

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
(138632)**

REASONS FOR DECISION REGARDING LIABILITY

Date and Place of Hearing:	July 24-25, 2019. Office of the Real Estate Council of British Columbia (RECBC)
Discipline Hearing Committee:	Len W. Hrycan, Committee Chair Sukh Sidhu, Committee Member Yasin Amlani, Committee Member
Counsel for RECBC:	David T. McKnight Alexander Holburn Beaudin Lang LLP
Respondent:	Jae Ryang (Jay) Kim, appearing on his own behalf
Interpreter:	Jane Lee, Korean/English Court Interpreter

INTRODUCTION

1. The hearing was conducted before a Discipline Hearing Committee (the “Committee”) of the Real Estate Council of British Columbia (the “Council”) pursuant to section 42 of the *Real Estate Services Act*, R.S.C. 2004, c. 42 (“RESA” or the “Act”) to consider whether Mr. Jae Ryang (Jay) Kim (the “Respondent”) committed professional misconduct, or conduct unbecoming a licensee, within the meaning of sections 35(1) and 35(2) of the RESA.
2. To ensure the interests of the Respondent were appropriately considered, a court interpreter attended throughout the proceedings and was available at the Respondent’s

request to clarify any matters during the hearing. Mr. Kim acknowledged his ability to understand English and his awareness that he had only to raise his hand should he need assistance with translation at any time during the hearing. Additionally, during the Respondent's testimony and cross-examination, the interpreter provided full English to Korean and Korean to English translation for each of these phases.

3. This matter relates to real estate trading services the Respondent provided to XXXXX (XXXXX) XXXXX ("Mr. YXXX") and XXXXX (XXXX) XXX ("Ms. HXX") (collectively the "Clients") respecting three properties as follows:
 - (a) The sale of XXXX Klahanie Drive, Port Moody, BC (the "Klahanie Property");
 - (b) The purchase of XXXX Princeton Avenue, Coquitlam, BC (the "Princeton Property"); and
 - (c) An offer to purchase XXXX Don Moore Drive, Coquitlam, BC (the "Don Moore Property").

ISSUES

4. The issues before the Committee are set out in the Notice of Discipline Hearing dated April 11, 2019 (the "Notice") as follows (with the same numbering as contained in the Notice):
 - [#] 1. You committed professional misconduct within the meaning of ss 35(1)(a), (c) and (d) of the RESA in that, while acting as the agent for clients (the "Clients") who were the sellers of property located at XXXX Klahanie Drive, Port Moody, BC (the "Klahanie Property") and the buyers of property located at XXXX Princeton Avenue, Coquitlam, BC (the Princeton Property"), you:
 - a. prepared a Contract of Purchase and Sale on behalf of the Clients for the purchase of the Princeton Property that did not include a subject condition for the sale of the Klahanie Property, contrary to ss 3-3(a) [act in the best interests of the client] and 3-4 [act honestly and with reasonable care and skill] of the Rules;

- b. prepared the Contract of Purchase and Sale knowing the Clients' offer exceeded the financing for which they had been pre-approved, contrary to ss 3-3(a) [act in the best interests of the client] and 3-4 [act honestly and with reasonable care and skill] of the Rules;
 - c. offered to lend the Clients funds to meet their financial obligations concerning the Princeton Property but later reneged on your offer, contrary to ss 3-3(a) [act in the best interests of the client], 3-3(i) [take reasonable steps to avoid a conflict of interest], 3-3(j) [promptly and fully disclose conflicts of interest to the client], and 3-4 [act honestly and with reasonable care and skill] of the Rules; and
 - d. failed to disclose, in writing, a substantive change in information that was required to be disclosed, when you reneged on your offer to waive your commission on the sale of the Klahanie Property, contrary to ss 3-3(a) [act in the best interests of the client], 3-4 [act honestly and with reasonable care and skill], and 5-8(2) [disclosure of substantive changes to remuneration] of the Rules.
- [#] 2. You committed professional misconduct within the meaning of ss 35(1)(a) and (d) of the RESA in that, while acting as the agent for Clients who were the sellers of the Klahanie Property and the buyers of the Princeton Property, you:
- a. Failed to follow the lawful instructions of the Clients when, on June 28, 2016, you were instructed by the Clients to request an extension on the completion date for the Princeton Property but failed to prepare an addendum and present it to the seller's agent until July 31, 2016, contrary to ss 3-3(a) [act in the best interests of the client], 3-3(b) [act in accordance with the lawful instructions of clients], 3-4 [act honestly and with reasonable care and skill] of the Rules.
- [#] 3. You committed professional misconduct within the meaning of ss 35(1)(a), (c) and (d) of the RESA in that, after viewing a property located at XXXX Don Moore Drive, Coquitlam, BC (the "Don Moore Drive Property") with the Clients, and

after the Clients advised you they did not want to make an offer on the Don Moore Drive Property because it was listed for more money than they could afford, you:

- a. enticed the Clients to make an offer on the Don Moore Drive Property by offering to lend the Clients funds to meet their obligations under the Contract of Purchase and Sale for the Don Moore Drive Property, contrary to ss 3-3(a) [act in the best interests of the client], 3-3(i) [take reasonable steps to avoid a conflict of interest], 3-3(j) [promptly and fully disclose conflicts of interest to the client], and 3-4 [act honestly and with reasonable care and skill] of the Rules.

[#] 4. Further, or in the alternative, you committed conduct unbecoming a licensee within the meaning of ss 35(2)(a), (b) and (c) of the RESA [is contrary to the best interests of the public confidence in the real estate industry and brought the real estate industry into disrepute] when you engaged in the conduct set out in paragraphs 1, 2 and 3 above.

BURDEN OF PROOF AND EVIDENCE

The burden and standard of proof:

5. Under section 43 of the RESA, the Committee may determine that the Respondent has committed professional misconduct or conduct unbecoming a licensee, or else dismiss the matter.
6. The burden of proof is on the Council to demonstrate that the Respondent committed professional misconduct or conduct unbecoming a licensee. The standard of proof is, as in every civil case, the balance of probabilities. The balance of probabilities means that the Committee must be satisfied, based on the evidence that is sufficiently clear, convincing and cogent, that the occurrence of an event was more likely than not: *F.H. v. McDougall*, 2008 SCC 53.

The evidence that the Committee may accept:

7. As an administrative tribunal, the Committee is not bound by court rules of evidence, in the absence of any statutory provision to the contrary, and it may consider evidence it considers relevant: *Wilson v. Esquimalt and Nanaimo Railway Company Co.*, [1922] 1 A.C. 202 (P.C.) [B.C.]; *Kane v. The Board of Governors (University of British Columbia)*, [1980] 1 S.C.R. 1105; *Hale v. B.C. (Superintendent of Motor Vehicles)*, 2004 BCSC 1358 at para. 23. The Committee may, however, draw upon principles underlying court rules of evidence to exclude or assess evidence.
8. As a public authority, the Committee must also afford procedural fairness to a respondent where a decision may affect his or her rights, privileges or interests. This right includes a right to be heard. The Committee affords every respondent an opportunity to respond to the case against them by providing advance notice of the issues and the evidence, and an opportunity to present evidence and argument. The Committee must determine facts and decide issues set out in the Notice of Discipline Hearing, based on evidence. Committee members may, however, apply their individual expertise and judgment to how they evaluate or assess evidence.

REASONS

The evidence before the Committee:

9. The evidence in the hearing consisted of seven exhibits, which included a Book of Documents from the Council, as well as other exhibits from the Respondent and the Council. The Complainants Mr. YXXX and Ms. Han were called upon to give evidence on behalf of the Council. The Respondent, Mr. Kim, gave evidence on his own behalf.

Findings of fact:

10. The Respondent had been a licensed realtor for 13 years at the time of these transactions and acknowledged that he was aware of the need to comply with the RESA and that the Real Estate Council of British Columbia provides a Professional Standards Manual to assist licensees in carrying out their duties.

11. The Respondent and the Clients are both originally from South Korea and the Respondent had acted as agent for the Clients in the purchase of the Klahanie Property and another condominium in 2004. The Respondent assisted the Clients in the sale of the condominium in 2010 when they decided to immigrate to Australia.
12. Upon their return to Canada in 2015 the Clients sought the help of the Respondent in May of 2016 to assist them in selling the Klahanie Property and purchasing a new home.
13. Through testimony of the Respondent and the Clients, they characterized a relationship that had developed between Mr. Kim and Mr. YXXX as a “big brother / little brother” relationship - something that held great respect in Korean culture.
14. The Respondent was aware that his Clients were looking to purchase a home in the Tri-Cities or Fraser Heights Surrey area and that with the sale of their Klahanie Property for \$760,000 and pre-arranged mortgage financing of \$750,000, the Client’s maximum budget to purchase a home was limited to \$1.2 million.
15. The Respondent encouraged the Clients to view the Don Moore Property, which was listed at \$1,298,000, substantially higher than the Clients’ budget. The Clients agreed to view the Don Moore Property but advised the Respondent that they did not wish to make an offer because the listing was price was higher than their budget of \$1.2 million.
16. The Respondent offered to loan the Clients the shortfall in funds in order to purchase the Don Moore Property and as a means of enticing the Clients to make an offer in excess of their budget. The offer and acceptance were made orally and the parties never had a written agreement to document the details. The Respondent’s testimony confirmed that he made a loan offer to the Clients, and this was further corroborated by the testimony of the Clients.
17. The Respondent advised the Clients that he would have no difficulty in selling the Klahanie Property for \$760,000 within two weeks of listing the property. He further assured them that this was based on recent sales activity in the neighbourhood of the Klahanie Property.

18. The Clients, relying on the Don Moore Property loan offer and the assurances of Mr. Kim that he would have no difficulty selling the Klahanie Property, agreed to make an offer on the Don Moore Property of \$1,280,000.
19. At no time did the Respondent advise the Clients that the loan offer on the Don Moore Property may constitute a conflict of interest, nor did he suggest that the Clients should obtain independent legal advice with respect to the loan offer, or appropriately document the loan offer as part of the offer to purchase.
20. The Don Moore Property offer was not accepted and the Respondent advised the Clients of this on June 6, 2016. The Clients never received a copy of the completed offer until September of 2016, when they requested a copy from Mr. Kim's brokerage, Hanna Realty Ltd.
21. On June 6, 2016, the Clients found a listing for the Princeton Property at \$1,248,000. The Clients contacted the real estate agent for the sellers, Rebecca PXXXXX and were advised that they should use their real estate agent if they wished to view the property. The Clients viewed the property later that day with the Respondent as noted in the offer to purchase (Exhibit 1 Tab 8).
22. The Clients made an offer to purchase the Princeton Property in the amount of \$1,200,000 (Exhibit 1 Tab 8), which was drafted by the Respondent and dated June 7, 2016. The offer to purchase contained a subject to financing clause, to be removed within 72 hours of acceptance of the offer and provision for a \$50,000 non-refundable deposit payable within 24 hours of subject removal. The offer to purchase did not, however, include "subject" clauses relating to an inspection, and relating to a sale of the Klahanie Property. The completion date for the contract was August 31, 2016.
23. The Clients were aware of the use of subject to clauses in making offers to purchase from their past offers on the Don Moore Property. Discussion took place with the Respondent on the hot real estate market at that time and the general need to make offers with fewer subject clauses so as to make them more attractive. The Respondent failed to properly explain the consequences of not including a sale of the Klahanie Property clause. Further, he failed to explain while knowing – according to his own

testimony – that it was no longer his intention to provide a loan to the Clients for the purchase of the Princeton Property. The Clients relied on the advice of the Respondent, with a mindset that they were still able to rely on his previous loan offer since the Respondent provided them with no indication to the contrary. Ultimately, and like the offer to purchase, the purchase contract for the Princeton property lacked any subject clause relating to a sale of the Klahanie Property.

24. After the seller of the Princeton Property refused the original offer by the Clients of \$1,200,000, the Respondent advised the Clients to accept a full listing price counter-offer from the sellers, of \$1,248,000 for the Princeton Property, as there was another offer on the table.
25. In considering the counter-offer of the full listing price, the Clients were still relying on the Respondent's previous loan offer associated with the Don Moore Property. It is clear from the evidence that although this loan offer was verbal and the terms not defined in writing, it carried an overarching purpose of assisting the Clients in purchasing a home that was beyond their \$1.2 million budget limitation. The offer of a loan was not clearly limited to the purchase of the Don Moore Property. In fact, the willingness of the Respondent to help his Clients with the purchase of a home through his loan offer, and his longstanding and respected relationship with them, added to the Clients' belief that the Respondent was still willing to assist them in making a property purchase on the Princeton Property, above their \$1.2 million budget. The Clients accepted the counter-offer on the Princeton Property with this in mind.
26. The Respondent knew that the counter-offer amount exceeded the Clients' budget limitation without a loan from him. The Committee has given more weight to the testimony of the Clients, than to the testimony of the Respondent, in relation to the level of financial information on budget limitations that the Clients shared with the Respondent. The Respondent should have known, and did know, that the Clients were still relying on his offer of a loan that would allow them to afford up to \$1,280,000. The Respondent made no attempt to clarify that his previous loan offer was no longer available to the Clients, or to define in any way the limitations, if any, on his offer.

27. The financing subject clause was removed from the purchase contract on the Princeton Property on June 13, 2016 and the Clients provided a non-refundable \$50,000 deposit to the Respondent.
28. On June 13, 2016, the Clients entered into a Listing Contract with the Respondent for the Klahanie Property with a sale price of \$778,000 and provision for the waiver of 40% of the Respondent's commission.
29. By the end of June 2016, there had been no interest in the Klahanie Property and the Clients were becoming concerned about the closing date of August 31, 2016 for the Princeton Property. The clients requested the Respondent to obtain an extension to the closing date.
30. On June 28, 2016, the Respondent contacted Ms. PXXXXX, the real estate agent for the sellers of the Princeton Property about extending the closing date and was told that they would be open to an extension but they required a firm date and would most likely look for some consideration to accommodate the extension. Mr. Kim did not advise the Clients of this until July 3, 2016. Throughout July 2016, the Clients requested that the Respondent send an addendum to extend the closing date on the Princeton Property but were told that they should not worry about the extension as it had already been agreed to. Evidence showed that during this time period, the Respondent met with Mr. YXXX and that Ms. Han was out of the country. Further, the seller's realtor, Ms. PXXXXX, was on vacation. However, despite these factors, the committee is satisfied that the Respondent had an obligation to follow through with the Clients' request for an extension, which would have included seeking a firm date from the Clients, given their expressed concerns that the Klahanie Property had not yet sold.
31. On July 31, 2016, over one month after receiving the original email from Ms. PXXXXX, the Respondent contacted Ms. PXXXXX to request an extension of the closing date to November 31, 2016 or December 1, 2016. Several communications were exchanged regarding the request, with various terms being proposed. On August 9, 2016 the sellers of the Princeton Property responded by offering to extend the closing date for financial consideration of \$4,000 on each of September 1 and October 1, 2016, and the assigning of the \$50,000 deposit should the Clients fail to close on October 31, 2016.

32. The Clients requested a reduction on the \$4,000 payments to \$2,500. The sellers agreed to this change on August 13, 2016 and an addendum was executed in this regard with a closing date of October 31, 2016. On this same date, the Respondent offered to reimburse the Clients 50% of the above payments “in order to help them and relieve the pressure on them” and did so (Exhibit 1 Tab 22). Also on this same date, the clients requested that the Respondent waive 40% of his commission on the purchase contract for the Princeton property, to which the Respondent ultimately agreed to give 40% of his agent commission to the Clients as soon as he received it (Exhibit 1 Tab 21).
33. On August 4, 2016, after receiving no offers on the Klahanie Property, the Clients reduced its listing price to \$738,000. This was the second reduction in the original listing price of \$778,000. On August 16, 2016, the Clients received their first offer of \$727,000 on the Klahanie Property (Exhibit 1 Tab 24) and after exchanging counter offers, settled on a sale price of \$732,000, well below their target price of \$760,000.
34. At the request of the Clients, the Respondent agreed to waive his entire commission on the sale of the Klahanie Property given that the sale price was substantially lower than what was needed by the Clients to complete the purchase of the Princeton Property. Subsequently, after speaking to colleagues in his brokerage office, Mr. Kim decided not to waive his entire commission. He took no efforts, however, to document either the waiver of commission or the change back in commission terms as required under the Rules.
35. On August 25, 2016, the Respondent requested that the Clients sign a waiver of inspection form, which indicated that he had strongly advised them to make the Princeton Property purchase subject to a property inspection report, but that the Clients had decided against this. The waiver form was dated June 7, 2016 (Exhibit 1 Tab 25). The Clients refused to execute the waiver form as the statements in the waiver form were false.
36. On September 12, 2016, the Clients requested that the Respondent assist them with the loan offer for the Princeton Property in the amount of \$70,960 (Exhibit 1 Tab 28), which was the difference between their \$1.2 million budget limitation and the final purchase price for the Princeton Property. The Respondent, in his reply to this request, did not

use this as an opportunity to clarify to the Clients that he had never intended the loan offer to apply to the Princeton Property. Rather, he spoke to the request being “unreasonable and unacceptable” for lack of specific terms for the loan. The Clients were left to find alternative financing with foreign banks at interest rates of 14.62% and 15.62% and obtain a first mortgage of \$786,299 from CIBC at an interest rate of 2.59%, which was higher than their originally pre-approved mortgage interest rate from BMO (Exhibit 1 Tabs 27 & 30).

37. The purchase of the Princeton Property concluded on October 31, 2016.

Findings on professional misconduct and conduct unbecoming a licensee:

38. The term “professional misconduct” is defined in the RESA. The relevant provisions are s. 35(1)(a), (c) and (d):

35(1) A licensee commits professional misconduct if the licensee does one or more of the following:

a) contravenes this Act, the regulations or the rules;

...

c) does anything that constitutes wrongful taking or deceptive dealing;

d) demonstrates incompetence in performing any activity for which the license is required.

39. For clarity, the four items of the Notice allege that the Respondent contravened the following Rules:

- (a) Rule **3-3**(a), (i) and (j);

Duties to clients

3-3 Subject to sections 3-3.1 and 3-3.2, if a client engages a brokerage to provide real estate services to or on behalf of the client, the brokerage and its related licensees must do all of the following:

- (a) **act in the best interests of the client;**

(b) **act in accordance with the lawful instructions** of the client;

...

(i) take reasonable steps to **avoid any conflict of interest**; ...

(j) without limiting the requirements of Division 2 *[Disclosures]* of Part 5 *[Relationships with Principals and Parties]*, if a conflict of interest does exist, **promptly and fully disclose the conflict to the client**. (emphasis added)

(b) Rule **3-4**; and

Duty to act honestly and with reasonable care and skill

3-4 When providing real estate services, a licensee must **act honestly and with reasonable care and skill**. (emphasis added)

(c) Rule **5-8(2)**.

Disclosures under this Division

5-8 ... (2) If, during the course of providing real estate services, there is **any substantive change in information that the licensee is required to disclose** to a person under this Division, the licensee must **promptly disclose the change** to the person in accordance with subsection (1). (emphasis added)

40. The term “conduct unbecoming” is defined in the RESA. The relevant provision is s. 35(2) of the RESA:

35(2) A licensee commits conduct unbecoming a licensee if the licensee engages in conduct that, in the judgement of a discipline committee,

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

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

c) brings the real estate industry into disrepute.

41. After considering all of the evidence and the testimony of the Clients and the Respondent, the Discipline Hearing Committee deliberated. The Committee acknowledged its duty to make findings, if any, of professional misconduct on the balance of probabilities and with clear, convincing and cogent evidence.

DECISION

42. On the basis of the evidence and testimony, the Discipline Hearing Committee determines that, as set out below, Jae Ryang (Jay) Kim committed professional misconduct by engaging in conduct that contravened the Rules, pursuant to section 35(1)(a) of the RESA. He also 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.
43. In relation to Notice Item **#1(a)**, the Respondent prepared a Contract of Purchase and Sale on behalf of the Clients for the purchase of the Princeton Property that did not include a subject condition for the sale of the Klahanie Property. The Respondent did not properly explain to the Clients the consequences of the contract omitting the subject condition, and he exposed the Clients to risks relating to the purchase of the Princeton Property, if they were to fail selling the Klahanie Property in time or for a minimum price, without the Clients understanding the risks. The act of the Respondent omitting that subject condition from the contract, without informing the Clients, was contrary to Rule 3-3(a) [act in the best interests of the client] and Rule 3-4 [act honestly and with reasonable care and skill].
44. In relation to Notice Item **#1(b)**, the Respondent prepared the Contract of Purchase and Sale for the Princeton Property knowing the Clients' offer exceeded the financing for which they had been pre-approved. The Committee was also satisfied that the Respondent should have known, and did know, that the Clients were still relying on his offer of a loan. The Respondent made no attempt to advise the Clients that he would not be loaning them money in relation to the Princeton Property. In preparing a contract with an offer for which he knew the Clients did not have financing, without telling them that he would not be providing financing they were relying on, the Respondent acted contrary to Rule 3-3(a) [act in the best interests of the client] and

Rule 3-4 [act honestly and with reasonable care and skill] of the Rules. The Committee also notes that the Respondent also failed to document his loan offer on the Don Moore Property. The Respondent's advice to the Clients on the use of subject clauses was not provided with any cautionary advice that would have highlighted for the Clients that no loan offer would be forthcoming or that they should consider the implications of signing the contract without first seeking independent legal advice, due to the conflict of interest that the Respondent failed to disclose. The Clients relied on the notion that the previous loan offer from the Respondent would be available to them on the Princeton Property and therefore, their financial obligations would be met.

45. In relation to Notice Item **#1(c)**, as alleged, the Respondent offered to lend the Clients funds to meet their financial obligations concerning the Princeton Property but later reneged on the offer. This allegation involves several elements. First, the Respondent offered to lend money to the Clients in relation to the Don Moore Property. In making this offer, which is addressed at Notice Item #3, the Respondent created a conflict of interest. For example, by offering to lend money to the Clients and become their creditor, he could not impartially carry out his duty to advise them about the benefits and risks of the loan terms, or the absence of loan terms. Further, a loan would favour the Respondent's personal financial interests, as he would receive remuneration through interest on loan money, and increase his commission upon the Clients buying a more expensive property than their original budget allowed. He did not advise the Clients of the conflict, and failed to advise them to obtain independent legal advice before acting on the offer. Second, in knowing that the Clients were continuing to rely on his offer in relation to the Princeton Property, and by failing to tell them he was not loaning them money, he was effectively representing to the Clients that he was offering to lend money in relation to the Princeton Property. He only declined to loan money after the Clients agreed to the list price counter-offer. Regardless of whether the Respondent's offer of a loan was an enforceable contract or not, relating to the Princeton Property, the Respondent misled the Clients, through his silence, about them having financing for a purchase over \$1.2 million. His making the offer in relation to the Princeton Property contravenes Rule 3-3(i) [take reasonable steps to avoid a conflict of interest], and Rule 3-3(j) [promptly and fully disclose conflicts of interest to the client].

His remaining silent about the offer not applying to the Princeton Property contravenes Rule 3-3(a) [act in the best interests of the client] and Rule 3-4 [act honestly and with reasonable care and skill].

46. In relation to Notice Item **#1(d)**, as alleged, the Respondent failed to disclose, in writing, a substantive change in information that was required to be disclosed, when he reneged on his offer to waive his commission on the sale of the Klahanie Property. The Respondent's commission on the sale of the Klahanie Property was to come from either the Clients, or from their sale proceeds. Under Rule 5-11.1(1) and (2), where a seller's licensee presents an offer to acquire real estate, a licensee providing trading services to or on behalf of the seller must disclose, among other things, "(a) the remuneration to be paid by the seller to the listing brokerage, " and "(c) the remuneration to be retained by the listing brokerage". Under Rule 5-8(2), a licensee must promptly disclose "any substantive change in information that the licensee is required to disclose to a person under this Division". Under Rule 5-8(1)(a), disclosures under Part 5, Division 2 of the Rules must be "in writing". The Respondent failed to give written notice about a change in the Respondent's remuneration. The Respondent contravened Rule 5-8(2).
47. In relation to Notice Item **#2**, the Clients instructed the Respondent, on June 28, 2016, to request an extension of the completion date for the Princeton Property, but he failed to prepare an addendum and present it to the seller's agent until about a month later, on July 31, 2016. The Respondent's delay included his not obtaining a firm date for an extension from the Clients, despite knowing from his initial discussion with Ms. PXXXXX, on June 28, that the sellers of the Princeton Property needed a firm date from the Clients. Despite requests from the Clients during July that he send an addendum, he told them they should not worry about an extension as it had already been agreed to. The Respondent's failure to follow his client's instructions within a reasonable time contravened Rules 3-3(a) [act in the best interests of the client], Rule 3-3(b) [act in accordance with the lawful instructions of clients] and Rule 3-4 [act honestly and with reasonable care and skill].
48. In relation to Notice Item **#3**, as alleged, the Clients advised the Respondent that they did not want to make an offer on the Don Moore Property because it was listed for

more money than they could afford. The Respondent enticed the Clients to make an offer on the Don Moore Drive Property by offering to lend them funds to meet their obligations under the Contract of Purchase and Sale. As noted above in relation to Notice Item #1(c), the Respondent's offer created a conflict of interest. For example, by offering to lend money to the Clients and become their creditor, he could not impartially carry out his duty to advise them about the benefits and risks of the loan terms, or the absence of loan terms. A loan would also provide him with remuneration through loan interest, and increase his commission should the Clients purchase a more expensive property than their original budget allowed. He did not advise the Clients of the conflict, and he failed to advise them to obtain independent legal advice before acting on the offer. The Respondent making the loan offer contravenes Rule 3-3(i) [take reasonable steps to avoid a conflict of interest], and Rule 3-3(j) [promptly and fully disclose conflicts of interest to the client].

49. In relation to Notice Item **#4**, the Committee is satisfied that the Respondent's conduct is contrary to the best interests of the public, and undermines public confidence in the real estate industry. His conduct was therefore conduct unbecoming a licensee within the meaning of section 35(2)(a) and (b) of the RESA.
50. The Committee concluded that the actions of the Respondent were of a serious nature, and resulted in numerous adverse repercussions to the Clients.
51. The Discipline Hearing Committee has found, however, that the Council has 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. The Committee also concluded that the Council has not proven that the Respondent's conduct brought the real estate industry into disrepute within the meaning of section 35(2)(c). The Committee was satisfied that the Respondent's offer to help in the form of a loan was genuine, although his silence in relation to the Princeton Property misled the Clients.

FURTHER MATTERS

52. The Committee will hear evidence and submissions from the parties concerning orders under section 43(2) of the RESA, and expenses under section 44(1) of the RESA, and any other actions available to the Committee, at a date, time and place to be set. Once the Committee has arrived at a decision on these issues, it will issue additional reasons that will form a part of this decision, make an order under section 43(2) of the RESA, and make such other orders under the RESA as the Committee may deem appropriate.
53. Once the Committee has made orders under Part 4, Division 2 of the RESA, the Respondent will have a right to appeal to the Financial Services Tribunal under section 54(1)(d) of the RESA, within 30 days of the date of the penalty decision: *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Dated at VANCOUVER, BRITISH COLUMBIA this 4th day of October 2019.

FOR THE DISCIPLINE HEARING COMMITTEE

“Len W. Hrycan”

Name: Len W. Hrycan
Title: Discipline Hearing Committee Chair

“Sukh Sidhu”

Name: Sukh Sidhu
Title: Discipline Hearing Committee Member

“Yasin Amlani”

Name: Yasin Amlani
Title: Discipline Hearing Committee Member

LIST OF EXHIBITS

- Exhibit 1 - RECBC – Book of Documents
- Exhibit 2 - Text Messages of Mr. YXXX, June 5, 6 and 7, 2016
- Exhibit 3 - Text Messages of Mr. YXXX, June 29 and July 1, 2016
- Exhibit 4 - Calendar Notations of Mr. Kim for June, July and August, 2016
- Exhibit 5 - Lunch Receipt of Mr. Kim dated July 14, 2016
- Exhibit 6 - Contract Addendum for the Princeton Property dated July 31, 2016
- Exhibit 7 - Newspaper Advertisement (Korean) for Truelight Law Corporation