

IN THE MATTER OF THE REAL ESTATE SERVICES ACT S.B.C. 2004, c. 42

AND

IN THE MATTER OF

TREVOR WILLIAM MAXWELL INGLIS

**REASONS FOR DECISION
DECISION ON LIABILITY**

Date and Place of Hearing	April 18 and 19, 2018 Office of the British Columbia Securities Commission Vancouver, BC
Discipline Hearing Committee	Dennis K. Hori, Q.C. (Chair) Len Hrycan Sukh Sidhu
Counsel for the Real Estate Council	Jessica Gossen
Counsel for the Respondent	Wes McMillan Nathan Muirhead
Court Reporter	C. Beaton

Introduction

[1] Trevor William Maxwell Inglis is a licensee under the *Real Estate Services Act*, S.B.C. 2004, c. 42 (the “Act”). In 2013 Mr. Inglis co-listed a property located at XXXX Graveley Street, North Vancouver, B.C. (the “Property”) with another licensee under the Act, PV. On October 10, 2013, Mr. Inglis delivered, to PV, an offer to purchase the Property made in the name of Huang (the “Huang Offer”). The buyer’s agent noted on the Huang Offer was AW.

[2] When it was discovered that AW denied having written the Huang Offer, the matter was reported to the Real Estate Council of British Columbia (the “Council”) and the Council undertook an investigation. Upon being told that the Council was investigating him, Mr. Inglis left a telephone message for PV in which he threatened retaliation against PV and also stated that the Huang Offer had been handed to him at an open house.

[3] Following the investigation by the Council an Amended Notice of Discipline Hearing dated December 8, 2017, was issued to Mr. Inglis. The allegations against Mr. Inglis in the Amended Notice of Discipline Hearing are:

1. that Mr. Inglis committed professional misconduct by:
 - (a) engaging in deceptive dealing by fabricating or altering a document (the Huang Offer) which he then asserted was an offer to purchase the Property;
 - (b) engaging in deceptive dealing by making a false statement to his co-listing agent when he advised her that an offer on the Property (the Huang Offer) had been handed to him on October 6, 2013, at an open house at the Property; and
 - (c) making a false statement to the Council in his response to the allegations made against him when he denied that the "penmanship" in the Huang Offer was his.

2. that Mr. Inglis committed conduct unbecoming a licensee when he:
 - (a) stated to his co-listing agent that an offer to purchase was presented in person on October 6, 2013, in the course of an open house on the Property; and,
 - (b) threatened retaliation against his co-listing agent in a telephone message left for her on February 20, 2014.

Issues

[4] The Discipline Committee (the "Committee") must determine the following issues:

1. whether Trevor Inglis fabricated or altered the Huang Offer;
2. if Trevor Inglis fabricated or altered the Huang Offer did it constitute deceptive dealing;
3. whether the statement to PV on February 20, 2014 constituted deceptive dealing;
4. whether Trevor Inglis committed professional misconduct by making a false or misleading statement to the council; and,
5. whether Trevor Inglis committed conduct unbecoming a licensee by threatening retaliation against PV.

Background

[5] Mr. Inglis is a real estate agent of some considerable experience. He became a licensee in 1986 and has been a licensee continuously since then. In the course of his career he has mentored almost 30 people in the real estate business.

[6] The Property was originally listed for sale by PV. PV is a realtor at Royal LePage Sussex in North Vancouver. PV initially listed the Property in October, 2011. She retained that listing until July, 2012. During this period of time PV received only one offer to purchase the Property which did not complete.

[7] The Property was off the market from July 2012 to January 2013. The Property was listed by another realtor from January 2013 to June 2013.

[8] The Property was owned by a husband and wife. By June 2013, the Property owners were in the midst of a separation. Therefore, the owners thought it necessary to have separate realtors representing their individual interests. Mr. Inglis was retained by the husband and PV was retained by the wife on a co-listing arrangement for the Property.

[9] The co-listing agreement for the Property commenced on June 5, 2013. The Property was registered with the Multiple Listing Service ("MLS") on June 6, 2013.

[10] The MLS contract included a description of the services to be provided by the listing agents. Those services included cooperating with the co-listing agent to maintain effective, cooperative communication and keeping the seller informed regarding the progress of the transactions. The expectation of PV was that as co-listing agents she and Mr. Inglis would ensure that both parties were informed of what was happening with the Property and that if Mr. Inglis received an offer on the Property she would be informed before the offer was rejected. The expectation of Mr. Inglis was somewhat similar in that he expected that each of the agents would let each other know what was happening.

[11] The Property was listed for the price of \$1,249,000. This listing price was set following discussions between PV and Mr. Inglis. It was Mr. Inglis' view that an appropriate selling price would have been relatively close to the listing price of \$1,249,000.

[12] Mr. Inglis recalls that interest in the Property in June, 2013, was not very good due to the coming of the summer months. As a result of there being no activity on the Property the parties agreed to reduce the listing price to \$1,198,000 on July 17, 2013. It was the impression of Mr. Inglis that after this price reduction the parties were firm on achieving this purchase price.

[13] During the time that the Property was listed with Mr. Inglis and PV, Mr. Inglis worked with his nephew, WO. WO was a licensed realtor and, as such, conducted open houses and showed properties that were listed with Mr. Inglis. However, Mr. Inglis describes WO's role as more of an administrator doing paperwork and preparing listing contracts.

[14] During the summer months of 2013 WO was working with two potential buyers for the Property – PR and DV.

[15] Mr. Inglis first had direct discussions with PR after he returned from summer vacation in September 2013. It is the evidence of Mr. Inglis that PR expressed a great deal of interest in the Property but wanted to look around at other places. Mr. Inglis does not recall whether he told PV about PR but indicates that he may have told her that someone had shown interest in the Property.

[16] Mr. Inglis met with DV only once at a showing of the Property. Most of the communications with DV were by email. Many of those emails were between DV and WO through Mr. Inglis' email account.

[17] Mr. Inglis gave WO access to his email account in order to conduct business because Mr. Inglis felt that WO was young and did not receive the same type of respect that Mr. Inglis received. Therefore, WO sent correspondence through Mr. Inglis' email account. On October 2, 2013, an email was sent to DV from the email account of Trevor Inglis. Mr. Inglis denies having sent that email and contends that it was sent by WO. However, the email was signed off as "Trev Inglis". This email was the start of a series of emails with DV leading to an email dated October 4, 2013, in which DV was advised that a potential purchaser had expressed a great deal of interest in the Property. Mr. Inglis again denies having sent the email of October 4, 2013.

[18] It is difficult to accept that Mr. Inglis did not compose the emails of October 2 and October 4, 2013. The documents produced at the hearing suggest that WO had established a line of communication with DV through his own email address. There are a series of emails from August 19, 2013, between DV and WO all of which were exchanged through the email address for WO. Further, on August 19, 2013, DV received an email from Mr. Inglis' email address which had been clearly written by WO as it is signed off, "Cheers WO". It makes no sense that WO would be communicating with DV in October, 2013, under the guise of Trevor Inglis when WO had already established a professional relationship with DV.

[19] Further, the email of October 4, 2013, is signed off specifically as "Trevor" rather than WO and in the email DV is advised as follows: "

As both [WO] and I have previously mentioned, the seller is not interested in even looking at an offer below the 1.1 price.

[20] The email continues:

When I called you yesterday I had just come from the house after a second showing as a result of last weekend's open house. These clients are represented by another agent and they have shown a great deal of interest so far.

[21] The language of this email is inconsistent with it having been authored by WO and is totally consistent with it having been written by Mr. Inglis. In addition, the response sent by DV to the October 4, 2013, email indicates that DV understood that he was communicating with Mr. Inglis when he writes, "Trevor, I believe I had done my homework on price." Therefore, the Committee finds that Mr. Inglis was in fact the author of the emails of October 2 and October 4, 2013.

[22] As part of the exchange of emails on October 4, 2013, DV indicated that he was prepared to make an offer to purchase the Property for \$1,025,000. By an email sent to DV at 7:11 PM on October 4, 2013, from the email account of Mr. Inglis, DV was advised that his offer had been discussed with both the sellers and they were not interested.

[23] At 6:57 PM on October 6, 2013, Mr. Inglis sent an email to DV advising him that the potential purchasers who had previously expressed interest in the Property had made an offer which would be presented to the owners the next day.

[24] PV was notified of DV's interest in the Property by Mr. Inglis on October 5, 2013. DV also contacted PV directly. As a result of her communications with Mr. Inglis about the DV proposals and through her direct communications with DV, PV became aware that Mr. Inglis had received offers on the Property of which she was not aware. Therefore, she asked Mr. Inglis for copies of those offers. By an email dated October 10, 2013, Mr. Inglis forwarded copies of two offers to purchase the Property – one being the Huang Offer and the other bearing the name of PR.

The Huang Offer

[25] It is the evidence of Mr. Inglis that the Huang Offer appeared at an open house held by Mr. Inglis on the Property on October 6, 2013. Mr. Inglis recalls that he attended at this open house with WO. WO remained at the open house for a period of time but left before it concluded. The activity at this open house was extremely high. Mr. Inglis describes there being droves of people coming through the house on this occasion. He recalls talking to many people at the open house and being bombarded with people asking whether the owners would accept a specific figure, all of which were very low. Mr. Inglis had instructions from his client that he would not accept anything less than the asking price.

[26] During the open house Mr. Inglis was asked by an "Asian person" if he had a preprinted form of a purchase and sale contract. It was common in this period of time for Mr. Inglis to carry contract forms preprinted with his real estate firm's name, address and phone number. Mr. Inglis gave a copy of one of his preprinted contracts to the person and then went about his business at the open house.

[27] It is the evidence of Mr. Inglis that near the end of the open house he found a partially completed copy of his preprinted contract on the countertop in the kitchen (the Huang Offer) along with a business card which was situated either on top of the contract or beside it. Mr. Inglis looked briefly at the Huang Offer, put it into his briefcase and went on to another appointment.

[28] The business card that Mr. Inglis found on the countertop next to or on top of the offer was the business card of AW. AW is a licensed real estate agent with Century 21 In Town Realty.

[29] Mr. Inglis testified that later in the evening of October 6, 2013, he telephoned his client to let him know what had transpired. Mr. Inglis' evidence is that he advised his client that he had an offer and told him the numbers. Mr. Inglis recalls that the proposed purchase price on the offer was not acceptable to his client. However, Mr. Inglis' client did not testify at the hearing.

[30] The evidence of Mr. Inglis is that he noticed that the Huang Offer was a strange offer in that it was not written properly. The offer was incomplete because it did not have the sellers' name on the form and because his real estate company was noted on the top of the offer.

[31] It is the evidence of Mr. Inglis that when he found the Huang Offer it already contained the name of the buyer, the address and legal description of the Property, the purchase price, the deposit details and the completion details. However, he and his real estate firm were incorrectly identified as the party that prepared the offer and the buyer's address and real estate agent had been omitted.

[32] Mr. Inglis admits that when he was asked by PV to produce a copy of the offers that he had received on the Property, he altered the Huang Offer. Mr. Inglis explained that he altered the Huang Offer because he did not want PV to think that the offer was coming from him. He chose to alter the Huang Offer rather than send the document without alteration to PV with an explanation as to how he came into possession of it.

[33] Because the business card of AW was found in the vicinity of the Huang Offer, Mr. Inglis assumed that the offer had been written by AW. Therefore, Mr. Inglis used whiteout to remove his real estate firm's name and contact information from the Huang Offer and replaced it with AW's firm name and contact information. Mr. Inglis also inserted an address for the buyer as "c/o Century 21 Realty In Town" and inserted the name "AW" as the real estate agent.

[34] In addition, Mr. Inglis wrote "unacceptable" diagonally across each page of the Huang Offer.

[35] Mr. Inglis altered the Huang Offer without contacting AW to verify that he was the realtor who had left the offer at the open house. Further, Mr. Inglis does not recall contacting AW to advise him that the Huang Offer was not acceptable. Had he done so, he would have discovered that AW was not the realtor who presented the offer.

[36] AW is a licensee with Century 21 In Town Realty. He has been licensed as a realtor since 2007. AW testified that he does not recall attending an open house on the Property and does not recall having a client by the name of Huang. AW first heard about the Huang Offer when he was contacted by the listing agent whose name he could not recall. He was advised by the listing agent that an offer had been received from him on the Property. As AW did not recall drafting an offer on the Property, he asked the listing agent to send him a copy of the offer. When he saw the Huang Offer it was confirmed for AW that he had not written the offer because it was not in his handwriting.

[37] AW testified that the listing agent who contacted him was a male. This is not consistent with PV's evidence that she contacted AW when she received the Huang Offer from Mr. Inglis. It is suggested on behalf of Mr. Inglis that based on this inconsistency, it could have been Mr. Inglis who contacted AW about the offer. However, there is no evidence from Mr. Inglis that he in fact contacted AW at any time. From this evidence, it is not possible to conclude that Mr. Inglis was the person who contacted AW about the Huang Offer.

[38] The only finding of fact that can be made based on the evidence of AW is that he was not the realtor who wrote the Huang Offer.

The PR Offer

[39] The other "offer" that was delivered to PV by Mr. Inglis on October 10, 2013, was a Contract of Purchase and Sale dated October 9, 2013, signed by PR. It is Mr. Inglis' evidence that in and around the time of the open house he was in discussions with PR about purchasing the Property. However, no final instructions were given by PR to submit an offer at a specific price. Mr. Inglis indicates that PR had given him a specific price that he was considering. While Mr. Inglis could not recall the specific number he believes it was something like \$1,185,000. Mr. Inglis was instructed by PR to write an offer to purchase the Property without a specific purchase price. It is Mr. Inglis' evidence that PR signed the offer to purchase and instructed Mr. Inglis to hold it until they had a meeting later that day or evening. However, a further meeting did not occur to finalize the offer to purchase.

[40] Mr. Inglis believes that on the day following the date on which PR signed the offer to purchase he was advised by PR that he had decided to purchase property elsewhere and that there would not be an offer made on the Property.

[41] Mr. Inglis referred to PR's prospective offer as an actual offer because he says he felt very confident that PR wanted to buy the Property and that a formal offer would be forthcoming.

Phone Message of February 20, 2014

[41] When PV received the offers to purchase from Mr. Inglis, she observed that the Huang Offer was unusual. Therefore, she consulted with her managing broker, AS. AS sought direction from the Council on how to deal with this matter. As a result of AS's enquiries an investigation was conducted by the Council.

[42] Mr. Inglis was advised of the Council's investigation into his conduct by a letter from the Council dated February 14, 2014. After receiving notification that an investigation was being conducted by the Council Mr. Inglis called PV. He left her a telephone message in which he expressed disappointment with PV because she had filed a complaint in connection with Mr. Inglis' conduct. In that telephone message he threatened that he would blackball PV and that he would never process any one of PV's offers.

[43] Mr. Inglis explains that when he left the message for PV on February 20, 2014, he had just learned that there had been a complaint against him about the Huang Offer. He says he was caught off guard and was very upset when he left the message.

Analysis

[44] It is alleged that Trevor Inglis committed professional misconduct within the meaning of Section 35 of the Act while acting as a co-listing agent for the seller of the Property by:

- (a) engaging in deceptive dealing by fabricating a document or altering a document (the Huang Offer) to create what he asserted was an offer to purchase the Property contrary to s. 35(1)(c) of the Act;
- (b) engaging in deceptive dealing by making a false statement to his co-listing agent when he advised her on February 20, 2014, that the Huang Offer had been handed to him by a person attending an open house on October 6, 2013, contrary to s. 35(1)(c) of the Act; and,

- (c) making a false statement to the Council when he stated that the penmanship on the Huang Offer was not his writing contrary to s. 35(1)(g) of the Act.

[45] It has also been alleged that Mr. Inglis committed conducted unbecoming a licensee within the meaning of s. 35(2) of the Act by threatening retaliation against his co-listing agent for making a complaint against him by:

- (a) stating that he would not ever do any deals with or process any offer presented to him by his co-listing agent; and
- (b) threatening to blackball his co-listing agent.

Statutory Framework

[46] Section 35(1) of the Act provides that a licensee commits professional misconduct if the licensee:

- (a) does anything that constitutes wrongful taking or deceptive dealing; or,
- (b) makes or allows to be made any false or misleading statement in a document that is required or authorized to be produced or submitted under this Act.

[47] There is no allegation against Mr. Inglis that he did anything that constituted a wrongful taking. The allegations of professional misconduct are confined to the allegation that Mr. Inglis' conduct constituted deceptive dealing and that Mr. Inglis made a false or misleading statement in a document.

[48] Deceptive dealing in relation to a person providing real estate services as a licensee is defined by the Act as follows:

- (a) an intentional misrepresentation, by word or conduct, or in any other manner, of a material fact in relation to real estate services, or in relation to a trade in real estate to which the real estate services relate, or intentional omission to disclose such material fact, or
- (b) a course of conduct or business that is intended to deceive a principal about the nature of the real estate services, or about the nature of a trade in real estate to which the real estate services relate.

[49] Real estate services are defined in the Act as “trading services.” Trading services are defined as including the service of presenting offers to dispose of or acquire real estate.

[50] Section 35(2) of the Act provides that a licensee commits conduct unbecoming a licensee if the licensee engages in conduct that, in the judgement of the Discipline Committee:

- (a) is contrary to the best interests of the public;
- (b) undermines public confidence in the real industry, or
- (c) brings the real estate industry into disrepute.

Burden and Standard of Proof

[51] The parties agree that the burden of proof is upon the Council to prove the allegations against Mr. Inglis on a balance of probabilities. However, there is some disagreement on the standard of proof that is required in this case.

[52] The Supreme Court of Canada in *Jory v. College of Physicians and Surgeons of British Columbia*, [1995] B.C.J. No. 320 established the standard of proof that a professional regulatory body must apply when deciding cases that have consequences for a professional person’s career and status in the community. The Supreme Court of Canada in *Jory* held that the standard of proof required in these cases is high but is not the criminal standard of proof of beyond a reasonable doubt. The Court held that the standard of proof is something more than a bare balance of probabilities but is proof by a fair and reasonable preponderance of credible evidence.

[53] In a more recent decision, the Supreme Court of Canada took a slightly different approach to the analysis of the standard of proof. In *F.H. v. McDougall*, 2008 SCC 53, the Court considered the standard of proof when considering allegations of sexual assault in a civil action.

[54] The Court in *F.H.* recognized different approaches taken to the standard of proof in such cases involving allegations of fraud, professional misconduct and sexual assault. The analysis by Justice Rothstein reviewed the various approaches that had been adopted by the courts across the country and concluded as follows:

“Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on the balance of probabilities. Of course, context is all important and a judge should not be unmindful,

where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. I am of the respectful opinion that the alternatives I have listed above should be rejected for the reasons that follow.”

[55] Justice Rothstein, goes on to provide the following guidance in reaching conclusions on the evidence:

“In my view, the only practical way in which to reach a factual conclusion in a civil case is to decide whether it is more likely than not that the event occurred.

To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases evidence must be scrutinized with care by the trial judge.

Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency.”

[56] Based upon the two decisions from the Supreme Court of Canada on the standard of proof, we conclude that the onus upon the Council is to prove the allegations against Mr. Inglis on a balance of probabilities based on evidence that is clear, convincing and cogent.

Did Mr. Inglis Fabricate or Alter the Huang Offer?

[57] AW denies that he wrote the Huang Offer and denies that the handwriting on the Huang Offer is his. There is no evidence that suggests otherwise.

[58] Mr. Inglis admits that he altered the Huang Offer by applying whiteout to portions of the Huang Offer that contained the contact information for himself and his realty firm. He replaced that information with the information he took from the business card for AW that he found on the counter following the open house of October 6, 2013. Mr. Inglis also admits that he was the person who wrote “unacceptable” diagonally across each page of the Huang Offer. However, Mr. Inglis denies that he made any other changes to the Huang Offer and denies that he wrote any other information on the Huang Offer.

Inconsistencies in the Evidence of Trevor Inglis

[59] At various points following the open house of October 6, 2013, Mr. Inglis has given different versions of how the Huang Offer came into his possession and what information it contained when he found it. These versions are inconsistent with the testimony of Mr. Inglis at the hearing.

[60] The evidence of Mr. Inglis at the hearing was that he had given a copy of his preprinted form of Purchase and Sale Contract to an “Asian person” at the open house. Near the end of the open house he found a copy of his preprinted contract on the countertop in the kitchen of the house along with AW’s business card. However, when Mr. Inglis called and left a message for PV on February 20, 2014, his message indicated that the Huang Offer was handed to him by a person at the open house. The contents of Mr. Inglis’ telephone message to PV were recorded and then later transcribed. A transcription of that telephone message was tendered as evidence in the hearing and Mr. Inglis admits that the transcription of the message is accurate.

[61] Mr. Inglis testified at the hearing that he did not alter the Huang Offer until October 10, 2013, when PV requested copies of the offers he had received on the Property. However, a written response to the Council prepared by his legal counsel on February 5, 2015, indicates that Mr. Inglis made the alterations to the Huang Offer at the end of the day and before he contacted his client in the evening of October 6, 2013. While this response of February 5, 2015, is written by his legal counsel, Mr. Inglis admits that he “vetted” the response as it was being sent to the Council. Mr. Inglis attempts to explain this inconsistency by suggesting that he did not vet the response properly.

[62] The testimony of Mr. Inglis at the hearing was that he inserted the name of AW into the Huang Offer. However, in his written response to the Council of March 7, 2014, Mr. Inglis stated that “an offer bearing the name of AW was left on the counter of XXXX Graveley during an open house held October 6, 2013”.

[63] Further, in his written response to the Council, Mr. Inglis denies that the “penmanship” on the Huang Offer was his. Again this is contradicted by his admission that he did in fact insert and alter the information in the Huang Offer prior to delivering a copy to PV.

[64] When questioned about his written response of March 7, 2014, being inconsistent with his evidence at the hearing, Mr. Inglis denied having personally written the response and testified that his nephew, WO, wrote it under his instructions. However, Mr. Inglis confirmed that he gave WO

instructions on what to write and that he looked at the response and approved it before it was sent. Mr. Inglis says that in hindsight he should have looked at it more carefully before it was sent off.

[65] Mr. Inglis also suggests that the reference to “penmanship” in the response was WO’s wording and not his own. He explains that he thought the term “penmanship” referred to the body of the contract rather than the alterations that he made to the Huang Offer. However, this does not explain why his response indicates that an offer “bearing the name of AW” was left on the countertop of the Property when his evidence at the hearing was that he inserted the name of AW on the contract document in place of his own name.

[66] Mr. Inglis attempts to lay the blame for the content of this response on WO. However, Mr. Inglis accepts that he should have dealt with this more seriously and suggests that he really did not think anything of it. WO did not testify at the hearing. Therefore, the Committee heard no evidence about what WO meant when he used the term, “penmanship”.

[67] Mr. Inglis testified that the allegations against him were very upsetting. He felt that the investigation was questioning his integrity and that he wanted to have his name cleared. He recognized that this matter was a serious issue yet he indicates that he really did not think anything of it when he reviewed the response that had been prepared by WO on his behalf.

[68] The inconsistencies and contradictions in the evidence of Mr. Inglis are related to material facts in the allegations against him. They relate to how the Huang Offer came into existence and how it came into the possession of Mr. Inglis. These material contradictions lead to the conclusion that Mr. Inglis is not a reliable witness. As a result, his testimony is not credible. Accordingly, little weight is given to Mr. Inglis’ denial that he fabricated the Huang Offer.

Evidence of Dan Purdy

[69] The Council relies upon the opinions of a handwriting expert, Dan Purdy. Mr. Purdy’s analysis and opinions are contained in a report dated May 27, 2014. No objections were made to Mr. Purdy’s qualifications as an expert in the area of handwriting analysis. Therefore, Mr. Purdy was accepted as an expert in the area of forensic document examination.

[70] Mr. Purdy was retained to examine the handwriting in the Huang Offer and to compare it to specimen handwriting written by Mr. Inglis. The purpose of Mr. Purdy's analysis was to determine whether the handwriting in the Huang Offer was that of Mr. Inglis.

[71] Mr. Purdy explains the different levels of certainty employed by forensic document examiners to describe their level of confidence when reaching conclusions.

- (a) The top level of certainty is defined as "Identification". This level of confidence is the upper limit of certification. In this classification the document examiner is said to have no reservations whatsoever that the writer of the specimen handwriting wrote the handwriting in question.
- (c) The next level of certainty is defined as "Highly Probable". For this certification document examiners consider the evidence to be very persuasive. However, some features or qualities of the questioned writing may be missing so an opinion of "Identification" is not justified.
- (d) The third level of certainty is defined as "Probable". This level certainty is used in cases where the evidence is rather strong but certain features within the questioned writing are not represented in the specimens. Other limitations present in this level of certification may be instances when the writing lacks individuality, when the questioned or specimen writing are disguised, or when the original documents are unavailable.
- (e) The fourth level of certainty is defined as "Indications". This definition is appropriate when the evidence falls short of the "Probable" degree of confidence. This is considered to be an investigative lead but not capable of sustaining a meaningful conclusion.
- (f) The lowest level of certainty is defined as "Inconclusive". This category is used when the document examiner cannot say if the suspected writer wrote the questioned handwriting or not.

[72] After analyzing the Huang Offer, Mr. Purdy concludes that Mr. Inglis "Probably" wrote the questioned handwriting on the Huang Offer. Mr. Purdy provides further insight into his classification of

“Probable” by saying that he is 80% to 85% confident that Mr. Inglis wrote the handwriting contained in the Huang Offer.

[73] In reaching his conclusion Mr. Purdy considered the features in his analysis that are problematic. Those problem areas considered by Mr. Purdy were as follows:

- (a) the copy of the Huang Offer given to Mr. Purdy for analysis was a “multigenerational” document. A multigenerational document is one that has been copied multiple times. Multigenerational documents give rise to artifacts which are marks on the document that may not have appeared on the original document. It is also more difficult to assess pen pressure, diagonal pen strokes and line quality on multigenerational documents making it difficult to assess fine details in the structural elements of the writing;
- (b) because the Huang Offer appeared to have been written in felt-tipped pen, some of the structural details of the handwriting may have been masked;
- (c) some parts of the Huang Offer were overwritten and obscured by the word “unacceptable” written diagonally across the document;
- (d) there was a limited amount of writing on the Huang Offer; and,
- (e) Mr. Purdy would have preferred to have had more handwriting specimens containing similar words and letter combinations to those appearing in the Huang Offer.

[74] Notwithstanding these shortcomings which were highlighted by cross-examination, Mr. Purdy was still able to provide the conclusion that the Huang Offer was probably written by Mr. Inglis. At no time during his cross-examination was Mr. Purdy asked whether these shortcomings altered his opinions.

[75] On behalf of Mr. Inglis it was submitted that Mr. Purdy’s opinion should only be accorded limited weight as a result of the shortcomings in his analysis. In support of this submission, counsel for Mr. Inglis relies upon *R. v. Bath*, 2011 BCSC 1726. In that case the defendant was charged with a criminal offence in which the standard of proof is proof beyond a reasonable doubt.

[76] The Court considered the opinions of a handwriting expert in the context of a criminal charges for fraud and money laundering. The Court held that the “non-conclusive” opinion of a handwriting

expert was not sufficient on its own to convict the accused. Therefore, the opinion was given only limited weight. In this case the standard of proof is proof on a balance of probabilities. Therefore, *R. v. Bath* is distinguished on that basis.

[77] It is submitted on behalf of Mr. Inglis that it is improbable that Mr. Inglis fabricated the Huang Offer because:

- (a) Mr. Inglis had no obvious motive to do so;
- (b) Mr. Inglis did nothing with the Huang Offer other than inform DV and PR that he had received it; and,
- (c) if Mr. Inglis were to have fabricated the Huang Offer, as a realtor of 30 years' experience, he would have done a better job with the fabrication by:
 - (i) not using a preprinted form requiring the application of whiteout;
 - (ii) completing the form completely and not leaving out information; and
 - (iii) inserting the name of someone other than a real and easily locatable person such as AW.

[78] The conduct of Mr. Inglis must be measured in the context of the circumstances in which he found himself on October 10, 2013. By that time Mr. Inglis had made representations to DV, PR and PV that offers on the Property had been received.

[79] On October 6, 2013, Mr. Inglis delivered an email to DV at 6:57 PM. In that email he indicated to DV that he had an offer for the Property that he was going to present the next day. On October 7, 2013, Mr. Inglis received an email from DV indicating that DV was going to approach PV to submit an offer on the Property.

[80] As of October 10, 2013, Mr. Inglis did not have an offer from PR as the offer form that was in the possession of Mr. Inglis did not include a price and Mr. Inglis had no instructions from PR to present an offer.

[81] PV found out about other offers on the Property from DV and contacted Mr. Inglis to request copies of those offers. However, Mr. Inglis had no offers to present to PV.

[82] Accordingly, the motivation for Mr. Inglis to alter or fabricate the Huang Offer was the desire to produce an offer to PV in order to create the impression that his representation about receiving offers on the Property was true.

[83] The fact that Mr. Inglis did not do a very thorough job in completing the Huang Offer is not convincing evidence that he would not have done so. The testimony of Mr. Inglis and his careless attitude when responding or instructing others to respond to the allegations made in this complaint are indicative of Mr. Inglis' lack of attention to detail. Mr. Inglis expected that the purchase price in the Huang Offer would not be acceptable because he understood that the owners were adamant that they were firm on receiving the listing price. Therefore, Mr. Inglis would not have expected the Huang Offer to have been taken seriously and would not have expected that it would be the subject matter of an investigation by the Council.

[84] The only reliable evidence related to the authorship of the Huang Offer presented at the hearing was that of Dan Purdy. Mr. Purdy considered the shortcomings of his analysis in his report and he readily acknowledged those shortcomings in cross-examination. Mr. Purdy's evidence that he is 80% to 85% certain of his conclusion that Mr. Inglis wrote the Huang Offer was not challenged.

[85] In the context of this case in which the handwriting expert is 80% to 85% certain that Mr. Inglis wrote the Huang Offer and Mr. Inglis' denial that he fabricated the Huang Offer is not credible, the Committee concludes that there is clear and cogent evidence that the Huang Offer was written by Mr. Inglis. Therefore, the Committee finds that the Huang Offer was fabricated by Trevor Inglis.

[86] Even if the conclusions of Mr. Purdy are not accorded any weight, Mr. Inglis has admitted that he altered the Huang Offer. Therefore the Committee also concludes that Mr. Inglis altered the Huang Offer by inserting the information of the realtor, AW.

Was the Fabrication or Alteration of the Huang Offer Deceptive Dealing?

[87] Having found that Mr. Inglis fabricated or altered the Huang Offer, the Committee must consider whether the fabrication or the alteration was deceptive dealing. In order to constitute deceptive dealing as defined by the Act, the fabricated or altered Huang Offer must have been an intentional misrepresentation of a material fact in relation to real estate services.

[88] Real estate services in the context of this case includes presenting offers to dispose of or acquire real estate.

[89] Mr. Inglis argues that his conduct was not an intentional misrepresentation or a misrepresentation of a material fact. On this issue Mr. Inglis presented no argument that his conduct was outside the scope of providing real estate services.

[90] The fabrication or alteration of the Huang Offer in itself was not a misrepresentation. It only became a misrepresentation when Mr. Inglis delivered the Huang Offer to PV.

[91] Mr. Inglis fabricated or altered the Huang Offer in order to create the impression that an offer had been received on the Property. There can be no other reason for Mr. Inglis to have delivered the Huang Offer to PV. In fact he represented to PV that this was an offer that had been received by him on the Property.

[92] If Mr. Inglis found the Huang Offer at the open house, he should have related the true state of affairs to PV. He should have provided her with the incomplete Huang Offer without alteration and with an explanation that the offer was found on the countertop at the open house, that he did not know if it was presented by a realtor and that he found AW's business card in close proximity to the document. However, Mr. Inglis says he did not present the Huang Offer as it was found because he was concerned that PV would think he was trying to "double end" the deal.

[93] It is submitted on behalf of Mr. Inglis that when he delivered the Huang Offer to PV, Mr. Inglis honestly believed that the offer was presented by the realtor, AW. The Committee is not prepared to accept this submission. Mr. Inglis did not know whether the Huang Offer was presented by AW. He does not recall taking any steps to contact AW to confirm that the offer had in fact been presented by him and he took no steps to contact AW to advise him that the offer was not acceptable. If Mr. Inglis

believed that AW wrote the Huang Offer, at the very least he would have contacted AW to advise him that the offer was not acceptable.

[94] Therefore, the Committee finds that Mr. Inglis intentionally misrepresented the facts when he delivered the Huang Offer to PV to create the impression that he had received a legitimate offer from a third party.

[95] The next question for the Committee is whether the fact that an offer had been received is a material fact. The Committee concludes that the fact that an offer had been received on the Property was a fact material to the parties to this transaction.

[96] There was an agreement between PV and Mr. Inglis that they would keep each other informed about offers received on the Property. The amount of interest shown in the Property is an important factor in the marketing efforts of both Mr. Inglis and PV. In addition, the price offered for the Property must be an important fact to the sellers.

[97] Counsel for Mr. Inglis argues that the changes that Mr. Inglis admits to making were not material because they did not alter any material term of the offer. However, the definition of deceptive dealing refers to a "material fact" which has a much broader scope than a material term of the offer.

[98] It is further submitted on behalf of Mr. Inglis that the alterations admitted to by Mr. Inglis were not material because they were only changes relating to the identity of the buyer's agent. The Committee is not prepared to accept this submission because the identity of the realtor who presented the offer provides the contact point for further negotiations, if any. It also provides the contact point for delivery of the acceptance of the offer, if accepted. Further, Mr. Inglis must have considered the alterations to have been material because he made the alterations so as to avoid having PV think that he was double ending the deal. For Mr. Inglis to make the alterations for that purpose indicates that they were material.

[99] The Committee concludes that in the context of this case, whether an offer had been presented to Mr. Inglis at the open house was a material fact to the parties. Therefore, it is the conclusion of the Committee that by fabricating the Huang Offer and presenting it to PV, Mr. Inglis engaged in deceptive dealing.

[100] Even if Mr. Inglis only altered the Huang Offer as admitted by him, the Committee finds that delivery of the altered offer to PV constitutes deceptive dealing.

[101] Having found that the delivery of a fabricated or altered Huang Offer to PV constitutes deceptive dealing, the Committee concludes that Mr. Inglis committed professional misconduct under the Act.

Was the Statement in the Telephone Message to PV Deceptive Dealing?

[102] On or about February 20, 2014, Mr. Inglis left a voicemail message for PV in which he advised PV that the Huang Offer was handed to him at the open house. Mr. Inglis explains that this voicemail message was left by him shortly after he was advised that the Council was investigating him with respect to his involvement in the Huang Offer. He says that when he left the message he was extremely upset. He explains that he did not have any time to think about it but picked up the phone and went into a terrible rant.

[103] Mr. Inglis admits at the hearing that his statement that the Huang Offer was handed to him at the open house was not accurate. Therefore, the Committee finds that this statement was false.

[104] Counsel for Mr. Inglis submits that this false statement does not constitute deceptive dealing because:

- (a) it was not an intentional misrepresentation;
- (b) it was not a misrepresentation of a material fact; and
- (c) it was not made while he was providing real estate services.

[105] The Committee appreciates that Mr. Inglis may have been extremely upset when he left the telephone message. However, by that time he had already fabricated and delivered the Huang Offer to PV.

[106] When Mr. Inglis made the statement that the Huang Offer was handed to him, he knew that was untrue. He also knew that the Council was investigating his conduct and he knew that if he told PV what really happened he would be admitting improper conduct. Therefore, the Committee concludes that Mr. Inglis made this statement with the intention of perpetuating the story that he had begun when he delivered the Huang Offer to PV on October 10, 2013.

[107] The Committee further finds that the statement is a misrepresentation of a material fact because it was intended to perpetuate the impression that the Huang Offer was a legitimate offer.

[108] However, the Committee is not satisfied that the statement was made while Mr. Inglis was providing real estate services. The definition of “deceptive dealing” in the Act is limited by the phrase “in relation to a person providing real estate services as a licensee”. Therefore, in order to constitute deceptive dealing, the conduct of Mr. Inglis must be related to the provision of real estate services.

[109] Real estate services are defined in the Act as trading services. Trading services are defined as follows:

“trading services” means any of the following services provided to or on behalf of a party to a trade in real estate:

- (a) advising on the appropriate price for the real estate;
- (b) making representations about the real estate;
- (c) finding the real estate for a party to acquire;
- (d) finding a party to acquire the real estate;
- (e) showing the real estate;
- (f) negotiating the price of the real estate or the terms of the trade in real estate;
- (g) presenting offers to dispose of or acquire real estate;
- (h) receiving deposit money paid in respect of real estate.

[emphasis added]

[110] In order to constitute real estate services, the conduct must relate to services “provided to or on behalf of a party to a trade in real estate”. At the time that Mr. Inglis made the false statement, he was not providing services to or on behalf of a client or party to a real estate transaction. His statement was made in response to the discovery that he was being investigated for the Huang Offer and was made to the person who he assumed instigated the investigation. It was a statement made on his own behalf and not on behalf of a party to a real estate transaction.

[111] Therefore, the Committee finds that the false statement made by Mr. Inglis to PV on February 20, 2014 did not constitute deceptive dealing or professional misconduct.

Did Mr. Inglis Commit Professional Misconduct by making a False or Misleading Statement to the Council?

[112] It is alleged that Mr. Inglis made a false statement to the Council in his May 7, 2014, written response to these allegations. In particular, the Council alleges that Mr. Inglis falsely stated in his response that the “penmanship on the offer is not my own”.

[113] Section 35(1)(g) of the Act provides that a licensee commits professional misconduct if the licensee makes or allows to be made any false or misleading statement in a document that is required or authorized to be produced or submitted under this Act.

[114] Mr. Inglis submits that his statement about penmanship in his response of March 7, 2014, does not constitute professional misconduct because:

- (a) it was not false or misleading; and,
- (b) the statement was not a document required or authorized to be produced or submitted under the Act.

[115] It should be noted that the allegation against Mr. Inglis is that he made a false statement in his response. There is no allegation that the statement was simply misleading.

[116] Given the Committee’s finding that Mr. Inglis fabricated the Huang Offer, the logical conclusion is that the statement about penmanship in Mr. Inglis’ response is false.

[117] In order for the statement to constitute professional misconduct, it must have been made in a document required or authorized to be produced or submitted under the Act.

[118] It is submitted on behalf of Mr. Inglis that the March 7, 2014, response letter to the Council was not required or authorized under the Act. Counsel for Mr. Inglis submits that the published decisions of the Disciplinary Committee concerning violations of s. 35(1)(g) of the Act relate to statements made on license applications. It is argued that s. 35(1)(g) does not apply to documents submitted to the Council in response to allegations of professional misconduct.

[119] Section 37 of the Act empowers the Council to conduct an investigation into whether a licensee has committed professional misconduct or conduct unbecoming a licensee. Section 37 provides that a person carrying out the investigation may “require” a licensee to answer inquiries relating to the

investigation. Section 37(4) also provides that a licensee must not withhold, destroy, conceal or refuse to provide any information or thing reasonably required for the purpose of an investigation.

[120] By letter to Mr. Inglis dated February 14, 2014, the Council advised Mr. Inglis that it had commenced an investigation into his conduct as a licensee. Mr. Inglis was given the information upon which the investigation was based and was advised that the investigation was being conducted under s. 37(1) of the Act. In that same letter, Mr. Inglis was asked to provide a “typewritten, detailed, statement” of his involvement in, and knowledge of, the events that had given rise to the investigation. He was asked to specifically address two aspects of the allegations set out in the letter.

[121] Counsel for Mr. Inglis makes the point that by using the phrase “please provide a typewritten, detailed, statement” in the letter, the Council was simply requesting the information and not making it a requirement. Using the phrase “please provide” does not make it any less a document required or authorized by the Act. It appears clear in the letter of February 14, 2014, that the Council required a response to the allegations from Mr. Inglis in order to complete its investigation. By virtue of s. 37 of the Act, the investigator is authorized to require a person to answer inquiries relating to the investigation. In this particular case the investigator requested answers from Mr. Inglis in written form. Therefore, by responding to this request, Mr. Inglis created a document that was authorized by the Act.

[122] Accordingly, the Committee finds that the response of Mr. Inglis dated March 7, 2014, was a document required or authorized to be produced or submitted under the Act in which Mr. Inglis made or allowed to be made a false statement. Therefore, the Committee finds that Mr. Inglis committed professional misconduct when he submitted his response of March 7, 2014.

Did Mr. Inglis Commit Conduct Unbecoming a Licensee by Threatening Retaliation Against PV?

[123] On February 20, 2014, Mr. Inglis called PV and left her a message in which he stated “so if you really want to get blackballed you’ve gone to the right person because trust me I wield a bigger bat than you do”. The message to PV continues by Mr. Inglis stating “so you’re off my books as far as ever doing a deal. I will never, ever, ever, process one of your offers ever. So you’re done” .

[124] Mr. Inglis has admitted that he made those statements to PV in his telephone message on February 20, 2014.

[125] Based on these facts, Mr. Inglis has admitted that he committed conducted unbecoming a licensee within the meaning of s. 35(2) of the Act in leaving a message for PV threatening retaliation against her for making a complaint to the Council.

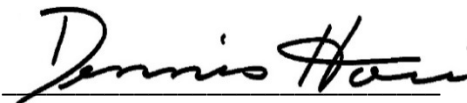
[126] Based upon the admission of Mr. Inglis, the Committee finds that Mr. Inglis has committed conduct unbecoming a licensee by threatening retaliation against PV.

Summary

[127] In summary, the Committee concludes as follows:

1. Trevor William Maxwell Inglis committed professional misconduct by:
 - (a) engaging in deceptive dealing by fabricating or altering the Huang Offer and asserting that it was an offer on the Property; and
 - (b) making a false statement to the Council in his response to the allegations made against him when he denied that the “penmanship” in the Huang Offer was his; and
2. Trevor William Maxwell Inglis committed conduct unbecoming a licensee when he threatened retaliation against his co-listing agent for making a complaint against him to the Council.
3. The statement made by Trevor William Maxwell Inglis to his co-listing agent that the Huang Offer was handed to him on October 6, 2013, at an open house at the Property does not constitute professional misconduct and, as a result, this allegation is dismissed.

Dated August 22, 2018


Dennis K. Hori, Q.C.



Len Hrycan



Sukh Sidhu