Citation: Chhina (Re), 2025 BCSRE 155
Date: 2025-09-26
File No. INC-2877

BC FINANCIAL SERVICES AUTHORITY

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

AND

IN THE MATTER OF

GURPREET SINGH CHHINA (138053) and GURPREET SINGH CHHINA PERSONAL REAL ESTATE CORPORATION (138053PC)

AND

RASPHAL SINGH KAMBO (088843) and RASHPAL SINGH PERSONAL REAL ESTATE CORPORATION (088843PC)

DECISION ON LIABILITY AND SANCTION

[This Decision has been redacted before publication.]

DATE AND PLACE OF HEARING:	February 11 & 12, 2025 and via written submissions
COUNSEL FOR BCFSA:	Jenna Graham
COUNSEL FOR RESPONDENT:	Kelly A. Murray
HEARING OFFICER:	Andrew Pendray

Introduction

1. On June 13, 2024, the Superintendent of Real Estate (the "superintendent") issued an Amended Notice of Discipline Hearing to Gurpreet Singh Chhina and Gurpreet Singh Chhina Personal Real Estate Corporation ("Chhina PREC") (collectively "Chhina"), and to Rashpal Singh Kambo and Rashpal Singh Personal Real Estate Corporation ("Kambo PREC") (collectively "Kambo").

2. The allegations against Chhina were that, between January 1, 2016 and August 1, 2017, Chhina had committed professional misconduct within the meaning of section 35(1) of the *Real Estate Service Act* ("RESA") and conduct unbecoming within the meaning of section 35(2) of RESA in relation to a housing development located at [Property 1], in Langley, BC (the "development").

3. The allegations against Kambo mirrored those against Chhina.

4. Both Chhina and Kambo entered into Agreed Statements of Fact and Proposed Findings of Misconduct (the "ASFs"). At a liability hearing held on November 25, 2024, I accepted those ASFs,

the admissions made by the respondents, and the proposed findings of misconduct. I found at that time that the respondents were liable in respect of all of the allegations set out against them in the Amended Notice of Discipline Hearing.

5. This decision relates to the appropriate orders to be issued against the respondents in respect of their admitted conduct. An oral hearing was held on the issue of sanctions, with both BCFSA and the respondents calling evidence.

6. In its submissions, BCFSA seeks orders that Chhina's licence should be cancelled, that he pay a penalty of $10,000, and that he pay investigative and hearing expenses in the amount of $69,772.48.

7. BCFSA further seeks orders that Kambo's licence be cancelled, that he pay a penalty of $10,000, and that he pay investigative and hearing expenses in the amount of $69,772.48.

8. The respondents take the position that each of Chhina and Kambo should be ordered to pay a penalty of no more than $5,000. Regarding enforcement expenses, the respondents submit that further submissions should be provided on costs after the decision on sanctions is issued.

Issues

9. The issues before me is what orders I should make under section 43 of RESA including the following:

    a. The sanction or sanctions I should order under section 43(2) of RESA; and

    b. Whether the respondents should be ordered to pay any expenses pursuant to section 43(2)(h) of RESA, and if so, in what amount.

Jurisdiction and Standard of Proof

10. Pursuant to section 2.1(3) of RESA, the superintendent may delegate any of its powers in writing. The Senior Hearing Officer and Hearing Officers of BCFSA's Hearings Division have been delegated the statutory powers and duties of the superintendent under sections 42 through 53 of RESA.

11. The superintendent must also afford procedural fairness to a respondent where a decision may affect his or her rights, privileges or interests. This 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 based on evidence. The superintendent may, however, apply its individual expertise and judgment to how it evaluates or assesses evidence.

Factual Background

12. The evidence and information before me includes the ASFs; the witness testimony of [Investigator 1], the Director of Investigations for BCFSA; the testimony of Chhina; the testimony of Kambo; the testimony of [Witness 1], a client of the respondents; the testimony of [Witness 2], a client of the respondents; three character reference letters submitted on behalf of the respondents, and a promissory note document and contract related to one of the units in the development.

13. The factual background is largely set out in the ASFs.

14. Chhina has been a licensed since August 2003, with Chhina PREC licensed since October 2016.

15. Kambo has been licensed since February 1992, with Kambo PREC licensed since August 2016.

16. Chhina and Kambo share an office space in Surrey, BC, where they meet with clients and conduct business.

17. Both Chhina and Kambo are also directors of companies. Chhina is a director of the company [Company 1], while Kambo is the sole director of the company [Company 2].

18. The development, known as "[Development 1]", was developed by 0981478 BC Ltd. (the "developer"). Mark Chandler was the owner and sole director of the developer.

19. In 2015, the developer sold, among other units in the development, the following units to purchasers (the "First Purchasers"), via pre-sale contracts each titled "Agreement for Purchase and Sale", as between each purchaser and the developer: units 209, 210, 211, 213, 304, 307, 310, 318, and 412 (collectively "the Units").

20. The First Purchasers paid the developer approximately 15% of the total price of the Units as a deposit, which was paid to the Developer's solicitor, to be held in trust and applied towards the total purchase price of their respective unit. The balance of the purchase price was due on completion of the development.

21. The sale of the units was structured so that after the initial pre-sale contracts were entered into with the First Purchasers, the units would be resold to second purchasers at a discounted price by way of a pre-sale contract titled "Agreement for Purchase and Sale" between the second purchaser and the developer.

22. In purchasing the Units, the second purchasers would pay the developer approximately 75% of the original purchase price of the Units, being the full discounted purchase price for the Units.

23. Attached to the "Agreement for Purchase and Sale" entered into by the second purchasers was an addendum. In that addendum, the developer and the second purchasers agreed that upon completion of the Units, the second purchasers would not be required to pay any additional monies. Rather, the addendum set out that upon completion the second purchasers would receive either the unit they had purchase, or, 100% of the total net sale proceeds from the sale of the unit. Also attached to the Agreement for Purchase and Sale entered into by the second purchasers was a Promissory Note for the amount of the second purchasers' deposit on the Units.

24. Chhina and Kambo became involved with units in the development in or around June 2016. At that time, they began working together to facilitate the sale of units to second purchasers. In doing so, Chhina and Kambo provided a number of trading services outside of their brokerage. Specifically they:

    - Found individuals interested in purchasing a unit in the development;
    - Met with prospective purchasers at their Surrey office to explain the Agreement for Purchase and Sale of the Units;
    - Provided purchasers with the Agreement for Purchase and Sale and recommended the purchasers buy a unit in the development;
    - Collected payments from the second purchasers on behalf of the developer and Visant Patel, an unlicensed individual who was working with the developer, for the cost of the Units and for referral fees, with sale proceeds going directly to the developer; and
    - Provided executed Agreements for Purchase and Sale of the Units to Mr. Patel.

25. After Chhina and Kambo collected cheques from the second purchasers for payments to Mr. Patel and the developer, Mr. Patel would then pay Chhina and Kambo referral fees in connection with the sale of the Units.

26. The details in respect of each of Chhina and Kambo's involvement with respect to the individual units follows. Each transaction is relatively similar.

Unit 209

27. On or around July 27, 2016, Chhina and Kambo each admit that they provided the following trading services with respect to unit 209:

- They met with the purchasers of unit 209 at the Surrey office where they recommended the purchasers enter into a promissory note and an agreement to purchase the unit for the discounted price. They explained to the purchasers that the unit had already been sold to a first purchaser, and that upon completion of the unit the purchasers, as the second purchaser, would have the option to either keep the completed unit or receive the full proceeds coming from the sale of the unit;
- They provided the purchasers with the original purchase agreement from the first purchaser as well as a blank copy of the Agreement for Purchase and Sale of the unit with the developer's signature executed on the document;
- After the purchasers signed the Agreement for Purchase and Sale of unit 209, they accepted a cheque addressed to the developer for $190,000 for unit 209;
- They further accepted a cheque from the purchasers for $30,000, which was payable to Mr. Patel's company, 1074936 BC Ltd., as a "finder's fee" for unit 209;
- They emailed Mr. Patel the executed Agreement for Purchase and Sale for unit 209.

Unit 210

28. On or around August 23, 2016, Chhina and Kambo each admit that they provided the following trading services with respect to unit 210:

- They met with the purchasers of unit 210 at the Surrey office where they recommended the purchasers enter into a promissory note and an agreement to purchase the unit for the discounted price. They explained to the purchasers that the unit had already been sold to a first purchaser, and that upon completion of the unit the purchasers, as the second purchaser, would have the option to either keep the completed unit or receive the full proceeds coming from the sale of the unit;
- They provided the purchasers with the original purchase agreement from the first purchaser as well as a blank copy of the Agreement for Purchase and Sale of the unit with the developer's signature executed on the document;
- After the purchasers signed the Agreement for Purchase and Sale of unit 210, they accepted a cheque addressed to the developer for $250,000 for unit 210
- They further accepted a cheque from the purchasers for $25,000, which was payable to Mr. Patel's company, 1074936 BC Ltd., as a "finder's fee" for unit 210;
- They emailed Mr. Patel the executed Agreement for Purchase and Sale for unit 210.

Unit 211

29. On or around August 10, 2016, Chhina and Kambo each admit that they provided the following trading services with respect to unit 211:
    - They met with the purchasers of unit 211 at the Surrey office where they recommended the purchasers enter into a promissory note and an agreement to purchase the unit for the discounted price. They explained to the purchasers that the unit had already been sold to a first purchaser, and that upon completion of the unit the purchasers, as the second

purchaser, would have the option to either keep the completed unit or receive the full proceeds coming from the sale of the unit;
- They provided the purchasers with the original purchase agreement from the first purchaser as well as a blank copy of the Agreement for Purchase and Sale of the unit with the developer's signature executed on the document;
- After the purchasers signed the Agreement for Purchase and Sale of unit 211, they accepted a cheque addressed to the developer for $180,000 for unit 211;
- They further accepted a cheque from the purchasers for $45,000, which was payable to Mr. Patel's company, 1074936 BC Ltd., as a "finder's fee" for unit 211;
- They emailed Mr. Patel the executed Agreement for Purchase and Sale for unit 211.

Unit 213

30. Chhina and Kambo each admit that, on or around August 12, 2016, they provided the following trading services with respect to unit 213:

    - They met with the purchasers of unit 213 at the Surrey office where they recommended the purchasers enter into a promissory note and an agreement to purchase the unit for the discounted price. They explained to the purchasers that the unit had already been sold to a first purchaser, and that upon completion of the unit the purchasers, as the second purchaser, would have the option to either keep the completed unit or receive the full proceeds coming from the sale of the unit;
    - They provided the purchasers with the original purchase agreement from the first purchaser as well as a blank copy of the Agreement for Purchase and Sale of the unit with the developer's signature executed on the document;
    - After the purchasers signed the Agreement for Purchase and Sale of unit 213, they accepted a cheque addressed to the developer for $250,000 for unit 213;
    - They further accepted a cheque from the purchasers for $30,000, which was payable to Mr. Patel's company, 1074936 BC Ltd., as a "finder's fee" for unit 213;
    - They emailed Mr. Patel the executed Agreement for Purchase and Sale for unit 213.

Unit 304

31. Chhina and Kambo each admit that, on or around September 7, 2016, they provided the following trading services with respect to unit 304:

    - They met with the purchasers of unit 304 at the Surrey office where they recommended the purchasers enter into a promissory note and an agreement to purchase the unit for the discounted price. They explained to the purchasers that the unit had already been sold to a first purchaser, and that upon completion of the unit the purchasers, as the second purchaser, would have the option to either keep the completed unit or receive the full proceeds coming from the sale of the unit;
    - They provided the purchasers with the original purchase agreement from the first purchaser as well as a blank copy of the Agreement for Purchase and Sale of the unit with the developer's signature executed on the document;
    - After the purchasers signed the Agreement for Purchase and Sale of unit 304, they accepted a cheque addressed to the developer for $250,000 for unit 304;
    - They further accepted a cheque from the purchasers for $35,000, which was payable to Mr. Patel's company, 1074936 BC Ltd., as a "finder's fee" for unit 304;
    - They emailed Mr. Patel the executed Agreement for Purchase and Sale for unit 304.

Unit 307

32. Chhina and Kambo each admit that, on or around August 11, 2016, they provided the following trading services with respect to unit 307:

    - They met with the purchasers of unit 307 at the Surrey office where they recommended the purchasers enter into a promissory note and an agreement to purchase the unit for the discounted price. They explained to the purchasers that the unit had already been sold to a first purchaser, and that upon completion of the unit the purchasers, as the second purchaser, would have the option to either keep the completed unit or receive the full proceeds coming from the sale of the unit;
    - They provided the purchasers with the original purchase agreement from the first purchaser as well as a blank copy of the Agreement for Purchase and Sale of the unit with the developer's signature executed on the document;
    - After the purchasers signed the Agreement for Purchase and Sale of unit 307, they accepted a cheque addressed to the developer for $150,000 for unit 307;
    - They further accepted a cheque from the purchasers for $35,000, which was payable to Mr. Patel's company, 1074936 BC Ltd., as a "finder's fee" for unit 307;
    - They emailed Mr. Patel the executed Agreement for Purchase and Sale for unit 307.

Unit 310

33. Chhina and Kambo each admit that, on or around August 17, 2016, they provided the following trading services with respect to unit 310:

    - They met with the purchasers of unit 310 at the Surrey office where they recommended the purchasers enter into a promissory note and an agreement to purchase the unit for the discounted price. They explained to the purchasers that the unit had already been sold to a first purchaser, and that upon completion of the unit the purchasers, as the second purchaser, would have the option to either keep the completed unit or receive the full proceeds coming from the sale of the unit;
    - They provided the purchasers with the original purchase agreement from the first purchaser as well as a blank copy of the Agreement for Purchase and Sale of the unit with the developer's signature executed on the document;
    - After the purchasers signed the Agreement for Purchase and Sale of unit 310, they accepted a cheque addressed to the developer for $150,000 for unit 310;
    - They further accepted a cheque from the purchasers for $35,000, which was payable to Mr. Patel's company, 1074936 BC Ltd., as a "finder's fee" for unit 310;
    - They emailed Mr. Patel the executed Agreement for Purchase and Sale for unit 310.

Unit 318

34. Chhina and Kambo each admit that, on or around August 15, 2016, they provided the following trading services with respect to unit 318:

    - They met with the purchasers of unit 318 at the Surrey office where they recommended the purchasers enter into a promissory note and an agreement to purchase the unit for the discounted price. They explained to the purchasers that the unit had already been sold to a first purchaser, and that upon completion of the unit the purchasers, as the second purchaser, would have the option to either keep the completed unit or receive the full proceeds coming from the sale of the unit;
    - They provided the purchasers with the original purchase agreement from the first purchaser as well as a blank copy of the Agreement for Purchase and Sale of the unit with the developer's signature executed on the document;

- After the purchasers signed the Agreement for Purchase and Sale of unit 318, they accepted a cheque addressed to the developer for $250,000 for unit 318;
- They further accepted a cheque from the purchasers for $25,000, which was payable to Mr. Patel's company, 1074936 BC Ltd., as a "finder's fee" for unit 318;
- They emailed Mr. Patel the executed Agreement for Purchase and Sale for unit 318.

Unit 412

35. Chhina and Kambo each admit that, on or around September 9, 2016, they provided the following trading services with respect to unit 412:

    - They met with the purchasers of unit 412 at the Surrey office where they recommended the purchasers enter into a promissory note and an agreement to purchase the unit for the discounted price. They explained to the purchasers that the unit had already been sold to a first purchaser, and that upon completion of the unit the purchasers, as the second purchaser, would have the option to either keep the completed unit or receive the full proceeds coming from the sale of the unit;
    - They provided the purchasers with the original purchase agreement from the first purchaser as well as a blank copy of the Agreement for Purchase and Sale of the unit with the developer's signature executed on the document;
    - After the purchasers signed the Agreement for Purchase and Sale of unit 412, they accepted a cheque addressed to the developer for $250,000 for unit 412;
    - They further accepted a cheque from the purchasers for $35,000, which was payable to Mr. Patel's company, 1074936 BC Ltd., as a "finder's fee" for unit 412;
    - They emailed Mr. Patel the executed Agreement for Purchase and Sale for unit 412.

36. Each of Chhina and Kambo admit that in recommending to the second purchasers that they enter into promissory notes and agreements to purchase the units, they were providing real estate services outside of their brokerage.

37. They also admit that they did not disclose their activities in respect of the units to their brokerage, Sutton Premier Realty, including failing to provide relevant trading records, including copies of the purchase agreements in relation to the sale of the Units. They also admit that they did not hold the referral fees/finder's fees in trust through Sutton Premier Realty or through their respective PRECs.

38. Rather, Mr. Kambo's unlicensed company, [Company 2], received $113,500 in referral fees from Mr. Patel and Mr. Patel's unlicensed company, 1074936 BC Ltd. Those payments were as follows:

    - A cheque for $10,000 dated August 5, 2016
    - A cheque for $65,000 dated August 18, 2016;
    - A cheque for $9,500 dated August 25, 2016;
    - A cheque for $29,000 dated September 15, 2016.

39. Chinna also received $113,500 in referral fees from Mr. Patel and Mr. Patel's unlicensed company, via cheques in the same amount as those received by Kambo, on the same dates as those received by Kambo.

Liability

Applicable Law

40. RESA has been amended since the activities in question, which took place from June through September of 2016. It is the version of RESA that existed at that time, as well as the relevant versions of the *Real Estate Services Regulations* (the "Regulations") and the *Real Estate Services Rules* (the "Rules") that existed at that time that apply to this case.

41. Section 35(1)(a) of RESA set out that a licensee commits professional misconduct where the licensee contravenes RESA, the Regulations, or the Rules.

42. Section 35(2) of RESA provided that a licensee commits conduct unbecoming if the licensee engages in conduct that, in the judgment of the superintendent:

    - Is contrary to the best interests of the public;
    - Undermines public confidence in the real estate industry;
    - Or bring the real estate industry into disrepute.

43. Section 7(3) of RESA provided that a managing broker, associate broker, or representative, must not provide real estate services other than on behalf of the brokerage in relation to which they are licensed and that those individuals are not entitled to and must not accept remuneration in relation to real estate services from any person other than the brokerage in relation to which they are licensed.

44. Section 27(1)(a) of RESA set out that a licensee engaged by a brokerage must promptly pay or deliver to the brokerage all money held or received from, for, or on behalf of a principal in relation to real estate services. Section 27(1)(b) of RESA sets out the same requirement in respect of all money held or received on account of remuneration for real estate services.

45. The relevant Rules at issue in this matter are section 3-4[1], section 6-1[2], section 3-2(1)(b), 29(1)(b)[3], section 3-2(2) and 29(2)(a)[4].

46. Section 3-4 of the Rules set out the general requirement that when providing real estate services, a licensee must act with honesty and with reasonable care and skill.

47. Section 6-1 of the Rules required that a licensee not pay, offer to pay, or allow to be paid, remuneration to a person in relation to real estate services if the person is required to be licensed in relation to those services but is not licensed.

48. Section 3-2(1)(b) of the Rules addressed the responsibilities of associate brokers and representatives in respect of the provision of records to their brokerage, and section 3-2(2) addressed the requirement that associate brokers or representatives must keep their managing broker informed of their real estate services activities. Section 3-2(1)(b) specifically required that an associate broker or representative must promptly provide their managing broker with the original or a copy of trading records. Section 3-2(2)(a) required that associate brokers and representatives keep their managing broker informed of the real estate services being provided, and other activities being performed, by the associate broker or representative on behalf of the brokerage.

    Discussion

49. As indicated above, based on the ASFs, I determined at the November 2024 liability hearing that the allegations in the Notice of Amended Discipline Hearing had been made out on a balance of probabilities.

[1] Section 34 of the current Rules.
[2] Section 66 of the current Rules.
[3] Section 29(1)(b) of the current Rules.
[4] Section 29(2)(a) of the current Rules.

50. The facts in this case are clear. The Units had been sold to first purchasers. Chhina and Kambo were both aware of that fact when they met with the second purchasers, and recommended to them that they enter into the agreements to purchase the Units which had already been sold to first purchasers. I have no difficulty concluding that in doing so, the respondents were putting the second purchasers at significant risk of their purchase not proceeding in the manner they understood it would, and that the respondents were therefore not conforming with their duty to act with reasonable care and skill in the provision of real estate services to the second purchasers as required by section 3-4 of the Rules. This breach of the Rules constitutes professional misconduct as contemplated by section 35(1)(a) of RESA.

51. I am also satisfied that the above noted actions by the respondents constitutes conduct unbecoming as contemplated by section 35(2) of RESA. Again, the respondents' actions, in recommending that the second purchasers enter into the agreements for purchase and sale of units that had already been sold to first purchasers, placed the second purchasers in a position of significant risk. The respondents' actions in making that recommendation is conduct that, in my view, was contrary to the best interests of the public.

52. Further, the respondents' actions in facilitating unlicensed real estate activities by Mr. Patel, is also activity that is contrary to the best interests of the public and therefore constitutes conduct unbecoming. I consider that the respondents, in facilitating Mr. Patel's unlicensed activity, must have known that they were creating a risk to the second purchasers' funds, in that those funds were not being held by an individual or entity that was regulated under RESA. The fact that the respondents provided the second purchasers' cheques, for units that had yet to be developed, to an unlicensed individual, is conduct that was contrary to the best interests of the public.

53. It is clear that the respondents, in providing the second purchasers' funds to Mr. Patel, were in breach of section 6-1 of the Rules. Mr. Patel was not licensed, and yet it is clear that he was engaged in trading services, that being receiving deposit money paid in respect of real estate (specifically the Units), for which he was required to be licensed. Further, the provision of those deposit funds to an unlicensed individual was clearly a breach of the respondents' duty to act with reasonable care and skill as required by section 3-4 of the Rules. These breaches of the Rules by the respondents constitutes professional misconduct as contemplated by section 35(1)(a) of RESA.

54. The evidence before me, as set out in the ASFs, is that the respondents did not provide relevant records to their managing broker in respect of the agreements for purchase and sale of the Units, nor did they report any of their activities with respect to the purchase and sale of the Units to their brokerage. This is a clear breach of section 3-2(1)(b) and 3-2(2) of the Rules, and therefore constitutes professional misconduct as contemplated by section 35(1)(a) of RESA.

55. The respondents also did not, upon receipt of referral fees received from Mr. Patel and his unlicensed company, promptly pay or deliver to their brokerage those referral fees. Rather, they deposited those referral fees into their respective unlicensed companies' accounts. This, again, is a clear breach of the requirements of sections 27(1)(a) and 27(1)(b) of RESA, and constitutes professional misconduct as contemplated by section 35(1)(a) of RESA.

56. Finally, in receiving remuneration from Mr. Patel and his unlicensed company, the respondents were both in breach of section 7(3)(b) of RESA, which again constitutes professional misconduct as contemplated by section 35(1)(a) of RESA.

57. Taken as a whole, I consider that the respondents' actions were of the type that could undermine public confidence in the real estate industry, in that the respondents were operating outside of the Rules and requirements of RESA, and thereby putting their clients' funds at risk. These activities were also of the type that could serve to bring the real estate industry into disrepute, in that they had the ability to cause the industry and its licensees to be motivated in a self-serving manner,

rather than one in which their clients' interests were being protected. I find that the respondents' actions, on the whole, constitute conduct unbecoming as contemplated by section 35(2).

58. Having taken into account the above, I make the following findings in respect of the respondents' liability in this matter:

- Between June 2016 to September 2016, Chhina and Kambo, as licensed representatives, committed professional misconduct within the meaning of section 35(1) of the former RESA and conduct unbecoming within the meaning of section 35(2) of the former RESA in that they:

  - recommended the purchasers enter into agreements to purchase the development units which had already been sold to other individuals, thereby putting the purchasers at risk, contrary to section 3-4 [duty to act with reasonable care and skill] of the former Rules (section 34 of the current Rules);

  - facilitated the unlicensed activities of Vasant Patel, by finding purchasers for the development units, contrary to section 3-4 [duty to act with reasonable care and skill] of the former Rules, (section 34 of the current Rules) and section 6-1 [payment to unlicensed persons prohibited] (section 66 of the current Rules);

  - failed to provide to their managing broker relevant trading records, contrary to section 3-2(1)(b) of the former Rules [must provide managing broker with trading records] (section 29(1)(b) of the current Rules) and section 3-2(2) of the former Rules [keep managing broker informed of real estate services] (section 29(2)(a) of the current Rules);

  - failed to promptly pay or deliver to his brokerage the referral fees received from the purchasers in relation to their purchases of the development units, contrary to sections 27(1)(a) and 27(1)(b) of RESA; and

  - received remuneration from Vasant Patel in the form of referral fees, contrary to section 7(3)(b) of former RESA.

Sanctions

Additional Evidence

59. As noted above, I heard additional evidence at the sanctions hearing in this matter.

[Investigator 1]

60. [Investigator 1] is the director of investigations at BCFSA. He indicated that he became involved in the investigation into this matter in August 2017, when a lawyer had contacted the former Office of the Superintendent of Real Estate ("OSRE"), and reported that a development called "[Development 1]" had a set of purchasers who had hired her and who believed they had been defrauded by the developer and his development company. Specifically, the lawyer informed OSRE that her clients had purchased units in the development that had in fact already been purchased by other purchasers.

61. [Investigator 1] indicated that he had attended the lawyer's office in August 2017, and had noted that the agreements for purchase and sale that the lawyer provided appeared to contemplate a first purchaser, with standard pre-sale agreements, and a pre-sale deposit that would be held in trust in accordance with the requirements of the *Real Estate Development Marketing Act* ("REDMA").

[Investigator 1] noted, however, that the agreements for purchase and sale had a second set of purchasers added to them, and that, in his view, those contracts did not appear to be standard.

62. Rather, [Investigator 1] indicated that the contracts for the second set of purchasers contained wording that appeared to promise, by way of promissory note that upon completion the second set of purchasers would either receive the unit that they had agreed to purchase, or a "lift" from the amount they paid to the amount the unit completed for upon sale.

63. [Investigator 1] noted that the second purchase agreements did not involve any deposit money, but rather that the funds from the second purchasers was provided straight to the developer. [Investigator 1] explained that the second purchasers provided the entire purchase price to the developer, but at a deeply discounted price for the unit.

64. [Investigator 1] noted that the lawyer also provided documentation which demonstrated remuneration fees being paid to third parties who were not the developer or his development company.

65. [Investigator 1] explained that as the investigation proceeded, he noted that although the development was a development of 92 units, there were more than 92 purchase agreements that had been entered into by the developer. [Investigator 1] indicated that he concluded at that time that there was no way that every purchaser could have their agreement completed. He indicated that he had observed more than 4.5 million dollars in purchase agreements completed with funds being deposited outside of the developer's trust account.

66. [Investigator 1] indicated that, given the circumstances and the findings of the investigation, an order in urgent circumstances was obtained pursuant to sections 30 and 32 of REDMA, and that the development company was subsequently placed into receivership. [Investigator 1] explained that in the course of that receivership action, over 11 million dollars in funds was uncovered to have been collected and not held in trust, and that the 92 units in the development had in fact been sold more than 150 times to a number of purchasers.

67. With respect to the respondents' involvement, [Investigator 1] explained that early on in his investigation he had met Mr. Patel, who was an accountant and had worked with the developer and the development. [Investigator 1] indicated that he had learned that Mr. Patel was involved in the provision of real estate services in terms of the sale of the development units, and that Mr. Patel had worked out a model of operating, along with the developer, in order to bring purchasers into the development.

68. As [Investigator 1] described it, Mr. Patel would bring people known to him to the development and then work with the developer in selling a unit to those individuals. Mr. Patel would assist those individuals in entering into a purchase agreement for a development unit at a deep discount, with the money provided by the purchaser not being held in trust, but rather going directly to the developer. Mr. Patel would then receive a remuneration from the purchaser, as high as $30,000 per unit.

69. [Investigator 1] indicated that Mr. Patel had provided investigators with significant documentation, and that upon reviewing that documentation he had noticed payments from Mr. Patel to third parties, including to Chhina and Kambo. [Investigator 1] indicated that Mr. Patel had informed him that Chhina and Kambo had both brought purchasers to the development, and that they were real estate licensees.

70. [Investigator 1] explained that the information provided by Mr. Patel indicated to him that Chhina and Kambo had provided real estate services to nine or 10 purchasers, and that they had recommended to those purchasers that they enter into the non-standard secondary purchase agreements. [Investigator 1] indicated that his investigation had determined that the remuneration

monies received from purchasers would go to Mr. Patel, who would then transfer payment amounts to Chhina and Kambo or their numbered companies.

71. [Investigator 1] explained further that while there was some variation in the information he obtained from secondary purchasers in respect of what they believed they were purchasing, the general theme was that if you were a secondary purchaser, you received a promissory note which said that as the secondary purchaser you would either have the right to move into the unit upon completion, or receive the difference in money between what the secondary purchaser had paid the developer and the full purchase amount agreed to in the first purchasers' agreement.

72. On cross examination, [Investigator 1] noted that the investigators had eventually requested information from the respondents, and that the respondents had provided investigators with all of the documents they had in their possession, as well as attended for several interviews. [Investigator 1] acknowledged that the respondents had answered all of the investigators questions and provided documents as requested.

73. [Investigator 1] further acknowledged that his investigation had, to a degree, followed an associated civil action in relation to the development, and that he had anecdotal awareness that some of those involved had settled or received partial settlements in respect of their purchase agreements with the developer.

74. With respect to the secondary purchase agreements, [Investigator 1] indicated that there was some variation in the agreements, but that in general terms the addendum to the agreement set out that on completion the secondary purchasers would receive either the development unit or the difference in price between the amount that they had provided to the developer as part of the purchase agreement and the full purchase amount that the first purchaser had agreed to pay. He noted that some, but not all, of the secondary purchase agreements used the term "loan" in respect of the payments to the developer from the secondary purchasers. [Investigator 1] agreed that in the secondary purchase agreements there was reference to the fact that there was an initial buyer, and that if the initial buyer did not complete, the second purchaser would receive the difference between what the secondary purchaser had paid and what was ultimately paid for the unit by some third purchaser.

75. [Investigator 1] indicated that his recollection was that in respect of the transactions involving the respondents, each of them had promissory notes and described the rights of the secondary purchasers to either receive the units or receive the "lift".

76. With respect to the respondents' involvement as agents, [Investigator 1] indicated that his understanding was that the respondents had met with the second purchasers at their real estate offices and had recommended to the second purchasers that they enter into the agreements for purchase and sale. [Investigator 1] indicated that in his recollection there was no agreement involving the second purchasers and the respondents which specifically indicated that the second purchaser and the respondents were in an agency agreement.

77. [Investigator 1] indicated that he agreed with the proposition that the developer had been running a sophisticated scheme that was contrary to REDMA. He explained that his understanding was that the developer had different sets of books, and that some units had been double and triple sold, with one unit having been sold by the developer four times.

78. [Investigator 1] indicated that he had not followed up with any of the second purchasers as to whether they had been paid back any of the money that the respondents had received, but that he had been informed by the respondents that they had given some of those monies back to the second purchasers.

79. Mr. Chhina is 48 years old. He indicated that he had been licensed under RESA since 2003, and that his sole source of income was through the real estate trading services he provided. Mr. Chhina indicated that his average income ranged from $25,000 to $80,000 on an annual basis. Mr. Chhina has three children, and is the sole income provider for his family.

80. Mr. Chhina indicated that he was also significantly involved in spiritual and volunteer work. He explained that he had a society which gathered every weekend, approximately 2,000 people, and that they would cook food, meditate, contemplate, and help people get off of alcohol or drugs. Mr. Chhina stated that he had engaged in these activities every weekend for the past 18 years, and that he spent a minimum of 20 to 40 hours per week on those activities.

81. In describing how he came to be involved in the purchase and sale of the units, Mr. Chhina indicated that he had been looking for a couch for his office space, and that one of his friends had recommended that they see Chattar Sing Flora[5]. Mr. Chhina indicated that while he was looking for the couch, Mr. Flora had described the development deal with the developer, and discussed investing in it. Mr. Chhina indicated that Mr. Patel would call Mr. Chhina and Mr. Kambo to discuss further. Mr. Chhina noted that he had not known Mr. Patel at that time.

82. Mr. Chhina noted that once he and Mr. Kambo heard from Mr. Patel, they had a number of questions. He indicated that Mr. Patel had informed them that the developer was buying other properties, and that the purchases of the units were to loan the company money in aid of that activity. Mr. Chhina indicated that Mr. Patel's explanation of the process was that when the unit completed, the secondary purchaser would receive the entire initial purchase price. Mr. Chhina indicated that he understood from Mr. Patel that the developer was doing this because he did not want to lose out on purchasing other properties, and that he was using the money from the secondary purchasers to pay for those other properties.

83. Mr. Chhina indicated that Mr. Patel had provided the respondents with the contracts of purchase and sale, which were all initialed and signed by the developer. He noted that the contracts for the respondents' purchasers included the fact, on the addendum, that the money provided was a loan, and that the secondary purchaser would receive the full purchase price.

84. Mr. Chhina was taken to the agreement of purchase and sale for unit 216. That document indicates that the agreement was between 0981478 BC Ltd (the "developer") and [Company 1] ("[Company 1]") and [Company 2], each as 50% purchasers. Mr. Chhina explained that [Company 1] was his company, and that [Company 2] was Mr. Kambo's company.

85. The purchase price in the Agreement of Purchase and Sale for unit 216 is noted to be $369,000, with Mr. Chhina and Mr. Kambo's companies providing an initial deposit of $225,000.

86. There are two addendums attached to the Agreement of Purchase and Sale for unit 216 entitled Addendum "A", which appears to be a standard development contract addendum, and an additional addendum between the vendor and the purchasers (the "Additional Addendum").

87. The Additional Addendum sets out that:

> The purchaser and vendor agree the purchaser will loan the vendor an amount of Two Hundred and Twenty Five Thousands Dollars ($225,000.00). The loan will be secured by a Promissory Note issued by the vendor. The vendor further agrees to credit the purchaser One Hundred and Forty Four Thousand Dollars, Nine Hundred Dollars ($144,900.00) on the completion date and after adjusting for the Promissory Note amount from the contract. On completion no further payment is

[5] Mr. Flora is an unlicensed individual who was also a named respondent in this matter. Mr. Flora entered into a consent order on November 21, 2024.

> required from purchaser to the vendor after deducting Promissory Note amount and lawyers deposit amount from the contract price, as per page 1 of the contract. Purchaser is responsible for any applicable Government taxes and closing cost which are not part of the contract price. On completion company will pay retail price which is paid by retail buyer.

88. Mr. Chhina indicated that his understanding of the Additional Addendum was that the respondents' companies provision of the $225,000 deposit was a loan provided to the developer, and that upon completion they would receive the full amount of the retail purchase price of the unit.

89. The Promissory Note attached to the unit 216 contract indicates that the developer would pay the respondents' companies $225,000, along with accrued interest at a rate of 7%, and that that payment would be due and payable 75 days after the date of the Promissory Note.

90. Mr. Chhina indicated that his understanding of the Promissory Note is that the respondents' companies would receive repayment of the principal amount of $225,000, along with accrued interest, from the developer.

91. Mr. Chhina explained that at the time he became involved with the purchase and sale of units in the development, he understood that they were providing money to the developer who was using that money to purchase other properties. He stated that he considered the agreement of purchase and sale and the Promissory Note to be like a security.

92. Mr. Chhina acknowledged that he had previously been involved in pre-construction agreements as a real estate licensee, and noted that his experience with the units in the development had been different from those prior pre-constructions agreements.

93. Mr. Chhina stated that he and Mr. Kambo had told other people of the opportunity to enter into these agreements with the developer, largely people involved with his society. He stated that he had told people about the deal, that he felt that it was a great deal, a great investment. Mr. Chhina indicated that he had explained to those interested that they were giving a loan to the developer, that they would get a promissory note as a security. Mr. Chhina stated that he had referred to the deal as a security. Mr. Chhina stated that those who became involved in the transactions for the units were aware of the fact that the units had already been sold, and that in fact Mr. Patel had provided the respondents with a piece of paper showing that the units had first purchasers.

94. Mr. Chhina acknowledged that he had received remuneration from Mr. Patel, and stated that the second purchasers had been aware of the fact that Mr. Chhina and Mr. Kambo would be receiving money for their role in the transactions. He further acknowledged that he had come to realize, after the fact, that he was in fact engaging in real estate trading services in his role in the transactions with the second purchasers of the Units.

95. Mr. Chhina explained that he had not become aware that there was a problem with these second purchase transactions until 2017, when he became aware that Mr. Flora was selling units behind Mr. Patel's back. Mr. Chhina indicated that at that time he and Mr. Kambo had asked Mr. Patel to update them on their accounts, and that suddenly the developer had fired the individual who was doing the accounts. Mr. Chhina stated that the new person hired by the developer apparently could not find the accounts, and that there was then a disagreement between Mr. Patel and the developer's new accountant. Mr. Chhina indicated that the development was supposed to be completed in 2017, but that when he attended the site it became apparent that it was not completed.

96. Mr. Chhina indicated that they subsequently contacted the developer directly, because another of its developments had gone into foreclosure. Mr. Chhina indicated that at that time they had asked for the second purchasers' money back, or they would obtain a certificate of pending litigation, and that the developer had told them that it would reimburse the funds, but that it did not in fact do so.

Mr. Chhina indicated that they had waited a few weeks, and upon not receiving the money from the developer, they had contacted a lawyer.

97. Mr. Chhina explained that the lawyer informed them that, given that they were licensees, they may be subjected to an investigation, and that Mr. Chhina had informed the lawyer that they were more concerned about proceeding with a lawsuit against the developer in order to advance the interests of the second purchasers, and that "if we were wrong, so be it".

98. Mr. Chhina indicated that over time the members of the lawsuit grew from just the second purchasers to include additional parties for a total of 54 unit purchasers. Mr. Chhina described his participation in the civil action as essentially a full-time job for a period of approximately 16 months. He explained that he would find properties owned by the developer and have a certificate of pending litigation placed on them. He indicated that they had been able to do that by using documents from Mr. Patel to show that money from the development unit sales had been used by the developer to purchase other properties.

99. Mr. Chhina indicated that he ultimately was reimbursed approximately $113,000 as a result of the civil action, and that he had provided approximately $95,000 of those funds as reimbursement to his clients who were second purchasers as a refund in respect of the referral fees.

100. On cross-examination, Mr. Chhina acknowledged that he had filed a disclosure of interest in trade in respect of unit 216, and stated that he had done so in order to disclose the fact that he was a realtor. He acknowledged that he would only fill out that form in relation to a real estate transaction. When asked if he would have filled out that form if he was purchasing shares in a company, Mr. Chhina indicated that he did not know.

101. Mr. Chhina denied that he had used his reputation in the community to convince people to invest in the development. He further denied that when discussing the purchase of units in the development that he had recommended that people enter into those deals, at least initially. He stated that he had simply talked about his investments and that people would get interested and look into it.

102. Mr. Chhina acknowledged that he had received $113,500 in referral fees in respect of the second purchasers purchases of the units, and that he had received those payments as a direct result of his referral of his friends and family members into those deals. Mr. Chhina indicated that his motivation was not the referral fees, and that people had appreciated that he had stuck with them throughout the process, and that those people had seen how he had been hurt as well. Mr. Chhina indicated that the fact that his friends and family were losing money had hurt him every single day.

Gurpreet Singh Kambo

103. Mr. Kambo is 64 years old, and has been licensed since 1992. He estimated his annual income from real estate as varying from $20,000 to $70,000. He indicated that in the past couple of years he had been driving a taxi due to low income from his real estate activities.

104. Like Mr. Chhina, Mr. Kambo indicated that he spent a significant amount of time working with their society, with his role generally being in connecting with youth and assisting them in the process of connecting with a higher power. He noted that due to working as a taxi driver approximately 10-12 hours per day, he was generally spending only 2-5 hours per week on society work.

105. Mr. Kambo's description of how he came to be aware of the potential to enter into the second purchase agreements with the developer differed somewhat from Mr. Chhina's.

106. Mr. Kambo described having first become aware of the opportunity through a body shop owner, and subsequently being approached by Mr. Flora. He explained that as he and Mr. Chhina were

searching for office furniture, Mr. Flora had indicated that he had a new contract come in and that he wanted to give it to a deserving person. Mr. Kambo indicated that Mr. Flora had then brought in Mr. Patel, and after meeting with Mr. Patel, who he thought would be pretty reliable and had explained the structure of the deal to them, and reviewing the development site and the contract, Mr. Kambo had concluded that the contract seemed likely to be pretty profitable and as such he and Mr. Chhina had entered into the contract for unit 216.

107. Like Mr. Chhina, Mr. Kambo indicated that his understanding was that they were providing the developer with a loan, with security being provided by way of being a potential secondary buyer, as well as the Promissory Note.

108. Mr. Kambo indicated that his view was that he and Mr. Chhina were likely to make a substantial profit on the deal.

109. Mr. Kambo noted that he had not previously been involved in any pre-construction sale contracts. He indicated that he would normally put a deal through his brokerage, but that in this case he had not viewed that to be necessary as the first purchaser's contract had been done in accordance with real estate rules, and he viewed their secondary contract as simply being funding that was secured with a promissory note and backup purchase contract. Mr. Kambo indicated that he had not viewed the deal for unit 216 as a real estate transaction, and that if it in fact became a real estate transaction in the future where they were in fact purchasing the unit, then he and Mr. Chhina would resubmit the documents.

110. Mr. Kambo acknowledged that he had recommended the units to others, and noted that all those that he had recommended become involved in the purchase of the units were like brothers and sisters to he and Mr. Chhina. He stated that they had not really had to convince the second purchasers to become involved, and that although they performed what he referred to as introductions to the deal, he did not believe at that time that they were acting as realtors or in an agency relationship.

111. Mr. Kambo stated that they had informed the second purchasers that he and Mr. Chhina would be receiving some remuneration as part of the deals, and that they had explained to the second purchasers that they were not the first purchasers of the Units.

112. Mr. Kambo noted that when they realized that there was an issue with the deals, he and Mr. Chhina had sought out a lawyer, and had subsequently provided all relevant information and conducted interviews with OSRE. He described having an ongoing role in the civil action by communicating with those involved, investigating and attempting to connect the dots with respect to the developer's actions, and described that work as like a full time job. He stated it had been very important to both him and Mr. Chhina that they were able to recover as much money as possible, with the ultimate recovery being just under 50%.

113. Mr. Kambo indicated that he had given most of the money he was able to recover from the civil action back to the second purchasers, amounting to approximately $95,000. He noted that he had used some of the money he recovered to pay for legal costs.

114. At the conclusion of the respondents' evidence, BCFSA admitted as fact that each of the respondents had repaid approximately $95,000 to the second purchasers.

[Witness 1]

115. [Witness 1] is an internal medicine specialist. He stated that he first became aware of the development through Mr. Flora, who had approached him with an opportunity to make between $80,000 and $100,000. [Witness 1] indicated that he had some initial skepticism regarding the deal,

as he did not understand why the developer would be offering it, and that Mr. Flora had explained to him that the bank was not financing the developer as much as he had anticipated.

116. [Witness 1] indicated that he had invested into three units in the development over time, and that he had also assisted other individuals close to him in becoming involved. [Witness 1] stated that the purchase of the units had seemed to him to be a good opportunity to make good income, with Mr. Flora informing him that it would occur over a period of just a month or two, and that they would avoid losing money paying commissions.

117. [Witness 1] indicated that Mr. Flora had informed him that there had been down payments placed on the units already, but that they were brand new and that no one else owned them. The only catch appeared to be, in [Witness 1]'s view, is that he had to pay the full amount and a commission to Mr. Patel, in the amount of $40,000 per unit. [Witness 1] indicated that he had invested approximately $180,000-$200,000 in each of the three units he purchased.

118. [Witness 1] explained that he had only come to meet Mr. Chhina and Mr. Kambo once he began to suspect that there was a problem with the project. He explained that he had not been aware that the units had been sold multiple times. He indicated that Mr. Flora had approached him to borrow money on two occasions, and that on the second occasion he had not been repaid. [Witness 1] indicated that shortly after that he contacted Mr. Patel, who then informed him that the developer had sold the units multiple times, and that it was only after that he became involved with the respondents, who had formed a group to dig into the previous work of the developer.

119. [Witness 1] indicated that it appeared to him that Mr. Chhina had gone to significant lengths to obtain information about the developer. He noted that when he spoke to Mr. Chhina and Mr. Kambo they informed him that they had spoken with a lawyer, and that they wanted to bring a civil claim against the developer on behalf of a group of purchasers.

120. [Witness 1] indicated that he had received approximately 50% of his purchase investments back as a result of the civil action, and that he considered he would not have been able to do so without the efforts of the respondents.

[Witness 2]

121. [Witness 2] is an insurance agent who also became involved in purchasing units in the development. He explained that Mr. Chhina had told him about the opportunity, and had described it as a short term investment. [Witness 2] stated that Mr. Chhina had described the opportunity as an investment or loan to the property, and that he understood that Mr. Chhina had also invested.

122. [Witness 2] stated that he understood that the unit he was purchasing in the development had previously been sold, and that he had believed that he was investing as a loan to the developer, and that he would receive some profit from that investment, but that he may get the unit upon completion of the development. He stated that he understood that the respondents would receive part of the referral fee that he had paid to Mr. Patel, but that he was not aware of precisely how that part of the transaction would work.

123. [Witness 2] indicated that it had been Mr. Chhina's idea to start the civil action, and that the respondents had been the ones to hire a lawyer, manage the group and obtain evidence against the developer.

124. [Witness 2] noted that after the civil action he had also received reimbursement of approximately $7,500 from the respondents.

Reference Letters

125. In an undated letter, [Individual 1], Managing Broker at Sutton Premier Realty, indicated that he has known Mr. Chhina for 14 years. [Individual 1] indicated that Mr. Chhina had demonstrated a deep sense of responsibility in his work, always putting his clients' best interests first, and as someone who cares about those around him and would step up when he saw someone in need. [Individual 1] described Mr. Chhina as highly respected by his fellow realtors at Sutton, and that on the rare occasion when an issue arose in a transaction he would handle that issue with professionalism, integrity, and transparency. [Individual 1] acknowledged having read the ASF, and noted that he was surprised by the situation as it was not in line with his knowledge of Mr. Chhina. [Individual 1] indicated that he could only assume that Mr. Chhina had believed he was acting in the best interest of those involved.

126. [Individual 1] also provided an undated letter on behalf of Mr. Kambo. He indicated that he had met Mr. Kambo approximately 4.5 years prior, and that having had the opportunity to engage with Mr. Kambo both professionally and personally, he had found him to have professionalism, integrity, and an unwavering dedication to his clients. [Individual 1] indicated that he found Mr. Kambo to have a deep understanding of the real estate market and a genuine commitment to the best interests of his clients. [Individual 1] indicated that having reviewed the ASF, he did not consider the situation set out therein to align with the character and integrity he had seen from Mr. Kambo.

127. [Individual 2] also provided a letter on Mr. Kambo's behalf. [Individual 2] indicated that he had known Mr. Kambo for approximately 35 years, and had always found him to be honest, hard-working, ethical and trustworthy. [Individual 2] noted that he had engaged with Mr. Kambo in past real estate transactions, and that he had always valued his input and advice, and felt that the information Mr. Kambo had provided him had been in [Individual 2]'s best interest. [Individual 2] indicated that he had never felt that Mr. Kambo was attempting to capitalize on any real estate transaction in a selfish manner. [Individual 2] noted that he had difficulty understanding Mr. Kambo's involvement in this matter, given that what had occurred did not "go with Mr. Kambo's character and integrity".

Submissions

BCFSA's Submissions

128. BCFSA seeks the same orders in respect of each of the respondents. Specifically, BCFSA seeks orders that the respondents' licenses be cancelled, that they each pay a penalty of $10,000, and that they pay investigative and hearing expenses in the amount of $69,772.48.

129. BCFSA submits that it operates to protect consumers and the public at large from undue loss and unfair market conduct, and to ensure protection of the public and public confidence in the real estate industry. BCFSA submits that the overarching goal of sanctions in a regulatory setting is protection of the public, and that the imposition of disciplinary sanctions communicates to both members of the profession and to the public that there will be consequences where a licensee disregards and/or violates the standards, rules, and regulations of the profession.

130. BCFSA takes the position that sanctions operate to protect the public through general and specific deterrence, and to ensure public confidence in the real estate profession. BCFSA acknowledges that while sanctions are not imposed for the purpose of being punitive, significant penalties are often necessary to deter general and specific non-compliance within the administrative or regulatory regime. BCFSA cites *Thow v BC (Securities Commission)*, 2009 BCCA 46, at paragraph 38, for the proposition that sanctions may result in significant burdens being placed on offenders.

131. BCFSA quotes from *Law Society of British Columbia v Dent*, 2016 LSBC 5 ("**Dent**"), at paras 20-23, which sets out a list of factors to consider when determining an appropriate regulatory sanction as follows:

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?

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?

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?

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?

132. BCFSA submits the misconduct engaged in by the respondents in this case is of the most serious kind, as it involved serious economic harm to purchasers in nine separate real estate transactions.

133. BCFSA further submits that the circumstances of the transactions were egregious, as the respondents were both very experienced real estate professionals who had been licensed for many years, who recommended to purchasers that they enter into purchase agreements for pre-sale units which had already been sold, and that they pay that purchase money not into trust, but directly to the developer. BCFSA submits that in exchange for those recommendations the respondents were paid very large referral fees, earning approximately $113,500 each in a period of four months.

134. In BCFSA's submission, the economic harm caused, combined with the clear economic motive behind the respondents' misconduct, required consideration be given to previous cases where the misconduct was serious enough to warrant not only the imposition of a discipline penalty, but also the cancellation of a licence.

135. BCFSA refers to the cases of *Jinnah (Re)*, 2024 BCSRE 105, *Rohani (Re)*, 2024 BCSRE 31, and C*honn (Re),* 2021 CanLII 89769 (BCREC), which I summarize below, as being of a similar type to the instant case, and of supporting the conclusion that both a discipline penalty and licence cancellation are appropriate in this case.

136. In terms of the nature, gravity, and consequences of the respondents' misconduct, BCFSA submits that it is clear that the respondents actions were entirely self-serving as described above, and notes that this was not a case in which there was a single isolated incident of misconduct, but rather that the respondents' misconduct occurred over a period of four months, impacting nine different individuals. BCFSA notes that the respondents held numerous meetings and collected over 2 million dollars in cheques, all of which were handed over to the unlicensed Mr. Patel.

137. BCFSA further submits that the impact on the second purchasers was substantial. It submits that the evidence indicates that the second purchasers were never fully reimbursed for their deposits or referral fees. It further suggests that it is reasonable to assume that there would have been additional stress imposed on the second purchasers in having to participate in the civil action, and that the second purchasers would have incurred legal fees as a result of that action.

138. BCFSA acknowledged in its submissions that the civil action did provide some recovery to the second purchasers, but submits that the civil action directly benefited the respondents as well. BCFSA submits that, in addition to the direct benefit, the respondents would have benefitted from the participation of more individuals in the civil action, as that provided a greater chance of success, as well as would have eased the burden of the cost of litigation. BCFSA noted that the respondents had each only returned $95,000 of the $113,500 they had received in referral fees, and submitted that the respondents had essentially chosen to retain some profit from their participation in the scheme. In BCFSA's submission, this fact ought to diminish what mitigating weight, if any, ought to be given to the respondents' efforts in spearheading the civil action against the developer.

139. With respect to the respondents' character and professional conduct records, BCFSA takes the position that the respondents' absence of any prior disciplinary record should be seen as a neutral factor, citing *Rohani*. BCFSA submits that in fact, the respondents' degree of experience in the real estate industry ought to be considered an aggravating factor in the circumstances. BCFSA submits that given the respondents' experience, knowledge and awareness of the risks of acting outside of their brokerage and working with unlicensed individuals, they knew or ought to have known that in selling the same unit to a second set of purchasers, providing payments directly to the developer rather than in trust, and providing payments to an unlicensed individual, they were exposing the second purchasers to serious financial harm and risk.

140. With respect to the character letters entered into evidence by the respondents, BCFSA submits that it should be noted that each of those letters notes the significant experience in the real estate industry that the respondents had. In BCFSA's submissions those letters simply serve to demonstrate that the respondents, with their experience, knowledge, and the fact that they had the trust of their peers, were in a position to use that trust within their community such that they were able further their own financial interests.

141. BCFSA submits that the respondents' conduct strikes at the heart of the real estate industry, in that they facilitated the activities of an unlicensed individual for the sale of units that had previously been sold to other purchasers for the purpose of furthering the respondents' own financial interests. In BCFSA's submission, a significant penalty is necessary to achieve not only general and specific deterrence, but also to maintain public confidence in the real estate profession.

142. In terms of the appropriate sanction, BCFSA submits that licence cancellation is not reserved solely for the most serious offences, but ought to be imposed in circumstances where such a sanction is necessary in order to protect the public, citing *Parsons v Real Estate Council of British Columbia,* 2015 BCFST 9, at paragraph 91. BCFSA submits that the issuing of a disciplinary penalty in addition to cancellation can also act as an appropriate general deterrent to other licensees in the industry by sending a clear message of the penalties that will be imposed in similar circumstances, citing *Jinnah* at paragraph 80.

143. While BCFSA acknowledges that this is not a case of deceptive dealing, or any efforts on the part of the respondents to thwart the regulator's processes. It submits that the aggravating factors, including specifically the financial harm caused to the second purchasers, suggests that in this case both cancellation and a monetary penalty are appropriate.

144. In BCFSA's submission, while there were mitigating factors present, in that the respondents acknowledged their misconduct by entering into an agreed statement of facts, and by initiating a lawsuit in pursuit of recouping the losses that the second purchasers incurred, the public interest

would best be served through the imposition of a penalty that communicates to the respondents, other members of the public, the victims of the development, and the public at large that serious misconduct would be met with serious sanctions. BCFSA submits that both the cancellation of the respondents' licenses, along with the imposition of disciplinary penalties of $10,000, as well as investigative costs, is necessary in order to achieve specific and general deterrence in order to ensure that similar misconduct does not occur in the future and to maintain public confidence in the industry.

Respondents' Submissions

145. The respondents submit that the sanctions sought by BCFSA are wholly inappropriate and disproportionate to their misconduct. The respondents take the position that BCFSA has failed to account for significant mitigating factors, and that the previous sanctions decisions referred to by BCFSA in its submissions are distinguishable.

146. The respondents submit, in general terms, that they, along with a group of their friends and family, invested into what turned out to be a fraudulent scheme created by the developer, who had no intention of paying out the monies obtained from the second purchasers. The respondents submit that upon discovering the fraudulent conduct of the developer, they retained legal counsel to commence a claim against the developer, spearheaded that civil action, and ultimately were able to obtain a degree of recovery.

147. The respondents submit that the nature of their conduct suggests that less than severe sanctions are warranted. They submit that their conduct was not deceitful, dishonest, or fraudulent. The respondents submit that they had no intention to deceive or defraud the second purchasers, and note that they in fact also lost money in the investment.

148. The respondents submit that while they did receive referral fees, it is of note that they each returned $95,000 of those referral fees to the second purchasers. The respondents deny having profited, as suggested by BCFSA, as a result of their failure to return the entirety of the referral fees, submitting that it is a known fact that the respondents experienced financial losses in the investment, as well as the loss of time and money associated with the civil action.

149. The respondents note that they made significant efforts to lead the civil action against the developer in order to assist in the recovery of funds from the developer's fraud. They submit that they coordinated the various plaintiffs, and organized countless documents to further the civil action. The respondents further submit that their action in directing their lawyer to report the developer to OSRE, when they knew that this could result in an investigation into their own conduct as licensees, ought to be considered a mitigating factor.

150. In terms of their character and professional conduct record, the respondents submit that the evidence is that they are each upstanding members in both their professional and personal lives, and that they have no previous disciplinary record as licensees.

151. The respondents further submit that they have recognized, with the benefit of hindsight, that the nature of their involvement in the transactions amounted to real estate trading services. They submit that they have learned from this experience, and note that they each testified that they would always ensure that any future transaction related in any manner to real estate would be processed through their brokerage.

152. The respondents further submit that they fully cooperated with the investigative and disciplinary process in this matter, which ought to be considered a mitigating factor.

153. The respondents submit that in determining the appropriate sanction, the unique facts of the developer's plan needed to be taken into account, along with the extensive mitigating factors

present. The respondents take the position that this was a sophisticated scheme put in place by the developer who was careful to hide his fraudulent activity and who presented these transactions as short-term investment opportunities providing a good return.

154. The respondents submit that the sanctions sought by BCFSA are not necessary in order to meet the purposes of specific and general deterrence.

155. In terms of specific deterrence, the respondents say that they have already been sufficiently deterred, and that the risk that they will reoffend is extremely remote. The respondents submit that their involvement in this matter has a had a profound impact on them personally, financially, and professionally. The respondents further submit that they have incurred significant costs in attempting to rectify the harm experienced by those involved, and that the knowledge of the impact that these transactions have had on their friends and family has been sufficient to ensure that the respondents would not be involved in any other matter relating to the provision of trading services outside of their brokerage or involving an unlicensed individual.

156. In terms of general deterrence, the respondents characterize the facts of this case as being so unique that the sanctions sought by BCFSA would not serve to contribute to general deterrence. The respondents describe the developer as a sophisticated fraudster, and submit that the severity of the sought sanctions seek to attribute the harm caused by the developer's intentionally fraudulent actions to the respondents. The respondents submit that at no time did they intentionally deceive, dupe, or seek to thwart their professional responsibilities when they assisted the second purchasers in investing in the development. The respondents submit that the developer's fraud occurred without their participation in other transactions.

157. In the respondents' submission, a monetary penalty, when considered with the financial losses they have already incurred as a result of their conduct, serves as a sufficient general deterrent to other licensees in the unlikely event they are faced with similar circumstances.

158. In the respondents' submission, a discipline penalty in the amount of $5,000, as well as an order for remedial education to be taken within 6 months, would be an appropriate sanction in the circumstances.

Reasons and Findings

Applicable Legislation

159. Section 43(2) of RESA provided that if after a discipline hearing a licensee was determined to have committed professional misconduct or conduct unbecoming, the discipline committee must do one or more of the following:

> (a) reprimand the licensee;
>
> (b) suspend the licensee's licence for the period of time the committee considers appropriate or until specified conditions are fulfilled;
>
> (c) cancel the licensee's licence;
>
> (d) impose restrictions or conditions on the licensee's licence or vary any restrictions or conditions applicable to the licence;
>
> (e) require the licensee to cease or to carry out any specified activity related to the licensee's real estate business;
>
> (f) require the licensee to enrol in and complete a course of studies or training specified in the order;

(g) prohibit the licensee from applying for a licence for a specified period of time or until specified conditions are fulfilled;

(h) require the licensee to pay amounts in accordance with section 44 (1) and (2) *[recovery of enforcement expenses]*;

(i) require the licensee to pay a discipline penalty in an amount of

(i) not more than $20 000, in the case of a brokerage or former brokerage, or

(ii) not more than $10 000, in any other case;

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

160. Having found the respondents to have committed professional misconduct and conduct unbecoming, I am required to make at least one of the types of orders set out under section 43(2) of RESA, and can make more than one in coming to the appropriate sanction.

Discussion: Sanction

161. I turn now to an assessment of the sanction to be ordered in this case.

162. Although I am not bound by the framework set out in *Dent*, given it was decided in the context of discipline of a member of the legal profession, I consider it to be useful, and it has often been applied in the context of disciplinary and enforcement decisions under RESA. I will therefore follow that framework in assessing this matter. I note that the factors listed in *Dent* are not exhaustive and I must determine the appropriate sanction in light of the whole of the circumstances.

163. I largely agree with the summary of the relevant purposes and principles in consideration of regulatory sanctions, as set out in BCFSA's submissions at paragraphs 22-30. The respondents have indicated their agreement without relevant purposes and principals as well.

164. I reiterate that in general terms, where the intention of the regulatory scheme is consumer or public protection, sanctions serve multiple purposes, including:

- denouncing non-compliance or misconduct, and the harms caused by those;
- preventing future non-compliance or misconduct by rehabilitating specific respondents through corrective measures;
- preventing and discouraging future non-compliance or misconduct by specific respondents through punitive measures (specific deterrence);
- preventing and discouraging future non-compliance or misconduct by other respondents (general deterrence);
- educating industry participants and the public about rules and standards; and
- maintaining public confidence in the industry.

Nature, Gravity, and Consequence of Conduct

165. Regarding the nature and gravity of the respondents' conduct, I consider it to be appropriately described as severe.

166. In reaching that conclusion, I note that although the respondents engaged in their misconduct in recommending the development units to the second purchasers, facilitating the unlicensed activities of Mr. Patel, failing to provide records and keep their brokerage apprised of their activities, receiving

the referral fees and failing to provide those to the brokerage, over only a relatively short period of time, the impacts of that misconduct was significant.

167. In sum, the respondents' misconduct caused significant financial harm to the second purchasers. Without the civil action, the second purchasers would have been left in a position of being out the entirety of the purchase price they provided, as well as the entirety of the referral fees.

168. Even with the civil action, the evidence before me suggests that the ultimate recovery obtained by the second purchasers in the civil action was somewhere in the neighborhood of 50% of the amounts they had paid to enter into their purchase and sale agreements Given that the respondents admit to having collected cheques payable to the developer totaling $1.9 million dollars, a fair estimate is that the second purchasers sustained losses totaling approximately $950,000 as a result of entering into the agreements for purchase and sale recommended by the respondents.

169. I note that it is unclear, on the evidence before me, as to whether the approximate recovery of 50% obtained by the second purchasers in the civil action included recovery of the referral fees. The second purchasers also paid referral fees of $295,000, the cheques for which were again collected by the respondents and provided to Mr. Patel. While the respondents took the step of reimbursing the second purchasers $190,000 of those referral fees, I consider that there remains an open question as to whether the second purchasers sustained a further loss of $105,000 as a result of the referral fees.

170. Regardless of whether the likely loss to the second purchasers was approximately $950,000 or $1.055 million, the reality is that it is likely that even after the civil action, the second purchasers were faced with an average loss of over $100,000. There can be no doubt, in my view, that the respondents' misconduct contributed to such significant losses, and ought to be characterized as severe.

171. I note that I do not consider the respondents' submission that they were simply, along with a group of family and friends, investing in what turned out to be a fraudulent scheme created by the developer, to be a fair characterization of the whole of the respondents' conduct in this case.

172. The respondents had specific responsibilities as licensees. As set out above, they misconducted themselves in respect of those professional responsibilities, and in doing so placed the second purchasers at risk, while at the same time obtaining financial gain for themselves. Had the respondents appropriately followed RESA and the relevant Rules, it is unlikely that the second purchasers would have been placed in the position of sustaining the financial losses that they did. This is particularly so as none of the amounts paid by the second purchasers were held in trust.

173. I note that in both Mr. Chhina and Mr. Kambo suggested in their evidence that they had not viewed the second purchase transactions as real estate transactions at the time they had recommended those transactions to the second purchasers. I find their evidence in this regard difficult to accept.

174. In his evidence, Mr. Chhina specifically reviewed the documents associated with the respondents' (through their companies) purchase of Unit 216 of the development. Those documents include an agreement for purchase and sale of real estate, with a developer, and which would, according to the documents in the agreement, potentially entitle the purchaser to take possession of the unit upon completion of the development. It is difficult to review the documents provided at this hearing and consider that the respondents would not have known that the transaction that they were entering into, which is the same transaction that they subsequently recommended to the second purchaser, was not a real estate transaction.

175. In reaching that conclusion, while I accept that the respondents may have considered that these transactions were simply a short-term investment with a significant potential return, I do not consider that fact to vitiate the reality of the fact that one of the potential outcomes of entering into the

transaction was that the purchaser would obtain a development unit upon completion. In those circumstances, I consider that it ought to have been plain to the respondents that they were engaged in a real estate transaction when they purchased Unit 216, and plain to the respondents that in recommending the transaction to the second purchasers, and receiving deposit money in respect of the development units, they were assisting the second purchasers in participating in a real estate transaction and thereby providing real estate trading services.

176. In my view, given their professional responsibilities and their failure to meet them, the fact that the respondents may have been duped by the developer does not mitigate the severity of their misconduct. Simply put, the respondents were not simply going along with their family and friends and unfortunately caught up in a fraud. Rather, as they have admitted, the respondents, as licensees, were recommending these second purchase transactions to their family and friends, and were facilitating the transactions, in a manner which was contrary to their professional responsibilities.

177. I note that I do not accept that the respondents' conduct was entirely self-serving as described by BCFSA in its submissions. I accept the evidence of the respondents' that they considered that they were providing the second purchasers with a good opportunity to make a significant return over a relatively short period of time. The fact that the respondents purchased a unit in the development on their own behalf supports the conclusion that they viewed this as a good opportunity. However, I also do not accept the respondents' denial of being motivated to recommend the opportunity to the second purchases as a result of the potential to receive referral fees. On the respondents' own evidence, the amount they each earned in referral fees over the four-month period in 2016 well exceeded their average annual income from their real estate work. Given that fact, I find that the respondents' conduct was motivated, to at least some degree, by the potential to earn a rather significant amount in referral fees. The respondents' motivation to earn financial gain from the transactions is an indication that their misconduct was severe.

178. Further adding to the severity, this is not a case in which there was a single incident of misconduct. The respondents engaged in their misconduct over the course of nine transactions during the four-month period in question. In sum, the respondents engaged in a pattern of misconduct, albeit over a relatively brief period of time.

179. In terms of the consequences to the respondents, I acknowledge that the respondents experienced negative consequences as a result of their misconduct. Certainly, I accept that the respondents value their well-earned positive reputation in their local society and community, and that it was upsetting to them that they had placed their friends and family members in a position to potentially lose significant sums of money. I also acknowledge that the respondents each experienced some financial consequences as a result of being duped into the fraud, similar to that of the other second purchasers who participated in the civil action.

180. In the circumstances of this case, I consider the consequences experienced by the respondents to be only minimally mitigating. I note in reaching this conclusion that the personal financial losses experienced by the respondents in being duped by the developer's fraud would have occurred regardless of whether they had brought the other second purchasers into the fraud. Further, the loss to their personal reputation in their community was a risk which they imposed upon themselves in engaging in the misconduct, and therefore, in my view, that reputational loss, while unfortunate, is only minimally mitigating.

181. I note that I will address further below the respondent's acknowledgment of their misconduct and the remedial steps they took to address their misconduct.

Respondent's Character and Conduct Record

182. Both Mr. Chhina and Mr. Kambo are longtime licensees, who have no prior disciplinary record. This is a neutral factor because compliance is expected of licensees: *Rohani (Re)*, 2024 BCSRE 31 at para 53.

183. I find that both Mr. Chhina and Mr. Kambo have records of positive community involvement. I heard evidence of their work with their society, and it is clear that both have taken a prominent role within that society, with a focus on connecting with youth on a spiritual level and assisting those in their community.

184. The character letters received all demonstrate that the respondents are well regarded, both within the industry, and in Mr. Kambo's case, by a member of the community.

185. I note again that the respondents undertook significant efforts in leading the civil action against the developer, and consider that this demonstrates that overall, the respondents' involvement in the misconduct in this case was out of character for them.

186. In my view, taken as a whole, the above factors are mitigating.

187. BCFSA has submitted that I ought to consider the respondents' age and experience in the industry to be an aggravating factor in this case. Simply put, BCFSA submits that the respondents, as a result of their knowledge and experience in the industry, had an awareness that in working outside their brokerage and with an unlicensed individual, with payments from the second purchasers being made outside of trust, they were placing the second purchasers at risk of serious financial harm. I agree that the respondents' failure to act in the manner required by their professional responsibilities, where they had the knowledge and experience which ought to have enabled them to do so, is an aggravating factor.

Acknowledgment and Remedial Action

188. It is apparent that the respondents have acknowledged their misconduct. The evidence before me is that the respondents provided all documentation available to OSRE, and that they willingly participated in interviews with OSRE during the investigation process. They also entered into ASFs.

189. Further, as set out above, the respondents did take significant steps to correct the specific misconduct that occurred in this case, by starting the civil action, as well as in largely making repayment of the referral fees to the second purchasers.

190. I note, with respect to those actions, that there was a degree of self-interest involved in the respondents' pursuing the civil action, given their own purchase of Unit 216, but I accept that the respondents were largely motivated to obtain as much return as possible from the developer for all involved. In reaching that conclusion, I consider that only a limited amount of self-interest that should be attributed to the respondents in respect of commencing the civil action, in that while I consider they were likely motivated to obtain financial redress for their own investment, I also consider that they were strongly motivated to assist the second purchasers to obtain financial redress.

191. Further, I accept the respondent's evidence that they knew that they were likely to expose themselves to investigation by reporting the issues with the developer to OSRE in conjunction with their commencement of their civil litigation. Overall, I accept that the respondents decided to pursue the civil action and reporting to OSRE with an overall focus of putting the interests of the second purchasers ahead of their own potential self-interest.

192. On the whole, I consider the evidence to indicate that the respondents have acknowledged their misconduct, and that they took immediate and significant steps to remedy the impacts of their misconduct. The above are mitigating factors.

193. I note that the steps the respondents took in terms of correcting the specific misconduct, including launching and to a degree driving the civil action, as well as repaying the large majority of the referral fees they received, did not result in a fulsome recovery for the second purchasers, in the sense that the second purchasers were still left with significant losses. I note further that the mitigating effect of the respondents' efforts would be more significant if the respondents had in fact made full repayment of the referral fees they received. That they chose not to make that full repayment, regardless of their explanation that they needed to pay for legal fees, is indicative of a degree of ongoing self-interest in retaining some of the funds that they received as a result of their misconduct.

194. I accept the respondents' evidence that for all future transactions they will always go through their managing broker, and ensure that funds are paid into trust. I consider this to be mitigating in terms of a demonstration of the respondents' rehabilitation.

Specific and General Deterrence and Public Confidence

195. I turn then to the question of public confidence. This includes a consideration of the adequacy of the specific and general deterrent effect of the proposed orders, the rehabilitative effect of the orders, the impact of the proposed orders on public confidence in the integrity of the industry and licensees, and the relationship between the proposed orders and similar cases.

196. The respondents submit that, with respect to specific deterrence, the risk that they will reoffend is extremely remote, and that they have already been sufficiently deterred, both due to the profound impact this matter has had on them personally, financially, and professionally. They note that they have personally incurred significant costs in attempting to rectify the harm on all involved, and that the impact of these transactions on their friends and family have been sufficient to ensure that the respondents would not be involved in any future matter relating to the provision of trading services without their brokerage's involvement or facilitating such activities by an unlicensed individual.

197. I agree that the consequences to the respondents in terms of their misconduct and involvement in these transactions, as well as their involvement in the investigation and in this disciplinary hearing has largely achieved specific deterrence in this case. I accept that the respondents are in fact remorseful for their actions, and particularly for the harm that they have caused to the second purchasers, and are unlikely to engage in any similar type of activity in the future.

198. There is, however, some remaining specific deterrent effect in sanctioning the respondents in this proceeding. As I have indicated above, the respondents elected to retain some of the referral fees that they received as a result of their participation in the transactions at issue. I have concluded that in doing so the respondents have continued to demonstrate a degree of self-interest, and I consider that specific deterrence is warranted in that regard, though it is not the major motivating factor behind any order I make here.

199. In terms of general deterrence, the respondents submit that this case is factually unique, and describe essentially being the victims of Mr. Chandler, the developer, who the respondents describe as a sophisticated fraudster. In making that submission, the respondents submit that they did not intentionally deceive, dupe, or seek to thwart their professional responsibilities when they recommended and assisted the second purchasers in their transactions. The respondents note that the fraud perpetuated by the developer would have, and indeed did occur, outside any participation from the respondents.

200. I accept that the respondents were not intentionally attempting to deceive or dupe the second purchasers. The evidence before me is clear that the respondents informed the second purchasers of the nature of the transaction, including the theoretical outcomes, as well as the fact that they

would be paying a referral fee to Mr. Patel, and that the respondents themselves would be obtaining a portion of that fee.

201. I do not, however, accept that the respondents were not seeking to thwart their professional responsibilities. As I have indicated above, it ought to have been clear to the respondents that this was a real estate transaction. It is difficult to imagine how it could not have been viewed that way, given, again, that one potential outcome of the transaction was that the second purchasers would receive possession of the unit on completion. In sum, the respondents knew or ought to have known that they had professional responsibilities as licensees in these transactions. They chose not to participate in the transactions as they were required to in accordance with those responsibilities. In my view, it is clear that there is an appropriate general deterrent effect in imposing a sanction in a case where licensees have failed to meet professional responsibilities that ought to have been plain and obvious to them. Simply put, general deterrence is needed in this case to demonstrate to all licensees and to the public that the superintendent will not tolerate licensees' failure to meet their responsibilities and thereby put their clients at risk.

202. Turning to public confidence, it is important to note that RESA has a primary goal of protecting the public interest in the real estate industry. Licensees are expected follow and uphold the law, and the public needs to know that when they do not, their regulator will ensure that they are held to account.

203. As discussed above, sanctions should be crafted to meet the regulatory needs in the circumstances. The circumstances in this case include the respondents' severe misconduct that caused significant financial harm to the second purchasers, while earning financial remuneration for the respondents. The circumstances also include the respondents' admissions, their remedial efforts, and the personal impacts on them.

204. Having considered those factors, I am of the view that there is a significant need for the order made in this case to ensure public confidence in the integrity of the real estate industry and the regulatory process. I consider that the superintendent must make it clear that the type of misconduct engaged in by the respondents, in recommending deals that perhaps seemed too good to be true to the second purchasers, in conducting those deals outside of their brokerage, with an unlicensed party, and in placing the second purchasers' funds at significant risk and ultimately causing them significant loss, is not acceptable. It is the kind of conduct that requires a substantial response from the regulator to ensure that the public maintains confidence in the integrity of the industry and the regulator's ability and willingness to appropriately respond to misconduct, particularly severe misconduct.

205. In my view, the need to maintain public confidence forms the paramount motivating goal in this proceeding. While general deterrence is achieved by a sanction that sufficiently indicates to the industry in general that the superintendent will take significant action to address severe misconduct, the justification for the sanction imposed below comes primarily from a need to maintain public confidence in the industry and the regulator.

Previous Orders and Type of Order

206. While previous orders are not binding on me, consistency with prior orders of the superintendent is desirable in ensuring public confidence in the industry and the disciplinary process, and in ensuring appropriate general deterrence.

207. The parties have referred to the following decisions and orders:

- *Jinnah (Re)*, 2024 BCSRE 105: Mr. Jinnah was found to have committed professional misconduct and conduct unbecoming by taking advantage of his client, who he was in a close relationship with, by pressuring her to sell her property to another individual. Mr. Jinnah was

also found to have failed to properly disclose the nature of his representation to his client, failed to disclose any conflicts of interest and avoid the conflict of interest, failed to disclose all known material to his client, and failed to act in the best interests of his client. Mr. Jinnah's behaviour was described in the liability decision as "predatory", and provided false and misleading information to BCFSA during its investigation. Mr. Jinnah earned commissions of over $39,000 in the two transactions at issue, which occurred during a 4-6 month period. The hearing officer found that given the severe nature of Mr. Jinnah's misconduct, a significant sanction was warranted, and imposed a discipline penalty of $10,000 and licence cancellation. The hearing officer concluded that licence cancellation in addition to the monetary penalty was necessary for the protection of the public, as it would send a message to other licensees and the industry that such conduct would be met with significant consequences, and to uphold public confidence in the industry.

- *Rohani (Re)*, 2024 BCSRE 31: Ms. Rohani was found to have committed professional misconduct when she referred six buyer clients to an individual she knew or ought to have known was a registered mortgage broker. Ms. Rohani was found to have received remuneration for those referrals which she did not disclose to her buyer clients, and to have committed conduct unbecoming when she submitted falsified mortgage applications which had been prepared by the unlicensed individual. Mr. Rohani's misconduct was found to have been severe enough to warrant both a licence cancellation and a discipline penalty. On appeal, (*Rashin Rohani v. Superintendent of Real Estate*, 2025 BCFST 6), the cancellation of Ms. Rohani's licence was confirmed, but the discipline penalty was reversed on the basis that the finding that Ms. Rohani had received or anticipated receiving remuneration was not reasonable, and that the cancellation of Ms. Rohani's licence was appropriately viewed as providing not only general but also specific deterrence.

- *Chonn (Re),* 2021 CanLII 89769 (BCREC): Mr. Chonn was found to have provided real estate services outside of his brokerage, accepted remuneration outside of his brokerage, failed to provide trading documents to his managing broker, failed to act in the best interests of his clients and failed to act honestly and with reasonable care and skill, and failed to deliver and disclose relevant information to his clients including the nature of his representation. The discipline committee concluded that Mr. Chonn's flagrant disregard for RESA and the Rules, along with his behaviour during the hearing process, warranted cancellation of his licence along with a prohibition on applying for licensure for 5 years. The committee further found that Mr. Chonn's conduct warranted an additional monetary penalty of $23,540.

208. None of the above cases are directly comparable to the circumstances before me. Mr. Jinnah's actions were described as "predatory", which I do not consider to be applicable to the respondents' case. While the respondents engaged in serious misconduct which caused harm to the second purchasers, I accept that while the respondents were certainly motivated to some degree by the fact that they would receive referral fees in relation to the transactions, I also accept that the respondents believed they were putting the second purchasers into an opportunity that would allow them to turn a good profit. The fact that the respondents themselves purchased a unit supports this conclusion.

209. In *Rohani,* Ms. Rohani was found to have participated in the deception of lenders. There is nothing in the respondents' case to suggest that they were involved in any direct deception towards the second purchasers. In fact, the evidence is that the respondents informed the second purchasers of the fact that there was a first purchaser of the Units.

210. In *Chonn*, the discipline committee found that Mr. Chonn had been in a dispute with his brokerage and wanted to leave it, and that it was for those reasons that he conducted the transaction outside of his brokerage. Mr. Chonn also failed to provide property sellers with material information, and continued to misconduct himself in the investigative and disciplinary process.

211. What I do accept from the above cases is that there are circumstances in which the nature of the conduct will warrant both a discipline penalty and licence cancellation.

Sanction Decision

212. In determining the appropriate sanction in this case, I reiterate that public protection and encouraging compliance are the primary goals of regulatory sanctions. Sanctions should not be purely retributive or denunciatory, and even if a sanction imposes a significant burden on an individual, that burden should be imposed to achieve specific deterrence and general deterrence, rehabilitate the respondent, protect the public, and enhance public confidence in the process, the industry, and the regulator: *Thow*, at para. 38.

213. In my view, this is a case in which both a discipline penalty and a suspension are the appropriate sanctions. My reasons for having reached this conclusion follow.

214. I begin with the discipline penalty. The maximum penalty allowed under RESA at the time the respondents' conduct occurred was $10,000. Both BCFSA and the respondents submit that a discipline penalty is appropriate, with BCFSA submitting that a penalty of $10,000 should be ordered, and the respondents indicating that a penalty of $5,000 should be ordered.

215. In considering the appropriate sanction, I refer back to my comments regarding the respondents' repayment of the referral fees they received. Each of the respondents repaid $95,000 of the $113,500 they received in referral fees, with both respondents having described that repayment as having come from the funds they obtained through the results of the civil action. Even considering that repayment, that left the respondents in the position of still having earned a profit as a result of their professional misconduct and conduct unbecoming, regardless of whether the respondents, as Mr. Kambo indicated in his evidence, kept those remaining profits to pay for things such as legal fees or debts associated with their participation in the civil. I note that the evidence before me does not indicate that the respondents were specifically covering the legal fees incurred by other second purchasers, associated with the legal action, and I conclude that Mr. Kambo's evidence on this point suggests that he did not return the full amount of the referral fees in order to pay his personal debts.

216. As I indicated above, I am of the view that there is some value in applying specific deterrence in respect of the respondents' ultimate retention of some of the profits obtained from their misconduct. A degree of general deterrence is also achieved by issuing a discipline penalty in respect of those profits, as it will demonstrate to the industry in general that the superintendent will take action to remediate against those who engage in misconduct being able to retain the profits gained by that conduct. Given that the maximum penalty of $10,000 will still leave the respondents in a position of having profited from their misconduct, I do not consider a penalty of that size to be inappropriate in the circumstances.

217. The respondents' position is that in addition to a discipline penalty, the only further order that should be contemplated is that of remedial education. They say that a licence cancellation would be wholly inappropriate and unreasonable, and that a period of suspension would fail to consider the unique circumstances and mitigating factors of this case.

218. BCFSA, on the other hand, submits that the seriousness of the respondents' misconduct requires that the public interest be served by a penalty that communicates to the respondents, other members of the public, the victims of the development, and the public at large that serious misconduct will be met with serious sanctions. In BCFSA's submission, the cancellation of the respondents' licences is needed in order to achieve specific and general deterrence to ensure that similar misconduct does not occur in the future.

219. Having considered the evidence and the submissions of the parties, I have concluded that an additional order of a suspension of the respondents' licences for a period of one year, is required in order to provide sufficient general deterrence, and to maintain public confidence in the regulator.

220. In reaching that conclusion, I reiterate again the seriousness of the respondents' conduct. This was not an isolated incident. It was not so complex a scheme, as perhaps suggested by the respondents, that they could not or should not have known they were engaging in trading services and real estate transactions, and doing so in a manner that was in violation of RESA and the Rules, and were putting the second purchasers at significant risk. That the respondents either failed to see the risk (as they entered into a contract to purchase a unit for themselves), or were simply blinded to it by the fact that there were potential significant profits to make both through their own purchase and through the referral fees, does not, in my view, make this a case that is unique such that a sanction in addition to a discipline penalty will not contribute to general deterrence.

221. To the contrary, I am of the view that a significant sanction will strongly contribute to general deterrence, as well as to public confidence in the industry.

222. Licensees are in a position of privilege in the real estate market. They are sought out by parties who rely upon them to guide them through important financial transactions, and are compensated with remuneration in return for that guidance. In my view, to suggest the fact that a licensee was duped by another individual (in this case the developer), and that where in being duped the licensee fails to abide by RESA and the Rules in recommending a transaction to members of the public, and thereby puts, in this case, purchasers at risk, would somehow be a unique situation is a naive view of the market. That a fraudulent scheme has perhaps not occurred in a precise form before, does not, in my view make a fraudulent scheme particularly unique. Fraudulent schemes exist. The form may differ, but the intention remains the same. The regulation of the real estate industry serves, in part, to protect the public from fraudulent schemes. The requirements of RESA and the Rules, including education, licensure, acting in the best interests of one's clients, acting through one's brokerage, and making payments into trust, are all of the type of regulation that seek to prevent the public from being exposed to such schemes.

223. To accept that a fraudulent scheme in a form not previously seen suggests that there can be no role for general deterrence in applying a sanction to a licensee who fails to meet their professional responsibilities and in doing so brings their clients into that fraudulent scheme, would, in my view, make it open to any licensee to simply take the position that they had not been aware of the nature of what they were getting involved in and that therefore any sanction imposed upon them ought to be minimal. In my view, a situation such as this, where the contract clearly appears to depart from the usual type of presale contract scenario, would in fact call for a licensee to engage in a greater, not lesser, degree of diligence, in order to be alive to the risks that such a transaction might pose to their clients. I consider that in order to maintain public confidence, an increased degree of diligence is the appropriate expectation of licensees in such circumstances.

224. In my view, general deterrence has a significant role to play in this matter. The industry needs to be aware that where licensees fail to meet their professional responsibilities, and in doing so lead their clients into a situation in which they could or do suffer significant harm, the superintendent will take significant action to address that misconduct.

225. Further, in order to maintain public confidence in the industry and the regulator, a sanction should be imposed that will ensure that the public is aware that the regulator takes seriously its role in ensuring that licensees are not exposing the public to undue risk and significant harm.

226. Having considered the above, I am not, however, of the view that cancellation is required in this case. I note, in reaching that conclusion, that licence cancellation has been referred to as the "most severe form of punishment available"[6]. While not a permanent expulsion from the industry, in that cancellations allow for re-admission of the individual on application for a fresh licence, individuals applying for readmission must show that they are of good reputation and suitable to be licensed as required by section 10 of RESA.

[6] *James Sydney Parsons v. Real Estate Council of British Columbia*, 2015 BCFST 9

227. In reaching this conclusion that cancellation would not be the appropriate sanction to be issued in this case, I note particularly that the respondents took significant steps to mitigate the harm experienced by the second purchasers, both by commencing the civil action and by repaying a portion of their referral fees, that the respondents accepted responsibility, and that the respondents truly do feel remorse for their conduct.

228. That said, I consider that the need for general deterrence and the need to maintain public confidence requires that the respondents be issued a significant suspension.

229. Again, the facts of this case are that the respondents engaged in conduct that was severe, and that caused very significant harm to the second purchasers. That the fraud perpetuated by the developer would have and in fact did occur regardless of the respondents' participation, does not, in my view, take away from the severity of the conduct and the harm caused. The fact is that the respondents did play a role in the losses experienced by the second purchasers: they recommended the purchase of the units to the second purchasers, they engaged in activities outside of their brokerage, and they paid the purchase amounts and the referral fees to an unlicensed individual. The severity of that conduct, and the risk created, cannot, in my view, be overstated.

230. Balancing the above, and acknowledging that the duration of an appropriate suspension can never be determined with absolute precision, I find that the facts of this matter warrant an order that each of the respondents be suspended for a period of one year. A suspension of that length will serve both the principles of general deterrence and public confidence, in that it will send a clear message to licensees and the public that the conduct engaged in by the respondents, and the harm it caused, will not be tolerated, but also serves to acknowledge the respondents remedial actions and the fact that upon completion of their suspensions, they should be able to resume their real estate careers.

Discussion: Enforcement Expenses

231. Given the submissions from the respondents on the issues of enforcement expenses, the parties are invited to provide further submissions on enforcement expenses, with a schedule to be set by the Hearing Coordinator.

Orders

232. I have found that between June 2016 to September 2016, Chhina and Kambo, as licensed representatives, committed professional misconduct within the meaning of section 35(1) of the former RESA and conduct unbecoming within the meaning of section 35(2) of the former RESA in that they:

- recommended the purchasers enter into agreements to purchase the development units which had already been sold to other individuals, thereby putting the purchasers at risk, contrary to section 3-4 [duty to act with reasonable care and skill] of the former Rules (section 34 of the current Rules);

- facilitated the unlicensed activities of Vasant Patel, by finding purchasers for the development units, contrary to section 3-4 [duty to act with reasonable care and skill] of the former Rules, (section 34 of the current Rules) and section 6-1 [payment to unlicensed persons prohibited] (section 66 of the current Rules);

- failed to provide to their managing broker relevant trading records, contrary to section 3-2(1)(b) of the former Rules [must provide managing broker with trading records] (section 29(1)(b) of the current Rules) and section 3-2(2) of the former Rules [keep managing broker informed of real estate services] (section 29(2)(a) of the current Rules);

- failed to promptly pay or deliver to his brokerage the referral fees received from the purchasers in relation to their purchases of the development units, contrary to sections 27(1)(a) and 27(1)(b) of RESA; and

- received remuneration from Vasant Patel in the form of referral fees, contrary to section 7(3)(b) of former RESA.

233. Having made those findings, I make the following orders:

- Pursuant to section 43(2)(i) of RESA, that Mr. Chhina and Gurpreet Singh Chhina Personal Real Estate Corporation jointly and severally pay a discipline penalty in the amount of $10,000 within 60 days of the date of this order;

- Pursuant to section 43(2)(b) of RESA, that Mr. Chinna's licence is suspended for a period of 12 months from the date of this order;

- Pursuant to section 43(2)(i) of RESA, that Mr. Kambo and Rashpal Singh Personal Real Estate Corporation jointly and severally pay a discipline penalty in the amount of $10,000 within 60 days of the date of this order;

- Pursuant to section 43(2)(b) of RESA, that Mr. Kambo's licence is suspended for a period of 12 months from the date of this order;

234. I retain jurisdiction to make a determination on the issue of enforcement expenses. The parties will provide further submissions on enforcement expenses, with a schedule to be set by the Hearing Coordinator.

235. Pursuant to section 54(1)(e) of RESA, Mr. Chhina and Mr. Kambo each have the right to appeal the above orders to the Financial Services Tribunal. Mr. Chhina and Mr. Kambo have 30 days from the date of this decision to file any such appeal: *Financial Institutions Act*, RSBC 1996, c 141, s 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, s 24(1).

DATED at Kelowna, BRITISH COLUMBIA, this 26th day of September, 2025

"Original signed by Andrew Pendray"

_____

Andrew Pendray
Senior Hearing Officer