interest to the client as required by section 30(j) of the Rules, I would now make the following orders:
- Pursuant to section 43(2)(i) of RESA, I order that Wei (Vicky) Wang and Vicky Wang Personal Real Estate Corporation are jointly and severally liable to pay an administrative penalty to BCFSA in the amount of \$5,000, within 90 days of the date of this Order;
 - Pursuant to section 43(2)(f) of RESA, I order that Wei (Vicky) Wang, at her own expense, enrol in and successfully complete the Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia, within three (3) months of the date of this Order;
 - Pursuant to section 43(2)(f) of RESA, I order that Wei (Vicky) Wang, at her own expense, enrol in and successfully complete the REIC2600 Ethics in Business Practice course offered by the Real Estate Institute of Canada, within six (6) months of the date of this Order; and
 - Pursuant to section 43(2)(h) of RESA, I order that Wei (Vicky) Wang and Vicky Wang Personal Real Estate Corporation are jointly and severally liable to pay enforcement expenses to BCFSA in the amount of \$22,958.18, within 90 days of the date of this Order.
91. If Wei (Vicky) Wang and/or Vicky Wang Personal Real Estate Corporation fail to comply with any term of the above orders, the Superintendent may suspend or cancel their licenses without further notice to them, pursuant to sections 43(3) and 43(4) of RESA.
92. Wei (Vicky) Wang and/or Vicky Wang Personal Real Estate Corporation have the right to appeal this decision to the Financial Services Tribunal under section 54(1)(e) of the RESA, within 30 days from the date of the decision: *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at Kelowna, British Columbia, this 5 day of January, 2024.

“Original signed by Andrew Pendray”

Andrew Pendray
Chief Hearing Officer