Citation: Zubko (Re), 2026 BCSRE 253
Date:2026-10-28
File No. 17-043

BC FINANCIAL SERVICES AUTHORITY

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

AND

IN THE MATTER OF

ANDRE ZUBKO
(150076)

AND

ANDRE ZUBKO PERSONAL REAL ESTATE CORPORATION
(150076PC)

REASONS FOR DECISION REGARDING SANCTION

[These Reasons have been redacted before publication.]

DATE AND PLACE OF HEARING:	December 11, 2024, Written Submissions February 3, March 12, April 1, 2025
COUNSEL FOR BCFSA:	Greg Cavouras Elizabeth All[a]n
COUNSEL FOR RESPONDENT:	Clayton Rubenstein
HEARING OFFICER:	Andrew Pendray

Introduction

1. In *Zubko (Re)*, 2024 BCSRE 43 (the "Liability Decision"), at paragraph 343, I found that Andre Zubko and Andre Zubko PREC (collectively the ["]respondents") committed professional misconduct within the meaning of section 35(1)(a), section 35(1)(c), section 35(1)(e), and section 35(1)(g) of the *Real Estate Services Act* ("RESA"), related to eight real estate transactions occurring in 2016 and 2017, and relating to the respondents' contravention of section 37(4) of RESA in respect of the investigation into his involvement in those transactions.

2. I further found, at paragraph 348 of the Liability Decision, that the respondents committed conduct unbecoming a licensee within the meaning of sections 35(2)(a), 35(2)(b), and 35(2)(c) of RESA when they engaged in the misconduct noted above.

3. Having found that the respondents engaged in professional misconduct and conduct unbecoming, sections 43(1)(a) and 43(2) of RESA require that I determine the appropriate sanction in this case. Below is my decision regarding the appropriate sanction in this case.

4. BCFSA seeks an order for the cancellation of the respondents' licences, as well as orders for discipline penalties totalling more than $600,000, and an order for enforcement expenses of $307,898.80.

5. The respondents acknowledge that their conduct was wrong and dishonest. They take the position, however, that the orders sought by BCFSA are outrageous and disproportionate to the harms caused. The respondents suggest discipline penalties totaling approximately $85,000, and an order that Mr. Zubko be permitted to reapply for a licence following confirmation of receipt of payment of the discipline penalty amounts ordered. Finally, the respondents suggest that an order for enforcement expenses in the amount of $40,000 would be appropriate.

6. This sanction hearing was conducted both by way of an oral hearing and written submissions.

Issues

7. The issues before me are what orders should be made under section 43 of RESA including the following:

    a. The sanction or sanctions that should be ordered 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

8. 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.

9. 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

10. The factual background of the respondents' conduct is set out in the Liability Decision. Although I have reviewed all of the information before me, the below includes only a summary of the relevant background, and some of the additional relevant factual information important to this decision, as well as a summary of the evidence from the witnesses on the sanction hearing. It is not intended to be a complete recitation of all of the evidence and information before me.

    Factual Background and Findings in the Liability Decision

11. Mr. Zubko was a successful real estate licensee. He was licensed from 2006 to 2017, largely working in the area of Squamish, BC. For the period of January through December 2016, Mr. Zubko was paid total gross commissions of $383,178.23 (inclusive of GST).

12. Mr. Zubko did not have any history of discipline with the regulator prior to the investigation into the matters which he has been found to have engaged in misconduct in 2016 and 2017. Mr. Zubko's licence renewal application was denied in 2017, and he has not held a licence since.

13. The following summary is from the Liability Decision:

> 20. Despite his success as a real estate licensee Mr. Zubko, unfortunately, commencing in 2016 and proceeding through 2017 until an investigation was started by the regulator, engaged in eight real estate transactions which involved tactics that were prohibited by RESA and the *Real Estate Services Rules* ("Rules").
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> 21. In general terms, those transactions involved Mr. Zubko and two other realtors working together, against the interests of Mr. Zubko's clients, with the intention of allowing Mr. Zubko to circumvent the commission provisions of the listing agreements he had entered into with his clients.
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> 22. In short, Mr. Zubko sought, in each of the eight transactions, to obtain larger commission payments than that which his listing agreements allotted to him, at his clients' expense. This occurred in each of the eight transactions at issue in this hearing, and I will refer to these as the "commission deals" in my reasons.
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> 23. In two of the eight transactions, Mr. Zubko's surreptitious and illegal activities went beyond simply seeking to obtain a higher commission for himself at the expense of his clients.
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> 24. Rather, in those two transactions, Mr. Zubko not only sought to obtain a higher commission for himself at the expense of his clients, but he also arranged for individuals personally close to him (his [family member] and a friend from high school) to enter into contracts to purchase listings Mr. Zubko had listed, with the purpose of then assigning those contracts of purchase and sale for a higher price. At the same time, Mr. Zubko sought to convince his seller clients to lower the price they had agreed to in the contracts of purchase and sale held by Mr. Zubko's close acquaintances, thereby increasing any profit his personal acquaintances may realize on the assignment of the contract and purchase and sale.
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> 25. In sum, Mr. Zubko sought to allow his close personal acquaintances to turn a profit on the assignment of contracts of purchase and sale, at the expense of Mr. Zubko's clients. I will refer to the additional aspect of these two transactions as the "assignment deals".

14. The two realtors that Mr. Zubko worked with in order to circumvent the commission contracts he had entered into with his clients were a high school acquaintance, [Licensee 1], and [Licensee 2], who was acquainted with Mr. Zubko as a result of being the cousin of Mr. Zubko's [family member].

15. As I summarized at paragraphs 31-39 of the Liability Decision, Mr. Zubko devised a plan, working in conjunction with [Licensee 1] and [Licensee 2], that would allow him to earn a higher rate of commission than he would otherwise. The plan, put succinctly, was that:

- Mr. Zubko would refer unrepresented buyers who were seeking to acquire a property Mr. Zubko had listed for sale on behalf of a client to either [Licensee 1] or [Licensee 2];

- [Licensee 1] and [Licensee 2] would then, in making an offer on Mr. Zubko's listing on behalf of the referred and previously unrepresented buyer, require in that offer an increased buyer's agent commission as compared to the commission Mr. Zubko had agreed to in his listing contract with his seller clients, causing Mr. Zubko's clients to have to pay a larger portion of their sales proceeds in commission to the buyer's agent than what they had anticipated;

- Finally, upon the completion of the purchase and sale transaction, [Licensee 1] and [Licensee 2] would kick the majority of the increased buyer's agent commission back to Mr. Zubko.

16. There were eight transactions identified in the Liability Hearing in which Mr. Zubko's plan was executed. Those transactions and the additional commission obtained by Mr. Zubko were as follows (collectively the ["]transactions"):

    - [Property 1] on or about January 12, 2016; Increased commission amount as a result of increased buyer's agent commission - $1,588.13;
    - [Property 2] on or about February 8, 2016; Increased commission amount as a result of increased buyer's agent commission - $6,250; Additional commission of $7,000 and $2,112 received from [Licensee 1];
    - [Property 3] on or about April 13, 2016; Increased commission amount as a result of increased buyer's agent commission - $7,814.63; Additional commission of $10,264.23 received from [Licensee 1];
    - [Property 4] on or about September 12, 2016; Increased commission amount as a result of increased buyer's agent commission - $8,370.60; Additional commission of $10,007.50 received from [Licensee 1];
    - [Property 5] on or about July 26, 2017; Increased commission amount as a result of increased buyer's agent commission - $7,736; Additional commission of $2,007.50 paid by [Licensee 1] to Mr. Zubko's [family member];
    - [Property 6] on or about March 27, 2017; Increased commission amount as a result of increased buyer's agent commission - $6,366.15; Additional commission paid by [Licensee 2] to Mr. Zubko in the amount of $6,800;
    - [Property 7] on or about April 21, 2017; Increased commission amount as a result of increased buyer's agent commission - $7,983.15; Additional commission paid by [Licensee 2] to Mr. Zubko in the amount of $9,080.00; and
    - [Property 8] on or about October 10, 2017; Increased commission amount as a result of increased buyer's agent commission - $7,671.45; no additional commission paid by [Licensee 2] to Mr. Zubko as [Licensee 2] was aware that an investigation by the regulator had commenced.

17. Each of the above transactions formed part of what I referred to in the Liability Decision generally as the "commission deals". In the Liability Decision I found that it was clear that Mr. Zubko engaged in the commission deals with a view to having his clients pay not only him a higher rate of commission than that which they had originally contracted for, but also to have his clients pay a commission to the buyer's agents above and beyond that which they had originally contracted for, and that Mr. Zubko in fact received additional commission payments from [Licensee 1] and [Licensee 2] out of those buyer's agents commissions.

18. Mr. Zubko's clients paid a total of more than $50,000 in increased commissions across the eight commission deal transactions, with Mr. Zubko receiving $47,641.23 in commission kickbacks from [Licensee 2] and [Licensee 1].

19. I concluded that in engaging in the commission deals, across eight transactions, Mr. Zubko was engaging in activities that were dishonest and contrary to Rule 3-4 of the *Real Estate Services Rules* (the "Rules"), that constituted a failure to disclose remuneration contrary to section 5-11 of the Rules, and that he was not acting in the best interests of his clients contrary to section 3-3(a) of the Rules.

20. I note that although in all 8 of the commission deal transactions Mr. Zubko referred the unrepresented buyers to one of [Licensee 1] or [Licensee 2], in addition to that action I also found in the Liability Decision, at paragraph 206, that despite that referral, in four of those transactions Mr. Zubko in fact essentially acted on behalf of the buyers, with [Licensee 1] or [Licensee 2] simply being listed as the buyer[']s agent on contractual documents that were in fact drafted by Mr. Zubko, rather than being drafted by either of [Licensee 1] or [Licensee 2].

21. In general terms, I concluded that Mr. Zubko's involvement in the commission deals was a scheme to obtain money through an illegal means. I further found that Mr. Zubko had placed himself into a conflict of interest contrary to section 3-4 of the Rules, and that his failure to disclose that conflict of interest was in violation of section 3-3(j) of the Rules. Mr. Zubko's failure to disclose to his seller clients that he was acting in an agency position in respect of the buyer[s] was also found to be a violation of section 5-10 of the Rules. Finally, I found Mr. Zubko to have been engaged in deceptive dealing as defined by section 1 of RESA.

22. As described in the excerpted summary above, Mr. Zubko's misconduct also involved using friends and family, including his [family member], [Family Member 1], and another high school friend, [Individual 1], for the purposes of assigning contracts of purchase and sale at a profit.

23. I found, at paragraphs 219-222 of the Liability Decision that Mr. Zubko had engaged in deceptive dealing contrary to section 35(1)(c) of RESA when he assisted his [family member] to earn a profit on the assignment of a contract of purchase and sale his [family member] had entered into with one of Mr. Zubko's seller clients, that being [Property 1]. I specifically found that rather than acting on his seller client's behalf, Mr. Zubko was in fact acting with a view to ensuring that his [family member] would be able to make a profit on the assignment.

24. Mr. Zubko's actions in that regard included having [Licensee 1] cut and paste an email from another agent indicating potential issues with [Property 1], and create a new email that suggested the problems had been identified by [Licensee 1] on behalf of Mr. Zubko's [family member] ([Licensee 1]'s ostensible client), when Mr. Zubko knew that [Licensee 1] had not conducted enquiries or identified the concerns set out in that email. Mr. Zubko then advised his seller client to accept a significantly lower price on the property ($175,000 less than Mr. Zubko believed it was worth), as offered by his [family member], as a result of the concerns identified in that email. Mr. Zubko's [family member] was subsequently, just days later, able to assign the CPS he had entered into for [Property 1] for a profit of $160,000.

25. Of note, Mr. Zubko had also provided the funds to his [family member] to enable him to complete the CPS on [Property 1].

26. In the [Property 5] transaction, Mr. Zubko once again engaged in deceptive dealing by inducing his seller client to enter into a CPS with Mr. Zubko's friend [Individual 1] at a price reduced by $10,000 from the original CPS [Individual 1] had entered into with Mr. Zubko's client. Mr. Zubko did this by making false representations to his seller client about the results of a home inspection, an inspection that had in fact never occurred. Mr. Zubko engaged in this inducement while knowing that [Individual 1] had already entered into an assignment for the CPS of [Property 5] at a price that was $48,000 higher than the price he had agreed to pay in the CPS.

27. Again, of note, similar to the [Property 1] transaction, Mr. Zubko's [family member] provided the deposit funds required of [Individual 1] by the CPS [for Property 5].

28. In the Liability Decision, I made the following findings:

> 344. I find that Andre Zubko and Zubko PREC committed professional misconduct within the meaning of section 35(1)(a) [with respect to the Rules set out in Schedule "1" of the Notice of Hearing, and 35(1)(c) of the RESA with respect to the following trades in real estate in British Columbia:
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> a) [Property 1] on or about January 12, 2016;
> b) [Property 2] on or about February 8, 2016;
> c) [Property 3] on or about April 13, 2016;
> d) [Property 4] on or about September 12, 2016;
> e) [Property 5] on or about July 26, 2017;
> f) [Property 6] on or about March 27, 2017;
> g) [Property 7] on or about April 21, 2017; and
> h) [Property 8] on or about October 10, 2017
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> (each, a "Transaction" and collectively the "Transactions"), as follows:
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> i. Mr. Zubko conceived and entered into an arrangement with either [Licensee 1] (properties identified in subparagraphs a - e above) or [Licensee 2] (properties identified in subparagraphs f- h above) to circumvent the commission provisions of the listing agreement and to obtain remuneration to which he was not entitled;
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> ii. Mr. Zubko prepared, or arranged for [Licensee 2] or [Licensee 1] to prepare, contracts and other documents identifying [Licensee 2] or [Licensee 1] as the buyer's agent when Mr. Zubko was the person primarily providing real estate services to the buyer as the buyer's agent;
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> iii. Mr. Zubko failed to take reasonable steps to avoid conflicts of interest by providing agency representation to the buyer and the seller and failed to promptly and fully disclose those conflicts of interest and the nature of his representation to the buyer and seller;
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> iv. Mr. Zubko advised or permitted the seller to enter into a written commission agreement with [Licensee 2]'s or [Licensee 1]'s brokerage, in order to pay a higher rate of commission than that provided in the listing agreement, relying on the false representation that [Licensee 2] or [Licensee 1] was the buyer's agent;
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> v. Mr. Zubko received remuneration from [Licensee 1] and [Licensee 2] which was not disclosed to his clients.
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> 345. I further find that Andre Zubko and Zubko PREC committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(c) of RESA with respect to the [Property 1] Transaction, as follows:
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> a. In or about January 2016, while acting as the agent for the seller of [Property 1], Mr. Zubko conceived of and entered into an arrangement with [Licensee 1], who was purporting to act as the agent for the named

buyer, [Family Member 1], for the purpose of inducing the seller to enter into a contract of purchase and sale for [Property 1] knowing the intention of [Family Member 1] was to try to assign the contract of purchase and sale to another individual at a higher price;

b. On or about January 9, 2016, Mr. Zubko arranged for [Licensee 1] to prepare a contract of purchase and sale for [Property 1] on behalf of the named buyer, [Family Member 1], when he knew that [Family Member 1] was not intending to complete the purchase;

c. On or about January 21, 2016, Mr. Zubko asked [Licensee 1] to send an email which indicated [Licensee 1] had made inquiries about the development potential of [Property 1] when:

   i. Mr. Zubko knew [Licensee 1] had not made such inquiries but rather another agent acting for a potential assignee had represented that she made the inquiries; and

   ii. the representations in the [Licensee 1] email were intended to induce the seller to reduce the sale price agreed in the Contract of Purchase and Sale;

d. On or about February 11, 2016, Mr. Zubko advised the seller, based on the email of [Licensee 1] referenced above, to accept a reduced sale price and an amendment to the contract of purchase and sale changing the price from $350,000 to $175,000;

e. On or about February 17, 2016, Mr. Zubko arranged for [Licensee 1] to prepare an assignment of the contract of purchase and sale assigning the contract at a purchase price of $335,000 to [Individual 2] and Mr. Zubko did not advise the seller he was aware of the assignment and the property was now being sold for $335,000 to the assignee;

f. On or about February 23, 2016, Mr. Zubko obtained a bank draft drawn on his personal account and provided it for the deposit owed by [Family Member 1] under the contract of purchase and sale for the purpose of ensuring [Family Member 1] as the named buyer, fulfilled the terms of the contract so that the assignment of [Property 1] could proceed to the benefit of [Family Member 1], despite Mr. Zubko being agent for the seller; and

g. Mr. Zubko was aware of a false representation in the contracts of purchase and sale and the assignment documents which identified [Licensee 1] as the buyer/assignor's agent when he did not solely provide agency to the buyer/assignor but Mr. Zubko also provided agency to the buyer/assignor, [Family Member 1].

346. I find that Andre Zubko PREC committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(c) of RESA with respect to the [Property 5] Transaction, as follows:

a. In or about July 2017, while acting as the agent for the seller of [Property 5], Mr. Zubko conceived of and entered into an arrangement with [Licensee 1], who was purporting to act as the agent for the named buyer, [Individual 1], for the purpose of inducing the seller to enter into a contract of purchase and sale for [Property 5] knowing the intention of [Individual 1] was to try to assign the contract of purchase and sale to another individual at a higher price; and

b. On or about July 26, 2017,Mr. Zubko arranged with [Licensee 1] for the preparation of a contract of purchase and sale for [Property 5] on behalf of [Individual 1] when he knew [Individual 1] was not intending to complete the purchase;

c. Mr. Zubko represented to the seller of [Property 5] that the named buyer, [Individual 1], had carried out a home inspection and the home required new windows when:

   i. [Individual 1] had not carried out a home inspection;

   ii. Mr. Zubko knew the representations regarding the results of a home inspection were untrue; and

   iii. The representation was intended to cause the seller to reduce the sale price of [Property 5];

d. On or about August 14, 2017, relying on the misrepresentation regarding a home inspection, Mr. Zubko advised the seller to accept a price reduction on the sale price of [Property 5] from $807,000 to $797,000;

e. Prior to the seller agreeing to reduce the sale price Mr. Zubko was aware [Individual 1] had assigned [Property 5] to an assignee for the purchase price of $845,000 and Mr. Zubko did not advise the seller of this fact;

f. On or about August 16, 2017, Mr. Zubko arranged for his [family member], [Family Member 2], to provide a bank draft for the deposit owed by [Individual 1] under the contract of purchase and sale for the purpose of ensuring [Individual 1] as the named buyer fulfilled the terms of the contract so that the assignment of [Property 5] could proceed to the benefit of [Individual 1], despite Mr. Zubko being agent for the seller; and

g. Mr. Zubko permitted the contract of purchase and sale for [Property 5] to identify [Licensee 1] as the buyer's agent when he knew he was also providing agency to the named buyer [Individual 1].

347. I also find that Andre Zubko and Zubko PREC committed professional misconduct within the meaning of sections 35(1), 35(1)(e) and 35(1)(g) of RESA, and contravened section 37(4) of RESA as follows:

a. Mr. Zubko made an agreement that [Licensee 1] and [Individual 1] would provide false or misleading statements to the Council during its investigation of the matters identified in paragraphs 344 through 346 above;

b. Mr. Zubko made false or misleading statements to the Council during its investigation of the matters identified in paragraphs 344 through 346 above; and

c. Mr. Zubko deleted some emails related to the Transactions identified in paragraph 344 above so that they would not be available to the Council or the BCFSA during the investigation.

348. Finally, I find that Andre Zubko and Zubko PREC committed conduct unbecoming a licensee within the meaning of sections 35(2)(a), 35(2)(b) and 35(2)(c) of the RESA, when they engaged in the conduct set out paragraphs above.

29. My reasons for having made those findings are set out at paragraphs 209-339 of the Liability Decision.

Sanctions Hearing

30. At the oral hearing of this matter, BCFSA called four witnesses, all of whom were clients of Mr. Zubko and whose properties were the subject of the transactions.

31. Mr. Zubko testified on his own behalf and on behalf of his PREC. He called two further witnesses; [Witness 5], a long time friend of Mr. Zubko, and [Witness 6], a licensed realtor and managing broker.

32. In addition to the witnesses called by the parties, materials from the liability hearing, including an agreed statement of facts ("ASF"), as well as exhibits from the liability hearing, and further exhibits submitted at the sanctions hearing are included in the evidence and information before me.

BCFSA Witnesses

[Witness 1]

33. [Witness 1] was the seller of [Property 1], which was a bare building lot in a residential area. He is a professional engineer.

34. [Witness 1] explained that [Property 1] had belonged to his mother, who had owned it for many years. [Witness 1] indicated that his mother had a stroke, and that given her medical prognosis, and after family discussion, it was determined the property should be sold. [Witness 1] had power of attorney over his mother's affairs.

35. At the time, in 2016, [Witness 1] was living with his family in Cranbrook. He indicated that his annual income at that time was around 70 or 80 thousand dollars. [Witness 1] described having been involved in the sale of only one other property previously, and indicated that he generally had an understanding that a realtor he hired to sell the property would be looking after his interest as seller. [Witness 1] noted that he had, for his previous property sale, used the same company as Mr. Zubko's, 1% Realty, and that after reading positive reviews about Mr. Zubko, was satisfied that Mr. Zubko would be a suitable agent to sell the property. [Witness 1] indicated that part of the factor in determining to use Mr. Zubko as his agent was the 1% commission fee.

36. [Witness 1] described having initially listed [Property 1], through Mr. Zubko, for $399,000. He indicated that he had initially entered into a CPS for $350,000 with [Family Member 1], but that CPS had eventually been reduced to a selling price of $175,000 due to what Mr. Zubko had told [Witness 1] were problems with [Property 1]. [Witness 1] indicated that he relied on Mr. Zubko's expertise in accepting that there were issues with the building area of the property, and that he had

eventually accepted a reduction to the price on the CPS with [Family Member 1] to $175,000 as a result. [Witness 1] indicated that in the course of selling Mr. Zubko had informed him that the buyer's agent wanted more commission to make the deal work, and that he had agreed as a result of Mr. Zubko's representation in that regard.

37. [Witness 1] indicated that at the time of the transaction, he had been under the impression that Mr. Zubko had done a significant amount of work for the sale of the Property, and that he was satisfied that Mr. Zubko had been acting in his best interest. It was not until much later that [Witness 1] became aware of the fact that Mr. Zubko had apparently, in [Witness 1]'s reading, been working behind the scenes with a partner to drive down the price of [Property 1]. [Witness 1] indicated that while it was sad they had lost out on a bunch of money as a result of the assignment of the contract, he was not going to lose any sleep over it. [Witness 1] further indicated that Mr. Zubko had never apologized to him, or offered to pay any of the money back. He described generally having questions about the integrity of the real estate profession as a result of his experience, but he knew that his experience with Mr. Zubko did not mean that all licensees had the same type of intent.

[Witness 2]

38. [Witness 2] is a self-employed construction worker. He indicated that his annual income in 2016/17 was approximately $50-70,000 per year. [Witness 2] was the owner of [Property 5]. He explained that he had decided to sell that property as he needed funds to complete the purchase of another property.

39. [Witness 2] indicated that he felt that he needed a real estate agent, as he did not know how to sell the home on his own, so he sought out someone to look out for his best interests. [Witness 2] indicated that he had an awareness of Mr. Zubko as he had been the seller's agent when [Witness 2] had purchased [Property 5].

40. [Witness 2] stated that at the time he intended to sell [Property 5] he was aware that his neighbours had recently sold their property for approximately $940,000, and that he was "pretty confident" that he could get $850,000 for [Property 5]. [Witness 2] testified that when he discussed this price with Mr. Zubko, Mr. Zubko had informed him that the market was cooling down and that he was not going to get that price, leading him to list at $819,000.

41. [Witness 2] further explained that when he first contacted Mr. Zubko about selling [Property 5] Mr. Zubko had indicated that he thought he had a buyer who may be interested. [Witness 2] indicated that within a day or two of speaking with Mr. Zubko he received an offer from [Individual 1], that his understanding was that this was the buyer Mr. Zubko had mentioned, and that he understood that [Licensee 1] was [Individual 1]'s agent. [Witness 2] described initially entering into a CPS with [Individual 1] for $807,000, and that after accepting that offer Mr. Zubko had told him that the buyer['s agent wanted more money in commission. [Witness 2] indicate[d] that he had initially simply responded that if the buyer's agent wanted a larger commission, the buyer was welcome to pay that amount, but that after being pressured by Mr. Zubko he had eventually agreed to paying the larger commission fee.

42. [Witness 2] further explained that after entering into the CPS he received a phone call or email from Mr. Zubko indicating that the buyer had done a home inspection and that the windows at [Property 5] would need to be replaced and the buyer therefore wanted a price reduction. [Witness 2] described Mr. Zubko having pressured him for his bottom price, and that he had eventually provided the same under that pressure. [Witness 2] indicated that the reported inspection had directly factored in his decision to reduce the price that had been agreed to in the CPS.

43. [Witness 2] indicated that when he read the Liability Decision he had felt deceived, angered, and as though he had been played by Mr. Zubko. He questioned who one could trust if one could not trust a licensed professional. [Witness 2] described feeling as though he had lost out on approximately $48,000 in the sale of [Property 5] as a result of Mr. Zubko's actions. [Witness 2]

indicated that Mr. Zubko had never apologised to him or offered to repay the mon[etary] difference between the contract and the Assignment.

44. On cross examination [Witness 2] acknowledged there had not been any other offers on [Property 5].

[Witness 3]

45. [Witness 3] sold [Property 6] in Squamish, BC through Mr. Zubko in 2017. The details of that transaction are set out at paragraphs 148 through 163 of the Liability Decision.

46. [Witness 3] testified that he was originally from China, where he had a high school education and had worked as a server and as a truck driver. He indicated that while he had previously purchased real estate property, both in China and in Canada, he had never used an agent prior to the sale of [Property 6].

47. [Witness 3] indicated that his wife had come to Canada in 2008, and that he had arrived in 2012. When [Witness 3] arrived in Canada, he worked as a room attendant in Whistler, BC, where he lived in employee housing. He was still working in that role in 2016-17, earning approximately 18 dollars per hour. [Witness 3] testified that at the time of the sanctions hearing he was self-employed as a handy-man.

48. Regarding his purchase of [Property 6], [Witness 3] explained that it had been owned by his wife's co-worker, and that he had simply obtained strata documents, provided those to a lawyer, and that the lawyer had assisted him with the transfer. He noted that the seller had not been using a real estate agent, and that he had purchased the property for $320,000. [Witness 3] explained that although his family had moved into [Property 3] for a short period of time, they had moved back to Whistler due to the commute being too long, and thereafter rented it out.

49. [Witness 3] indicated that when he and his wife determined to sell [Property 6], he felt that as they did not have a specific buyer lined up, he would need to have a realtor list, advertise and put the property on the market. He indicated that his knowledge of the qualifications of real estate agents was that they had to have a licence, which required writing an examination. [Witness 3] stated that he was not very clear on what he was supposed to do as part of the real estate sale and transaction process, but that he trusted the realtor would tell him what to do and that he would trust his realtor.

50. [Witness 3] stated that Mr. Zubko had been referred to him by a friend, and that he had seen Mr. Zubko's advertisements indicating that he worked for 1%, and as a result decided to contact him. [Witness 3] described that he did not initially know what the 1% referred to, but that Mr. Zubko had explained that for properties below $750,000 he would charge 1% of the final sale price, and that any portion above that there were some extra charges, as well as a document handling fee. [Witness 3] indicated that he understood that this was different from other real estate companies after Mr. Zubko had explained it to him, in that other real estate companies used a different percentage amount in splitting commission. [Witness 3] indicated that the lower commission than other agents was the reason he and his wife determined to list [Property 6] with Mr. Zubko.

51. [Witness 3] described the process of entering into CPS to sell [Property 6] for $529,000. He indicated that he understood the buyer[']s agent to be [Licensee 2], and that the contract had been emailed to him by Mr. Zubko. [Witness 3] indicated that he had no knowledge of how Mr. Zubko received the CPS. He stated that after some negotiation on price they had eventually settled on $529,000. In this regard [Witness 3] explained that when they initially received the offer they had thought that the price was a bit low, and that they had come back at $530,000. [Witness 3] indicated that they had discussed the matter on the telephone with Mr. Zubko, and that he understood Mr. Zubko was putting their counters to the buyers on the telephone. [Witness 3] indicate that the final price was within their expectations, and that they had felt "ok" regarding the service Mr. Zubko had provided them at the time of the sale.

52. With respect to the change in commission, [Witness 3] explained that although Mr. Zubko had initially told them that the commission on their sale would be 1%, Mr. Zubko had told them when they received a previous offer that the buyers[‘] agent thought the 1% commission was too low and wanted to change the commission. [Witness 3] indicated that the[y] had been quite puzzled and shocked by the change requested, but that Mr. Zubko had provided a long explanation and he had eventually agreed. [Witness 3] confirmed that after that first offer the rate of commission had been changed, and that they had signed a new document to reflect the change and as such when they received the offer from [Buyer 1] the commission was still based on the change they had previously agreed to.

53. [Witness 3] indicated that he had not known why the first offer had not completed, but that Mr. Zubko had informed them, when they received [Buyer 1]’s offer, that it would be based on the commission change they had previously agreed to. [Witness 3] indicated that having previously agreed to the change on the previous offer, he had agreed again, because Mr. Zubko had previously informed him that if the commission was too low agents would not want to complete the deal. [Witness 3] indicated that he believed Mr. Zubko’s reasoning, and that if he rejected the rate change they probably would not get the deal completed.

54. [Witness 3] explained that at the time of the sale of [Property 6] he had tenants living there, and that when the sale completed the tenants moved out and [Buyer 1] took possession. He explained that he had attended at the property to clean it after the sale, and that there were three people walking around who approached him and wanted to meet him. They asked [Witness 3] if they could get the keys to the property two or three days in advance of possession. [Witness 3] indicated that these people had explained to him that they were the buyers, and that he had told them they needed to obtain the keys to the property from their agent. [Witness 3] indicated that the people had then asked him who his agent was, and when he had indicated that his agent was Mr. Zubko the buyers had informed him that Mr. Zubko was also their agent. [Witness 3] stated that he had then said to the buyers that he thought their agent was [Licensee 2], and that the buyers had told him that they did not know who [Licensee 2] was and had never met him. The buyers informed [Witness 3] that every time they had come to view the property and executed documents they had done so with Mr. Zubko.

55. [Witness 3] indicated that this had made him believe that Mr. Zubko had been deceiving him. He indicated that he and his wife had called Mr. Zubko, and that he had told them that what the buyers had said was not true and that the buyer[‘]s agent was [Licensee 2]. [Witness 3] indicated that after that phone call Mr. Zubko stopped taking his phone calls, and he had realized that Mr. Zubko was deceiving him. As a result, [Witness 3] indicated that he had sent a text message to Mr. Zubko asking him to repay the extra commission, and that Mr. Zubko denied having received the buyers portion of the commission.

56. [Witness 3] noted that there had been a discussion with Mr. Zubko about borrowing money, as he had told Mr. Zubko about potentially purchasing a property prior to the sale of [Property 6], and that Mr. Zubko had suggested that he could lend [Witness 3] $50,000 to do so, but he had ultimately not done so. [Witness 3] noted that he had not asked to borrow money from Mr. Zubko, and that it was simply an offer Mr. Zubko had made on one occasion.

57. [Witness 3] explained that after receiving the text message from Mr. Zubko denying that he had received the buyer’s commission, he and his wife had completed the complaint form. He explained that he had done so because Mr. Zubko had simply ignored them after the denial, and that when they went to Mr. Zubko’s managing broker he had suggested that they simply forget about it since the deal was already completed. [Witness 3] indicated that he had completed the complaint letter as he wanted to get to the bottom of what was happening, and had felt that Mr. Zubko had represented both the buyer and the seller without telling him that he was doing so, and that as a result Mr. Zubko ought to only receive the seller’s portion of the commission. He noted that he had

drafted [Buyer 1]'s letter of complaint, and gone to their residence and that they had signed it after discussing with them, as they also felt that Mr. Zubko was their agent.

58. [Witness 3] indicated that he had read the [L]iability [D]ecision, and he understood from that decision that Mr. Zubko had deceived a number of different people. He noted that he had been left with the impression that there were too many real estate agents who were dishonest and deceptive to people, and felt that everything Mr. Zubko had been telling them were lies. [Witness 3] noted that the additional $6,300 in commission was a significant amount of money to his family, equal to approximately three months of his pay, and that Mr. Zubko had never apologized to him or offered to pay the money back, though he acknowledged in cross-examination that his lawyer had showed him an apology letter with no dates or signature just a few days prior to testifying at the sanctions hearing.

59. [Witness 3] described the entire process of dealing with this matter as very stressful, and noted that while he felt that the majority of real estate agents were good people, he was left with the impression that a small portion were not working in the best interests of their clients but rather for their own personal gains.

60. On cross-examination [Witness 3] acknowledged that the offer received from [Buyer 1] was the highest offer they had received on [Property 6], and that throughout the process Mr. Zubko was also assisting them in attempting to purchase a property. [Witness 3] acknowledged that during that process he had enquired as to a commission rebate from Mr. Zubko on a potential purchase. He noted that after he found out that Mr. Zubko was acting as the seller and the buyer's agent on [Property 6] that he had not had any further discussions with him.

[Witness 4]

61. [Witness 4] is [Witness 3]'s wife. She described attending at [Property 6] and meeting [Buyer 1], and that they had told her that Mr. Zubko was their agent as well. She indicated that she had told them that was impossible, but that the purchaser had been very firm that they had no other agent and that their agent was Mr. Zubko as well.

62. [Witness 4] described feeling deceived by Mr. Zukbo, and indicated that she clearly remembered him telling them that the buyers had their own agent, [Licensee 2], who had demanded a higher commission just like in the previous offer to purchase they had received. [Witness 4] indicated that she had concluded that Mr. Zubko was trying to trick them, and that they had made a phone call to Mr. Zubko to demand a return of the commission. [Witness 4] indicated that Mr. Zubko had denied acting as agent for the buyers as well, and indicated that they had their own agent. [Witness 4] indicated that she had told Mr. Zubko that if he did not refund the increased commission she would go to his manager, and that he had simply sent a text message about borrowing money. [Witness 4] indicated that she had concluded that she wanted "nothing to do with this", and that she had sent an email to Mr. Zubko's manager, who had replied that she had signed all of the documents and was just trying to make trouble.

63. [Witness 4] indicated that she had reviewed the [L]iability [D]ecision and it caused her to view Mr. Zubko as a repeat offender who was simply trying to cheat people. She indicated being very angry about the fact that [Licensee 2] was not involved in the negotiations on [Property 6], and that the increased commission amount was significant to her family. [Witness 4] indicated that she viewed the apology letter that had now been provided by Mr. Zubko as perfunctory and that there was nothing truthful or substantial in the document.

[Witness 5]

64. [Witness 5] is a friend of Mr. Zubko's. He described having met Mr. Zubko in high school and that they continued to be good friends. He indicated that after Mr. Zubko became a real estate agent, he did a number of transactions, purchasing an apartment and two homes, with Mr. Zubko. [Witness 5] described each transaction as having been a great experience with results better than he was hoping for.

65. [Witness 5] noted that when he had sold a home with Mr. Zubko's assistance, he had let the buyer[']s agent in and that the buyer's agent had informed him that her clients would not be able to put in an offer unless the commission rate was increased. [Witness 5] told the buyer's agent that she would have to speak to Mr. Zubko about that, but [Witness 5] noted that this had left him with the impression that the increase of a commission rate was a common issue.

66. [Witness 5] described having seen the effects of the investigation and discipline process on Mr. Zubko, noting that it had been hard on Mr. Zubko emotionally and financially. He indicated that he felt that it would be beneficial for Mr. Zubko to get back into real estate and that it would enable him to be more of a community member again.

67. In cross examination, [Witness 5] described having reviewed the [L]iability [D]ecision and considered that although it appeared that Mr. Zubko was supposed to get most of the money from the commission scheme it was likely something that [Licensee 1] and Mr. Zubko came up with together.

[Witness 6]

68. [Witness 6] became licensed as a real estate broker in 2004, started his own brokerage in 2016, left that brokerage in 2022 and co-founded another brokerage where he was a managing broker. He was first licensed as a managing broker in 2016.

69. [Witness 6] indicated that he had tried to recruit Mr. Zubko to his brokerage in 2017, but that Mr. Zubko had informed him that he was under investigation at that time. [Witness 6] noted that he had read the [Li]ability [D]ecision, and that he understood that Mr. Zubko had not provided full disclosure to his clients on some transactions and that he had lied to his clients. [Witness 6] acknowledged that those findings concerned him and that his impressions of Mr. Zubko after reading the decision was not good, but that it struck him as out of character and not consistent with what he had seen from Mr. Zubko. [Witness 6] indicated that he had remained in communication with Mr. Zubko during the investigation and discipline process.

70. [Witness 6] indicated that it was at his suggestion that Mr. Zubko had taken the managing broker course, and that if Mr. Zubko was permitted to reapply for his licence and join [Witness 6]'s brokerage, [Witness 6] would ensure that Mr. Zubko was compliant with RESA and the Rules. He described that he would oversee Mr. Zubko's transactions, and review all paperwork before it went out to clients. In general terms, [Witness 6] indicated that through his communication with Mr. Zubko he had garnered the impression that he had learned his lesson and that [Witness 6] was willing to give him a second chance.

71. In cross examination, [Witness 6] indicated that the fact that Mr. Zubko had not apologized to his clients caused him some consternation, but noted that it may be that Mr. Zubko was simply waiting for a final decision on the discipline matter before doing so. He indicated that he did not believe that Mr. Zubko's licence ought to be cancelled, despite his awareness of the nature of the misconduct Mr. Zubko was involved in. [Witness 6] indicated that he was simply of the view that Mr. Zubko had changed and that everyone deserves a second chance.

Mr. Zubko

72. Mr. Zubko was born in 1983. He described his background as having received a high school education in Canada, after immigrating from the Ukraine at the age of 8. He stated that he had taken some post-high school studies at a college, worked for a couple of years, and then taken the real estate licensing exam in 2006.

73. Mr. Zubko explained that from 2006 to 2016 he had worked exclusively through 1% Realty, with essentially all of his work based out of Squamish. Mr. Zubko explained that as a new realtor in 2006, his friend and former business partner had joined 1% [Realty], and that he didn't know how to start his career so he had just followed his friend and partner to work together. He explained that he and his friend had not found any success working in Richmond, and as a result they decided to try Squamish as there was less competition and no discount realty brokerage there.

74. Regarding his personal circumstances, Mr. Zubko indicated that he was married in 2014, and had children born in 2015, 2017, and 2024. Mr. Zubko described 2016 as being a busy time in real estate, and that as a result his family had decided to move to Squamish to be closer to work.

75. Mr. Zubko described his understanding of the requirements as a licensee as to help connect sellers and buyers, sell properties, treat clients fairly and act in their best interests. When asked what motivated him to engage in the behaviour that led to the liability findings, Mr. Zubko indicated that he was under considerable family pressure and financial stress, but indicated that he knew this did not excuse his actions. He stated that he simply wanted to close as many deals as possible, and was motivated by his immediate personal problems and failed to consider the long term consequences and the ethical implications of his actions.

76. Mr. Zubko explained, with respect to the commission scheme, that he had a desire to assist his [family member], [Licensee 1], and that he was under family pressure to assist [Licensee 2] with his real estate career. Mr. Zubko indicated that he convinced himself that what he was doing wasn't causing significant harm, and that he still thought he was working for his sellers to get them the highest price, but that charging commission at a level that was the industry standard was not a big deal. Mr. Zubko indicated that with hindsight he realized that what he was doing was wrong, and that he now knew that full and transparent disclosure was a must. He indicated that he now knew that he could not put himself into situations where there was a conflict of interest, and that he needed to let clients know everything no matter how uncomfortable it may be.

77. Regarding the assignment issues, Mr. Zubko spoke directly to the [Property 1] transaction. He described that he ought to have disclosed to [Witness 1] his relationship with [Family Member 1], and that he knew now that he had not clearly explained to [Witness 1] that the contract was assignable. Mr. Zubko indicated that he had not, prior to the [Property 1] transaction, done any assignment contracts, but he acknowledged that he knew it was in place in this transaction and that the failure to disclose was a significant problem. Mr. Zubko indicated that he had spoken to his managing broker about the assignment because he knew the buyer, and that his managing broker had basically told him it was fine to not disclose the relationship.

78. Regarding [Property 5] transaction, Mr. Zubko again acknowledged that with hindsight he ought to have disclosed to [Witness 2] that the buyer was an acquaintance of his and a mutual friend of his and [Licensee 1]'s, in order to avoid a conflict of interest. When asked about the reduction in price at [Property 5] when he was already aware of the assignment contract, Mr. Zubko indicated that he was aware that the house had issues, and that he felt that the $800,000 range was a fair market value for the home. Mr. Zubko further explained that he was away doing the West Coast Trail at the time of the transaction, and that his understanding was that the assignment remained conditional. Mr. Zubko indicated that although he knew about the assignment, he did not know if the deal was going to go through and he had not wanted [Witness 2] to lose out on the deal, and so encouraged him to counter the offer of

$790,000 with $797,000. Mr. Zubko acknowledged that he knew now that he needed to look out for the best interests of his client and that he needed to make him aware, even if the assignment was conditional, that there was one in place. He also acknowledged that he should have disclosed that the buyer was an acquaintance and had gone to the same school as [Licensee 1] and himself. Mr. Zubko acknowledged that it appeared that he should have gone through the contract terms with [Witness 2] more fully, as it was apparent now that [Witness 2] did not understand that the contract was assignable.

79. Mr. Zubko denied receiving any portion of the profit obtained through the [Property 1] transaction, including any additional commission. He further denied having received any commission from [Licensee 1] on the [Property 2] transaction, nor any portion of the profit obtained on the assignment in the [Property 5] transaction. Mr. Zubko noted that although [Licensee 1] had indicated that he provided $2,000 to Mr. Zubko's [family member] as a result of the [Property 5] transaction, Mr. Zubko himself had not received any portion of the commission on that deal.

80. With respect to the discussion with [Witness 3] and [Witness 4] about loaning money, Mr. Zubko described them having asked if they could borrow money from him and that he had been "a bit standoff". He indicated that that had been the first time a client had ever asked to borrow funds from him, and that in hindsight he was glad he had not loaned them money as that would have created another conflict of interest.

81. In terms of the cancellation of his licence, Mr. Zubko described having felt shame, regret, and remorse. He described being crushed not being able to tell his children that he was a realtor and was once a valued member of the community. Mr. Zubko described his career as having been his identity, and noted that it had been taken away from him for almost a decade. He described having helped hundreds of people in his role as a realtor, and stated that he had lost his career for mistakes that were avoidable and in situations where he had no[t] known how to act. Mr. Zubko indicated that he was working all alone in Squamish, and that he had needed to be in a situation where he could ask more questions, have more oversight, and have better knowledge of the current and changing rules at the time.

82. Mr. Zubko described the personal effects of the loss of his licence, including that due to financial uncertainty he had pushed his [family member] to [personal information regarding the this family member has been redacted], but they continued to have regrets regarding the [redacted] decision. Mr. Zubko described general feelings of shame, and not being able to talk about what he did for a living. He stated that both he and his [family member] were depressed, that he was worried his children would read about him in the paper, and that he had experienced financial issues which were draining as a result of this matter.

83. Mr. Zubko also spoke about a car accident he was in in May of 2018, which had caused him to experience a variety of physical and cognitive issues. He stated that during the investigation and discipline process he had attended some counselling, and enrolled in the managing broker course to assist in expanding his knowledge and education regarding the rules of the industry. Mr. Zubko stated that he had not done any work of significance since losing his licence, and that in the future he would like to return to the real estate industry. Mr. Zubko indicated that he had learned from his failures, and that he wanted to prove that he was capable of redemption. In his view, he had a good career and had lost it all over a handful of transactions where he acted stupidly because "I was trying to get deals done and be number 1". He reiterated that at the time he felt that while his clients were having to pay increased commission, he was getting them the highest price.

84. Mr. Zubko indicated that if he was able to get his licence back he would never put his clients or his family at risk again. He indicated that he imagined that his managing broker would review all of his deals, and that he would have weekly meetings. He noted that [Witness 6]

had informed him that he would have ongoing training at the office and that he was sure there would be conditions on his licence.

85. In cross-examination Mr. Zubko was asked about his understanding of the importance of telling the truth when giving evidence under affirmation or oath. He was asked about being sued by ICBC for misrepresentation, and indicated that his former lawyer had done some things incorrectly without speaking to him, which included filing some documentation indicating he was a realtor working for 1% [Realty] when he was not.

86. Mr. Zubko acknowledged that during the investigation of this matter he was not truthful in the initial interview. He indicated that he did not want to get his colleagues or family in trouble, and that he should have been more open with the investigator. Mr. Zubko also acknowledged that he had met with [Licensee 1] and [Individual 1] after receiving a request for documents from the investigator in this matter. While Mr. Zubko acknowledged having signed the [ASF], he testified that while he met with [Licensee 1] and [Individual 1], he denied having deleted any records. Mr. Zubko indicated that his signing the [ASF] was done reluctantly.

87. As an example of a fact in the ASF that he denied, despite already accepting it, Mr. Zubko in his cross examination specifically indicated that he denied the admitted fact at paragraph 149 of the ASF, and stated that he had never received money from [Licensee 1] in respect of the [Property 2] transaction.

88. Mr. Zubko admitted that he knew, at the time of the transactions in question, the requirements of RESA and the Rules, that he was supposed to act in the best interests of his clients, disclose information to his clients, take reasonable steps to avoid a conflict of interest and disclose conflicts of interest to his clients. He admitted that despite that knowledge he had chosen not to comply. He indicated that he felt that he had "just made mistakes along the way", and that his ethics got blurred and he had not acted ethically. He denied having destroyed any documents, but admitted concealing or withholding documents, until the ASF was signed. Mr. Zubko denied minimizing his misconduct, but admitted that he had relied on documents to attempt to conceal some misconduct, including creating transaction documents in the names of other agents in order to conceal what was actually happening.

89. Mr. Zubko was asked about his current home, which he purchased on December 28, 2016. He explained that he had paid approximately $1.66 million for that property, with a $100,000 deposit and approximately a $500,000 down payment. Mr. Zubko explained he had provided funds from his commission earnings as well as some money from his [family member]'s family that had been intermingled in the family finances. Mr. Zubko also indicated he had a condo that he had purchased when he was younger.

90. He explained that his [family member], who works as a nurse, had continued to assist in paying the mortgage on his family home, and that [another family member] had also been providing them with support. He indicated that he felt that between his properties he likely had access to about 2 million dollars in equity in real estate, but that he had limited liquid assets and no assets other than his real estate holdings.

91. Mr. Zubko was asked whether he had always known that he could make amends for his misconduct by simply paying back the extra commissions he had received. He stated that he did not know how to go about that, and that he did not know how it would be viewed if he were to reach out to those affected individuals during the course of the investigation. Mr. Zubko described being concerned that it would come off as though he was trying to "buy them off or compromise their evidence". It was put to Mr. Zubko that part of the issue was that he had not admitted his misconduct until March of 2024, and he indicated that he thought he had admitted wrongdoing earlier, pointing to the fact that he thought he said he had received money from [Licensee 2].

92. Of note, Mr. Zubko was taken through a variety of deposits into his personal bank accounts in March, July, and October 2016, totalling approximately $150,000. Mr. Zubko indicated that these amounts were provided to his [family member] from [their] parents. BCFSA put to Mr. Zubko that these amounts were in fact payments from [Family Member 1] to his [family member] and to Mr. Zubko in relation to the profits from the [Property 1] transaction. Mr. Zubko denied this and indicated that the banking records demonstrated the funds came from his [family member]'s family. Mr. Zubko denied receiving any commission or profit from the [Property 1] transaction. He state[d] that he did not discuss it further with [Family Member 1] or [Family Member 1's spouse].

Reasons and Findings

Applicable Legislation

93. Section 43(2) of RESA currently provides that if the superintendent finds that a licensee has committed professional misconduct or conduct unbecoming then the superintendent must make an order doing one or more of the following:

> (2) If subsection (1) (a) applies, the discipline committee must, by order, do one or more of the following:
>
> (a) reprimand the licensee;
>
> (b) suspend the licensee's licence for the period of time the committee considers appropriate or until specified conditions are fulfilled;
>
> (c) cancel the licensee's licence;
>
> (d) impose restrictions or conditions on the licensee's licence or vary any restrictions or conditions applicable to the licence;
>
> (e) require the licensee to cease or to carry out any specified activity related to the licensee's real estate business;
>
> (f) require the licensee to enrol in and complete a course of studies or training specified in the order;
>
> (g) prohibit the licensee from applying for a licence for a specified period of time or until specified conditions are fulfilled;
>
> (h) require the licensee to pay amounts in accordance with section 44 (1) and (2) *[recovery of enforcement expenses]*;
>
> (i) require the licensee to pay a discipline penalty in an amount of
>
> (i) not more than $500 000, in the case of a brokerage or former brokerage, or
> (ii) not more than $250 000, in any other case;
>
> (j) require the licensee to pay an additional penalty up to the amount of the remuneration accepted by the licensee for the real estate services in respect of which the contravention occurred.

94. It is important to note that section 43 was amended on September 30, 2016. Prior to the September 30, 2016 amendments, section 43 did not include subsection (j), and subsection (i) read as follows:

> (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.

95. As a result of the amendments noted above, it is clear that section 43 as it existed prior to September 30, 2016 applies to the [Property 1], [Property 2], and [Property 3] transactions, and the initial stages of the [Property 4] transaction. The current version of section 43, with the increased discipline penalties and disgorgement provisions apply to the commissions received by Mr. Zubko as a result of the [Property 4], [Property 6], [Property 7], [Property 5], and [Property 8] transactions.

Discussion: Sanction Principles

96. In general terms, where the intention of the regulatory scheme is consumer or public protection, such as is the case with RESA, 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.

97. BCFSA has referred in its submissions to the framework set out in *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?

98. Although I am not bound by the framework set out in *Dent,* that framework has regularly been applied by the superintendent in discipline and enforcement decisions under RESA, and I am of the view that it is useful to follow that framework in assessing this matter. I note that the factors set out in *Dent* are not exhaustive, and I must determine the appropriate sanction for Mr. Zubko in light of the whole of the circumstances.

General Comment Regarding Evidence and Submissions at the Sanctions Hearing

99. Both parties provided written submissions following the sanctions hearing. I have considered those submissions through my reasons below. There are, however, some general comments regarding the submissions that I consider to be necessary in order to provide context for my reasons.

Credibility and Reliability

100. Both parties also questioned the credibility of some of the witnesses at the sanctions hearing. For example, Mr. Zubko suggested that [Witness 2]'s evidence was at times not credible, and made the same submissions regarding the evidence received from [Witness 3] and [Witness 4]. BCFSA, on the other hand, submitted that Mr. Zubko's evidence generally ought not to be relied upon where it differed from the ASF, and that Mr. Zubko's evidence at the sanctions hearing consistently demonstrated a willingness to massage or bend the truth, and at times outright lie.

101. The assessment of a witness's credibility involves an assessment of the truthfulness of a witness. In reviewing and considering the evidence of the witnesses at the sanctions hearing, I have considered various factors that comprise the assessment of the trustworthiness of a witness's testimony as set out in the decision of *Bradshaw v. Stenner*, 2010 BCSC 1398, at paragraph 186. These factors include:

- the ability of a witness to observe events;
- the firmness of a witness's memory;
- the ability of a witness to put aside their interests in the outcome of the litigation to modify their recollection;
- whether the evidence of a witness is consistent with other independent evidence;
- whether the witness changes their evidence during direct and cross-examination;
- whether the evidence of a witness seems unlikely, unreasonable, or implausible; and
- whether the witness has a motive to lie.

102. I note, in setting out the above, that I did not consider that the areas in which Mr. Zubko questioned the credibility of BCFSA's witnesses, to be of particular importance to an overall determination of the appropriate sanction in this case.

103. For example, Mr. Zubko questioned [Witness 2]'s credibility in respect of his knowledge of the fact that the CPS on [Property 5] that he had signed with [Individual 1] could be assigned. In

my view, in light of the overall nature of the [Property 5] transaction, little turns on that evidence. In any event, I consider [Witness 2]'s explanation that he had not previously sold a property through a licensee and that Mr. Zubko had not directly explained the nature of the assignment process to him to have been credible. Mr. Zubko admitted, on cross examination that he could have better explained the nature of assignments to [Witness 2].

104. Similarly, Mr. Zubko suggested that [Witness 4]'s claim that Mr. Zubko had simply proposed to her that he could lend her $50,000 to complete the purchase of another property. I do not consider that there is any particular need for me to engage in a detailed analysis of whose evidence is more believable on that point. The ASF sets out in detail the facts of Mr. Zubko's engagement with [Witness 4] and [Witness 3]. Those facts led to the findings of misconduct against Mr. Zubko in relation to the [Property 6] transaction. That there may have been other interactions between Mr. Zubko and [Witness 4] and [Witness 3] are not, in my view, relevant to the sanction to be applied in this matter.

Use of the ASF

105. I note that a focus of the sanctions hearing, and the parties' submissions, was the fact that Mr. Zubko sought to resile from a number of the facts in the ASF in his evidence at the sanctions hearing. Mr. Zubko described, at the sanctions hearing, that he had signed the ASF reluctantly, and made a number of denials of the facts he agreed to in the ASF. These included, for example, denying in his evidence that he had received kickbacks on certain transactions when he agreed as a fact in the ASF that he had, and denying in his evidence that he had ever destroyed documents when he agreed as a fact in the ASF that he had.

106. In response, BCFSA has submitted that it was not appropriate to revisit the ASF, in closing submissions or at the sanctions hearing. In BCFSA's submission, Mr. Zubko's approach to the ASF at the sanctions hearing was indicative of his tendency to minimize his culpability or to frame things in a way that he viewed as advantageous.

107. In my view, it is appropriate to rely on the ASF as containing accepted facts for my consideration of the appropriate sanction to be imposed in this matter.

108. While Mr. Zubko now says that he entered into ASF reluctantly, he cannot escape from the reality that he entered into the ASF and agreed to the facts therein. Mr. Zubko was represented by counsel when he did so. There is nothing before me to suggest that Mr. Zubko was somehow coerced into entering into the ASF, nor does it appear that Mr. Zubko misunderstood the facts admitted to. As noted by BCFSA in its submissions, it is readily apparent from a review of the ASF that there were some facts in the draft that he did not agree with, and that he struck out those facts prior to signing the document. It strikes me that where Mr. Zubko has attempted to resile from the ASF in the sanctions process, he is simply doing so in order to paint his activities as less culpable than the facts in the ASF have already demonstrated.

109. The ASF largely formed the factual basis for the liability findings made against Mr. Zubko. In my view, and in spite of Mr. Zubko's attempts to resile from some of the facts within the ASF at the sanctions hearing, the facts in the ASF stand for the purposes of this sanction proceeding. Where Mr. Zubko sought to resile from facts he had already agreed to in the ASF, I reject his evidence and rely on those set out in the ASF.

110. I turn to a review of the *Dent* factors.

Nature, Gravity, and Consequences of Conduct

111. The nature and gravity of Mr, Zubko's misconduct is, in my view, severe. I reach that conclusion based not only on the nature of Mr. Zubko's conduct, but also having specific regard to the consequences of that misconduct.

The Commission Scheme

112. I begin with the commission scheme. It is clear that, as found in the Liability Decision, Mr. Zubko was engaged in deceptive dealing, in that he intended to deceive his seller clients about the nature of his relationship with the buyer clients in the transactions, and that he sought to deceive some of the buyer clients as well who were also under the impression that he was their real estate agent acting on their behalf. Mr. Zubko intended the commission scheme to obtain money through an illegal means.

113. The evidence from Mr. Zubko's clients clearly established that each of them was enticed by the idea that the commission charged by Mr. Zubko was lower than that required by other agents, and that they were ultimately convinced by Mr. Zubko that the commission amount needed to be raised in order to complete their respective deals. This of course, was not true. Rather, Mr. Zubko's clients were subjected to the commission scheme in order to convince them to pay a higher rate of commission than they had initially agreed to.

114. In his submissions, Mr. Zubko indicated that while he was not attempting to excuse his conduct, he considered it important to understand that the accepted offers on most of the transactions were the highest offers received, that he had fully marketed all of the properties, that his clients benefitted from lower commission fees that were typical even when considering the higher agent fees that formed part of the transactions than what were originally agreed to, that the total commissions and remuneration was disclosed to his clients and he was not aware of the exact amounts, if any he would receive back from [Licensee 1] and [Licensee 2] and as such he could not have disclosed an exact amount to his clients, that in some of the transactions he did not in fact receive a kickback, he did not have proper oversight, and he had been away at the closing of a number of the transactions and had therefore relied on [Licensee 1] or [Licensee 2] to ensure the transactions completed.

115. In Mr. Zubko's submission, it was also necessary to note that in amending the multiple listing contracts he was actually reducing his commission by 50% in the transactions in question, with that portion going to the buyer's agent. Mr. Zubko suggested that while in some instances these agents returned a part of the commission to him, this was not consistent across all deals. Nevertheless, Mr. Zubko acknowledged in his submissions that his conduct was improper and contrary to the best interests of his client, and that there was "no justification for his conduct".

116. I agree with BCFSA's reply submission that Mr. Zubko's submissions regarding the commission scheme generally attempt to re-imagine what that scheme in fact involved. This was not a situation in which Mr. Zubko was simply referring buyers to [Licensee 2] and [Licensee 1] to distance himself in an attempt to "not compromise his loyalty or confidentiality to his seller clients" as Mr. Zubko has submitted.

117. Rather, as found in the Liability Decision, Mr. Zubko conceived of the commission deals. While he arranged for either [Licensee 1] or [Licensee 2] to prepare contracts and other documents in order to appear as the buyer's agents, Mr. Zubko was in fact primarily responsible for providing real estate services to the buyers, creating a conflict of interest which he did not disclose.

118. I do not accept that Mr. Zubko was seeking to avoid concerns that dual agents could not adequately serve conflicting interests without compromising loyalty or confidentiality. Given the findings of the Liability Decision, I consider it to be clear that Mr. Zubko was simply seeking to work both ends of the deals, he conceived of a scheme that would allow him to do so, and he in fact sought to do so without his clients having knowledge of that fact. The fact that he continued to deny that he had acted for both parties in the [Property 6] transaction after the closing of that transaction, and after [Witness 3] had become aware that [Buyer 1] also thought that Mr. Zubko was their real estate agent, demonstrates that fact.

119. In my view, the commission scheme involved deliberate, deceptive conduct on Mr. Zubko's part directed towards his clients. Mr. Zubko's clients testified as to the impact this misconduct had on them. This misconduct was, without doubt, serious.

120. The consequences of Mr. Zubko's misconduct as it relates to the commission scheme involved the payment of thousands of dollars in additional commissions in each case. While the amounts were not substantial as compared to the amounts related to the assignment scheme, I heard evidence at the sanctions hearing from those affected indicating that they considered the additional sums paid out to be significant to them. This is an aggravating factor.

The Assignment Scheme

121. The assignment schemes involved what can only be described as severe misconduct.

122. In the assignment transactions, Mr. Zubko purposefully arranged transactions which would cause his clients to obtain less money from the sale of their property than Mr. Zubko in fact was fully aware they could earn. More to the point, it was not merely a situation in which Mr. Zubko was aware that his clients were leaving money on the table, Mr. Zubko was in fact actively arranging for his family and friends to earn that additional money, at the expense of his clients.

123. A brief review of the assignment schemes is helpful in making this fact clear.

124. With respect to [Property 1], Mr. Zubko made arrangements for the assignment prior to the property even being listed for sale. Rather than seeking to ensure [Witness 1]'s interests in selling the property at a profitable price, Mr. Zubko was actively working to promote [Family Member 1's] best interests, going so far as to providing the funds for the deposit on [Family Member 1's] behalf.

125. On the [Property 5] transaction, Mr. Zubko acted with [Licensee 1] and [Individual 1] to induce [Witness 2] to enter into a contract of purchase and sale at a price which would ensure that [Individual 1] could turn a profit on the assignment of the CPS. As I found in the Liability Decision, Mr. Zubko knew that [Individual 1] did not intend to complete the purchase and did not have the financial ability to do so, and knew that the entire transaction between [Individual 1] and [Witness 2] was simply being completed to allow [Individual 1] to turn a profit on the assignment of the CPS. In working to achieve this goal, Mr. Zubko fabricated the existence of a home inspection, which had not occurred, which suggested that new windows were required on [Property 5], inducing [Witness 2] to further lower the price on the [Property 5] CPS. I note [Witness 2]'s testimony at this hearing was that he felt that Mr. Zubko was pressuring him to lower the price on [Property 5] throughout their dealings.

126. Again, in his submissions, Mr. Zubko attempted to minimize the nature of his involvement in the assignment transactions.

127. With respect to the [Property 1] transaction, Mr. Zubko notes that he did not draft the assignment contract or have any direct dealings with [Individual 2], and submits that at the time of the price reduction addendum there was no [assignee] and it was completely uncertain if [Individual 2] or any other third-party would present an offer. While I accept that there was not a specific assignee for the CPS signed by [Family Member 1] at the time the price reduction on [Property 1] was agreed to, I do not consider that fact to alter the reality that Mr. Zubko knew that at a price of $175,000 [Family Member 1] would be able to turn a profit on the assignment of the CPS, and that he held the specific intention of assisting [Family Member 1] in turning a profit, by [delete: in] getting [Witness 1] to agree to the significant price reduction he did. As I found in the Liability Decision, it would have been apparent to Mr. Zubko by the time he received the [Licensee 3]/[Licensee 1] email that the only possible way for [Family

Member 1] to assign the [Property 1] CPS at a profit would be if [Witness 1] reduced the price that had been agreed upon in the [Property 1] CPS. Mr. Zubko therefore had [Licensee 1] forward an edited version of the [Licensee 3] email to [Witness 1] in order to convince [Witness 1] to reduce the price that had been agreed upon. At issue is the amount of the price reduction agreed to by [Witness 1], that being $175,000. As I noted in the Liability Decision:

> 268. While there is a debate amongst the appraiser experts regarding the appropriate valuation on [Property 1] as at January 2016 based on the amount of site preparation required, I consider the reality of the circumstances to be that even if I accept that Mr. Zubko was of the view that some site preparation was likely to be required in order to build on [Property 1], it is clear that Mr. Zubko still considered, at the time the Amended [Property 1] CPS was entered into by [Witness 1] and [Family Member 1] on February 11, 2016, that [Family Member 1] would be able to make a profit on the assignment of the Amended [Property 1] CPS at that amended $175,000 price.
>
> 269. I reach this conclusion given the fact that the evidence is that Mr. Zubko's intention (along with [Family Member 1's]) was that [Family Member 1] would enter into a CPS on [Property 1] with a view to making a profit.
>
> 270. I consider that given his intention for [Family Member 1] to make a profit, even if Mr. Zubko was of the view that the price on [Property 1] needed to be reduced from the $350,000 amount set out in the [Property 1] CPS, it is clear that Mr. Zubko likely knew that $175,000 was less than fair market value for [Property 1]. In my view, if Mr. Zubko had not had that knowledge, he would not have recommended that price point to [Witness 1].
>
> 271. As it turns out, Mr. Zubko was in fact correct in his assessment that [Family Member 1] would be able to turn a profit on the Amended [Property 1] CPS, given that [Individual 2] purchased the assignment on [Property 1] for $335,000 a matter of days after [Witness 1] agreed to the Amended [Property 1] CPS.

128. The situation was not one in which Mr. Zubko was simply advising his client that a reduction was necessary to make a sale. While I accept that there was briefly some information available to indicate that a price reduction may be necessary to reach completion of that sale, that was not information that Mr. Zubko had personally gathered or confirmed. In any event, I find that Mr. Zubko was not in fact focused on what an appropriate price reduction may be in order to secure a sale in the best interest of his client, [Witness 1]. Rather, I find that Mr. Zubko was focused on ensuring that his [family member] was able to make a significant profit on his assignment of the CPS, and on what reduction Mr. Zubko could obtain from his client in order to ensure that outcome. In sum, Mr. Zubko was working in the interests of his [family member], rather than the interests of his client. He ensured his [family member]'s interests were met by providing [Family Member 1's] deposit to enable him to complete the CPS, by which time the assignment was already in place, again demonstrating [delete: to] whose interests Mr. Zubko was in fact protecting.

129. Turning to [Property 5], Mr. Zubko submits that he was unaware of the status of the assignment terms and subjects at the time he negotiated the price reduction with [Witness 2], noting that he was away hiking the West Coast Trail at the time (of note Mr. Zubko admitted that he was hiking on the West Coast [T]rail with [Individual 1]). Mr. Zubko further submits that [Witness 2]'s claim that he was not advised of [Individual 1]'s ability to assign the contract is not credible in the face of documents reviewed and signed by [Witness 2] at the time.

130. With respect, I consider little can be taken from the fact that Mr. Zubko may have been away at the time the assignment terms were reached, or [Witness 2]'s indication that he [delete: did] was not advised that the contract may be assigned.

131. The ASF sets out that Mr. Zubko, [Licensee 1], and [Individual 1] had all discussed [Property 5] in advance, that all three knew that [Individual 1] was not interested in or actually able to purchase [Property 5], and that the intention was to assign the property at a profit. In sum, Mr. Zubko's sale of [Property 5] was to be a scheme intended to enable a profit on an assignment. While it is true, as Mr. Zubko submits, that the documents provided to [Witness 2] address assignment clauses, it is also true that Mr. Zubko admitted in the ASF that he "did not explain the effect" of the assignment terms clause, and that he "never advised [[Witness 2]] that [[Individual 1]] intended to assign the [Property 5] CPS". In the context of the entire situation, in which Mr. Zubko specifically knew that the only reason for [Individual 1] entering into the CPS was to assign it for a profit, I consider that it makes little difference if [Witness 2] ought to have had some awareness of the possibility the property could be subject to assignment. The question is the nature of Mr. Zubko's misconduct. Mr. Zubko's misconduct involved running a scheme to enable his friend to turn a profit, at the expense of Mr. Zubko's client. That, in my view, is the relevant point, and clearly constitutes severe misconduct.

132. The consequences of the assignment scheme were significant. In BCFSA's submission, the only reason that [Witness 1] sold [Property 1] to [Family Member 1] for $175,000 rather than to [Individual 2] for $335,000, was because Mr. Zubko was working with [Family Member 1] against [Witness 1]'s interests. I am satisfied that this is an accurate depiction of what occurred, and that [Witness 1] essentially lost out on an additional $160,000 in sale proceeds due to Mr. Zubko's engaging in the assignment scheme on [Property 1]. Mr. Zubko negotiated the reduction in price in order to favour [Family Member 1's] ability to make a profit. Mr. Zubko provided [Family Member 1] with the deposit funds and knew, prior to the completion of the CPS, knowing that [Property 1] was going to sell at a significant profit to [Family Member 1]. The consequence to [Witness 1] amounted to essentially two years of what he testified was his then salary of approximately $70 to $80,000. While [Witness 1] was forgiving of Mr. Zubko, he nevertheless had felt cause to question the integrity of the real estate profession.

133. The financial consequences to [Witness 2] were less than to [Witness 1], but still significant, selling his property for $797,000 when an assignment was already in place for $845,000. It is of particular note that Mr. Zubko's submissions suggest that it is of some [importance] that [Licensee 1] "dealt exclusively" with the eventual purchaser of [Property 5] assignment on [Individual 1]'s behalf. I consider that fact may have some relevance in considering the nature and gravity of the misconduct if not for the following facts:

- Mr. Zubko had been a part of the plan to have [Individual 1] enter into a CPS to purchase [Property 5] and assign it at a profit;

- Mr. Zubko referred the eventual purchaser of [Property 5] to [Licensee 1] in order to enter into the assignment to enable [Individual 1] to turn a profit; and

- Mr. Zubko sought a reduction in the price of the CPS between [Witness 2] and [Individual 1] based on fabricated information and when Mr. Zubko was aware that [Individual 1] had already entered into an assignment for the property at $845,000.

134. Mr. Zubko's submission suggests that while he was aware of the assignment (as he agreed he was in the ASF), he understood that [Individual 3] had not yet removed subjects as of the time he was negotiating [Witness 2]'s agreement to reduce the price on the CPS with [Individual 1], and that as such the assignment was not firm and binding. I take Mr. Zubko's submission to be that despite all of the above, he should be seen as having simply been working towards ensuring the completion of the deal between [Witness 2] and [Individual 1],

and that the assignment was of no moment in his considerations in seeking the price reduction. In my view, in light of the ASF, and all of the circumstances surrounding the transaction, this submission is of no merit. Again, regardless of whether he knew that the assignment was "firm and binding" at the time he was negotiating a reduction in the price on [Property 5], Mr. Zubko was clearly not working in his client's interests, and was clearly intending to ensure that his friend, who had no ability to actually complete the CPS, was able to assign the CPS for the best profit to him. Given his knowledge of the assignment, Mr. Zubko clearly knew of at least one interested buyer in [Property 5] who was willing to pay far more than the CPS called for, and despite that fact he convinced [Witness 2] to lower the price further. This is severe misconduct.

135. The losses sustained by [Witness 2] and [Witness 1] were significant, and are significantly aggravating factors.

Investigation Misconduct

136. In addition to the misconduct in the transactions, there is the fact that Mr. Zubko also engaged in misconduct in the course of the investigation into these matters. I concluded in the Liability Decision that Mr. Zubko had not cooperated in the investigation, and specifically that Mr. Zubko had admitted to deleting emails related to the transactions, that he had met with [Licensee 1] and [Individual 1] to align the stories they intended to tell investigators, and that he had made a number of false or misleading statements to the regulator both in writing and verbally. These false statements included denying receiving any commissions from [Licensee 2], denying any contact with the buyers of [Property 7] or [Property 4], and denying having referred any deals to [Licensee 1]. Mr. Zubko also informed the regulator he did not have any contact information for [Family Member 1], any connection to [Family Member 1] (his [family member]), and denied having advised [Family Member 1] with respect to the [Property 1] CPS, all of which was blatantly false.

137. I consider that the above misconduct with respect to the investigation constitutes serious misconduct. Mr. Zubko demonstrated a blatant disregard for the requirements of section 37(4) of RESA, and his dishonesty clearly impacted the regulator's ability to conduct an investigation intended to uphold and protect the public interest.

138. I acknowledge Mr. Zubko's submissions regarding the fact that he was at times unrepresented through the investigation process, as well as the fact that he was involved in a motor vehicle accident in 2018 which he says left him with serious and ongoing injuries, including a traumatic brain injury. He nevertheless acknowledged that his first dealings with the regulator were defensive and not forthcoming, and in hindsight he appreciated he ought to have been more cooperative.

Conduct Unbecoming

139. The professional misconduct is not the only conduct that is at issue. Mr. Zubko was also found to have engaged in conduct unbecoming a licensee pursuant to section 35(2) of RESA. Such conduct is that which is contrary to the best interests of the public, undermines public confidence in the real estate industry, or brings the real estate industry into disrepute. As I found in the Liability Decision:

> 331. If Mr. Zubko had simply provided a list of real estate licensees that he knew in order for those unlicensed buyers to obtain real estate services, there would be no issue.

332. On the evidence before me, I consider that rather that simply making a referral, Mr. Zubko was actively seeking to increase the commissions he received. This was done at the expense of his seller clients, and for Mr. Zubko's benefit.

333. In my view, this activity was clearly contrary to the best interests of the public. Mr. Zubko's conduct was self-interested. Both sellers and buyers in the transactions believed that Mr. Zubko was their designated agent, that he was acting exclusively in their interests, when in fact he was focused on manipulating circumstances to ensure that he received the highest possible commission payment at the expense of those he was supposed to be representing.

334. I note that this is not a situation in which Mr. Zubko simply negotiated the highest possible commission for himself and signed a contract to that effect. These transactions involved Mr. Zubko actively acting for both sellers and buyers in the same transaction, in order to increase his commission payment, without telling either party that he was doing so and where each party believed that Mr. Zubko was acting exclusively in their interest.

335. **Mr. Zubko's actions in this regard undermines public confidence in the real estate industry and brings the industry into disrepute, as it will cause buyers and sellers to have concern that licensees are simply acting in a self-interested manner, rather than representing the interest of their clients.**

336. Similarly, I consider that the assignment deals were transactions which were orchestrated by Mr. Zubko for the purpose of earning money at the expense of the public, rather than in the best interests of the public.

337. The evidence before me is that Mr. Zubko actively sought to encourage his seller clients, [Witness 1] and [Witness 2], to lower the sale prices of their properties, in order that the buyers, who Mr. Zubko brought into the deals and who were Mr. Zubko's close personal acquaintances, could achieve larger profits on their assignments.

338. In my view, the reasonable conclusion to draw from the above is that Mr. Zubko was acting in the best interests of his [family member], and his friend [Individual 1], rather than the best interests of his clients or the public.

339. **The fact that Mr. Zubko was actively attempting to have his seller clients lower their prices in order that Mr. Zubko's close personal acquaintances could earn more significant profits is clearly the type of activity that undermines public confidence in the real estate industry and brings the industry into disrepute. Once again, this is activity that would indicate to the public that licensees are simply acting in a self-interested manner, rather than representing the interests of their clients.**

340. I note, in setting out the above, that in their submissions the parties referred to whether or not Mr. Zubko received profits from the assignment deals.

341. There is no direct evidence before me, in the form of admissions or documentary evidence, which demonstrates that Mr. Zubko shared in the profits made by [Family Member 1] and [Individual 1] on the assignment deals. Mr. Zubko explicitly denies receiving any of those profits. While it may be that inferences could be made in that regard, I do not consider it necessary for me to

> consider that matter further at this time. For the purposes of determining whether or not Mr. Zubko engaged in conduct unbecoming, I do not consider it to be necessary to make a finding as to whether Mr. Zubko did in fact share in the assignment scheme profits. As set out above, Mr. Zubko's involvement in the assignment deals, whether he shared in the profits from those deals or not, constitutes conduct unbecoming.
>
> [emphasis added]

140. Again the nature of this misconduct is serious. Actions that constitute conduct unbecoming under RESA are of the type that call into question the professional integrity not only of the licensee in question, but of the industry as a whole.

Respondent's Character and Conduct Record

141. At the time the initial complaint was filed in 2017, Mr. Zubko had been a licensee for more than 10 years. Prior to the issues in this matter, Mr. Zubko did not have any disciplinary record. This is a neutral factor because compliance is expected of licensees: *Rohani (Re)*, 2024 BCSRE 31 at para 53.

142. In BCFSA's submission, the length of Mr. Zubko's time in the industry, and the number of transactions he had been engaged in, ought to be viewed as an aggravating factor due to the fact that he was a well experienced member of the industry who knew what was expected of him by his regulatory body, and that by engaging in acts of dishonesty he knew what he was doing was wrong. BCFSA submitted that Mr. Zubko was not a new licensee who could avail himself of the potential mitigating factor of inexperience or lack of knowledge, and that in any event the nature of his misconduct was of the type that any agent would know that it was misconduct beginning at day one.

143. Mr. Zubko submitted that he had worked hard to build up his business and his reputation as a reliable realtor in the Squamish area, and that he prided himself on working with clients to achieve their real estate goals.

144. I agree with BCFSA that the type of misconduct that Mr. Zubko engaged in was that which any licensee would be expected to be aware was wrong from the beginning of their careers. Mr. Zubko's long history as a licensee, which he indicated was directed towards assisting clients achieve their real estate goals, suggests that in engaging in the misconduct that he did, he had completely lost sight of that direction.

145. With respect to Mr. Zubko's general character, I accept that he has generally sought to be a good member of the community and a good father. The character evidence provided by [Witness 5] did, as BCFSA pointed out in his submissions, have some limitations in respect of its utility as [Witness 5] appeared to indicate that he did not necessarily understand the true scope of the liability findings, indicating that he believed that in spite of the misconduct Mr. Zubko had still been attempting to ensure that his customers were getting a fair deal, or understand that Mr. Zubko's conduct was harmful to the public. I accept [Witness 5]'s evidence as it relates to Mr. Zubko having been a good friend to him and of having provided good service to him on the real estate transaction he engaged in, but would limit the overall value of his evidence as to Mr. Zubko's character.

146. With respect to [Witness 6]'s evidence, while it is true that [Witness 6] indicated that he believed Mr. Zubko deserved a "second chance", and that he believed Mr. Zubko had a strong moral compass, he later acknowledged that Mr. Zubko's conduct was inconsistent with someone who in fact has a strong moral compass.

147. It is important to note that the misconduct that Mr. Zubko has been found to have engaged in goes directly to his character. He sought to enrich himself, his family and his friend, at the expense of his clients and through intentionally dishonest means. These are not the actions of an individual who is of good character.

148. Overall, given Mr. Zubko's lack of previous discipline history, I would consider this factor to be neutral. Given the nature of Mr. Zubko's misconduct, I do not consider the character evidence of [Witness 6] and [Witness 5] to suggest that this should be considered to be a mitigating factor of any significance. Rather, as I have indicated above, the issue of his dishonesty[,] as it relates to his misconduct[,] serves as an aggravating factor in consideration of the first *Dent* factor.

Acknowledgment and Remedial Action

149. While Mr. Zubko entered into the ASF, at the sanctions hearing he indicated that he did not agree with some of the information contained within that document.

150. In BCFSA's submission, Mr. Zubko's evidence at the sanctions hearing indicated that Mr. Zubko had not, in fact, fully engaged with the significant nature of his misconduct or the significant nature of the harm that he had caused his clients. Rather, BCFSA submitted that Mr. Zubko continued to minimize his misconduct, and in fact sought to walk back admissions he had made in the ASF. In BCFSA's submission, Mr. Zubko's acknowledgment was based more on his own regrets as to the effect his actions had on his personal situation, rather than an acknowledgement of the impact he had on his clients and the industry as a whole.

151. BCFSA further submitted that Mr. Zubko had in effect engaged in no remedial action of any meaning, noting that he had not paid back any of his clients, despite agreeing that they deserved to be paid back at least in part. BCFSA noted that Mr. Zubko had not taken any steps to apologize to six of the eight clients affected by his misconduct, and that even the apologies that he had provided to [Witness 3] and [Witness 1], amounted to essentially no steps at all, describing the apology to [Witness 3] as a non-apology and having indicated a desire to apologize to [Witness 1] only after hearing [Witness 1]'s evidence.

152. With respect to Mr. Zubko's having taken the managing broker's course, BCFSA submitted that this appeared to have been taken around the time he was discussing a potential business arrangement with [Witness 6]'s then brokerage, and that even after having taken that course he had continued to lie to investigators.

153. Overall, BCFSA submitted that this factor ought to be considered to be neutral.

154. Mr. Zubko, on the other hand, submitted that while his acknowledgement of his misconduct had been complicated by certain facts he disputed in the ASF and the Liability Decision, he has nevertheless acknowledged that his conduct was deceitful, improper, and wrong, and that he has sympathized with the impact his conduct has had on his clients and the real estate industry. Mr. Zubko indicated that he had been uncertain about whether and how he ought to reach out to his former clients throughout the investigation and disciplinary process, and that given his financial situation he was simply not certain as to what, if any, arrangements he could make to compensate his clients given that he was not earning an income.

155. While I accept that Mr. Zubko has remorse regarding his actions, and the effects those actions had on his clients, I do not consider the evidence before me to indicate that Mr. Zubko engaged in any remedial action of substance that would suggest that this ought to be considered a mitigating factor. Simply put, Mr. Zubko obtained a financial benefit at the expense of his clients, denied having done so for an extended period of time (not entering into the ASF until 2024), did not take any steps to rectify that financial issue, and did not apologize to any of the

clients he affected until well after the issuing of the [L]iability [D]ecision. The apologies Mr. Zubko did provide occurred on the eve of, and at, the sanctions hearing.

156. Further, it was clear at the sanctions hearing that despite the ASF and the findings in the liability hearing, Mr. Zubko, as BCFSA submitted, has failed to fully engage with the nature of his misconduct. In my view, Mr. Zubko's acknowledgement of his misconduct is best described as begrudging. At the sanctions hearing, he denied things he has already admitted doing in the ASF, including, as an example, deleting emails between himself and [Licensee 1]. Most tellingly, he described his misconduct in relation to [Property 5] as one of a failure of disclosure. While the lack of disclosure in that transaction was an issue, the fact that he specifically lied to his client about a home inspection that did not exist, with the purpose of that lie being to enrich his friend at the expense of his client, was misconduct at a much more extreme degree than failing to disclose the fact that the CPS may be assigned, which was the misconduct Mr. Zubko was focused on.

Specific and General Deterrence and Public Confidence

157. I turn to the question of deterrence and 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.

Specific Deterrence

158. It is clear that significant specific deterrence is required in this case. Mr. Zubko chose, in eight separate transactions over the course of a two year period to put his own interests, or those of his family and friend, ahead of those of his clients. He took, as BCFSA has submitted, deliberate steps to conceal his conduct, including colluding to mislead investigators, and preparing documents to appear to show a legitimate transaction. All of Mr. Zubko's actions of misconduct are of the type that required him to specifically choose to proceed in that manner, and Mr. Zubko must be specifically deterred from making such choices in the future.

159. I acknowledge, in setting out the above, that Mr. Zubko has in fact faced specific deterrence, in the fact of the length of time that he has been unlicensed during the course of the investigation and discipline process. While, as BCFSA submits, the length of the investigation was certainly contributed to by Mr. Zubko's actions, I consider that account must be taken of the fact that Mr. Zubko has not been able to be licensed since 2017, and that the extended time of being unlicensed should be taken into account in the overall sanction assessed to him.

General Deterrence

160. BCFSA submits that general deterrence is perhaps the most important consideration in this case, as the misconduct engaged in by Mr. Zubko goes to the core of the integrity of the real estate industry. BCFSA notes that Mr. Zubko, like all real estate agents, was uniquely positioned to take advantage of vulnerable clients for his own gain, and that the only way to maintain the integrity and trustworthiness of the real estate profession and BCFSA's ability to regulate it is to impose a penalty that is commensurate with the seriousness of the misconduct, and at a scale provided by RESA.

161. Mr. Zubko submitted that the respective importance of general deterrence should be found to vary according to the breach of the Act and the circumstances of the person charged with breaching the Act, citing *Cartaway Resources Corp. (Re)*, 2004 SCC 26 at para. 61.

162. I agree with Mr. Zubko's submission that the pursuit of general deterrence does not warrant imposing a crushing or unfit sanction on an individual respondent. That said, it is clear that a

case involving misconduct of the type engaged in by Mr. Zubko warrants a sanction that will serve to indicate to all licensees that not only will such misconduct not be tolerated by the superintendent, but that the superintendent will proceed to issue sanctions which are appropriate and proportionate to this type of wrongdoing.

163. Finally, with respect to public confidence, I consider this to be a case in which there is a significant need to provide a sanction that ensures continued public confidence in the real estate industry. The evidence provided by Mr. Zubko's former clients indicated that their experience with a real estate licensee, Mr. Zubko, caused them to question the reliability of the industry as a whole. I have no doubt that members of the public who were made aware of Mr. Zubko's activities would experience the same feeling. It is important to note that RESA has a primary goal of protecting the public interest in the real estate industry. This is a case in which the superintendent must demonstrate to the public that when licensees engage in the type of behaviour that Mr. Zubko did, the superintendent will ensure that they are held to account.

Previous Orders and Type of Order

164. When determining the appropriate sanction, I must also consider previous sanctions ordered by the superintendent and other regulators. These orders are not binding on me, but 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. I also note that most of the prior orders referred to are consent orders, which are sometimes the result of negotiations and motivations that are not reflected in the final order. I therefore treat consent orders with a degree of caution.

Sanction Decision

165. 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.

166. Below, I have summarized Mr. Zubko's overarching submissions. In setting out my reasons for determining the appropriate sanctions against Mr. Zubko, I will address specific submissions raised by each party further as they relate to each transaction and the appropriate sanction to be imposed.

Zubko Submissions

167. Mr. Zubko made extensive submissions regarding the nature of the penalties to be imposed, including what he submits is the requirement that there must be some degree of proportionality between the wrongdoing at issue and the penalty imposed. Mr. Zubko referred to a number of decisions relating to the regulation of securities transactions in that regard, including:

- *Walton v. Alberta Securities Commission*, 2014 ABCA 273: The court noted at paragraph 165 that one purpose of fines was to remove profit from offences, and ensure that the penalty imposed was large enough so that the fine did not simply become a licensing fee. The court went on to note however that "at some point the monetary penalty must be proportionate to the circumstances of the individual offender…A monetary penalty that is beyond the capacity of the individual offender cannot be justified on the basis that it will deter others who are in a better financial condition."

- *Davis v. BC (Securities Commission)*, 2018 BCCA 149: where the court indicated that the securities commission was required to consider the principles of proportionality and assess the respondent's "individual circumstances and alternative sanctions" when determining sanctions. Mr. Zubko noted the court[']s affirmative comments that there is a need for some degree of proportionality between the wrongdoing and the penalty imposed, and the need for consideration of the range of penalties and whether a lower penalty can meet appropriate sentencing objectives.

168. In his submissions, Mr. Zubko suggested that in deciding what sanctions to issue, the matter must be approached with the aim of protecting consumers and other stakeholders in the real estate market. He submitted that the duration and impact of the investigation and proceedings was a factor that ought to be considered in the analysis of what sanctions were appropriate, and noted in particular that Mr. Zubko had been unable to re-apply for his license since 2017, which had impacted his ability to earn an income for his family; that Mr. Zubko had experienced significant legal costs and expenses; and that there had been significant mental health impacts on Mr. Zubko, his wife, and his children.

169. Mr. Zubko's submission is that the application of the above factors, combined with the sanctions that he proposed, would provide sufficient notice to other licensees that similar conduct would result in significant and meaningful sanctions and enforcement expenses.

170. Mr. Zubko noted, in particular, the fact that the penalties agreed to by [Licensee 2] and [Licensee 1] in their consent orders were well below what was being sought by BCFSA in this proceeding. Of note regarding this submission is the fact that [Licensee 1]'s license was cancelled, with a two year prohibition on reapplying. [Licensee 1] also agreed to making reimbursement for the amounts of the commissions he was paid on [Property 1] and [Property 3].

171. The parties referred to various other previous real estate disciplinary decisions. While I have reviewed all of the decisions referenced by the parties, I summarize only those below that I find most applicable to the circumstances at hand:

Monetary Penalties

Pre-2016 Amendments: [Property 1], [Property 2], [Property 3], and [Property 4]

172. As set out above, the [Property 1], [Property 2], [Property 3], and [Property 4] transactions all took place, either in whole or in part, before the September 30, 2016 amendments to RESA.

173. The parties each note in their submissions that section 43(2), as it existed prior to the September 30, 2016 amendments, did not provide express authority in RESA at that time allowing for discipline penalties to be assessed per contravention, or for assessing additional penalties to account for remuneration received by a licensee[. As such,] a discipline penalty of $10,000, the maximum amount available at the time, was warranted.

174. In sum then, the maximum monetary penalty that can be associated with the pre-amendment transactions is $10,000. I find that such a penalty is warranted in the circumstances of Mr. Zubko's misconduct in respect of these transactions.

175. Not only did Mr. Zubko obtain a financial gain as a result of those transactions that exceeds the monetary penalty available, his misconduct with respect to the assignment scheme was clearly of the type that would warrant such a penalty on its own. I agree with the comments in *Jinnah (Re),* 2024 BCSRE 105, at paragraph 81, that although disgorgement or a penalty which fully addresses the amount of profits arising from a licensees misconduct is not available

under the pre-amendment provisions, those provisions that existed ought to be used to minimize the profits gained by a licensee as a result of their misconduct to the extent possible.

176. I acknowledge, in reaching this conclusion, Mr. Zubko's submission that his exposure to ongoing civil litigation with respect to [Property 1] ought to be viewed as a mitigating factor that ought to be used to reduce the sanctions imposed by BCFSA overall.

177. With respect, I do not agree with Mr. Zubko's position in this regard. First, as I have set out above, the maximum financial penalty that Mr. Zubko faces with respect to [Property 1], and other pre-amendment transactions, is $10,000. Mr. Zubko earned far more than that in increased commissions on those transactions – a total of $29,383.73 just in kickbacks, leaving aside the increased commission he received as a result of having the commission scheme to send unrepresented buyers to either [Licensee 2] or [Licensee 1] and have them demand a higher commission amount, which Mr. Zubko also benefited from. Second, in Mr. Zubko's own description, the outcome of the civil action is an unknown and Mr. Zubko has not faced any actual financial consequences as a result of that action. In any event, the monetary penalties as set out section 43 as it existed prior to September 30, 2016, did not provide for licensees to receive a sanction that would in fact address the total remuneration that he received as a result of that transaction. As a result, I do not consider the outstanding civil litigation to be a mitigating factor in my consideration of the monetary penalty to be applied to the [Property 1] transaction.

178. I acknowledge that there was not, in the ASF, any acceptance on the part of Mr. Zubko that he received any of the profits from [Property 1], and the evidence was not sufficient for me to conclude that Mr. Zubko received any of those profits directly. What was clear, from the [Property 1] transaction, however, was that Mr. Zubko specifically arranged that transaction with a view to taking advantage of [Witness 1], and to enable his [family member] to turn a significant profit, that being $160,000. The idea that Mr. Zubko, facing no greater monetary penalty than $10,000 for having engaged in that misconduct, would submit that he ought to receive the benefit of a mitigating factor due to the fact that he may potentially, and only potentially, be subject to further civil consequences, is in my view, misguided.

179. Again, the purpose of the regulatory regime is to protect the public. Sanctions imposed in the regulatory regime are intended to address specific and general deterrence, and to ensure public confidence. The regulatory regime is separate from the civil claim, and the sanctions imposed on Mr. Zubko for his misconduct under the regulatory regime must address the purposes of those sanctions in the regulatory context.

Post 2016 Amendments – [Property 6], [Property 7], [Property 8]

180. BCFSA seeks a monetary penalty in the range of $115,000 to $135,000 for each of the [Property 6], [Property 7], and [Property 8] transactions. BCFSA notes that in each of those transactions Mr. Zubko prepared the CPS for the buyers which falsely identified [Licensee 2] as the buyer's agent, and advised his client to pay an increased commission based on those false documents. BCFSA noted that Mr. Zubko's actions had been found to constitute deceptive dealing, unlawful taking, and conduct unbecoming, and that his clients had all suffered financial harm as a result of his actions.

181. In BCFSA's submission each of these transactions calls for a significant and serious penalty. It submits that conduct of a less predatory nature had led to financial penalties of or in excess of $100,000. BCFSA referred to the *O'Reilly*[1] consent order, which was mainly about disclosure and misleading statements, and *Mills*[2], which resulted in loss of only the

[1] *O'Reilly* et al, 2024 BCSRE 76
[2] *Mills (Re),* 2024 BCSRE 47

consumer's expected profits, each of which led to agreement to pay a monetary penalty of $100,000 and licence cancellation.

182. Mr. Zubko submitted that the total penalties in respect of the commission deals related to [Property 6], [Property 7], and [Property 8] ought to be confined to the additional commission that Mr. Zubko received in respect of those transactions. He took the position that the penalties sought by BCFSA respect of those transactions significantly deviated from those "imposed" on [Licensee 2] and [Licensee 1].

183. I note that in making the submission that the monetary penalties associated with these transactions ought to be limited to the additional commission he received in respect of them, Mr. Zubko argued that he had acted with diligence and transparency in his dealings with [Witness 3] in the [Property 6] transaction. In making that submission, Mr. Zubko focused on the information he provided to [Witness 3]. He did not, at any point in his submissions, address the fact that he in fact represented both the buyers and the sellers in the [Property 6] transaction, and created documentation intended to indicate to the parties that the buyers in fact had a different realtor, namely [Licensee 2], when that was not true. Having left out this glaringly obvious failure to act with diligence and transparency, which included falsely informing [Witness 3] that the buyers in fact had their own realtor, when he knew that he had simply created documentation to create that impression, I give little weight to Mr. Zubko's submission in this regard.

184. I note further that Mr. Zubko's submissions, with respect to the [Property 7] and [Property 8] transactions, dramatically downplayed the nature of the misconduct he engaged in by stating as follows:

> The request for a typical commission structure was made by [Licensee 1] and [Licensee 2] for their assistance with the transactions – it was not Mr. Zubko's idea alone, nor was it a strategy to make more money off his clients.
>
> [Licensee 2] and [Licensee 1] assistance was sought because Mr. Zubko was often away or going to be away during the entirety or some portion of time during these deals. Mr. Zubko trusted [Licensee 1] as a former partner, and he wanted [Licensee 2] to come up in the industry and help him as a new realtor and at the request of his family members.

185. This submission is entirely at odds with the facts set out in the ASF. In the ASF, Mr. Zubko agreed to the following facts:

> 15. [Mr. Zubko] approached [[Licensee 1]] and [[Licensee 2]] suggesting he would refer unrepresented buyers in his listings to them if they would require increased buyer's agent commission as part of contracts of purchase and sale and share the buyer's agent commission with him.
>
> 16. The basic agreement was that [Mr. Zubko] would put the deals together, have the seller(s) sign and agreement increasing commission payable over and above One Percent Realty's contractual fee, and then be repaid the majority of the increased commissions after the transaction completed.

186. Based on the ASF, which I accept, there was no "request for a typical commission structure" made by [Licensee 1] or [Licensee 2]. Rather, Mr. Zubko approached them with his commission scheme, indicated that he would do essentially all of the work, and that they would then kick back the majority of the commission fee they received to him. In my view, there is nothing misleading and inaccurate in referring to this arrangement as a scheme, as Mr. Zubko

has suggested in his submissions. Rather, a scheme is indeed what it was, and one that was created by Mr. Zubko for his own benefit.

187. A review of the facts set out in the ASF relating to the [Property 7] transaction is instructive. Mr. Zubko signed a listing agreement with the seller. Unrepresented buyers entered into a CPS to purchase the property, with Mr. Zubko preparing the contract on their behalf, but listing [Licensee 2] as their real estate agent, despite the buyers having never met [Licensee 2], and only ever dealing with Mr. Zubko. In the end, a commission was paid to [Licensee 2], who then provided a kickback to Mr. Zubko.

188. Similarly, with the [Property 8] transaction Mr. Zubko again prepared the contract for the buyers, indicating that [Licensee 2] was their representative. In this transaction, [Licensee 2] did have some contact with the buyers by way of a telephone call to discuss the terms of the offer, but once again Mr. Zubko was providing real estate services to the buyers in addition to the services he was providing to his sellers. While Mr. Zubko did not ultimately receive the commission kickback for this transaction as [Licensee 2] became aware of the investigation into their activities, the intention of the scheme remained.

189. Mr. Zubko's submissions focused on what he said was the fact that "[n]one of the clients involved suffered significant harm or financial loss that is in any way proportionate to the penalty being sought". As I have indicated above, I consider Mr. Zubko's framing of determining the proportionality of a penalty to be too narrow. The consequences incurred by specifically wronged clients are but one aspect of the consideration of what penalty is appropriate, or proportionate.

190. I consider that given that BCFSA is also seeking monetary sanctions orders pursuant to section 43(2)(j), the monetary penalties to be applied in respect of these transactions under section 43(2)(i) are less focused on specific deterrence (though specific deterrence remains a factor), and rather are geared towards general deterrence and ensure public confidence. In effect, the question is focused on what type of penalty will demonstrate to the industry generally, and to the public, that the type of commission scheme activity that Mr. Zubko engaged in with respect of these transactions will be subject to a proportionate penalty.

191. In [its] submissions, BCFSA referred to a number of consent orders with varying degrees of misconduct and penalties ranging from $20,000 for drinking milk from a client's fridge[3] to failing to disclose important information about a property and leading buyers to believe that the property was suitable for permanent use when it was not, which led to a consent order discipline penalty of $100,000[4]. BCFSA also referenced discipline decisions in which penalties in excess of $100,000 were issued after a hearing in respect of unlicensed property management and a disregard of the regulatory regime[5].

192. Of interest, both parties have referred to *Mills (Re),* 2024 BCSRE 47, a consent order in which the licensee agreed to cancellation of her licence and a monetary penalty of $110,000, as being supporting of their position on the appropriate penalty. In *Mills*, the licensee admitted to professional misconduct and conduct unbecoming. In general terms, the licensee was acting as agent for the sale of a property. After the property sold the licensee agreed that her client would invest $60,000 in a co-ownership of a property and receive $20,000 in profit for making that investment when the co-owned property sold. The licensee did not acquire the property, but represented to her client that she had, and then subsequently advised that she had sold the property and repaid the client $20,000 over the course of two months. When the client requested her principle funds back, the licensee ran the same scheme with a different property,

[3] *Rose (Re)*, 2023 BCSRE 22
[4] *O'Reilly* et al, 2024 BCSRE 76
[5] *Bakker (Re),* 2023 BCSRE 12, *Campbell (Re),* 2023 BCSRE 54

again not acquiring the property but representing that she had. Eventually the client brought a civil suit to recover her principle funds, and the parties reached a settlement, with the client receiving $62,500. Of note, throughout the period of time the licensee was experiencing extraordinary personal and family stresses that affected her well-being and professional abilities, and she had made substantial efforts to resolve those issues.

193. In BCFSA's submission, the conduct in *Mills* was "far less serious" than that engaged in by Mr. Zubko. BCFSA noted that the client in *Mills* was repaid their entire investment, and a portion of the profit that had been promised to her by the licensee. BCFSA further noted that the licensee in *Mills* had not been shown to have concealed her misconduct, from the regulator and had compelling personal mitigating circumstances.

194. Mr. Zubko, on the other hand, submitted that the circumstances in *Mills* were "significantly more egregious" than the misconduct Mr. Zubko had engaged in with respect to the commission scheme.

195. I do not particularly agree with either of the parties' view as to how the misconduct in *Mills* compares to that engaged in by Mr. Zubko in the [Property 6], [Property 7], and [Property 8] properties.

196. In my view, the misconduct at issue in *Mills* and by Mr. Zubko in each of the [Property 6], [Property 7], and [Property 8] transactions is in fact remarkably similar in scope, with the main difference, which can be seen as making Mr. Zubko's conduct somewhat worse, being the financial loss experienced by Mr. Zubko's sellers as a result of having to pay higher commissions, with the client only missing out on a portion of the promised profit in *Mills*. What is clear is that both Mr. Zubko and the licensee in *Mills* engaged in deceptive practices towards their clients. I note that there was a single monetary sanction applied in *Mills*, but I consider that there is a difference in the multiplicity of the conduct in *Mills* and that in Mr. Zubko's case. In short, the *Mills* misconduct related to a single ongoing form of misconduct with the same client, whereas Mr. Zubko engaged in his misconduct repeatedly over the course of multiple transactions, with multiple clients. In my view, the repeated circumstances of Mr. Zubko's misconduct make it appropriate to apply an individual monetary penalty for each of the separate instances of misconduct engaged in by Mr. Zubko. I will consider the global impact of those individual monetary penalties further below.

197. On the whole, and while acknowledging the limited value of consent orders in determining an appropriate sanction, given that they are negotiated settlements between the parties, I am of the view that the sanction agreed to in *Mills* provides some direction as to the level of monetary penalty that would be appropriate for the type of repeated and clear deception that was engaged in by Mr. Zubko in these transactions.

198. Mr. Zubko's submission was that the total discipline penalties for these transactions ought to be $22,020.75, the amount of excess commission paid by Mr. Zubko's clients, which would represent "the amount suffered by each client in each transaction".

199. I reject this submission. As I have indicated above, the purpose of monetary sanctions is not limited to the amount of a loss experienced by a wronged client. To limit monetary sanctions in that manner would be to essentially treat these sanctions as nothing more than the cost of doing business. In short, a licensee would be free to take risks in deceiving their client, only to have to pay a fine in the amount exactly equivalent to the amount of money the client lost as a result of the deception. Monetary sanctions would therefore become, essentially, just the cost of doing business in an inappropriate way, and only if one was caught.

200. I would repeat again, the ASF makes clear that Mr. Zubko created the commission scheme with the express purpose of increasing the amount of commissions he would receive, not only

in increased commission fees, but in kick backs from the realtors he brought into the scheme. This type of deceptive dealing must be discouraged in the strongest possible terms. It brings the industry into disrepute. The potential monetary sanctions that may come with this type of behaviour for a licensee who is caught engaging in it cannot be at a level such that they are simply seen as the cost of doing business.

201. Having given consideration to all of the relevant factors, I find that the appropriate monetary penalties for these transactions are as follows:

- [Property 6] - $110,000
- [Property 7] - $110,000
- [Property 8] - $100,000

202. I have reduced the sanction on [Property 8] minimally from that for the [Property 6] and [Property 7] properties on the basis that at least in that case the unrepresented buyers did have some degree of engagement with [Licensee 2]. While I consider that engagement was rather perfunctory, and of course [Licensee 2] was a part of the commission scheme overall, I consider that there is at least some indication that the buyers of [Property 8] were provided with at least a minimal degree of proper representation.

[Property 5]

203. Mr. Zubko submitted that the appropriate monetary penalty for the [Property 5] transaction was $25,000. BCFSA submitted that the misconduct associated with the [Property 5] transaction warranted a monetary penalty of $250,000.

204. In my view, Mr. Zubko's submissions as to the nature of this transaction again misstate the nature of what actually happened.

205. In his submission Mr. Zubko focused on the fact that the purchase price of $797,000 reflected the highest sale price for the neighborhood at that time. In Mr. Zubko's submission, this demonstrated that he had in fact been acting in the best interest of his client, [Witness 2].

206. As with Mr. Zubko's other submissions, this submission focuses on one aspect of the transaction, while ignoring the reality of the whole of the transaction.

207. In the [Property 5] transaction Mr. Zubko deliberately lied to his client, [Witness 2], about a home inspection that had never occurred. He did so in order to get his client to reduce the price of [Property 5] from what the actual sale price in the CPS had been, that being $807,000. The only reason then, that $797,000 was, as Mr. Zubko submits, the highest sale price in the neighborhood at that time was because Mr. Zubko lied to his client in order to induce him to lower the price from that which he had initially agreed to. If Mr. Zubko had in fact been doing his best to get his client the best price, "the highest sale price for that type of property in that neighborhood at that time", ignoring the assignment scheme portion of the sale, would have been $807,000, not $797,000.

208. Further, the reason Mr. Zubko lied to his client about the home inspection was to further the assignment scheme with a view to ensuring that his friend would be able to make a bigger profit on the planned assignment. It is important to note in this regard that the reduction from $807,000 to $797,000 occurred only after Mr. Zubko became aware of another buyer's interest in the property. All of the above regarding the $10,000 price reduction of course also leaves out the fact that [Property 5] was subject to Mr. Zubko's usual commission scheme.

209. In my view, Mr. Zubko's behaviour as it relates to the [Property 5] sale was particularly outrageous. I agree with BCFSA that Mr. Zubko's misconduct as it related to the assignment scheme, including the [Property 5] transaction, was at the highest end of the spectrum.

210. I consider this framing of the seriousness of the misconduct in the [Property 5] transaction to be so regardless of whether Mr. Zubko received any of the profits obtained by his friend [Individual 1] as a result of the [Property 5] transaction, and regardless of the fact that [Licensee 1] paid Mr. Zubko's [family member] a portion of the commission he had received on the transaction.

211. It is the overall nature of Mr. Zubko's deception in the [Property 5] transaction that I consider the public would find particularly galling, and which demonstrates a significant need for specific and general deterrence. Mr. Zubko's actions were specifically intended to take advantage of his client, for the benefit of his friend. Given my comments above, I reject, in whole, Mr. Zubko's submission that this transaction involved nothing more than an error in providing sufficient disclosure and that he simply:

> …wanted to facilitate the sale, convert another deal, earn his commission, and secure a Medalion point to maintain his status as a top performer with the Real Estate Board. That was what motivated [me] to put the deal together.[6]

212. If that were the case, one would be left to wonder why Mr. Zubko invented, from whole cloth, a story about an inspection that had never occurred only after he became aware of another buyer having interest in purchasing the property, which is what the facts in the ASF indicate. I do not feel the need to wonder. I am satisfied that Mr. Zubko's intention was to cause financial harm to his client for the benefit of his friend.

213. Mr. Zubko's actions in this transaction are of the type that undermine public trust in real estate and the overall integrity of the real estate market. It is difficult to imagine a more clear-cut case of deception of one's client than completely making up a negative home inspection in order to convince that client to sell their property at a lower price. That this was done for the purpose of helping out Mr. Zubko's friend, at the direct expense of the client to whom he owed a duty to act honestly, is egregious. Mr. Zubko's intention was to cause financial harm to his client. It was not simply, as he submits, to ensure the sale went through. The appropriate sanction for these egregious actions must reflect the scale at which the legislature has set monetary sanctions in section 43(2).

214. Given that the [Property 5] transaction involved both the commission scheme and the assignment scheme, I consider that a more significant monetary penalty is appropriate than that in respect of [Property 6], [Property 7], and [Property 8]. In my view, the assignment scheme on its own should attract a monetary penalty at a much higher level than that applied to those transactions. After considering all of the factors in Dent, I am satisfied that a monetary penalty in the amount of $230,000 is appropriate.

Global Consideration of Monetary Sanctions issued pursuant to section 43(2)(i) as they relate to the [Property 6], [Property 7], [Property 2], and [Property 5]Properties

215. The monetary sanctions I have set out as being warranted in this case are significant. They are certainly, in total, greater than what has been assessed in previous decisions and consent orders issued by the superintendent. I note, however, that the cases involving lower levels of monetary penalties are generally dated to misconduct which occurred prior to the September 30, 2016 amendments, when monetary penalties were limited to a maximum of $10,000.

[6] Zubko submissions, para. 238.

216. More recently, decisions and consent orders[7] issued have imposed monetary sanctions that are far more significant than the amounts that Mr. Zubko submits should be considered to be "the norm", and which reflect the changes to RESA brought about by the September 2016 amendments. $20,000 monetary sanctions are not uncommon for managing brokers who have failed to ensure that their brokerage has taken the step of filing a section 75 annual accountant's report (see: *Kobayashi (Re),* 2026 BCSRE 205; *Wittstock (Re),* 2026 BCSRSE 206). I note again, as I did above, that in *Mills* the monetary sanction agreed to was $100,000 in respect of what was essentially a single (although ongoing) event of deception and misconduct towards a single client. Other recent examples include:

- *Shen (Re)*, 2026 BCSRE 204, a consent order for a $50,000 monetary sanction related to a licensee engaging in unlicensed property management services for a single client and single unit, and withholding the payments relating to that unit from her client for a period of approximately four months.

- *O'Reilly (Re)*, 2024 BCSRE 76, a consent order in which the licensees, O'Reilly and Brynelsen each agreed to pay monetary sanctions in the amount of $100,000 for their professional misconduct. The misconduct in *O'Reilly* involved advertising a property for sale with false and/or misleading representations by failing to represent it was only for seasonal use, failing to disclose that the foreshore tenure was expired, and failing to disclose to the buyers that the property was non-conforming.

- *Bood (Re), 2026 BCSRE 30,* a decision in which a monetary sanction of $60,000 was ordered where the licensee had knowingly failed to properly disclose to a buyer that the property listed for sale was of archaeological significance, and failing to refuse to provide trading services to her seller client when he instructed the licensee to withhold that information from the buyer. The buyer sustained a significant loss as a result of that non-disclosure. The hearing officer noted that the penalty would likely have been close to $100,000 but for the mitigating factors present.

217. Mr. Zubko's misconduct was not related to a single transaction. Or a single client. It was repeated: over and over. In my view, each instance of that misconduct should be assessed a monetary penalty that is commensurate with the nature of the misconduct and the scale of penalty that the legislature has set. I have not issued a maximum penalty in respect of any of the individual transactions. This is despite the fact that I have found that Mr. Zubko was clearly trying to take advantage of his clients for his own benefit, at their expense, and in the case of [Property 5] for the benefit of Mr. Zubko's friend, [Individual 1].

218. I note Mr. Zubko's submission that:

> The BCFSA has not provided a single case – because none exist – where penalties even approach the draconian sanctions they propose against Mr. Zubko. Fines of $5,000 to $10,000 and suspensions of six months to a year have been the norm for serious misconduct – yet here, the BCFSA seeks to impose measures so far beyond that ballpark they defy comprehension. This isn't penalty rooted in precedent; its an arbitrary escalation that mocks the princip[l]es of consistency and proportionality this body is duty-bound to uphold.

219. I do not find this submission to be compelling. It ignores, without explanation, the reality of the changes to the penalties available under RESA that occurred in 2016. BCFSA has made lengthy submissions regarding the reasons for those changes, but I choose to summarize the

[7] I acknowledge again that there is some limitation to relying on consent orders, as they are the result of negotiated settlements. They do, however, provide a degree of insight as to the type of penalty that is applied given the type of misconduct that is admitted.

reasons for the legislative amendments to section 43(2)(i) succinctly: the amendments responded to significant concerns that the regulator at the time was unable, due to the minimal monetary penalties available under the legislation, or unwilling, to take strong action to address alleged misconduct, which led to a lack of public trust in the regulator and the industry.

220. The result of those significant concerns were amendments such that monetary penalties were increased from a maximum penalty of $10,000 (inclusive of multiple incidents of misconduct) to a maximum penalty of $250,000 for each individual action of misconduct on the part of an individual licensee.

221. The idea, as Mr. Zubko appears to suggest, that “fines of $5,000 to $10,000” should remain the norm, when the clear legislative intent demonstrated by the amendments to RESA (which are now 10 years old) is, in my view, a submission that fails to grapple with the reality of the direction the legislature provided in increasing the amount of penalties that could be available. I would note further that if I were to take Mr. Zubko’s argument that fines of $10,000, that being the maximum fine available under the legislation at the time, were the “norm” prior to the amendments, and simply apply that “norm” of assessing the maximum fine available to the current legislative scheme, the result would inevitably be that multiple maximum fines of $250,000 ought to be issued in this case.

222. I do not agree with such a simplistic view of the applicability of the monetary penalties available in the amended legislation.

223. Each application of a monetary penalty must engage with the principles of specific and general deterrence, as well as public confidence. It is not sufficient to simply say that a fine which would have attracted the maximum fine under the pre-amendment legislation should attract the maximum fine now. Equally, it is not sufficient to say, as Mr. Zubko attempts to, that as the fines used to be in the range of $5,000 to $10,000, the much higher fines that are imposed under the new legislation are the result of an “arbitrary escalation that mocks the principles of consistency”.

224. I do, however, consider that the circumstances of this case warrant some consideration as to the global amount of the monetary penalties that are to be imposed.

225. Mr. Zubko submitted that a global approach to sanctioning ought to be considered in his case as, in his submission, the imposition of a sanction for each contravention would have the effect of imposing an excessive total monetary penalty.

226. Mr. Zubko’s further submitted that consideration ought to be given to his ability to pay, and the financial impact of BCFSA’s proposed sanction. On the subject of his ability to pay, Mr. Zubko noted that he had generally not worked since 2017, and he submitted that the BC Assessment values of the properties he owned were too high, noting that his apartment building was undergoing various projects, and that a home directly across the street from his primary residence, on a larger lot, had recently sold for approximately $2.1 million with other recent comparable sales in the neighborhood selling at or below $2 million. Mr. Zubko’s submission, at its base, was that forcing him to sell his property to pay disciplinary penalties and significant enforcement expenses would be completely disproportionate to the amounts at issue in each of the eight transactions. Mr. Zubko noted that the primary residence was a family home, and submitted it was wholly unacceptable to impose a penalty so severe as to put his family into financial ruin. Mr. Zubko submitted that none of his clients had experienced such a consequence as a result of his misconduct, and that the proposed sanctions constituted an unreasonable and disproportionate departure from fairness which would undermine the integrity of the regulatory process.

227. A global approach to sanctions has been considered by other regulators. In *Singh (Re),* 2021 LSBC 12, the discipline panel considered the application of the global approach and noted the following:

> [66] It is acknowledged that the Global approach to a determination of the correct penalty in circumstances of multiple acts of misconduct, requires an assessment of the seriousness of the totality of the offences and specifically *not* the adding together of the appropriate penalty for each to produce a sum total. We agree that that approach could lead to mischief. For example, consider an appropriate penalty for a three-allegation citation where each allegation, considered separately, suggests an appropriate penalty of an 18 month suspension. The Global assessment approach, would not permit the addition of the three 18 month suspensions together to impose a penalty of a 54 month suspension.
>
> [67] However, it is difficult to imagine how a global 18-month suspension for those three separate events of misconduct, with each separately providing a justification for an 18-month suspension, is an appropriate outcome...
> …
>
> [72] We have determined that the application of a global penalty for the array of professional misconduct demonstrated in these circumstances requires a suspension of greater duration than the lowest common denominator in the authorities cited in support of the suggested penalty. As indicated above, the counter-intuitive nature of the argument must be addressed.

228. The discipline panel in *Singh* ultimately applied a suspension that was longer than what was being sought by the law society, and longer than what would have been the suspension it considered to be applicable to a single one of the acts of misconduct engaged in by the licensee in that case.

229. The global amount of the monetary sanctions that I have set out above for the [Property 6], [Property 7], [Property 8], and [Property 5] properties would be $550,000.

230. In my view, it is reasonable to take into account some of the factors that Mr. Zubko has cited, including a consideration of whether the global amount of the sanctions for [Property 6], [Property 7], [Property 8] and [Property 5], being $550,000, is such that the penalty is disproportionate and unreasonable in all of the circumstances. I further consider it necessary to take into account the process that has led to this discipline hearing, and the outcome, which, as I have set out below, includes the notional cancellation of Mr. Zubko's licence.

231. Given the global amount of the penalties, as well as the length of time associated with the investigation and to bring the matter to hearing, with the resulting effect being that Mr. Zubko was unlicensed for the period of 2017 to date, and while acknowledging that much of the length of time associated to that process is attributable to Mr. Zubko's admitted actions as they relate to the investigation process, and that in any event Mr. Zubko's actions were of the type that warranted licence cancellation, I am satisfied that a global reduction on the monetary penalties issued pursuant to section 43(2)(i), as they relate to [Property 6], [Property 7], [Property 8] and [Property 5] is appropriate.

232. As was noted in *Singh*, I do not consider that it would be appropriate to simply reduce the global amount of the penalties to the level of just the highest penalty, that being the penalty applicable on [Property 5]. Rather, having consideration to all of the factors set out in *Dent,* I

would reduce on a global basis what I would otherwise consider to be the appropriate monetary sanctions on each of those [Property 6], [Property 7], [Property 2] and [Property 5] transactions by 50%.

233. This reduction would leave the total penalties to be paid by Mr. Zubko on those transactions to be $275,000. This amount is greater than a maximum penalty that can be assessed to an individual licensee for a single contravention, and in my view will convey the appropriate amount of specific and general deterrence, and will ensure the public has confidence that Mr. Zubko's misconduct in those transactions has been addressed in a serious manner by the Superintendent. Combined with the other monetary sanctions I have found to be warranted, the total monetary sanctions that Mr. Zubko will face for his misconduct will still be [in] excess of $300,000. I do not consider this amount to be disproportionate or excessive given the level of misconduct present.

234. In reaching the conclusion I have as to the appropriate global amount in respect of these transactions, I note that I have given some consideration to Mr. Zubko's claims regarding his ability to pay a significant penalty, as well as the fact that, as will be seen below, Mr. Zubko also faces significant enforcement expenses. Mr. Zubko's submissions as to his ability to pay are indeed, as BCFSA noted, limited by the fact that he is the owner of multiple properties of substantial value, including his family home which he was able to purchase through commissions he earned as a licensee, some of which he earned through the misconduct at issue in this case. I am satisfied that the global penalty applied here is fair and proportionate in all of the circumstances. While the monetary penalties imposed will no doubt place a significant burden on Mr. Zubko, that burden is imposed for the reasons described in *Thow*, that is with a view to achieving specific and general deterrence, the protection of the public, and to enhance public confidence in the process, the industry, and the regulator.

Additional Remuneration Penalty

235. In his submissions Mr. Zubko has acknowledged that he should not retain any of the additional remuneration he received in respect of the commission scheme as it related to the [Property 4], [Property 6], [Property 7], and [Property 5] transactions. I agree. As a result of that submission, Mr. Zubko submits that he should, pursuant to section 43(2)(j) of RESA, pay additional penalties in the following amounts for the additional commission he (or in the case of [Property 5] his [family member]) received as kick backs:

- [Property 4] - $10,007.50
- [Property 6] - $6,800
- [Property 7] - $9,080
- [Property 5] - $2,007.50
- Total - $27,895.00

236. BCFSA submits that the appropriate penalty pursuant to section 43(2)(j) is the total remuneration (rather than only the kickback amounts) received by Mr. Zubko in the [Property 4], [Property 6], [Property 7], [Property 8], and [Property 5] property transactions, in the amount of $49,937.75. BCFSA submits that it is necessary that Mr. Zubko receive a penalty in the full amount of the commissions he received on those transactions in order to give effect to the legislature's intention to ensure that licensees do not profit from their misconduct, and do deter similar conduct in the future.

237. Mr. Zubko's submission is that to impose a penalty amounting to the total amount of commissions received would be excessive and disproportionate, and that the penalty amount he has suggested above is more than sufficient to achieve the overarching goal of protecting the public. He relied on *Prit (Re),* 2024 BCSRE 17, in which the respondent was found to have engaged in ongoing and intentional disregard for the regulatory scheme by continuing to provide real estate services during a period in which she knew she was unlicensed, and in failing to properly complete anti-money laundering forms. In Mr. Zubko's submission, the outcome in *Prit* was that despite having received more than $37,000 in commissions, Ms. Prit was not ordered to disgorge any of her commissions, but was issued penalties in the range of her actual earnings after the taxes that she would have had to pay on those commissions were taken into account. That submission, in my view, is based on a misunderstanding of the order in *Prit*. In *Prit* the respondent was in fact ordered, pursuant to section 43(2)(j), to pay an additional penalty which took into account the amount of commissions she received, minus the taxes she would have paid on those commissions.

238. Section 43(2)(j) sets out that a licensee may be required to pay an additional penalty "up to the amount of remuneration accepted by the licensee for the real estate services in respect of which the contravention occurred." I am satisfied that the legislature's intention in enacting that section was to ensure that licensees were not able to retain profit that was obtained through a transaction involving misconduct.

239. However, I consider it equally likely that Mr. Zubko had to pay taxes on the commissions he received, as was the case in *Prit*. In my view, the result of a penalty at the level requested by BCFSA would, in effect, place Mr. Zubko in a position that was worse than if he had not sold the properties at all. While I agree that Mr. Zubko ought not be able to retain a profit garnered from an illicit transaction, I consider that section 43(2)(j), in specifically providing that the penalty may be "up to the amount of remuneration accepted", provides for some latitude in considering ancillary effects such as the payment of taxes.

240. I am satisfied that a penalty of $35,000 would be suitable in the circumstances, and serve to ensure that Mr. Zubko has not retained any of the profits he initially obtained from the transactions in question.

Licence Cancellation

241. BCFSA submitted that cancellation of Mr. Zubko's licence was clearly required due to the fact that in addition to lying to his clients and abusing their trust for his personal gain, and that of his family and friend, he also took significant steps to conceal his misconduct, including destroying documents and lying to investigators.

242. The cancellation of Mr. Zubko's licence would indeed be, as the parties have noted, notional, as he is not presently a licensee, and has not been for many years.

243. While there is therefore little specific deterrent effect in that notional cancellation, I consider that general deterrence and public confidence are primary drivers of the sanction that must be imposed in this case. Having considered all of the evidence before me, I am satisfied that, when considering all of the misconduct Mr. Zubko engaged in, it is clear that cancellation is an appropriate sanction. In my view the eight commission scheme transactions, or each of the assignment scheme transactions would, on their own, be the type of misconduct that the public would expect to warrant cancellation. Just as in *Jinnah*, Mr. Zubko's actions towards his clients were predatory. Further, like in *Jinnah*, Mr. Zubko provided false and misleading information to BCFSA investigators, and destroyed relevant documents. This serious and egregious nature of the totality of the misconduct in this case indicates that cancellation is warranted. I note, as above, that *Mills* also involved a cancellation in addition to the monetary penalty.

244. Given the length of time during which Mr. Zubko has already been unlicensed, I do not consider any period of ineligibility is required in addition to the cancellation. This is a case in which the determination of Mr. Zubko's suitability, good reputation and suitability for licensure under RESA should be left to be determined by the superintendent at the time of any future licensure application: see *Jinnah,* paras. 73-74.

Discussion: Enforcement Expenses

245. Sections 43(2)(h), 44(1), and 44(2) of RESA permit the superintendent to require a licensee to pay the expenses, or part of the expenses, incurred by BCFSA in relation to either or both of the investigation or the hearing to which the order relates. Section 44(2)(a) provides that the amounts ordered must not exceed the prescribed limits for the type of expenses claimed as set out in section 4.4 of the *Real Estate Services Regulation*, BC Reg 506/2004 ("Regulations").

246. BCFSA seeks an order for enforcement expenses of $307,898.80.

247. In *Siemens (Re)*, 2020 CanLII 63581, at paras 62-63, the panel stated as follows, regarding ordering enforcement expenses:

> 62. Enforcement expenses are a matter of discretion. A discipline committee will ordinarily order expenses against a licensee who has engaged in professional misconduct or conduct unbecoming a licensee. Orders for enforcement expenses serve to shift the expense of disciplinary proceedings from all licensees to wrongdoing licensees. They also serve to encourage consent agreements, deter frivolous defenses, and discourage steps that prolong investigations or hearings.
>
> 63. The practice of discipline committees has also been to assess reasonableness of enforcement expenses by examining the total amounts in the context of the duration, nature, and complexity of the hearing and its issues. While a discipline committee may reduce any award of enforcement expenses to account for special circumstances, such as where the Council fails to prove one or more allegations corresponding to a significant and distinct part of a liability hearing, no such special circumstances arise in this case.

248. BCFSA has proved its allegations in substance in this proceeding and was substantially successful regarding the sanction sought. I therefore find that an expenses order is appropriate.

249. In making the request for the enforcement expenses that it has BCFSA provided a bill of costs the amount of $478,385.18 related to legal services, administrative expenses associated to hearing costs, witness payments, external counsel disbursements, and other expenses related to reporting and the obtaining of an expert report pursuant to section 4.4 of the Regulation[s], and a further $3,600 for 100 hours of investigation.

250. BCFSA submitted that this was a complex proceeding involving a number of transactions occurring over two years, and that if the matters had been separated out individually the total legal costs number would "become more palatable". BCFSA noted that its external legal counsel generally billed at less than the maximum amount permitted by the Regulation[s], and that the reality of this case was that Mr. Zubko did not enter into the ASF and admit most of the facts underlying the allegations until the eve of the liability hearing.

251. In general terms, BCFSA submitted that Mr. Zubko's actions generally had the effect of concealing his misconduct and served to increase the investigation and legal expenses BCFSA incurred. It noted that Mr. Zubko had:

- Denied all misconduct at issue at an initial interview with investigators;
- Refused to attend another interview;
- Destroyed documents relating to the subject transactions and met with [Licensee 1] and [Individual 1] to align their stories;
- Lied to BCFSA investigators and provided redacted banking records which hid information that was crucial to the investigation;
- Denied having any connection to [Family Member 1];
- Applied for multiple last minute adjournments and refused to engage with disclosure of documents, witness lists and summaries of anticipated evidence requiring multiple pre-hearing conferences.

252. BCFSA submitted that despite Mr. Zubko's actions it is not seeking full indemnity of its legal expenses, and is in fact reducing the amount of its claim in the amount of $170,000 regarding all external legal counsel steps from engagement in 2018 through to [Licensee 1]'s consent order in October 2021; $37,000 in costs related to a petition to BC Supreme Court in order to obtain Mr. Zubko's banking records, and a general reduction related to Mr. Zubko eventually entering into the ASF, although late in the day. Overall, BCFSA indicates it is prepared to offer, in addition to those reductions, an additional 40% reduction and is seeking only $255,729.44 for external legal fees.

253. The remaining amounts sought by BCFSA relate to disbursements in the amount of $18,993.83, Hearing day charges in the amount of $18,000, $200 in witness fees, and expenses involving transcripts, property appraisal, production of hard copies of disclosure at Mr. Zubko's request and court reporter attendance [totaling] $14,975.80.

254. Mr. Zubko submits that enforcement expenses must reflect reasonable and documented costs incurred by the regulator.

255. In Mr. Zubko's submission, he in fact demonstrated cooperation and a commitment to transparency throughout the investigation and disciplinary proceedings. He also submitted that while there were a variety of factors that had impacted the overall timeline with respect to the investigation and disciplinary proceedings, including the transition to a new regulatory body and the COVID health crisis, and that those were issues that had an effect on the progression of his file. Mr. Zubko submitted that he had not deliberately withheld information or acted in bad faith, and that overall delays in obtaining information during the investigation process related to inefficiency and lack of diligence on the part of the regulator. In sum, Mr. Zubko's submission was that he had not personally delayed the investigation or disciplinary process, and that the enforcement costs and expenses sought by BCFSA were exorbitant and excessive.

256. BCFSA is entitled to claim the entirety of the costs that it has incurred as provided by the Regulation[s]. Rather than doing so, it has reduced the claimed enforcement expenses significantly. While Mr. Zubko objects to the amount claimed, he provides no real explanation as to why he is of the view they should be reduced further, other than to simply say, they are too much.

257. This was clearly a complex case, involving multiple transactions, and significant efforts in respect of investigation and legal resources. Given the number of transactions at issue, along with the impediments that Mr. Zubko did in fact create in the investigation process (again, although he now attempts to paint a different picture, he admitted to creating those impediments in the ASF), I am satisfied that the amounts claimed for investigative costs are reasonable. While the ASF did simplify the overall length of the hearing, that occurred late in the day, and what remained were significant arguments regarding conclusions that ought to

be drawn from the ASF, as well as Mr. Zubko's attempt to resile from various facts he agreed to in the ASF at the sanctions hearing.

258. I note that there has been recent discussion regarding orders for payment of expenses in the regulatory context in the courts. In *Charkhandeh v. College of Dental Surgeons of Alberta*, 2025 ABCA 258, the Alberta Court of Appeal noted that costs are not intended to be a form of sanction, rather, they are intended to allocate the costs of the proceedings, and relate to the process of the hearing. I agree with this conclusion. I also agree with the court's conclusion that there were a number of factors that must be considered in assessing what enforcement expenses should be paid, including that they must be proportionate to the issues involved, the circumstances of the disciplined party, and the overall burden it places on him or her.

259. There is no doubt that the enforcement expenses sought by BCFSA would place a significant burden on Mr. Zubko. However, as I have indicated above, Mr. Zubko engaged in activities that delayed the investigation process. He engaged in multiple separate acts of misconduct that each required investigation and each required preparation and hearing time. Mr. Zubko also requested multiple adjournments during the discipline process.

260. Having given consideration to all of the above factors, I am satisfied that BCFSA has already taken appropriate steps to reduce the total amount of enforcement expenses claimed. The total amount which BCFSA seeks as an enforcement order is similar to the 65% amount awarded in *Yang (Re),* 2021 CanLII 86353. In all of the circumstances, I am satisfied that an order of enforcement costs in the amount of $307,000 is an appropriate exercise of my discretion in the circumstances of this case, which again, involved multiple separate transactions all of which were found to have involved misconduct, as well as Mr. Zubko's misconduct directed towards inhibiting the regulator's investigation. As BCFSA noted in its submissions, if the enforcement expenses were broken down to address each individual transaction involving Mr. Zubko's misconduct, they would not give the appearance of being as high as they do in total. The legislation, in my view, clearly intends to shift an appropriate portion of enforcement expenses to respondents found to have engaged in professional misconduct or conduct unbecoming in discipline proceedings, and I consider that requiring Mr. Zubko to pay 65% of the expenses incurred during this process is a just outcome.

Orders

261. Having made the findings set out in the Liability Decision findings, I make the following orders:

    a. Pursuant to section 43(2)(c) of RESA, that Mr. Zubko and Andre Zubko Personal Real Estate Corporation's licenses be cancelled;

    b. Pursuant to section 43(2)(i) of RESA, as it existed prior to September 30, 2016, that Mr. Zubko and Andre Zubko Personal Real Estate Corporation jointly and severally pay a discipline penalty in the amount of $10,000 in relation to the [Property 1], [Property 2], [Property 3] and [Property 4] property transactions, within 60 days of this order;

    c. Pursuant to section 43(2)(i) of RESA, that Mr. Zubko and Andre Zubko Personal Real Estate Corporation jointly and severally pay a discipline penalty in the amount of $55,000 in relation to the [Property 6] transaction, within 60 days of this order;

    d. Pursuant to section 43(2)(i) of RESA, that Mr. Zubko and Andre Zubko Personal Real Estate Corporation jointly and severally pay a discipline penalty in the amount of $55,000 in relation to the [Property 7] transaction, within 60 days of this order;

e. Pursuant to section 43(2)(i) of RESA, that Mr. Zubko and Andre Zubko Personal Real Estate Corporation jointly and severally pay a discipline penalty in the amount of $50,000 in relation to the [Property 8] transaction, within 60 days of this order;

f. Pursuant to section 43(2)(i) of RESA, that Mr. Zubko and Andre Zubko Personal Real Estate Corporation jointly and severally pay a discipline penalty in the amount of $115,000 in relation to the [Property 5] transaction, within 60 days of this order;

g. Pursuant to section 43(2)(j) of RESA, that Mr. Zubko and Andre Zubko Personal Real Estate Corporation jointly and severally pay a discipline penalty in the amount of $35,000, within 60 days of this order; and

h. Pursuant to section 43(2)(h) of RESA, Mr. Zubko and Andre Zubko Personal Real Estate Corporation jointly and severally pay enforcement expenses in the amount of $307,000 within 60 days of this order.

262. Pursuant to section 54(1)(e) of RESA, Mr. Zubko and Andre Zubko Personal Real Estate Corporation have the right to appeal the above orders to the Financial Services Tribunal. Mr. Zubko and Andre Zubko Personal Real Estate Corporation 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 28th day of October, 2026

“Original signed by Andrew Pendray”

_____
Andrew Pendray
Senior Hearing Officer