

BC FINANCIAL SERVICES AUTHORITY

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*

SBC 2004, c 42 as amended

IN THE MATTER OF

**RASHIN ROHANI
(163039)**

REASONS FOR DECISION REGARDING LIABILITY

[These Reasons have been redacted before publication.]

Date of Hearing: July 17 - 20, 2023

Counsel for BCFSA: Menka Sull

Jon Peters

Counsel for the Respondents: Self-Represented

Hearing Officer: Andrew Pendray

Introduction

1. On June 26, 2023 the BC Financial Services Authority (“BCFSA”) issued, pursuant to section 40 of the *Real Estate Services Act* (“RESA”), an amended notice of discipline hearing (the “Notice of Hearing”) in relation to Rashin Rohani¹.
2. The Notice of Hearing alleged that Ms. Rohani had committed professional misconduct within the meaning of section 35(1) of RESA, and conduct unbecoming within the meaning of section 35(2) of RESA when she, in 2017, referred six buyer clients to an unregistered mortgage broker, Jay Chaudhary, in the expectation of receiving a referral fee.
3. The Notice of Hearing further alleged that Ms. Rohani committed conduct unbecoming as contemplated by section 35(2) when she, in 2016, submitted mortgage applications that included falsified income information while again using the services of Mr. Chaudhary.
4. This decision relates to whether the allegations set out in the Notice of Hearing have been proven by BCFSA.
5. The hearing of this matter proceeded by way of an oral hearing. BCFSA was represented by legal counsel. Ms. Rohani was self-represented.

Notice of Hearing

6. The allegations against Ms. Rohani are set out in the Notice of Hearing as follows:

1. You committed professional misconduct within the meaning of section 35(1) of the RESA and conduct unbecoming within the meaning of section 35(2) of the RESA in that:

a. you referred at least six (6) buyer clients, including those listed in Schedule 'A', to Jay Chaudhary also known as Mike Kumar ("Chaudhary") in 2017 when you knew or ought to have known that he was not a registered mortgage broker thereby putting your clients at risk, contrary to section 30(a) [duty to act in the best interests of the client] (formerly section 3-3(a)), section 33 [duty to act honestly] (formerly section 3-4) and section 34 [duty to act with reasonable care and skill] (formerly section 3-4) of the Rules; and

b. you received or anticipated receiving remuneration from Chaudhary, who you knew or ought to have known was not a registered mortgage broker, in the form of a referral fee without disclosing the remuneration to your clients, contrary to section 30(a) [duty to act in the best interests of the client] (formerly section 3-3(a)) and section 34 [duty to act with reasonable care and skill] (formerly section 3-4) of the Rules.

2. You committed conduct unbecoming within the meaning of section 35(2) of the RESA in that:

a. you submitted a mortgage application in June 2016 in relation to the purchase of a property located at [Property 1], North Vancouver with falsified income and savings information and using the services of Chaudhary, who you knew or ought to have known was not a registered mortgage broker;

b. you submitted a mortgage application in August 2016 in relation to the purchase of a property located at [Property 2], North Vancouver with falsified income information and using the services of Chaudhary, who you knew or ought to have known was not a registered mortgage broker;

c. you submitted a mortgage application in August 2016 in relation to the refinancing of a property located at [Property 3], North Vancouver with falsified income information and using the services of Chaudhary, who you knew or ought to have known was not a registered mortgage broker; and

d. you used the services of Chaudhary, who you knew or ought to have known was not a registered mortgage broker and who had previously falsified income documents for you, to obtain mortgage financing for two properties you purchased in 2018, while representing yourself as the buyer, located at [Property 4], North Vancouver, and [Property 5], North Vancouver.

7. The properties identified in schedule A were the following:

- [Property 6], North Vancouver;

- [Property 7], North Vancouver;
- [Property 8], Port Moody;
- [Property 9], Maple Ridge;
- [Property 10], New Westminister; and
- [Property 11], North Vancouver.

Issues

8. The issues are:

- Did Ms. Rohani commit professional misconduct within the meaning of section 35(1) of RESA and conduct unbecoming with the meaning of section 35(2) of RESA as described at item 1 of the Notice of Hearing?
- Did Ms. Rohani commit conduct unbecoming with the meaning of section 35(2) of RESA as described at item 2 of the Notice of Hearing?

Jurisdiction and Procedure

- Pursuant to section 2.1(3) of RESA the Superintendent of Real Estate (the “Superintendent”) may delegate any of its powers. The Chief Hearing Officer and Hearing Officers of the Hearings Department of BCFSA have been delegated the statutory powers and duties of the Superintendent of Real Estate with respect to sections 42 through 53 of RESA.
- BCFSA must prove its case on the balance of probabilities, that is, it must prove that it is more likely than not that the facts as alleged occurred. In order to make a finding against the respondent, I must find that the evidence is “sufficiently clear, convincing and cogent” to satisfy that test: *FH v McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41.
- Evidence is generally considered as a matter of procedure². As an administrative tribunal the Superintendent is not bound by court rules of evidence, and in the absence of any statutory provision to the contrary, may consider any evidence it considers relevant, including hearsay evidence: *Adams v. British Columbia (Superintendent of Motor Vehicles)*, 2019 BCCA 225 (CanLII).
- Further, the fact that the legislation may provide for a formal structure for enforcement proceedings does not preclude hearsay evidence from being admitted at a hearing³. There is no provision in RESA which imports civil or criminal rules of evidence into the administrative proceedings held by the Superintendent. The Superintendent may, however, draw upon principles underlying court rules of evidence to exclude or assess evidence.
- The Superintendent must also afford procedural fairness to a respondent where a decision may affect his or her rights, privileges or interests. This right includes a right to be heard. The Superintendent affords every respondent an opportunity to respond to the case against him or her by providing advance notice of the issues and the evidence, and an opportunity to present evidence and argument. The Superintendent must determine facts, and decide issues set out in the Notice of Discipline Hearing, based on evidence. The Superintendent may, however, apply its individual expertise and judgment to how it evaluates or assesses evidence.

Background and Evidence

14. The evidence and information before me included a significant number of documents, as well as the evidence of a number of witnesses. BCFSA called the following witnesses: [Investigator 1], a BCFSA investigator; [Investigator 2], an external contract investigator hired by BCFSA; [Investigator 3], a BCFSA investigator; and [Witness 1], a buyer client of Ms. Rohani's. Ms. Rohani testified on her own behalf.
15. I have reviewed and considered all of the evidence and information before me. The following is intended to provide context for my reasons.

Ms. Rohani's Licensing History

16. Ms. Rohani was first licensed as a trading representative under RESA in January 2012. She has continued to be licensed since that time, with two periods of approximately one year, from August 2012 to October 2013, and January 2014 to April 2015, where she was unlicensed.
17. Since April 22, 2015, and continuing at the time of the hearing of this matter, Ms. Rohani was licensed with Team 3000 Realty Ltd. (North Vancouver).

The FICOM Chaudhary Investigation

18. On June 7, 2019, the former Real Estate Council of BC (RECBC) received a letter from the former Financial Institutions Commission of BC (FICOM) ⁴regarding a cease and desist order that had been issued for Jay Chaudhary on May 29, 2019. The cease and desist order indicated that Mr. Chaudhary was engaged in unregistered mortgage broker activity.
19. The June 7, 2019 letter indicated that FICOM had obtained evidence which suggested that Mr. Chaudhary had used altered/fraudulent documents such as tax documents, bank account statements, and letters of employment to obtain mortgage financing for clients of real estate licensees, and that he had also assisted licensees in obtaining mortgage financing for their own purposes, also through the use of altered/fraudulent support documents.
20. FICOM further noted that in the course of its investigation into Mr. Chaudhary, it had obtained evidence which suggested that RESA licensees had referred their clients to Chaudhary, and that the licensees had received a fee for having made that referral.
21. [Investigator 1] provided evidence regarding the investigation into Mr. Chaudhary. [Investigator 1] explained that he was currently an investigator with BCFSA but that he had, in 2018, been an investigator at FICOM, where he had worked in that role since 2008.
22. [Investigator 1] indicated that he first became familiar with Mr. Chaudhary when a suspension order was issued against him, in his role as a mortgage broker in 2008 or 2009. [Investigator 1] explained that Mr. Chaudhary used aliases, and that some people knew him as "Mike", or "Mike Kumar".
23. [Investigator 1] stated that subsequent to the issuing of the suspension order, FICOM received further complaints that Mr. Chaudhary was doing unregistered mortgage broker activity in 2017. In general terms [Investigator 1] described the complaints as being that Mr. Chaudhary was

working with realtors and mortgage brokers, creating fraudulent documents and obtaining funding based on that fraudulent documentation.

24. [Investigator 1] was taken to a RECBC complaint form dated August 24, 2017. He indicated that RECBC had provided that complaint form to FICOM in 2017. The August 24, 2017 complaint form sets out that the complaint was being brought against two licensees, one of whom was identified as "Rashin Rohani". In a typed letter attached to the complaint form, the complainant sets out that:

This is to inform you that the following licensed realtors have been working with an unlicensed man Named Jay Chaudhary known as "Mike" who collects 2% fee from their Buyers and uses people in different banks to submit and approve their deals.

All income statements and [Notices of Assessment] are made up for the purpose of getting approvals. These individuals must be investigated and punished as they are advertising and getting buyers through fraudulent conduct.

They are:...

Rashin Rohani from Team 3000

...

25. The August 24, 2017 complaint also attached an advertisement for Ms. Rohani, with the details of that advertisement set out in Farsi.
26. [Investigator 1] testified that on February 12, 2019, he was involved in a search of Mr. Chaudhary's property, where materials including electronic devices, cell phones, portable drives, and mortgage files that Mr. Chaudhary had been working on were seized.
27. [Investigator 1] explained that among those documents obtained during the February 12, 2019 search was a colour coded excel spreadsheet (the "client spreadsheet"). [Investigator 1] indicated that the client spreadsheet had provided investigators with an outline of who Mr. Chaudhary's clients were.
28. The client spreadsheet sets out (among other things):
- Closing Date;
 - Client Name;
 - The name of the person from whom the referral was received;
 - The type of deal (purchase or refinancing);
 - The bank that provided the funds;
 - The broker who had submitted the deal to the bank;
 - The mortgage amount;
 - Whether there was a third party insurer;
 - The client fee;
 - The broker fee; and
 - The property address.

29. [Investigator 1] described the client spreadsheet as having provided FICOM with a roadmap as to how it ought to proceed with its investigation. [Investigator 1] indicated that he had primarily focused on transactions in which the borrowers were RESA licensees, or worked in a licensed profession, as he had felt that he would get more cooperation in the investigation of those individuals.
30. [Investigator 1] noted that Ms. Rohani had been listed as a borrower in the client spreadsheet, twice on page 9 of that document, in respect of mortgages for [Property 2] and [Property 3], in North Vancouver; and once on page 10 in respect of a mortgage for [Property 1], North Vancouver.

[Property 1], North Vancouver Mortgage Application

31. [Investigator 1] indicated that he had investigated this mortgage application and had reviewed the deal file associated with that application.
32. On June 15, 2016, a mortgage application was submitted to [Lender 1] on Ms. Rohani's behalf by Mana Erfani, who, [Investigator 1] testified, was Mr. Chaudhary's spouse at that time. That mortgage application was seeking \$1,400,000 in mortgage financing for Ms. Rohani towards the purchase of a property located at [Property 1], North Vancouver (the "[Property 1]").
33. The mortgage application set out that Ms. Rohani earned \$168,733 annually, based on the average of her 2014 and 2015 Notice of Assessment income, and that Ms. Rohani's down payment would be supplied by funds that she had accumulated through her employment income.
34. In addition to the mortgage application, FICOM investigators obtained documents from Ms. Erfani's mortgage brokerage, including:
 - A commitment letter containing the financing details in relation to Ms. Rohani's purchase of [Property 1], signed by Ms. Rohani on June 24, 2016;
 - A 2014 T1 General tax form for Ms. Rohani showing total income of \$155,387.04;
 - A 2014 Notice of Assessment for Ms. Rohani showing total income of \$155,387;
 - A 2015 T1 General for Ms. Rohani showing total income of \$182,079.14;
 - A 2015 NOA for Ms. Rohani showing total income of \$182,079; and
 - A [Bank 1] bank statement relating to an account in Ms. Rohani's name, showing that between June 1, 2016 and June 30, 2016 Ms. Rohani had a balance ranging from \$309,995 to \$350,137.76.
35. On July 28, 2016, [Lender 1] registered its mortgage against [Property 1].

[Property 2] and [Property 3] Mortgage Applications

36. [Investigator 1] also investigated two further mortgage applications filed on behalf of Ms. Rohani in 2016.
37. That investigation showed that on August 10, 2016 a mortgage broker named Arman Esmaili had submitted a mortgage application on Ms. Rohani's behalf to [Lender 2], seeking \$436,000 in mortgage financing for the purchase of [Property 2], North Vancouver (the "[Property 2]").

38. That August 10, 2016 application sets out that Ms. Rohani had a total annual income of \$94,220, based on an average of her annual income as a self-employed real estate agent for the years 2014 and 2015.
39. On August 19, 2016 Mr. Esmaili submitted another mortgage application on Ms. Rohani's behalf, for the refinancing of a property at [Property 3], North Vancouver (the "[Property 3]"). In that application, Ms. Rohani is said to have had an annual income of \$108,353.00, with Mr. Esmaili indicating that he had grossed up Ms. Rohani's income to make the ratios work.
40. On November 2, 2017, FICOM investigators obtained mortgage files from [Brokerage 1], the company through which Mr. Esmaili had submitted the two [Property 2 & Property 3] mortgage applications. Those files contained the following documents:
 - A 2014 T1 allegedly prepared by [Accounting Firm 1] showing Ms. Rohani's total income as \$85,387.04, and a 2014 NOA showing total income of the same amount;
 - A 2015 T1 allegedly prepared by [Accounting Firm 1] showing Ms. Rohani's total income as \$103,053.14, and a 2015 NOA showing the same total income.
41. On August 26, 2016, Ms. Rohani was approved by [Lender 2] for a mortgage of \$436,000 for the purchase of [Property 2]. Subsequently, on August 29, 2016, Ms. Rohani was approved for \$371,000 in mortgage financing for the refinance of [Property 3].
42. [Investigation 1] interviewed Ms. Rohani on December 3, 2018. In that interview Ms. Rohani denied knowing an individual named Jay Chaudhary, and denied having heard that name previously. Ms. Rohani indicated in the course of the interview that she had been recommended to an individual she knew as "Mike", who had assisted her in obtaining a mortgage. When shown the various tax documents setting out her income that were included in the mortgage applications for the above noted properties, Ms. Rohani denied having provided those documents to Mr. Chaudhary/Mike. She indicated that she had provided the accurate documents to Mr. Chaudhary, and that if he altered those documents she had not been aware of that fact.
43. In the course of FICOM's investigation, Ms. Rohani provided tax and income documents which differed from those contained in the above-noted mortgage files. Specifically, Ms. Rohani provided FICOM with:
 - A 2014 NOA showing total income of \$13,038;
 - A 2015 Income Tax Return Information document showing that Ms. Rohani reported \$16,612 in total income;
 - A 2015 T1 General showing total income as \$16,612.10; and
 - A [Bank 1] bank statement relating to the same account described above, showing that between June 1, 2016 to June 30, 2016 the balance in that account ranged from \$9,995 to \$50,137.76.
44. In an April 18, 2019 report, investigators contracted by BCFSA indicated that they had met with Ms. Rohani in order to show her four photographs of Jay Chaudhary and determine whether she recognized him. Ms. Rohani identified the individual in the photographs as the person she knew as "Mike".

45. On June 20, 2019, [Investigator 1] attended the offices of [Accounting Firm 1]. [Investigator 1] indicated that the accountant there had confirmed that Ms. Rohani was a client, and that the T1 General indicating that she had earned \$16,612 in 2015 had been prepared by [Accounting Firm 1]. [Investigator 1] further noted that the accountant at [Accounting Firm 1] had indicated that the 2014 T1 General showing an income for Ms. Rohani of \$85,387.04 and the 2015 T1 General showing a \$103,053.14 income for Ms. Rohani had not been prepared by his office.
46. On June 27, 2019, [Accounting Firm 1] emailed [Investigator 1] a copy of Ms. Rohani's 2014 T1 General. That document set out Ms. Rohani's total income for 2014 as \$13,039.49.
47. In an August 6, 2019 email, [Individual 2], AVP Risk and Compliance with [Lender 2], informed [Investigator 1] that had [Lender 2] been provided with income amounts of \$13,038 in 2014 and \$20,512 in 2015, it would not have approved the mortgage applications for the [Property 2 & Property 3] Properties.
48. [Investigator 1] noted that in the course of his investigation of another mortgage broker, he noted that one of that mortgage broker's clients had indicated that she was employed by Ms. Rohani. [Investigator 1] indicated that this had jumped out at him, given his understanding of Ms. Rohani's income as a real estate licensee. As a result, [Investigator 1] wrote to the mortgage lender to enquire about any interactions they may have had with Ms. Rohani in relation to her "employee's" mortgage application.
49. On January 9, 2020 the lender, [Lender 3], provided [Investigator 1] with a copy of a letter dated August 2, 2016. That letter indicates that it is from the Rashin Rohani Personal Real Estate Corporation, and includes a phone number which is the same as the telephone number used in the advertisement Ms. Rohani had placed. The letter also appears to be signed by Rashin Rohani.
50. The August 2, 2016 letter sets out that [Individual 3] was employed as Ms. Rohani's real estate assistant since October 1, 2015, on a full time basis with a monthly salary of \$3,300.
51. In her evidence, Ms. Rohani denied having any knowledge of that letter, and denied having signed it.

Mortgage Applications for [Property 4] and [Property 5]

52. The client spreadsheet identifies Ms. Rohani as the purchaser of two properties located at [Property 4] and [Property 5], in North Vancouver. The client spreadsheet further indicates that in January 2018, Ms. Rohani took out two mortgages with [Lender 4] for \$335,400 and \$420,000 respectively (the "2018 mortgages").
53. [Investigator 1] indicated that he had not done any further investigation into the 2018 mortgages due to the fact that he would not be able to compel the bank employees' participation in the investigation, given that [Lender 4] was federally, rather than provincially regulated.

The BCFSA Chaudhary Investigation

54. On December 13, 2021 BCFSA wrote to Ms. Rohani informing her that it was investigating her conduct, in respect of the properties and mortgages set out in the Notice of Hearing and her own mortgages.

55. Ms. Rohani replied to BCFSA on December 19, 2021. In that letter she indicated that she had only engaged in transactions with Mr. Chaudhary, who she knew as “Mike”, from 2016 to 2018. Ms. Rohani indicated that she had heard that Mr. Chaudhary was a mortgage broker who was able to get very low interest rates from “Main banks”, and that she had obtained his telephone number and contacted him. Ms. Rohani indicated that Mr. Chaudhary had informed her that there existed a special program for realtors which made her eligible to receive a mortgage. She indicated that she had provided Mr. Chaudhary with the required documents, and that she had attended the bank for finalization of her mortgage when requested to do so.
56. Ms. Rohani indicated in her December 19, 2021, letter that once the first mortgage had gone smoothly, she decided to buy more properties as investments. She noted that she had also introduced to Mr. Chaudhary to some of her clients.
57. Ms. Rohani wrote in the December 19, 2021 letter that she had not provided Mr. Chaudhary with false documents, and indicated that she had not known that Mr. Chaudhary was not a registered mortgage broker.
58. [Investigator 2] was hired as a contract investigator for BCFSA in relation to this matter, and was the lead investigator for BCFSA once the matter was transferred from FICOM and RECBC. He explained that he had joined the investigation in late December 2021, and that he had specifically been assigned the investigation as it related to Ms. Rohani. [Investigator 2] explained that he had obtained deal files from managing brokers on the deals that Ms. Rohani (or Rashin, as was noted on the client spreadsheet) appeared to have been involved in based on Mr. Chaudhary’s client spreadsheet, as well as the mortgages in which she was involved. [Investigator 1] indicated that when he obtained the deal files, he was looking for any irregularity that might stand out as suspicious.
59. [Investigator 2] noted that through his investigation he discovered that Ms. Rohani worked with another realtor, Lina Contreras, and that some of the deals listed in the client spreadsheet were in fact completed by Ms. Contreras. [Investigator 2] said that his understanding was that Ms. Rohani would refer clients to Ms. Contreras, and noted that it appeared that the two had a fairly close relationship.
60. [Investigator 2] indicated that he obtained an Agent Earnings History Report from Team 3000 Realty Ltd., where Ms. Rohani was licensed, for Ms. Rohani for the period of December 1, 2015 to February 28, 2022. That report shows that Ms. Rohani was involved in six deals during that period of time, with the last two deals relating to Ms. Rohani’s own properties at [Property 4 & Property 5]. The total gross earnings for Ms. Rohani for the period in question was \$52,041.36, with net earnings of \$51,388.44.
61. [Investigator 2] conducted an interview with Ms. Rohani on March 8, 2022. At that interview, Ms. Rohani acknowledged having referred the following buyer clients to Mr. Chaudhary, and to having had Lina Contreras, a licensee, assist with completing the transaction:
- [Client 1] ([Property 6], North Vancouver);
 - [Client 2] ([Property 10], New Westminster);
 - [Client 3] ([Property 11], North Vancouver); and
 - [Client 4] ([Property 7], North Vancouver).

62. Ms. Rohani described, for example, that the contract on [Property 6] was under her name, but that Ms. Contreras would have assisted with the process.

63. At the interview [Investigator 2] asked Ms. Rohani about the advertisement that had been obtained from the FICOM complaint. The translation of that advertisement sets out, in part, the following:

Rohani Real Estate Consultants

604-727-4467

Rashin Rohani

- Proof of income is not required
- With the least amount of down payment (5%) and the lowest banking interest 100% guaranteed by our experienced mortgage advisers

64. Ms. Contreras is also referenced in Ms. Rohani's advertisement.

65. [Investigator 2] asked Ms. Rohani if, when she put out that advertisement, the intention was to say "If you don't have any income, we can help you get a mortgage. I know someone." Ms. Rohani agreed that that was the intention of the advertisement. Ms. Rohani further agreed that this was intended for people who had income from Iran that they were not claiming to the Canada Revenue Agency, as she knew that Mr. Chaudhary could help with that.

66. [Investigator 3] completed a September 29, 2022 investigation report for BCFSa. [Investigator 3] indicated that her role in the investigation was to complete the investigation report. Essentially, [Investigator 3] indicated that she had compiled the investigative information from FICOM and from [Investigator 2]'s investigation with BCFSa.

67. In the investigation report [Investigator 3] noted that Ms. Rohani appeared to have obtained mortgage financing through Mr. Chaudhary, Ms. Erfani and Mr. Esmaili in respect of five properties that Ms. Rohani purchased in 2016 and 2018:

1. [Property 1], North Vancouver on July 28, 2016 with a mortgage arranged by ERFANI;

2. [Property 3], North Vancouver on September 16, 2016 with a mortgage arranged by ESMAILI;

3. [Property 2], North Vancouver on September 16, 2016 with a mortgage arranged by ESMAILI;

4. [Property 4], North Vancouver dated January 11, 2018 with a mortgage facilitated by CHAUDHARY;

5. [Property 5], North Vancouver dated January 30, 2018 with a mortgage facilitated by CHAUDHARY.

68. The investigation report further concluded that Ms. Rohani had referred buyers to Mr. Chaudhary to facilitate mortgages between 2016 and 2018, and that the records obtained from Mr. Chaudhary indicated that Ms. Rohani had received a 1% finders fee for 12 client referrals, totalling \$72,639.00 in referral fees.

69. Finally, the investigation report noted that in her advertisement Ms. Rohani had indicated that no proof of income was required and that her mortgage brokers were 100% guaranteed and experienced. In the investigation report [Investigator 3] noted that Ms. Rohani had indicated in her interview with [Investigator 2] that she referred individuals who responded to her advertisement to Mr. Chaudhary and Ms. Contreras.

[Witness 1]

70. [Witness 1] testified with the assistance of an interpreter. She indicated that she lived at [Property 8], in Port Moody (the “[Property 8]”), a property that she owns with her husband, and that she had purchased in 2017.

71. [Witness 1] indicated that she had met Ms. Rohani in 2017 at an open house for another property. She stated that during this meeting Ms. Rohani had been quite friendly and helpful, and that she and her husband had spoken to Ms. Rohani about whether they would qualify for loans. [Witness 1] indicated that she could not recall who commenced that conversation, but she indicated that she had shown Ms. Rohani some relevant information that she had on her phone, including a social insurance number, driver’s licences, and occupation information. [Witness 1] indicated that she had shown Ms. Rohani that information because Ms. Rohani had asked to see it.

72. [Witness 1] stated that following the open house she had formed the opinion that Ms. Rohani was an honest individual and that she wanted Ms. Rohani to be her realtor. [Witness 1] noted that her understanding was that there was a group that Ms. Rohani worked with and that they would assist her in obtaining a mortgage. [Witness 1] acknowledged that she did not receive any information from Ms. Rohani about that group.

73. [Witness 1] stated that shortly after the open house she had identified [Property 8] as one that she and her husband, [Individual 4], wished to purchase. She indicated that Ms. Rohani assisted in completing that transaction. When it was pointed out to [Witness 1] that the contract of purchase and sale on [Property 8] indicated that [Witness 1] and her husband had an agency relationship with Lina Contreras, [Witness 1] indicated that she did not know who Ms. Contreras was. [Witness 1] indicated that she only recalled meeting with Ms. Rohani, and that her understanding was that Ms. Rohani was her realtor in respect of the purchase of [Property 8].

74. The contract of purchase and sale of [Property 8] identified a purchase price of \$655,000, and indicated that a \$35,000 deposit was to be paid within 24 hours of subjects being removed.

75. [Witness 1] indicated that she had provided two bank drafts in respect of the [Property 8] purchase. The first was a \$35,000 bank draft made out to “[Brokerage 2].”, dated July 7, 2017, and the second was in the amount of \$9,500, made out to “[Company 1]”, dated July 13, 2017.

76. [Witness 1] indicated that she had obtained those bank drafts at the direction of Ms. Rohani. She noted that she understood the \$35,000 was for the deposit, and that Ms. Rohani had informed her that the \$9,500 was required, but that Ms. Rohani had never explained why.

77. Of note, as part of its investigation into Mr. Chaudhary, FICOM had conducted a business record search of [Company 1], as that company appeared to have been associated with Mr. Chaudhary. A September 10, 2018 records search identified [Company 1] as a sole proprietorship owned by Mr. Chaudhary.

78. [Witness 1] indicated that Ms. Rohani had directed her to meet at a coffee shop to complete mortgage papers. [Witness 1] indicated that she had telephoned Ms. Rohani when she arrived to inform her that she and her husband were at the coffee shop, and that Ms. Rohani had told her that they would be meeting with her colleague. [Witness 1] stated that she could not recall the colleague introducing himself, but that she had signed paperwork at that time.
79. When asked if she had provided any financial documents to get the mortgage in place, [Witness 1] indicated that she could not recall, noting that it had been approximately seven years' time. She indicated that Ms. Rohani had been the one to inform her that she had been approved for a mortgage with the lender [Lender 5].
80. [Witness 1] indicated that she had not previously heard the name Jay Chaudhary or Mike Kumar. She further indicated that she did not know of a Mike involved in her real estate or mortgage transactions.
81. In cross-examination [Witness 1] was asked if she had attempted to purchase a property, with the assistance of another realtor, the year prior to the [Property 8] purchase. [Witness 1] indicated that she and her husband had determined that their previous realtor was not honest, and that they had therefore terminated their discussions with her.
82. [Witness 1] denied having requested that "Mike" assist in obtaining a mortgage on the previous property. She indicated that if the previous realtor had made any arrangements in respect of that previous property, she had done so without coordinating with [Witness 1] and her husband. [Witness 1] indicated that she was of the view that the previous relator she had worked with was dishonest because that relator had tried to push her to purchase a house that required a lot of work.
83. [Witness 1] was asked if, upon meeting Ms. Rohani at the open house, she specifically asked Ms. Rohani about obtaining a mortgage and provided Ms. Rohani with various documents. She indicated that she may have done so, but noted that she had never previously applied for a mortgage in Canada before the [Property 8] mortgage.

Jay Chaudhary

84. Although Mr. Chaudhary was served with a summons, he did not appear to testify at the hearing. BCFSA read in portions of Mr. Chaudhary's testimony before Commissioner Austin F. Cullen at the Commission of Inquiry into Money Laundering in British Columbia (the "Commission").
85. In his testimony before the Commission, which was provided on February 24, 2021, Mr. Chaudhary indicated that while registered as a mortgage broker from 2007 to 2008, he would alter borrowers' income and bank balance information, and submit that altered information to lenders. Mr. Chaudhary further indicated that he had grown his mortgage broker business primarily through word-of-mouth referrals from realtors.
86. Mr. Chaudhary did not renew his registration as a submortgage broker after being suspended, and initially returned to his accounting business. However, Mr. Chaudhary testified that within a year he had returned to facilitating mortgages, occasionally using the aliases George DeSouna or Mike Kumar.

87. Mr. Chaudhary described his facilitation efforts as collecting income information and other relevant documents from applicants, preparing the applications, and then forwarding the application package on to registered mortgage brokers, who would submit the applications to lenders.
88. As he did prior to being suspended, Mr. Chaudhary indicated that he had grown his business through word-of-mouth referrals, until the issuing of the cease and desist order, when he ceased to operate his unregistered mortgage business.
89. Mr. Chaudhary testified before the Commission that he received compensation from the mortgage brokers with whom he worked, who would pay him 25-30% of their commissions, in cash. Mr. Chaudhary indicated that he falsified documents on an ongoing basis throughout the time that he operated his unregistered mortgage business. Mr. Chaudhary noted that he charged his borrower clients a fee of about 1% of the mortgage amount, and then would provide a percentage of that 1% fee to the realtor who had referred the client to him.
90. Mr. Chaudhary estimated that 80% of the realtors he received referrals from knew that he was not a registered mortgage broker. He noted that he would also occasionally process mortgage applications for realtors themselves, and the realtors for whom he had processed those applications were aware that he was unregistered. When asked how he knew those realtors were aware that he was unregistered, Mr. Chaudhary indicated that it was "Because I had been dealing with them in the past."

Rashin Rohani

91. Ms. Rohani indicated that she had known Jay Chaudhary, who she indicated had introduced himself to her as Mike Kumar, from mid-2016 until 2018. She stated that, in her view, she was a victim, just like Mr. Chaudhary's other clients.

Personal Transactions

92. At the time of the hearing, Ms. Rohani was residing at [Property 1], and continued to own [Property 4], and [Property 2]. She had sold [Property 5], as well as [Property 3].
93. Ms. Rohani indicated that she had moved to Canada in 2000, and that since 2016 she had worked only as a realtor, but acknowledged that she did not maintain an active real estate business. Rather, she indicated that she generally assisted relatives with real estate transactions. Ms. Rohani indicated that her income generally came from a monthly workers' compensation payment, and that if she needed help her family in Iran would provide her with money.
94. Of interest, Ms. Rohani explained that she had previously owned a home when she was a student in Canada and had no income. She indicated that she and her former husband had put down 25% on the purchase and were able to get a mortgage.
95. Ms. Rohani indicated that she first met Mr. Chaudhary, who she knew as "Mike", after being referred to him as being a very good mortgage broker by an individual she had met in the [redacted] complex. At that time, Ms. Rohani was interested in what further mortgage she could afford to buy a property. It was for that reason that she contacted Mr. Chaudhary.

96. Ms. Rohani indicated that she first met Mr. Chaudhary at a Starbucks, and that she could not recall whether he had ever provided her with a business card, but that she thought he had. Ms. Rohani indicated that she did not know if Mr. Chaudhary had informed her as to what company he worked for, and she indicated that she had not asked. She indicated that rather than email, she would contact Mr. Chaudhary over the telephone.
97. Ms. Rohani acknowledged that she did not take any steps to verify whether Mr. Chaudhary was in fact a registered mortgage broker.
98. Ms. Rohani indicated that it was her experience that most people in the Persian community knew "Mike", that she had previously heard his name in the community, and that it was known that he was a good mortgage broker and he worked in a group. Ms. Rohani indicated that, based on the way he talked, Mr. Chaudhary appeared to her to be a mortgage broker. She noted that after meeting with Mr. Chaudhary she began to look for houses with a view to making a purchase, and having Mr. Chaudhary assist her in obtaining a mortgage.
99. Ms. Rohani noted that she understood from Mr. Chaudhary that there was a special program in place for self-employed borrowers which allowed the banks to make up income based on the job one held, such that they could put a higher than actual income on the mortgage application.
100. Ms. Rohani indicated that she had first retained Mr. Chaudhary to assist with her mortgage application in relation to her purchase of [Property 1]. Ms. Rohani indicated that she had trusted Mr. Chaudhary and had simply provided him with any documents he requested in respect of mortgage applications, including her genuine income tax documents for the 2014 and 2015 tax years. She indicated that he eventually told her to go to [Lender 1] to sign mortgage documents, and that the deal had gone through.
101. Ms. Rohani indicated that she had not noticed Mona Erfani's name on the mortgage application documents. She noted that when she completed her various personal mortgage transactions, her practice was not to read any documents she signed, explaining that she was often rushed to complete those transactions. Ms. Rohani indicated that she would verify what she considered to be the most important information, that being her name and the mortgage interest rate. Ms. Rohani did indicate that she had met a woman on one occasion while signing mortgage paperwork with Mr. Chaudhary. Ms. Rohani indicated that although she made no inquiries as to why the woman was present, she now believed the woman to have been Ms. Erfani.
102. Ms. Rohani explained that after [Property 1] was purchased, her brother had asked her if she could make a property purchase for him if he sent money. Ms. Rohani indicated she had identified [Property 2] as a property to purchase, and that she had again gone to see Mr. Chaudhary and asked him if he could get a mortgage for her. Ms. Rohani indicated that Mr. Chaudhary had informed her that he could, as it was an investment property. She noted that Mr. Chaudhary had further informed her that as he already had her documents, he did not require anything further from her.
103. Ms. Rohani noted that Mr. Chaudhary was able to obtain mortgages from "A" lenders, and that she was therefore under the impression that all was legitimate.
104. Ms. Rohani acknowledged that none of her mortgage applications referenced her having Iranian income that was used to qualify her for a mortgage, but she stated that Mr. Chaudhary had been

the one who was creating false documents, and that she had not known that he was doing so. She further stated that she was never aware that Mr. Chaudhary was not a registered mortgage broker.

105. Ms. Rohani admitted that she did not have sufficient income to qualify for one mortgage in 2016, let alone the three mortgages she did ultimately qualify for in that year. She indicated, however, that she had trusted Mr. Chaudhary. Of note, Ms. Rohani indicated that she had not received any money from Mr. Chaudhary.

Client Referrals

106. Ms. Rohani acknowledged that she had assisted each of the buyer clients listed in Schedule A in the Notice of Hearing, even though Ms. Contreras may have actually been the realtor listed on the deal documents.

107. Ms. Rohani testified that Mr. Chaudhary had informed her that banks would charge a fee in completing her personal mortgages, but that he would be able to have that fee waived if she agreed to refer clients to him.

108. Ms. Rohani denied having pushed her buyer clients to Mr. Chaudhary. Rather, she stated that she would include his name on a list of mortgage brokers she would provide to clients.

109. Ms. Rohani acknowledged having recommended all of the buyer clients listed in Schedule A, other than [Witness 1], to Mr. Chaudhary as part of her list of recommendations.

110. Of note, when asked what other mortgage brokers she may have referred clients to on that list, Ms. Rohani indicated that she could not say. Ms. Rohani indicated that when she met [Witness 1] it was apparent that she was working with Mr. Chaudhary already, given that [Witness 1] had informed her that she had been working with "Mike". Ms. Rohani indicated that she knew that Mike was a reference to Mr. Chaudhary, due to Mr. Chaudhary's fame in the Persian community.

Reasons and Decision

Applicable Law

111. Section 35(1) of RESA provides:

35(1) A licensee commits professional misconduct if the

licensee does one or more of the following:

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

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

35(2) A licensee commits conduct unbecoming a licensee if the licensee engages in conduct that, in the judgment of the superintendent,

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

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

(c) brings the real estate industry into disrepute.

113. Section 30 of the Rules⁵ sets out, among other things, that if a client engages a brokerage to provide real estate services to or on behalf of the client, the brokerage and its related licenses must act in the best interests of the client.

114. Section 33⁶ of the Rules sets out that when providing real estate services, a licensee must act honestly.

115. Section 34⁷ of the Rules provides that when providing real estate services, a licensee must act with reasonable care and skill.

Discussion

Did Ms. Rohani commit conduct unbecoming within the meaning of section 35(2) of RESA as described at item 2 of the Notice of Hearing?

116. In general terms, the allegations under item 2 of the Notice of Hearing are that:

- Ms. Rohani submitted applications for mortgages in 2016 which contained falsified income and savings information, and that this constituted conduct unbecoming;
- Ms. Rohani's use of Mr. Chaudhary as a mortgage broker in 2016, when she knew or ought to have known that he was not a registered mortgage broker, constituted conduct unbecoming; and
- Ms. Rohani's use of Mr. Chaudhary's services again in 2018, when she knew or ought to have known that he was not a registered mortgage broker and who had previously falsified income documents for her, was conduct unbecoming.

117. In support of the allegations, BCFSa points to the fact that Ms. Rohani knew that she did not have any employment income in 2014, and only \$24,231 in gross employment income in 2015, and yet her mortgage application for [Property 1] described her as a "successful realtor" who had an average income of \$168,733 for 2014 and 2015. BCFSa further points to the fact that the tax, income, and bank savings documents provided in the [Property 1] mortgage application were all fraudulent.

118. Ms. Rohani denies having known that Mr. Chaudhary had taken the real documents she had provided to him and fraudulently increased her level of income and savings. In general, Ms. Rohani indicated in her evidence that she understood from Mr. Chaudhary that there was a special program available to those who were self-employed in which their income could simply be estimated. Ms. Rohani further states that she did not review the June 17, 2016 commitment letter for [Property 1] she signed at [Lender 1], other than to identify her name and the interest rate to be paid.

119. While I accept that it is possible that Ms. Rohani did not specifically know that Mr. Chaudhary had filled her mortgage application with fraudulent documents relating to her income and savings, I note that in her evidence at this hearing Ms. Rohani admitted that she did not have sufficient

income to qualify for a single mortgage in 2016, let alone the three for which she ultimately qualified.

120. The June 17, 2016 commitment letter required that Ms. Rohani verify her income, at an amount equal to \$168,733.00, by providing Notices of Assessment and T1 Generals for the previous two years. The June 17, 2016 commitment letter further indicated that it required further evidence of at least two years of self-employment.

121. While Ms. Rohani indicates that she did not review the June 17, 2016 commitment letter, I do not find her evidence in this respect to be credible. I note that Ms. Rohani agreed in cross-examination that for an investment of the size she was making in [Property 1], she would have expected a client to review an important document before signing it. While Ms. Rohani indicated that she felt rushed to sign the document, I do not find her evidence in this respect to be compelling, given, again, that she indicated that she would have expected a client to have reviewed such an important document.

122. I consider it to be more likely than not that Ms. Rohani was aware that she was required to provide proof of income in order to qualify for the mortgage for [Property 1]. While I accept that Mr. Chaudhary may have told Ms. Rohani that there was a way to estimate the earnings for self-employed people, I also consider the reality of the situation is likely that Ms. Rohani knew that she had to provide proof of income of approximately \$168,000 per year as required by the commitment letter, that she knew that she could not provide such information, but that she felt that Mr. Chaudhary could.

123. In my view, the most likely scenario is that Ms. Rohani relied on Mr. Chaudhary to provide falsified income and savings information to the lender in order to enable her to obtain the mortgage for [Property 1] that she would otherwise not have been able to obtain. In summary, I consider that it is more likely than not that Ms. Rohani was relying on Mr. Chaudhary to perpetuate a deception on her behalf in order to enable her to obtain a mortgage.

124. I note that Ms. Rohani's evidence was that after the success of the [Property 1] mortgage application, she determined to use Mr. Chaudhary's services on two further occasions in 2016.

125. In my view, in determining to continue to rely on Mr. Chaudhary for those further applications, when she knew that her income was in fact too low to qualify her for further mortgages, Ms. Rohani was once again relying on Mr. Chaudhary to provide lenders with falsified income and savings information for her own mortgages, and thereby perpetuate a deception on her behalf.

126. I consider Ms. Rohani's engagement of Mr. Chaudhary in each of the above transactions to constitute conduct unbecoming as contemplated by section 35(2) of RESA, in that Ms. Rohani's participation in the deception of the lenders, due to Mr. Chaudhary's use of fraudulent documents, would bring the real estate industry into disrepute.

127. Finally, with respect to the 2018 mortgages Ms. Rohani obtained, I consider that, in once again engaging the services of Mr. Chaudhary, when she knew that he was prepared to engage in the production of falsified income and savings documents, and when she knew that she had no employment income in 2016 and limited employment income in 2017 and would therefore not qualify for a mortgage absent Mr. Chaudhary providing those falsified documents, Ms. Rohani

was engaged in that deception, and therefore engaged in conduct unbecoming as contemplated by section 35(2) of RESA.

128. I turn to a consideration of whether Ms. Rohani knew or ought to have known that Mr. Chaudhary was not a registered mortgage broker.

129. In my view, it is possible that Ms. Rohani did not know, and ought not necessarily to have known, that Mr. Chaudhary was not registered when he completed the first three mortgage applications for her in 2016.

130. I reach that conclusion based on Ms. Rohani's evidence that Mr. Chaudhary was essentially famous in her community as a mortgage broker. Ms. Rohani indicated that when she met with Mr. Chaudhary, she felt that he talked like a mortgage broker, although she did not recall him providing her with a business card or company name. Mr. Chaudhary requested documents from her, prepared mortgage applications, and informed her when lenders approved her applications.

131. In all of those circumstances, while I consider, as I have set out above, that Ms. Rohani likely knew that Mr. Chaudhary was engaged in deceptive practices, I do not consider the evidence to show that Ms. Rohani knew or ought to have known that Mr. Chaudhary was not registered as a mortgage broker when he assisted her in 2016. I acknowledge, in reaching this conclusion that the fact that Mr. Chaudhary's name was not on the mortgage applications submitted to the lenders could perhaps have triggered Ms. Rohani's attention. I consider, however, that it is more likely than not that, at least in 2016, Ms. Rohani was simply focused on the success Mr. Chaudhary was having on her behalf, rather than the nature of his registration.

132. I do not consider that the same conclusion can be reached in respect of the mortgages obtained by Ms. Rohani in 2018.

133. By that time, Ms. Rohani had been recommending Mr. Chaudhary's services to her clients for approximately a year. As I have explained below, I am of the view that even with a minimum amount of diligence in the service of her clients, Ms. Rohani would have become aware, in 2017, of the fact that Mr. Chaudhary was not a registered mortgage broker. As such, I consider that she knew or ought to have known that fact by the time of the 2018 mortgages. I find that, in using Mr. Chaudhary's services as a mortgage broker when she knew or ought to have known that he was not registered, Ms. Rohani acted contrary to the best interests of the public and engaged in conduct that brings the industry into disrepute. As a result, I find that for this reason Ms. Rohani also committed conduct unbecoming in respect of the 2018 mortgage transactions.

Did Ms. Rohani commit professional misconduct within the meaning of section 35(1) of RESA and conduct unbecoming with the meaning of section 35(2) of RESA as described at item 1 of the Notice of Hearing?

134. At item 1 of the Notice of Hearing, BCFSA alleges that by referring the six buyer clients to Mr. Chaudhary, who was an unregistered mortgage broker, Ms. Rohani placed her clients at risk, and in doing so contravened the above-noted rules, and therefore committed professional misconduct as contemplated by section 35(1) of RESA.

135. Simply put, BCFSA says that Ms. Rohani knew that Mr. Chaudhary was not a registered mortgage broker, and that Ms. Rohani's referral of her clients to him demonstrated a failure to act

in the best interests of the client, a failure to act honestly, and a failure to act with reasonable care and skill.

136. In the alternative, BCFSa submits that even if I were to accept that Ms. Rohani was not aware that Mr. Chaudhary was not a registered mortgage broker, the exercise of reasonable care and skill would have required her to inquire as to Mr. Chaudhary's registration status prior to referring her clients to him.

137. Ms. Rohani, has admitted that she referred the buyer clients of the following properties to Mr. Chaudhary:

- [Property 6], North Vancouver;
- [Property 7], North Vancouver;
- [Property 9], Maple Ridge;
- [Property 10], New Westminster; and
- [Property 11], North Vancouver.

138. I note that each of the above-noted properties is listed in Mr. Chaudhary's client spreadsheet. On the spreadsheet, each of those properties identifies "Rashin" as the individual who provided the referral to Mr. Chaudhary. In light of that evidence, even if Ms. Rohani had not admitted to having made the above-noted referrals, I would have concluded that it was more likely than not that she had.

139. Prior to considering whether those referrals constitute professional misconduct and/or conduct unbecoming, I consider it to be necessary to determine whether the evidence supports a conclusion that Ms. Rohani also referred [Witness 1] and her husband to Mr. Chaudhary for the purposes of arranging a mortgage for their purchase of [Property 8].

140. In my view, the evidence supports a conclusion that it is more likely than not that Ms. Rohani did in fact make that referral. Having heard from both witnesses, I find that [Witness 1]'s description of how she came to obtain a mortgage, that is through the direction provided by Ms. Rohani, is more consistent with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions: *Faryna v. Chorny*, 1951 CanLII 252 (BCCA).

141. In my view, the fact that the client spreadsheet specifically sets out that the referral in respect of the [Property 8] mortgage came from "Rashin", just as the other property referrals noted above did, is compelling evidence that Ms. Rohani referred [Witness 1] to Mr. Chaudhary.

142. I note, in reaching this conclusion, that I do not consider that it would make sense for Mr. Chaudhary to identify that a mortgage applicant had been referred to him by a realtor when that was not the case. As Mr. Chaudhary testified at the Commission, he paid a portion of his client fee to the real estate licensees who referred clients to him. I consider it to be more likely than not that if Mr. Chaudhary had a client for whom he did not need to pay a referral fee, he would not do so, as that would be reducing his income for no reason.

143. I recognize, in setting out the above, that I am relying on documentary evidence, and interpreting that documentary evidence, without the benefit of having Mr. Chaudhary explain the precise intention of the client spreadsheet. I consider, however, that the purpose of the spreadsheet is patent. I consider it to be clear that it was a tracking system for Mr. Chaudhary to ensure he knew

who had referred which clients, who the lender was, and what fees he had obtained and paid out in respect of the transactions recorded on the client spreadsheet. I do not consider I require Mr. Chaudhary to provide evidence in order to rely on the information contained in the client spreadsheet.

144. I note further that I consider [Witness 1]'s evidence as to how her interactions with Mr. Chaudhary came about to be more compelling than that provided by Ms. Rohani.

145. While I accept that it may be possible that [Witness 1] indicated some awareness of the existence of "Mike" at the time she met Ms. Rohani at the open house, as Ms. Rohani says, I consider that the remainder of the evidence favours a conclusion that it was Ms. Rohani who made the arrangements between [Witness 1] and Mr. Chaudhary.

146. In my view, given that [Witness 1] had never before had a mortgage in Canada, whereas Ms. Rohani had not only worked with Mr. Chaudhary in respect of her three personal mortgage transactions dating to 2016, but also had referred at least two clients to Mr. Chaudhary prior to engaging with [Witness 1], it is more likely that Ms. Rohani provided [Witness 1] with Mr. Chaudhary's contact information, rather than [Witness 1] already having that information.

147. I note in this respect that if [Witness 1] had in fact already been working with Mr. Chaudhary, as Ms. Rohani appears to suggest, it is difficult to understand why she would have been enquiring, upon meeting Ms. Rohani, what her thoughts were on [Witness 1]'s ability to obtain a mortgage, and showing Ms. Rohani documents that she had which she felt would support her mortgage application.

148. I consider further that given [Witness 1]'s lack of knowledge of mortgages, it is more likely than not that she followed the directions provided by Ms. Rohani as to what steps to take in order to get her mortgage approved. This relates not only to directing [Witness 1] to a meeting at a coffee shop, but also the direction that [Witness 1] provide a bank draft payable to [Company 1].

149. Having concluded that Ms. Rohani did in fact refer all of the buyer clients listed in Schedule A of the Notice of Hearing to Mr. Chaudhary, I turn to a consideration of whether those referrals constituted professional misconduct.

150. I find that they did. Specifically, I consider that in referring her clients to an unregistered mortgage broker who charged a significant fee for his services to applicants, Ms. Rohani was clearly not acting in the best interests of her clients.

151. Rather, I consider it to be more likely than not, based on the client spreadsheets, that rather than acting in the best interests of her clients, Ms. Rohani was in fact motivated to recommend Mr. Chaudhary's services in order to profit from the arrangement. As BCFSAs submits, this was in Ms. Rohani's best interest, but not that of her clients.

152. On that basis alone, I would find that Ms. Rohani committed professional misconduct by being in breach of Rule 3-3.

153. While Ms. Rohani has submitted that she was simply unaware that Mr. Chaudhary was unregistered, I am of the view that she ought to have known of that fact, and that any failure to have been aware constituted a failure to act with reasonable care and skill.

154. On her own evidence, Ms. Rohani never enquired with Mr. Chaudhary about where he worked, despite the fact that she had worked with him previously in 2016, and despite admitting being aware of the fact that she ought not to refer clients to someone who was not a registered mortgage broker.
155. Ms. Rohani testified that rather than only referring clients to Mr. Chaudhary for mortgage services, she would provide clients with a list of potential mortgage brokers. Leaving aside that she then testified that she could not remember the names of any of the other mortgage brokers she would have recommended besides Mr. Chaudhary, I consider it to be clear that a licensee under RESA has a responsibility, when making recommendations to clients, to ensure that the recommended party is appropriately licensed or qualified for the role in which the licensee is recommending them.
156. I note in reaching this conclusion, the comments of the BC Supreme Court in *Sedgemore v. Block Brothers Realty Ltd.*, 1985 CarswellBC 625:
- It is now well established that real estate brokers who elect to provide information and advice to the third parties with whom they may have dealings must exercise reasonable care and skill in the performance of their undertaking in ensuring the completeness and accuracy of such information and advice.
157. In my view, the recommendation of a mortgage broker to a client constitutes the provision of information and advice. I consider that taking the step of checking to ensure that a “mortgage broker” being recommended to a client is in fact a registered mortgage broker would be the bare minimum step for a licensee acting with reasonable care and skill towards one’s clients.
158. I agree with BCFSa that Ms. Rohani’s evidence that “everyone” in the Persian community knew who “Mike” was does not excuse her failure to ensure that the recommendation she was making was a reasonable one. Simply put, whether Ms. Rohani exercised reasonable care and skill is not an assessment of whether “everyone” knew that Mr. Chaudhary could get people a mortgage. Rather, it is an assessment of whether Ms. Rohani’s referrals of her clients to Mr. Chaudhary exhibited reasonable care and skill.
159. I note that there was nothing that required Ms. Rohani to make any recommendations about any mortgage broker to her clients. I consider, however, that once she determined that she would make such recommendations to her clients, and particularly in respect of a potentially life altering financial transaction, Ms. Rohani was required, at minimum, to ensure that the recommended party was appropriately qualified to provide those financial services. Here, Ms. Rohani failed to take any steps to do so. I find that she acted without reasonable care and skill for her clients.
160. I therefore find that Ms. Rohani breached Rules 3-3 and 3-4 in recommending Mr. Chaudhary to her clients in respect of the six transactions listed at Schedule A. Given that a breach of a rule constitutes professional misconduct within the meaning of section 35(1) of RESA, I further find that Ms. Rohani committed professional misconduct in making those recommendations.
161. I turn to the allegation that Ms. Rohani committed professional misconduct when she received, or anticipated receiving remuneration, from Mr. Chaudhary.

162. Mr. Chaudhary's evidence at the Commission was that he paid a referral fee to the realtors he worked with. This would appear to be supported by the client spreadsheet, which identifies the referral realtors and the total commission amount Mr. Chaudhary charged.
163. In the face of Mr. Chaudhary's evidence at the Commission, and the client spreadsheet, which specifically sets out what appears to be a fee to be paid to "Rashin", I do not find Ms. Rohani's evidence that she did not receive any fees as a result of providing the referrals from Mr. Chaudhary to be compelling.
164. I note further that, in the case of [Witness 1], her evidence was that she was directed by Ms. Rohani to produce a bank draft in the amount of \$9,500 payable to Mr. Chaudhary's company, [Company 1]. On the client spreadsheet in relation to that transaction, Mr. Chaudhary recorded a "client fee" of \$6,500 in respect of the [Witness 1] mortgage application, and a broker fee of \$950 to the mortgage broker who submitted the application. That would leave \$2,000 from [Witness 1]'s bank draft outstanding, which would be consistent with a payment to Ms. Rohani of approximately 20-25% for her involvement in the deal, which is also consistent with Mr. Chaudhary's testimony as to the percentage of his fee he would pay to realtors who referred clients to him.
165. In my view, it is more likely than not that the fact pattern that appears to have played out in the [Witness 1] mortgage also played out in respect of the other transactions noted at Schedule A of the Notice of Hearing. I note that the client spreadsheet in each of those transactions sets out a "Fee Client" and a "Fee Broker".
166. Having considered all of the evidence, I am satisfied that it is more likely than not that Ms. Rohani referred clients to Mr. Chaudhary in anticipation of receiving remuneration for that referral, and that she did not reveal that fact to her clients. I find that such action was contrary to the best interests of her clients (contrary to section 30(a) of the Rules, formerly Rule 3-3(a)).

Conclusion

167. I find that:

- Ms. Rohani breached section 30(a), and section 34 of the Rules, and thereby committed professional misconduct within the meaning of section 35(1) of RESA, when she referred the six buyer clients set out at Schedule A of the Notice of Hearing to Jay Chaudhary, when she knew or ought to have known that he was not a registered mortgage broker;
- Ms. Rohani breached section 30(a) of the Rules, and thereby committed professional misconduct within the meaning of section 35(1) of RESA, when she referred clients to Mr. Chaudhary in anticipation of receiving remuneration from Mr. Chaudhary and failing to disclose that anticipated remuneration to her clients;
- Ms. Rohani committed conduct unbecoming within the meaning of section 35(2) of RESA, when in 2016, she submitted mortgage applications prepared by Mr. Chaudhary for properties located at [Property 1], North Vancouver; [Property 2], North Vancouver; and [Property 3], North Vancouver; each of which contained falsified income and savings information; and
- Ms. Rohani committed conduct unbecoming within the meaning of section 35(2) of RESA when, in 2018, she used the services of Mr. Chaudhary, who she knew or ought to have

known was not a registered mortgage broker and who had previously falsified income documents for her, to obtain mortgage financing for properties located at [Property 4], North Vancouver, and [Property 5], North Vancouver.

Sanctions

168. I retain jurisdiction to determine issues of sanctions and expenses, and will hear evidence and submissions from the parties concerning orders under section 43(2) of RESA, and expenses under section 44(1) of RESA, and any other actions available to the Superintendent, at a date, time and place to be set.

169. BCFSA and Ms. Rohani must advise the Hearing Coordinator, by January 22, 2024 of any request for an in-person hearing respecting sanctions, and why an in-person hearing is necessary or desirable. If an in-person hearing is directed, the Hearing Coordinator will contact the parties to arrange a suitable hearing date. Unless an in-person hearing is directed, any further evidence will be received through affidavits, and submissions respecting sanction will be received in writing. Subject to further directions, the parties must provide affidavit evidence and written submissions to the Hearing Coordinator and to each other as follows:

- BCFSA must provide any affidavits and written submissions by February 1, 2024;
- Ms. Rohani must provide any responding affidavits and written response submissions by February 22, 2024;
- BCFSA must provide any reply affidavits and written reply submissions by February 29, 2024.

170. Any party may apply to vary these dates, seek leave to cross-examine on an affidavit, or address other procedural matters.

171. Once I have arrived at a decision on sanctions issues, I will issue additional reasons (a "Decision on Sanctions & Expenses") that will form a part of this decision, make an order under section 43(2) of RESA, and make such other orders under RESA as I may deem appropriate.

172. Once an order has been made under Part 4, Division 2 of RESA, Ms. Rohani will have a right to appeal to the Financial Services Tribunal under section 54(1)(e) of the RESA. Ms. Rohani will have 30 days from the date of the sanction decision to appeal: *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 11 day of January, 2024

"Original signed by Andrew Pendray"

Andrew Pendray
Chief Hearing Officer

¹ The Notice of Hearing was initially issued on March 7, 2023. The amendment to the Notice of Hearing issued on June 26, 2023 was the removal of one of the allegations against Ms. Rohani.

² *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119, para. 38.

³ *Cambie Hotel*, paragraph 38.

⁴ BCFSa was established in November 2019 pursuant to the *Financial Services Authority Act*, at which time the operations and affairs of FICOM were transferred to BCFSa. In August 2021, RECBC was integrated into BCFSa.

⁵ The numbering of the Real Estate Services Rules (the “Rules”) was changed in 2021. Section 30 was formerly section 3-3.

⁶ Formerly section 3-4.

⁷ Formerly section 3-4.