

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended
AND IN THE MATTER OF
JAE RYANG (JAY) KIM**

REASONS FOR DECISION REGARDING SANCTION

DATE AND PLACE OF HEARING:	The Penalty Hearing was conducted by written submissions of the parties as agreed by the consent of the parties. The parties provided written submissions from January 17 to March 31, 2020
DISCIPLINE COMMITTEE:	Len Hrycan, Chair Sukh Sidhu Yasin Amlani
INDEPENDENT LEGAL COUNSEL:	Lisa C. Fong, Q.C.
SOLICITOR FOR THE REAL ESTATE COUNCIL:	David T. McKnight
LICENSEE / RESPONDENT:	Jae Ryang (Jay) Kim, on his own behalf

1.0. INTRODUCTION

1. For the reasons set out in the decision regarding liability of October 4, 2019 (the “Liability Decision”), this discipline hearing committee (the “Committee”) found that Jae Ryang (Jay) Kim (“Mr. Kim”, or the “Respondent”) committed professional misconduct and conduct unbecoming within the meaning of s. 35 (1) and 35 (2) of the *Real Estate Services Act*, S.B.C. 2004, c. 42 (“RESA” or the “Act”).
2. In summary, the Committee concluded as follows:
 - a. Jae Ryang (Jay) Kim committed professional misconduct, by engaging in conduct that contravened the rules, pursuant to section 35(1)(a) of the RESA.
 - b. Jae Ryang (Jay) Kim committed conduct unbecoming a licensee, as his conduct is contrary to the best interests of the public, and undermines public confidence in the real estate industry, pursuant to section 35(2)(a) and (b) of the RESA.

- c. The Committee did not, however, accept that the Respondent's conduct involved wrongful taking or deceptive dealing within the meaning of section 35(1)(c) of the RESA, or that his conduct demonstrated incompetence within the meaning of section 35(1)(d) of the RESA.
- d. The Committee did not accept that the Respondent's conduct brought the real estate industry into disrepute within the meaning of section 35(2)(c).

3. The details of the Committee's findings are set out in the Liability Decision, but may be briefly summarized. Mr. Kim orally offered to loan money to the Clients, so that they would offer to buy the Don Moore Property, and he created a conflict of interest that he did not disclose to them (Notice Items #1(c), #3 and #4). Mr. Kim later prepared a Contract of Purchase and Sale for an offer to buy the Princeton Property, but failed to make the purchase offer subject to a sale of their Klahanie Property, and did not tell the Clients about the risks of omitting the "subject to" condition (Notice Items #1(a) and #4). When Mr. Kim prepared the offer on the Princeton Property, and when the sellers of the Princeton Property made a counter-offer for a price that exceeded the financing for which the Clients had been pre-approved, Mr. Kim failed to tell the Clients he would not be loaning them money for that purchase, which was also an undisclosed, substantive change to his remuneration (Notice Items #1(b), #1(d) and #4). Mr. Kim also failed to follow the Clients' instructions when he failed to make a timely request for an extension of the completion date for the Princeton Property (Notice Items #2 and #4).

2.0. PENALTY SUBMISSIONS AND REPRESENTATION

4. The Real Estate Council of British Columbia ("RECBC" or the "Council") was represented by Mr. McKnight ("Mr. McKnight").
5. Mr. Kim represented himself during the sanction hearing.
6. By way of a written request for abeyance, Mr. Kim had sought to postpone submissions for the sanction hearing until after May 8, 2020, a civil court date respecting the real estate transactions involved in this discipline case. The Committee considered this request and decided on December 23, 2019 that it was not prepared to grant an abeyance. It set dates for written penalty submissions by the parties (January 17, 2020 to February 14, 2020). The Committee subsequently provided written reasons for its decision to the parties on January 10, 2020.

2.1. Initial Sanction and Reply Submissions of RECBC

7. Mr. McKnight submitted that Mr. Kim had committed professional misconduct and conduct unbecoming. He argued that the conduct of Mr. Kim was serious as it resulted in numerous financial repercussions to the Clients and as such, warranted a severe penalty.

8. Mr. McKnight submitted that the Committee should:

- Suspend the license of Mr. Kim for a period of 30 days pursuant to s. 43(2)(b) of the RESA;
- Impose a discipline penalty in the amount of \$7,500 pursuant to s. 43(2)(i) of the RESA;
- Prohibit Mr. Kim from acting as an unlicensed assistant during any license suspension period pursuant to s. 43(2)(d) of the RESA;
- Require Mr. Kim, at his own expense, to register for and successfully complete the *Real Estate Trading Services Remedial Education Course* as provided by the Sauder School of Business at the University of British Columbia, pursuant to s. 43(2)(f) of the RESA;
- Require that Mr. Kim be subject to enhanced supervision by his managing broker for a period of not less than 12 months following his license suspension period, pursuant to s. 43(2)(d) of the RESA; and
- Order that Mr. Kim pay enforcement expenses in the amount of \$48,097.72, pursuant to s. 43(2)(h) and s. 44 of the RESA.

9. Mr. McKnight Further submitted that the Committee should assess the penalty facing Mr. Kim on the bases of specific deterrence, general deterrence of other licensees, and public confidence in the real estate industry.

10. In reply to the penalty submissions of Mr. Kim, Mr. McKnight noted that the Respondent had surrendered his trading services license on November 4, 2019, prior to the penalty hearing, and that he was attempting to avoid the consequences of the Liability Decision by his retiring from the real estate industry.

11. Mr. McKnight provided the Committee with two written penalty submissions and a Book of Authorities and asked that they be admitted, to the extent necessary, as exhibits in these proceedings.

12. The Committee did so order.

2.2. Initial Sanction Submissions of Mr. Kim

13. Mr. Kim, representing himself, provided the Committee with two written penalty submissions and submitted that the Committee should take into consideration a multitude of factors, and requesting that the Committee waive any penalties and obligations that might be imposed on him:

- Mr. Kim's service as a real estate agent for more than 13 years had provided many clients in the Vancouver Korean Community with satisfaction and joy;
- Mr. Kim's early retirement from the real estate industry was a life-altering decision that has resulted in significant long-term financial impact and hardship;
- Mr. Kim has lost his livelihood;
- Mr. Kim must access training and education to find new employment;
- Mr. Kim's decision to leave the real estate industry was not to dismiss the seriousness of this matter, but to prevent further negative impact on his fellow peers in the industry, the brokerage, and related organizations, in the future; and
- Mr. Kim committed to not re-apply for a trading services license in the future.

14. Mr. Kim further submitted, "I understand and respect the efforts of the Council to protect the interests of the public, but I am disappointed because the Council's decision was based solely on the allegations of the clients without any evidence or witnesses to prove, and my claims were hardly accepted. I believe it's not fair to me as a licensee."

15. The Committee ordered that Mr. Kim's written submissions be marked, to the extent necessary, as exhibits in these proceedings.

2.3. The Committee's Invitation for Further Submissions

16. Upon considering the parties' submissions, the Committee became concerned that sanctions greater than the measures the parties had addressed in their submissions might be appropriate. To err on the side of ensuring procedural fairness to the parties, and especially to Mr. Kim, the Committee invited the parties to provide submissions, if any, on first, the appropriateness of sanctions more severe than what the Council proposed in its submissions, i.e., a suspension in the range of 2-3 months, and second, the appropriateness of a suspension in combination with a period during which Mr. Kim cannot apply for licensure, and that he satisfy conditions before reapplying for licensure.

2.4. The Supplemental Submissions of the Council

17. In supplemental submissions dated April 1, 2020, the Council clarified that it submitted a suspension of *at least* 30 days was appropriate, but if the Committee felt a suspension in the range of 2-3 months was appropriate, that would be within the Committee's discretion.

18. The Council also submitted that since Mr. Kim surrendered his licence, any suspension issued against him could take effect should Mr. Kim seek to become relicensed in the future. Additionally, Mr. Kim should be required to comply with all other terms regarding fines, expenses and remedial education before Council reconsiders an application for relicensing.

2.5. The Supplemental Submissions of Mr. Kim

19. In a short letter dated April 13, 2020, Mr. Kim advised that he accepted "the appropriateness of these two questions."

3.0. ANALYSIS

20. The criminal sentencing principles accepted by the Commercial Appeals Commission ("CAC") as guiding the imposition of penalty in RECBC disciplinary proceedings were outlined by the CAC in *Wong v. Real Estate Council of BC*, [2003] B.C.C.O. No. 3 (Commercial Appeals Commission) [July 25, 2003] as follows:

[19] We accept for present purposes the appellant's reliance on principles governing sentencing under the *Criminal Code*. As set out in *R. v. Hinch and Salanski* (1967), 62 W.W.R. 205 (B.C.C.A.), there are four considerations: (1) the safety of the public; (2) the deterrent effect of a sentence; (3) punishment of the offender; and

(4) reformation and rehabilitation of the offender (p. 209). However, it is also beyond dispute that the primary purpose of legislation governing professional bodies is protection of the public: James T. Casey, *The Regulation of Professionals in Canada* (Carswell: 2001), at p. 14-4. Thus, in determining the appropriate penalty in professional discipline cases, “the emphasis must clearly be upon the protection of the public interest”: *McKee v. College of Psychologists (British Columbia)*, [1994] 9 W.W.R. 374 (B.C.C.A.), p. 376.

21. The many factors to be considered in assessing penalty or sanctions in a professional regulation context were helpfully consolidated in *Law Society of British Columbia v. Dent*, 2016 LSBC 5, [2016] L.S.D.D. No. 25 (Disc. Hearing Panel) (“Dent”), 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?

A Discipline Committee accepted and applied *Dent* sentencing factors in *Goodwin*, 2018 CanLII 11327 (RECBC) [Jan. 15, 2018] at para. 5.

22. In February 2018, the RECBC published *Sanction Guidelines*. The *Sanction Guidelines* provide principled guidance to discipline committees, licensees, and others about for applying

disciplinary sanctions under the RESA, to enhance transparency, consistency of approach, and fairness. The *Sanction Guidelines* incorporate the sentencing factors addressed in *Dent* and in other leading discipline cases.

23. The *Sanction Guidelines* speak to the use of sanctions as serving several purposes, all within the overarching goal of protecting the public. These specific purposes include,
- a. denouncing misconduct, and the harms caused by misconduct;
 - b. preventing future misconduct by rehabilitating specific respondents through corrective measures;
 - c. preventing and discouraging future misconduct by specific respondents through punitive measures (i.e. specific deterrence);
 - d. preventing and discouraging future misconduct by other licensees (i.e. general deterrence);
 - e. educating respondents, licensees and the public about rules and standards; and
 - f. maintaining public confidence in the real estate industry.
24. Further, the *Sanction Guidelines* note other relevant sanction principles that Discipline Committees should consider, including:
- a. proportionality (between the nature and severity of sanctions and the seriousness of the misconduct, resulting harms, and the responsibility or blameworthiness of the licensee);
 - b. progressive discipline (such as where a licensee's prior disciplinary record shows a pattern of misconduct);
 - c. the effectiveness of suspensions and fines in specific contexts;
 - d. any need to prevent profit from wrongdoing (so that sanctions achieve a deterrent effect); and
 - e. a need to consider a variety of mitigating and aggravating factors, including the following:

- i. the respondent's age and experience;
- ii. the respondent's discipline history;
- iii. the nature and gravity of the misconduct, including whether the conduct involved fraud, dishonesty, or deception;
- iv. the extent to which the respondent attempted to obtain a financial benefit through the misconduct;
- v. harm to clients or others;
- vi. voluntary measures, prior to or during investigation, to accept responsibility for misconduct, to compensate for or mitigate harm to others, or to avoid a recurrence;
- vii. whether the respondent has attempted to frustrate, delay and undermine Council investigations; and
- viii. parity with sanctions previously imposed by discipline committees for similar misconduct.

25. The Committee has considered all these principles and factors, in deciding what sanctions are most appropriate for the Respondent in the circumstances. The Committee will address these principles and factors, using the *Dent* categories for convenience.

Nature, gravity and consequences of the conduct

26. The Council has submitted that Mr. Kim's misconduct, when viewed as a whole, is properly characterized as serious in nature and aggravated by the factors of Mr. Kim's length of experience as a licensee, and of numerous financial repercussions to the Clients, such that a significant suspension of his license is warranted.

27. Mr. Kim argued that his surrender of his trading services license was a significant step on his part in offsetting his misconduct. Specifically, Mr. Kim committed in his submissions to "leave the real estate industry forever", and said he "will not inflict any harm to the public on real estate transactions whatsoever." He also asked, however, that the Committee "waive any penalties and obligations that may be imposed on me." In other words, he has voluntarily

relinquished his licence, but seeks to avoid any formal consequences. Whether the Committee addresses this conduct by the Respondent as mitigating the nature of the conduct, or as an acknowledgement of wrongdoing, his “offer” is not one that the Committee can accept. Absent a joint submission from the Council and the Respondent, the Committee’s responsibility is to determine an appropriate sanction – one that is neither too lenient nor too harsh – which will denounce the misconduct, impose a penalty that will deter both the Respondent and other licensees from similar misconduct in the future, and maintain public confidence in the real estate industry. Allowing the Respondent to avoid formal sanctions, due to his voluntarily relinquishing his licence and stating a current intention not to reapply, would fail to meet these objectives. A lack of formal sanctions would, among other things, legally allow the Respondent to immediately reapply for licensure.

28. The Committee has concluded that Mr. Kim’s misconduct was in fact serious and that direct harm to the public has resulted. The nature of his misconduct is not lessened by his voluntarily relinquishing his licence prior to this penalty hearing.

Character and professional conduct record of the respondent

29. Mr. Kim is an experienced licensee with over 13 years of real estate trading service.

30. Mr. Kim has submitted that his misconduct in this case did not fit with his personal and work character over many years in the industry. While Mr. Kim did not provide any character references to substantiate this claim, this submission is taken at face value in the context of his personal and working relationships in the industry. It warrants, however, a limited measure of mitigation in terms of the appropriate sanctions.

31. Mr. Kim has no previous discipline record as a licensee with the Real Estate Council of British Columbia.

32. The Committee found that these factors are somewhat relevant to the appropriate level of sanction in this case, but concluded that the submission by Mr. Kim that the Committee impose no penalties, apart from accepting his voluntary (and unenforceable) commitment to never re-apply, lies at the extreme end of leniency on the sanction spectrum.

Acknowledgement of the conduct and remedial action

33. The Council has submitted that Mr. Kim has denied misconduct throughout the proceedings, maintaining that any negative consequences to the clients were largely due to their own fault. The Council cited the lack of an acknowledgement of the misconduct or an apology for his actions as aggravating factors justifying an increased penalty.

34. Mr. Kim has submitted that he understands the efforts of the Council to protect the interests of the public but has offered no other acknowledgement of his misconduct or the financial impacts on the clients.

35. In this regard, the Committee considered these arguments and has identified a need for a strong message to the Respondent and to licensees generally regarding this type of misconduct.

Public confidence in the profession including public confidence in the disciplinary process

36. The Committee has considered many factors in determining the appropriate weight that public confidence in the profession and in the disciplinary process has on this case.

37. We have taken into account the Report of the Independent Advisory Committee, On Conduct and Practices in the Real Estate Industry in British Columbia (June 2016), which stated: "Alleged misconduct, combined with the perception that the Real Estate Council is unable or unwilling to take strong action to address it, has resulted in the loss of public trust". The report found that the failure of licensees to identify and address conflicts was a public concern, causing some to put "their own interests ahead of those of their clients".

38. *Faminoff v Law Society of British Columbia*, 2017 BCCA 373, an appeal from a decision of the Law society of British Columbia which applies a similar list of factors as the RECBC Sanction Guidelines, emphasizes the important role of public confidence in the disciplinary process:

"The weight given to factors will vary and in some cases not all will come into play. However, the factors of protection of the public, including maintaining public confidence in the disciplinary process and in the profession generally, and the rehabilitation of the member will play an important role in most cases (...)"

39. The Committee concluded that the issue of public protection and public confidence in the disciplinary process is of significant importance to the sanction decision for this case.

40. The Committee then turned its mind to the consideration of specific issues as follows:

License Suspension

41. Mr. McKnight referred the Committee to *Engelsman (Re)*, 2019 CanLII 55650 (BC REC), *Gill (Re)*, 2019 CanLII 67654 (BC REC), and *Yin (Re)*, 2018 CanLII 67061 (BC REC). The *Gill* and *Yin* cases confirmed for the Committee that a suspension of the Respondent's license would ordinarily be the appropriate remedy. Mr. McKnight submitted that Mr. Kim's misconduct was most comparable to the cases of *Gill (Re)* and *Yin (Re)* which led to serious repercussions for their clients, citing that Mr. Kim's conduct in this case, which resulted in financial detriment to the clients and numerous findings of professional misconduct and conduct unbecoming, ought to be penalized at the higher end of the scale.

42. The three cases involved consent orders. As such, the Committee must be cautious in applying the outcomes of such cases, as their outcomes are the product of agreements between parties and not decisions of Discipline Committees after hearings on the merits. That said, consent order cases provide a degree of guidance.

43. The Committee does not view *Engelsman* as comparable to this case in terms of seriousness, and the Council has not suggested that it is. *Engelsman* involved a licensee acting for a seller of property. The licensee loaned money to the client so that she could finish construction on the property but did not discuss the potential for a conflict of interest. The licensee agreed to a reprimand, a \$5,000 monetary sanction, a course requirement, and enforcement expenses of \$1,500. While Mr. Kim also failed to disclose a conflict of interest arising from his offering a loan, he also engaged in other forms of significant misconduct that in the Committee's view warrant a suspension.

44. In the *Gill* case, a licensee represented A, a seller of property that could potentially be subdivided into two lots. After B agreed to buy the property, the licensee agreed to represent B with respect to selling assignments of his purchase rights in the proposed lots, at a profit, to an assignee, C. When B informed A about B's assignments, A asked the licensee to find a way to terminate the original contracts of sale. When B discovered C was advertising the assignments

for sale, at a profit, B asked the licensee to find a way to terminate the assignments. The licensee failed to avoid conflicts of interest and to disclose material information to his clients. The licensee also demonstrated incompetence at various points, the particulars of which are not important here. The licensee agreed to a three-month suspension, a \$5,000 monetary sanction, a course requirement, and enforcement expenses of \$1,500. While all cases turn on their own facts, and may be difficult to compare, the Committee views the misconduct in *Gill* as roughly comparable in seriousness to Mr. Kim's misconduct.

45. Mr. Kim did not provide any decisions regarding the appropriate level of sanction for his misconduct.

The Committee took into consideration the arguments of both sides in determining the appropriate sanctions. The Committee found that there is sound precedent to support the premise that a significant suspension of Mr. Kim's license is well within the range of an appropriate penalty.

4.0. SANCTION

4.1. License Suspension

46. In considering the length of the suspension, the Committee noted the decision of *Gill (Re)*, 2019 CanLII 67654 (BC REC). In that matter, as addressed above, the licensee admitted to professional misconduct by failing to avoid a conflict of interest and failing to act in the best interests of the clients and within the lawful instructions of his clients. Mr. Gill was, among other sanctions, suspended for 3 months.

47. The Committee further considered the decision in *Yin (Re)*, 2018 CanLII 67061 (BC REC). In that matter, the licensee admitted to committing professional misconduct by failing to act with reasonable care and skill, to act in the best interest of her clients, and to avoid or disclose conflicts of interest. Ms. Yin was suspended for 21 days.

48. The Committee readily concedes that it is difficult to find previous decisions that mirror the findings and specific facts in this case. Mr. Kim's misconduct distinguishes itself from the foregoing cases by virtue of the financial implications that the clients have suffered and the lack of any acknowledgement and acceptance by Mr. Kim of his misconduct.

49. In these circumstances the Committee concludes that a suspension of three (3) months, in combination with other sanction measures, would serve as a general deterrent for other members of the profession who might consider such misconduct in the future, and maintain public confidence in the real estate industry. Since Mr. Kim has voluntarily relinquished his licence, however, a suspension would not actually result in specific deterrence to Mr. Kim. An additional measure to accomplish the goal of specific deterrence is addressed below.

50. Since Mr. Kim's relinquishment of his licence means that he no longer has a licence to suspend, the Committee must address its jurisdiction to order a suspension in such a circumstance, which either takes effect immediately, or whenever Mr. Kim may re-acquire a licence. Section 43(2)(b) of the RESA allows the Committee to "(b) suspend the licensee's licence for the period of time the committee considers appropriate or until specified conditions are fulfilled..." The RESA does not expressly address the Committee's power where a former licensee has no licence. The Committee does however have jurisdiction over former licensees under section 35, which provides that for purposes of Part 4 of the RESA ("Discipline Proceedings and Other Regulatory Enforcement"), the term "'licensee' includes a former licensee in relation to matters that occurred while the person was a licensee."

51. The authority of a regulatory body to impose licence-related sanctions on a former licensee or registrant, under Ontario's *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, was addressed in *College of Nurses of Ontario v. Dumchin* (2016), 130 O.R. (3d) 602, 2016 ONSC 626 (Ont. Sup Ct., Div. Ct.) ("Dumchin"). That case involved a registrant of the College of Nurses who had resigned his registration while under investigation by the College. Based on criminal convictions for possession of child pornography, the College's Discipline Committee found him guilty of professional misconduct. Although the committee decided the appropriate penalty was revocation of his certificate of registration, it concluded it lacked the power to impose that penalty because the respondent had resigned.

52. On appeal, the court decided that the committee had made an unreasonable decision, based on a reading of the word of the statute "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of the legislature..." (at para. 34). The court decided that the Committee's conclusion was inconsistent with the purpose of the College's continuing disciplinary jurisdiction (at

para. 38). It reasoned that, “[a]bsent a clear and unambiguous limitation, the panel should have read s. 51(2) in a manner consistent with the legislative purpose and intent that the college have continuing jurisdiction over former members at all stages of the disciplinary process” (at para. 39). The court set aside the Committee’s order, and replaced it with an order revoking the respondent’s certificate of registration (at para. 49).

53. Based on the reasoning in *Dumchin*, the Committee concludes that its continuing jurisdiction over former licensees pursuant to section 35 of the RESA includes a jurisdiction, under section 43(2), to order a notional cancellation or suspension of a former licensee’s license, even though the former licensee has relinquished his licence by other means. Such a jurisdiction would also operate harmoniously with section 10(d) of the RESA, which requires that an applicant for a license satisfy the Council the applicant has not “(ii) held a license that was suspended or cancelled under real estate... legislation in British Columbia or another jurisdiction...” The Committee declines to interpret the RESA in a manner that would allow for the absurd result of a licensee engaging in conduct warranting a suspension or cancellation, avoiding such sanctions by relinquishing his licence through a resignation or a failure to renew, and re-applying on the basis his license was not in fact suspended or cancelled under the RESA.

54. Since the Committee has decided to order a suspension with immediate effect, and is providing for specific deterrence by restricting his eligibility to reapply for a fixed period, which the Committee addresses below, it need not address the Committee’s jurisdiction to order that a suspension only take effect whenever Mr. Kim reacquires a license. The Committee does address this issue, however, since it concludes Mr. Kim should be subject to a requirement for enhanced supervision, should he reacquire a licence. For the following reasons, the Committee concludes that it may suspend, or impose restrictions or conditions on, a licensee’s licence on a deferred basis, so that the sanction takes effect whenever a former licensee reacquires a licence.

55. In *Dumchin*, the Ontario court concluded that references to a “certificate of registration” in the *Regulated Health Professions Act* “does not mean a piece of paper confirming one’s membership in the profession. In this statutory context, a ‘certificate of registration’ means the entitlement to practice in a regulated profession” (at para. 41). The Committee applies this interpretation to references to “the licensee’s licence” under section 43(2) of the RESA. The

Committee may therefore suspend, cancel, or impose restrictions or conditions on a former licensee's entitlement to provide real estate services, whenever the former licensee has such an entitlement. The Committee's power is not limited to any specific licence, or lost if the licensee resigns or fails to renew a licence. The Committee's power extends to a former's present and future entitlement to provide real estate services under the RESA.

4.2. Enhanced supervision

56. Mr. Kim must, upon his obtaining another licence, undergo enhanced supervision by his managing broker for a period of twelve (12) months, Pursuant to s. 43(2)(d) of the RESA.

4.3. Fine

57. Although the RESA now provides for discipline penalties of up to \$250,000 for a licensee (or up to \$500,000 for a brokerage), the provisions of the RESA at the time of this case provided for a maximum monetary discipline penalty of \$10,000. Given the seriousness of the misconduct and the submissions of Mr. Kim, we order that the Respondent pay a monetary discipline penalty of \$5,000 (the "Fine"), due sixty (60) days from the date of this decision.

4.4. Remedial Courses and Supervision

58. The Council has submitted that Mr. Kim be required to undertake further education and training. The Committee had little difficulty in agreeing this was appropriate and concluded that the Mr. Kim, at his own expense, register for and successfully complete the *Real Estate Trading Services Remedial Education Course* as provided by the Sauder School of Business at the University of British Columbia (the "Course"), before reapplying for licensure.

4.5. Ineligibility to reapply for a fixed period

59. Part of the purpose of sanctions is to impose consequences that will denounce misconduct and achieve specific and general deterrence. Since the Respondent has no current licence, a suspension would in fact have no impact on him, and fail to provide for specific deterrence. The Committee has a power under section 43(2)(g) of the RESA to prohibit the Licensee from applying for a licence for a specified period, or until specified conditions are fulfilled. The Committee has no way to evaluate what period of ineligibility would be financially equivalent to the suspension it would have otherwise imposed. The Respondent had, however,

opportunity to choose when he would relinquish his licence, and the Committee must infer he also had some opportunity to arrange his affairs to minimize the consequences of his relinquishing his licence. The Committee has set a period of ineligibility accordingly.

60. The Committee orders that the Respondent may not reapply for a licence
- a. within six months of the date of this Order;
 - b. until after the Respondent has paid the Fine; and
 - c. until after the Respondent has taken the Course.

4.6. Period of enhanced supervision

61. The Committee further concluded that Mr. Kim would benefit from, and public interest would be serviced by, a period of enhanced supervision in the event of the Respondent obtaining another licence. Accordingly, the Committee orders that Mr. Kim's licence, should he again acquire one, be subject to a condition of enhanced supervision by his managing broker for a period of twelve (12) months after any further grant of licensure by the Council.

62. The Committee addresses enforcement expenses under sections 43(2)(h) and 44 of the RESA in the next section.

5.0. ENFORCEMENT EXPENSES

63. S. 44 of RESA provides that:

44 (1) A discipline committee may, by an order under section 43 (2) (h) [*recovery of enforcement expenses*], require the licensee to pay the expenses, or part of the expenses, incurred by the real estate council in relation to either or both of the investigation and the discipline hearing to which the order relates.

(2) Amounts ordered as referred to in subsection (1)

(a) must not exceed the applicable limit prescribed by regulation in relation to the type of expenses to which they relate, and

(b) may include the remuneration expenses incurred in relation to employees, officers or agents of the real estate council, or members of the discipline committee, engaged in the investigation or discipline hearing.

64. Mr. McKnight submitted that the Council has incurred expenses in the amount of \$48,097.72, as set out in Appendix A of his submission and that such expenses should be assessed against Mr. Kim by way of Order.

65. Mr. Kim submitted that no enforcement expenses should be payable due to his having surrendered his license in November of 2019. Mr. Kim has not otherwise contested the reasonableness of any specific element of the enforcement expenses.

66. The RESA uses the term “expenses” instead of the term “costs”. This choice of wording by the legislature, as well as the specifics of section 4.2 of the *Real Estate Services Regulation*, BC Reg 506/2004 (the “Regulation”), sets the RESA apart from “costs” systems used by courts. 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, although it may adjust orders to account for special circumstances. 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.

67. The Committee noted that the RECBC had not proven that the Respondent’s conduct involved wrongful taking or deceptive dealing within the meaning of section 35(1)(c) of the RESA, or that his conduct demonstrates incompetence within the meaning of section 35(1)(d) of the RESA and consequently a reduction in the enforcement expenses was warranted.

68. The Committee considered the submissions of the parties and concluded that the submitted enforcement expenses were a reasonable reflection of the time and legal expenses involved in this discipline hearing, save and except for a reduction of enforcement expenses relating to the unproven allegations.

69. The Committee has applied a 25% reduction in the enforcement expenses, to reflect the unproven allegations. This leaves enforcement expenses in the amount of \$36,073.29, to paid within one (1) year of this Order.

6.0. **ORDER**

70. The Committee orders as follows:

- a. Mr. Kim's license is suspended for a period of three (3) months, pursuant to s. 43(2)(b) of the RESA;
- b. Mr. Kim's license is subject to a restriction that he is prohibited from acting as an unlicensed assistant during the suspension period pursuant to s. 43(2)(d) of the RESA;
- c. Mr. Kim shall pay a discipline penalty in the amount of \$5,000 (the "Fine") within sixty (60) days of this decision, pursuant to s. 43(2)(i) of the RESA;
- d. Mr. Kim must, at his own expense, register for and successfully complete the *Real Estate Trading Services Remedial Education Course* as provided by the Sauder School of Business at the University of British Columbia (the "Course"), pursuant to s. 43(2)(f) of the RESA;
- e. Mr. Kim is ineligible to apply for licensure, pursuant to s. 43(2)(g) of the RESA,
 - i. within six months of the date of this Order;
 - ii. until after Mr. Kim has paid the Fine; and
 - iii. until after Mr. Kim has taken the Course.
- f. Mr. Kim must, upon his obtaining another licence, undergo enhanced supervision by his managing broker for a period of twelve (12) months, pursuant to s. 43(2)(d) of the RESA;
- g. Mr. Kim shall pay enforcement expenses in the amount of \$36,073.29 within one (1) year of this decision, pursuant to s. 43(2)(h) and s. 44 of the RESA.
- h. If Mr. Kim obtains another licence and fails to comply with any of the terms of the Order (insofar as they remain outstanding), the Discipline Committee may suspend or cancel the Respondent's license, without further notice, pursuant to sections 43(3) and 43(4) of the RESA.

7.0. RIGHT OF APPEAL

71. The Respondent has a right to appeal to the Financial Services Tribunal under RESA section 54(1)(d). The Respondent will have 30 days from the date of the sanction decision: *Financial Institutions Act*, R.S.B.C. 1996, ch. 141, section 242.1(7)(d) and *Administrative Tribunals Act*, S.B.C. 2004, section 24(1).

DATED May 1, 2020.

FOR THE COMMITTEE

“Len W Hrycan”

Len W Hrycan
Committee Chair

“Sukh Sidhu”

Sukh Sidhu
Committee Member

“Yasin Amlani”

Yasin Amlani
Committee Member

List of Exhibits

Exhibit 1 – RECBC Written Penalty Submissions and Book of Authorities

Exhibit 2 – Mr. Kim’s Written Penalty Submissions

Exhibit 3 – RECBC Additional Written Penalty Submissions to Committee request

Exhibit 4 – Mr. Kim’s Additional Written Penalty Submissions to Committee request