

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*  
S.B.C. 2004, c. 42 as amended  
AND IN THE MATTER OF  
SHAHIN BEHROYAN  
AND  
SHAHIN BEHROYAN PERSONAL REAL ESTATE CORPORATION**

**DECISION REGARDING LIABILITY**

DATE AND PLACE OF HEARING: September 13, 14 and 15, 2017  
Office of the Real Estate Council  
Vancouver

DISCIPLINE HEARING COMMITTEE: Barry Long, Chair  
Tom Styffe, Committee Member  
Len Hrycan, Committee Member

ALSO PRESENT: Jean P. Whittow Q.C. – Solicitor for the Real Estate Council  
John Shields - Solicitor for the Respondent  
Shahin Behroyan - Respondent

WITNESSES: [REDACTED]

**INTRODUCTION**

- [1] On September 13-15, 2017, the Real Estate Council of British Columbia ("RECBC") convened a disciplinary hearing to determine whether Shahin Behroyan, an agent licensed under the *Real Estate Services Act*, SBC 2004, c. 42 ("*RESA*"), committed professional misconduct within the meaning of s. 35 of *RESA*.
- [2] The allegations of misconduct focus principally on the payment of a \$75,000 bonus to Mr. Behroyan in conjunction with a sale of a property in West Vancouver that was completed on January 30, 2015. The particulars of the misconduct are set out in seven allegations contained in the Amended Notice of Discipline Hearing at Appendix I.

**EVIDENCE**

**I - BACKGROUND**

- [3] Mr. [REDACTED] owned a property located at [REDACTED] Kings Avenue, West Vancouver. The property was purchased in about 2008 and consisted of a new home on a corner lot. The house was originally occupied by Mr. [REDACTED], his wife

Mrs. [REDACTED] and their four children. Mr. [REDACTED] died in October 2013 and left the property to Mrs. [REDACTED]

- [4] After Mr. [REDACTED] passed away, Mrs. [REDACTED] found the property too large for herself as her children were no longer living in the home. She decided to sell the property. The sale was handled by her son Mr. [REDACTED]. He acted on her behalf under the authority of an enduring power of attorney.
- [5] The property is located on the corner of Kings Avenue and 21st Avenue in West Vancouver. 21st Avenue is an access road to the Upper Levels Highway in West Vancouver and has increased traffic volume compared to Kings Avenue.
- [6] Mr. [REDACTED] initially engaged Mr. [REDACTED] to handle the sale in May 2014. The property was listed for \$2,998,000, but there were no offers over the next several months. There was some pressure to sell the property due to cash flow problems and a mortgage had fallen into arrears at some point prior to the sale of the property.
- [7] In an effort to generate more interest in the property, Mr. [REDACTED] offered to co-list it with a second realtor in the hopes that this might lead to a sale. He supplied the names of three agents for Mr. [REDACTED] consideration. One of these was Mr. Behroyan.
- [8] Mr. [REDACTED] decided to use Mr. Behroyan. However, Mr. Behroyan was unwilling to share the listing with Mr. [REDACTED] and the parties subsequently agreed that Mr. Behroyan would become the exclusive listing agent. Mr. [REDACTED] advised Mr. Behroyan that Mr. [REDACTED] would be owed some of the sales commission when the property eventually sold to compensate him for the work that he had done.
- [9] On September 22, 2014, Mr. [REDACTED] entered into a new listing agreement with Re/Max Master's Realty with Mr. Behroyan as the designated agent. The listing price was \$2,850,000. Mr. Behroyan's commission was negotiated and settled at 7 percent on the first \$100,000 and 2.5 percent on the balance.
- [10] Despite the lower price and change of agents, there were no offers of purchase. Mr. [REDACTED] decided to reduce the price of the property again. On October 27, 2014, he signed a second listing agreement with Mr. Behroyan with a price of \$2,698,000. All other terms in the listing contract remained the same.
- [11] It is at this point that the evidence diverges dramatically as to what next occurred. The differing accounts are set out in the summary of evidence below. However it is agreed that on November 11, 2014, Mr. [REDACTED] accepted an offer to purchase the property from Mr. [REDACTED] and Mrs. [REDACTED] for the listed price of \$2,698,000. On the same date, Mr. [REDACTED] signed two documents that authorized the payment of a \$75,000 bonus in addition to the previously agreed commission. This more than doubled the total commission from \$68,378.57 to \$143,378.57. One of the documents provided that the bonus would be paid to the brokerage. The other document authorized the bonus be paid solely to Mr. Behroyan.
- [12] The contract of purchase and sale had a completion date of January 30, 2015. Prior to completion Mr. [REDACTED] obtained legal advice that raised issues as to whether he was

obliged to pay the bonus. However, the sale was completed, although under formal protest by Mr. [REDACTED] as to his obligation to pay the bonus.

- [13] In April 2015 Mr. [REDACTED] made a formal complaint about the bonus to the RECBC on behalf of his mother. Mrs. [REDACTED] commenced an action against Mr. Behroyan for recovery of the bonus and other damages in May 2015.
- [14] It is the events between October 27, 2014 and November 11, 2014 that are at the heart of the RECBC's allegations of misconduct.

## II - EVIDENCE AT THE HEARING

A - [REDACTED]

- [15] Mr. [REDACTED] testified that after relisting the property on October 27, 2014, he had no further communications with Mr. Behroyan until Friday, November 7, 2014 when he received a text message from Mr. Behroyan. The message (Exhibit 12) said "Call me" and is recorded as sent at 1:03 p.m.
- [16] Mr. [REDACTED] was occupied at a staff lunch when the message arrived and was unable to call Mr. Behroyan immediately. When he spoke with Mr. Behroyan shortly thereafter, Mr. Behroyan told him that he had obtained a full price offer, but the buyer's agent wanted a bonus of \$100,000 in order to present the offer. Mr. Behroyan did not disclose the names of the agent or the prospective buyer. Mr. [REDACTED] said that he was pleased about the offer, but shocked about the demand for the bonus. He told Mr. Behroyan that it was a lot of money and that he wanted to think about it. He said that he would talk to his family and then get back to Mr. Behroyan.
- [17] Mr. [REDACTED] called his mother and brother. He said the gist of their conversation was that the property had started out at \$3,000,000, was now down to \$2,698,000, and a further \$100,000 for a bonus was a lot of money. If there was no other buyer for the property and no way to not pay the bonus, Mr. [REDACTED] should accept the offer. However, he should try to lower the bonus as much as he could.
- [18] Mr. [REDACTED] testified that at this time he also sought advice from a Mr. [REDACTED] regarding the demand for the bonus. Mr. [REDACTED] is a friend of Mr. [REDACTED] in the business of buying and selling property, but is not a real estate agent.
- [19] Mr. [REDACTED] then telephoned Mr. Behroyan. He said that he questioned the bonus. Mr. Behroyan replied that this was how properties with problems, such as being on a busy street, were sold. He pointed out that the effect of the bonus was the same as having an offer of \$100,000 less than the asking price. He said that the buyer's agent was doing them a favour. He explained that he or she had a more expensive house in the neighbourhood to show the prospective purchasers. In convincing the purchasers to buy Mr. Behroyan's lower-priced property, the agent would be making less commission and wanted to be compensated.
- [20] When Mr. [REDACTED] asked Mr. Behroyan whether the request for the bonus was legitimate, Mr. Behroyan replied "don't even go there". He reiterated that the agent had asked for the bonus. He said that he wanted to do more business with these people in the future

and did not want his reputation with them to be ruined. He suggested that if anyone questioned the legitimacy of the bonus, Mr. [REDACTED] should say that it was for Mr. Behroyan.

- [21] Mr. [REDACTED] testified that he asked Mr. Behroyan to try to negotiate with the other realtor to lower the amount of the bonus. Mr. Behroyan replied that he would. Mr. [REDACTED] then sent a confirming text message to Mr. Behroyan (Exhibit 12) that is recorded as sent at 3:10 p.m. The message said:

"Shahin, 100k is a lot! Try to bring it as low as you can! I have to convince my family too!"

- [22] Mr. [REDACTED] continued that shortly thereafter he had a subsequent telephone conversation with Mr. Behroyan. Mr. Behroyan said that he was able to get the bonus down to \$75,000 but not lower. Mr. Behroyan emphasized that this was a full price offer and would Mr. [REDACTED] not accept an offer that was only \$75,000 less than asking price? Mr. [REDACTED] replied that he did not have a choice and instructed Mr. Behroyan to accept. He explained that his family was under emotional and financial pressure.
- [23] Mr. [REDACTED] next heard from Mr. Behroyan on November 10, 2014. Mr. Behroyan advised that the offer was ready and asked whether Mr. [REDACTED] was available the following morning to sign the documents. Mr. [REDACTED] agreed.
- [24] Mr. [REDACTED] met with Mr. Behroyan at about 9 a.m. on November 11, 2014 at the Re/Max office in West Vancouver. This was the first time that Mr. [REDACTED] actually met with Mr. Behroyan in person in relation to this matter. Up until that point all communications had been conducted by email, text or telephone.
- [25] Mr. [REDACTED] reviewed the contract of purchase and sale and other documents that had been prepared by Mr. Behroyan. There are copies at Exhibit 2. The offer was only open for acceptance until 9 p.m. on November 11, 2014.
- [26] One of the documents prepared by Mr. Behroyan was entitled "SELLERS FEE AGREEMENT (BUYER AND SELLER ARE NOT REPRESENTED)" (Exhibit 6). This document provided that the seller would pay a further \$75,000 to the brokerage on top of the agreed commission. The document was dated November 11, 2014. Mr. Behroyan also prepared another document entitled "LISTING AMENDMENT FORM". This document provided that \$75,000 would be paid as a personal bonus solely to Mr. Behroyan. This document was dated November 12, 2014.
- [27] The last page of the contract of purchase and sale was an addendum that contained various subject to conditions in favour of both the buyer and seller as well as some representations about the property. Mr. [REDACTED] added a condition that made the agreement subject to Mr. [REDACTED] obtaining probate by November 21, 2014. Term #7 stated that the "Buyers and Sellers have been advised to seek independent legal advise (sic)".
- [28] Mr. [REDACTED] testified that the review of the documents was cursory and the entire meeting took about a half an hour. The only area of controversy was whether he should

pay GST on the \$75,000 bonus. He was unwilling to do so and the amount in the Listing Amendment Form was adjusted to be inclusive of GST.

- [29] Mr. [REDACTED] admitted that he did not read through all the "fine lines" of the documents. He said that he trusted Mr. Behroyan and signed where he was instructed to do so. He executed the documents on behalf of his mother pursuant to his power of attorney, without indicating that he was signing under that authority. He then witnessed his own signature. Mr. [REDACTED] stated that all the documents were signed at the same time. He then took photographs of the documents with his cell phone. The photographs (Exhibit 5) record as taken at 9:22 a.m. and 9:23 a.m.
- [30] Mr. [REDACTED] met with Mr. Behroyan a second time on November 11, 2014 at between 8 and 9 p.m. The purpose of the meeting was to remove the probate subject to condition. This appears to have occurred, although there is some contradictory evidence as to when the condition was removed. However nothing turns on this.
- [31] Mr. [REDACTED] was firm and unequivocal in his testimony on several key points. These included that:
- at no point did he ever offer to pay Mr. Behroyan a bonus;
  - Mr. Behroyan never advised him that the demand for the bonus might create a conflict between them and that he should seek legal advice about the matter;
  - he was unaware that Mr. Behroyan had any relationship with the [REDACTED] or that he had acted for them in the sale of their home on November 5, 2014; and
  - he did not discover until last year that the buyer's agent, a [REDACTED], gave half of her commission to Mr. Behroyan.
- [32] [REDACTED] was cross-examined at length by Mr. Behroyan's counsel, Mr. Shields. He vigorously challenged [REDACTED] evidence and forcefully suggested to [REDACTED] that:
- he had freely offered to pay Mr. Behroyan a bonus because he was so happy with his services;
  - Mr. Behroyan had clearly advised him to obtain independent legal advice about the bonus;
  - Mr. Behroyan told him that he had represented the [REDACTED] on the sale of their property;
  - he had altered his account of the timing of the communications between November 7 and 11 to make it appear that he was pressured;
  - he clearly understood what he was signing as evidenced by his signature and initials on all the documents;
  - he had altered his evidence to fit with documentation that was later produced after he complained to the RECBC; and
  - he decided to renege on his agreement to pay the bonus after getting advice when she reviewed the documents prior to closing.

- [33] ██████ resolutely denied these assertions. He acknowledged some inconsistencies between his evidence and a submission provided by his lawyer to the RECBC and notes of an interview with him taken by RECBC counsel. Most of these inconsistencies related to the timing of some of the events between November 7 and 11, 2014.
- [34] He explained that he had not carefully reviewed his counsel's submissions. He acknowledged that the Listing Amendment Form showed that the bonus was payable solely to Mr. Behroyan as opposed to the buyer's agent. He explained that he thought it might be in trust to be paid to the appropriate party at a later date, but ultimately that it was not his business as his only concern was that the bonus was coming out of his pocket. He insisted that he had lots of questions and concerns, but felt pressured because he wanted to sell the home.

**B - ██████**

- [35] ██████ was subpoenaed by Ms. Whittow, counsel for the RECBC, to give evidence of the conversation described by ██████. Mr. Shields strenuously objected to the admission of this evidence. The panel agreed to hear the testimony of ██████ on the understanding that it would determine admissibility after hearing legal arguments at the conclusion of the hearing.
- [36] ██████ testified that he has had a business and professional relationship with Mr. ██████ for about 10 years. He confirmed that he was aware that ██████ was selling the property on Kings Avenue. He said that he had several telephone conversations with him about the property that included a discussion about whether to lower the price. He recalled a particular conversation in which ██████ sought his advice about a full price offer on the reduced price in which the buyer's agent had asked for a \$100,000 bonus. Although he was uncertain of the time and date of the call, he knew that ██████ had yet to decide whether he was going to pay the bonus because he had called him first to get his opinion on the matter.

**C - Shahin Behroyan**

- [37] Mr. Behroyan began his evidence by stating that he was a successful realtor. He said that he was ranked in the top five in the world for Re/Max and was consistently ranked in the top 1 percent in the greater Vancouver area. He reviewed his efforts to sell the property after obtaining the listing. This consisted of advertising in newspapers and online, holding open houses, posting signs in the neighbourhood, and calling potential buyers who might be interested.
- [38] Mr. Behroyan testified that the topic of a bonus was first raised by ██████ on or about October 27, 2014 when the property was relisted at a lower price. He said that Mr. ██████ offered to pay him a bonus as an inducement for him to spend more time on the sale and if he got a full price offer. The amount of the bonus was not specified and Mr. ██████ said that he would talk to his family and get back to Mr. Behroyan.
- [39] The bonus was next discussed on or about November 7, 2014. Mr. Behroyan said that Mr. ██████ was still willing to honour his offer to pay a bonus and asked him what would be

- fair. Mr. Behroyan "tossed out" the figure of \$100,000. He also advised [REDACTED] that he should get some legal advice as the bonus could create a conflict of interest. He added that [REDACTED] did not know what a conflict of interest was until he explained it to him. The conversation concluded with [REDACTED] stating that he would speak to his lawyer and family and get back to Mr. Behroyan. Mr. Behroyan said that this conversation was followed by another telephone call with [REDACTED] that concluded with an agreement to pay \$75,000 bonus, but only if he got a full price offer.
- [40] Mr. Behroyan was unequivocal that he "absolutely" did not make "any sort of implication or any sort of suggestion" that the bonus was for anybody else other than him. As to Mr. [REDACTED] evidence that he refused to present the contract of purchase until the bonus was agreed to, Mr. Behroyan said that this was "absolutely false. I would never do that".
- [41] Mr. Behroyan confirmed that he had been the [REDACTED] real estate agent and had sold their home on or about November 5, 2014. He insisted that he did not act on their behalf thereafter. Their agent in the purchase of the Kings Avenue property was [REDACTED].
- [42] Mr. Behroyan identified a text message sent to him from [REDACTED] at 1:00 p.m. on November 7, 2014 that stated "[REDACTED] wants to offer full price for kings" (Exhibit 12). He maintained that he did not think this would result in an offer because he knew that the Kings Avenue property would be too noisy for [REDACTED]. He said that later that day he had a conversation with [REDACTED] and was advised that "[REDACTED] had passed on the property". He stated that he passed that information on to [REDACTED] the time. Nevertheless, he learned that [REDACTED] viewed the property on November 10, 2017 and approved the full price offer.
- [43] Mr. Behroyan testified that [REDACTED] carefully reviewed all the documents when they met in his office on November 11, 2014. He said that the only issue raised by [REDACTED] was paying GST on the bonus, and that he wanted the bonus to be inclusive of GST. Mr. Behroyan agreed and the Listing Amendment Form was modified. He repeated that Mr. [REDACTED] had carefully reviewed all the documents. He insisted that [REDACTED] was completely informed as to what he was signing. He pointed out that [REDACTED] initialed term #7 at page 5 of the contract of purchase and sale. He added that this condition was placed in the document by [REDACTED].
- [44] Mr. Behroyan stated that he advised [REDACTED] around November 7, 2014 that he had acted for the [REDACTED] in the sale of their home. He advised [REDACTED] that he expected to receive one half of [REDACTED] commission. He said that [REDACTED] did not care how the commission would be divided up between the realtors. He acknowledged that he permitted [REDACTED] to execute the documents on behalf of his mother under his power of attorney, without indicating that authority, and then allowed him to witness his own signature.
- [45] The only error or mistake that Mr. Behroyan acknowledged making was using the form entitled "SELLERS FEE AGREEMENT (BUYER AND SELLER NOT REPRESENTED)." He agreed

that this document was clearly the wrong form. He said it was a simple mistake that he has not repeated.

- [46] In cross-examination from Ms. Whittow, Mr. Behroyan was challenged to explain Mr. [REDACTED] text message of November 7, 2014 about the bonus that included the words "try to bring it as low as you can". He disagreed that the message appeared to be directed to a third person, explaining "if you speak to a lot of the Iranians, that is how they speak".
- [47] He agreed that there were some inconsistencies in his testimony regarding the sequence of the first conversations about the bonus compared to the version set out in the statement provided by Mr. Shields to the RECBC. Like [REDACTED], Mr. Behroyan attributed these errors to not carefully reviewing his counsel's representations. He agreed that the Listing Amendment Form was signed on November 11, 2014 and not November 12, 2014 as indicated on the face of the document. He denied that it was deliberately postdated so that it would appear to have followed the removal of [REDACTED] subject to condition about obtaining probate.
- [48] Mr. Behroyan was asked to explain why [REDACTED] split her commission with him. He was referred to a text message from her on November 7, 2014 that said "So I split selling side with you 50/50 no problem not sure why you don't want the selling point" (Exhibit 12). He insisted that [REDACTED] had offered to split her commission with him. He explained that he had agreed to co-list the [REDACTED]' home with her and that he did not try to take her clients or push her out of the listing. He said that "she felt that I deserved it, and she offered half to me because I knew them. I sold their house for a really good price, in a very short period of time". He added that [REDACTED] had offered to split her commission to create a relationship with him. He acknowledged that it sounded "weird".

### III - ANALYSIS

#### A - ADMISSIBILITY OF [REDACTED] EVIDENCE

- [49] Before attempting to resolve the marked conflict in evidence between [REDACTED] and Mr. Behroyan, we addressed whether the testimony of [REDACTED] was admissible. Ms. Whittow argued that such evidence was properly before the panel based on the authority of *R. v. Evans*, [1993] 2 SCR 629, 1993 CanLII 102 (SCC), which provided as follows, at p. 643:

Ordinarily, other persons may not be called to testify as to a witness's out of court statements. Nor may a witness repeat, in court, her own earlier statements. Generally, the narration by a witness of her previous declarations made to others outside of the court should be excluded because of its general lack of probative value and because such a repetition is, as a rule, self-serving. However, they may be admitted in support of the credibility of a witness in situations where that witness's evidence is challenged as being a recent fabrication or contrivance. See *R. v. Campbell* (1977), 1977 CanLII 1191 (ON CA), 38 C.C.C. (2d) 6 (Ont. C.A.), at p. 18, *per* Martin J.A., and *R. v. Béland*, 1987 CanLII 27 (SCC), [1987] 2 S.C.R. 398, at p. 409.



Further, it has been held that there need not be, in cross-examination, any express allegation of recent fabrication for the prior statements to be admissible. It is sufficient if, in light of the circumstances of the case and the conduct of the trial, the apparent position of the opposing party is that there has been a prior contrivance. In those situations, fairness and ordinary common sense require that the jury receive a balanced picture of the whole of the witness's conduct throughout the police investigation. To demonstrate that the evidence of the witness is not a recent fabrication it may be essential to introduce on re-examination a prior statement which shows the consistency of the witness' testimony. See *R. v. Simpson*, 1988 CanLII 89 (SCC), [1988] 1 S.C.R. 3, at p. 25. (Emphasis added)

- [50] The rationale in *Evans* for admitting prior consistent statements was explained in *R. v. Stirling*, [2008] 1 SCR 272, 2008 SCC 10 (CanLII) at p. 43 as showing that they "can illustrate that the witness's story was the same even before a motivation to fabricate arose."
- [51] Mr. Shields argued that [REDACTED] evidence should not be admitted because Mr. Behroyan has not taken the position that [REDACTED] had fabricated his evidence about the bonus. He submitted that [REDACTED] was simply mistaken. According to this argument, [REDACTED] was confused as to whether the bonus was payable to Mr. Behroyan or [REDACTED]. It is unclear how there could have been confusion in light of [REDACTED] evidence that he was told that the bonus was needed to compensate the buyer's agent for persuading her clients to purchase a lower priced property. More importantly, this argument fails to take into account how there could have been any confusion regarding [REDACTED] evidence that Mr. Behroyan had told him that he had to agree to a bonus in order to secure the full price offer.
- [52] We had little difficulty concluding that this submission was without merit. It was abundantly clear from the tenor and substance of Mr. Shields's cross-examination, as well as his closing submissions, that his position was that [REDACTED] decided to renege on his commitment to pay the bonus after receiving legal advice and fabricated the story he gave in order to recover the bonus. There was no air of reality to the suggestion that Mr. [REDACTED] was mistaken about the matter. Based on the authority of *Evans*, we concluded that [REDACTED] evidence was admissible.

#### **B - CREDIBILITY**

- [53] The evidence of [REDACTED] and Mr. Behroyan is diametrically opposed on the crucial events between November 7 and 11, 2014. Counsel submitted, and we agree, that we were required to make findings of credibility to determine whether the allegations of misconduct have been proven.
- [54] The leading authority on the assessment of credibility continues to be *Faryna v. Chorny*, 1951 CanLII 252 (BCCA). Although counsel cited a number of additional cases that have interpreted this decision, we found the summary set out in *Bradshaw v. Stenner*, 2010 BCSC 1398 (CanLII), aff'd. 2012 BCCA 296 (CanLII) to be helpful:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, 1951 CanLII 252 (BCCA), [1952] 2 D.L.R. 354 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

[187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 1993 CanLII 7140 (AB QB), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful. (emphasis added)

- [55] In making this assessment we have reminded ourselves that we are not obliged to accept either the entirety of [REDACTED] or Mr. Behroyan's evidence. We may accept all, part, or none of their evidence and may attach different weights to different parts of their respective testimony. (See: *R. v. D.R.* 1996 CanLII 207 (SCC), [1996] 2 S.C.R. 291 at para. 93).
- [56] Applying the methodology set out in *Bradshaw*, we begin by considering the evidence of [REDACTED] on a "stand alone" basis. We found nothing inherently unbelievable in Mr. [REDACTED] assertions that Mr. Behroyan had demanded a large sum of money in order to complete the sale of the property. Such conduct is readily explained by the combination of greed and absence of morality. It is regrettably consistent with human behaviour.
- [57] [REDACTED] evidence contained details of the rationale for the bonus demanded by Mr. Behroyan. This consisted of the explanation about how properties with problems were sold, the effect of the bonus being the same as having an offer of \$100,000 less than the

asking price, and the diminished commission due to the buyer's agent. Such details were quite specific and added an air of reality to his version of events.

- [58] In considering Mr. Behroyan's evidence on a "stand alone" basis, there was initially nothing inherently unbelievable in his assertions that [REDACTED] had reneged on his agreement to pay a bonus after obtaining advice from his lawyer. Like the analysis of Mr. [REDACTED] evidence, such behaviours are all too explainable by greed and absence of morality. However, there were other elements in Mr. Behroyan's evidence that were less believable.
- [59] According to Mr. Behroyan, [REDACTED] offered a bonus as an inducement for him to put more effort into selling the property and if he got a full price offer. However, the need to put more effort into the sale was inconsistent with Mr. Behroyan's description of the considerable efforts that he had previously made to sell the property. We had difficulty imagining what else he might do. In fact, there was no evidence that Mr. Behroyan made any additional efforts or employed a different strategy to sell the property after the topic of the bonus first arose.
- [60] We found Mr. Behroyan's explanation surrounding the negotiation of the bonus unconvincing. The nature of a bonus is essentially an additional payment intended to reward extraordinary success. Mr. Behroyan and [REDACTED] agreed that the conversations about the amount of the bonus took place on or about November 7, 2014. At that point, according to Mr. Behroyan, there was no real prospect of a sale because he knew that [REDACTED] would not be interested in the property due to its location. If that were the case, the timing for the negotiation of a bonus seems odd. For that matter, we wondered why the bonus needed to be negotiated at all, if this was something Mr. [REDACTED] was not obliged to pay. The type of negotiation that occurred appeared more like something that was part of a deal than some amount that [REDACTED] had volunteered to pay.
- [61] After careful reflection, we found Mr. Behroyan's evidence on a "stand alone" was less inherently believable than [REDACTED] evidence.
- [62] We next considered whether the testimony was consistent with other witnesses. The only other witness in this matter was [REDACTED]. Although he is a friend of [REDACTED], he was not a party to the proceedings. [REDACTED] had nothing at stake in the proceedings and attended the hearing under subpoena. The conversation that he had with [REDACTED] fits with taking place on November 7, 2014 just after [REDACTED] spoke with Mr. Behroyan. Significantly, [REDACTED] was able to corroborate that [REDACTED] had complained to him that the buyer's agent had demanded a \$100,000 bonus as a condition to present a full price offer.
- [63] In considering the import of [REDACTED] testimony, we remind ourselves that it is not evidence of what Mr. Behroyan stated. However it is persuasive evidence that [REDACTED] expressed on November 7, 2014 the same version of events as in his subsequent evidence. According to Mr. Shields's argument, [REDACTED] changed his mind about the bonus after he obtained advice from his counsel when she reviewed the documents prior

to closing. [REDACTED] evidence is potentially important as it demonstrates "that the witness's story was the same even before a motivation to fabricate arose" (*Stirling, supra*).

- [64] We then turned to the documentary evidence. The most significant was the text message sent by [REDACTED] at 3:10 PM that said "Shahin, 100k is a lot! Try to bring it as low as you can! I have to convince my family too!". In our view, the plain reading of this message is that Mr. Behroyan should try to convince a third party to lower the bonus. The language is inconsistent with a negotiation taking place directly between [REDACTED] and Mr. Behroyan. It is also inconsistent with Mr. Behroyan's evidence that [REDACTED] offered to pay the bonus. If that were the case, [REDACTED] could choose to pay whatever amount he considered appropriate. It is difficult to imagine a bonus as the subject of a contested negotiation when there is no obligation to pay. If [REDACTED] was seeking agreement or approval from Mr. Behroyan, the wording seems awkward and ill chosen for the circumstances.
- [65] When Ms. Whittow challenged Mr. Behroyan that the text appeared to be directed towards a third party, he answered somewhat breezily "No. No. If you speak to a lot of Iranians, that is how they speak". We found that answer unconvincing as there was nothing odd, unusual, or unclear in [REDACTED] language, syntax or the manner in which he expressed himself.
- [66] There are other texts that are consistent with [REDACTED] evidence but inconsistent with Mr. Behroyan's evidence. Mr. Behroyan maintains that there was no offer until November 10, 2017 when [REDACTED] viewed the property. However, there is a text message from [REDACTED] s at 1:00 p.m. on November 7, 2014 that states that "[REDACTED] wants to offer full price for kings". At 1:03 p.m. Mr. Behroyan texted [REDACTED] with the message "Call me". Mr. Behroyan insisted that he knew that [REDACTED] would not be interested in a property on a busy street. If that were the case, why would Mr. Behroyan immediately text [REDACTED] upon receiving the message from [REDACTED] ?
- [67] Furthermore, by 3:10 p.m. that day, [REDACTED] and Mr. Behroyan had already engaged in specific discussions about a \$100,000 bonus. The timing of the conversation is consistent with [REDACTED] evidence that there was a full price offer at that time, but inconsistent with Mr. Behroyan's evidence that he knew [REDACTED] would not be interested in the property.
- [68] In assessing this evidence, we have not ignored Exhibit 7 which attaches a joint email from [REDACTED] and [REDACTED] that states that [REDACTED] was not interested in the property until viewing it on November 10, 2014. Neither of the [REDACTED] were called by Mr. Shields, and as a result, their evidence was not tested in cross-examination. In the circumstances we were unable to place significant weight upon the email statement.
- [69] There is other documentary evidence that raises concerns. The mistake on the date on the Listing Amendment Form (November 12, 2014 instead of November 11, 2014) that authorized the bonus payable solely to Mr. Behroyan is puzzling given Mr. Behroyan's acknowledgement that he carefully prepared and reviewed all the documents. However,

it is consistent with an attempt to create an evidentiary record to support that the bonus was not wound up with the sale of the property.

- [70] The methodology for assessing credibility approved in *Bradshaw* is not exclusive. Other factors include demeanour and motive to lie. Both [REDACTED] and Mr. Behroyan provided testimony in a relatively straightforward manner. As noted, [REDACTED] was subjected to a particularly lengthy and vigorous cross-examination. He maintained his composure and balance throughout. While Mr. Behroyan's cross-examination was shorter and less aggressive, he was also able to maintain his composure. As a consequence, this factor did not impact our assessment.
- [71] Both [REDACTED] and Mr. Behroyan had a motive to lie. Mr. Shields inelegantly characterized [REDACTED] motive as "75,000 reasons to prefer his own interests". We had little doubt that [REDACTED] would be well poised to recover a significant amount of money if his version of events is accepted. However, Mr. Behroyan arguably has even more at stake. Apart from the potential liability to repay the bonus and other damages, he faces sanction from the RECBC that could have major repercussions on his professional standing and capacity to engage in lucrative employment.
- [72] Mr. Shields placed great emphasis on purported inconsistencies between [REDACTED] evidence and the statements made by his lawyer and the notes taken by counsel during an interview. We found these inconsistencies were not significant and were between statements supplied by third parties as opposed to statements from [REDACTED]. Importantly there were no inconsistencies on the main points in contention. We add that there were inconsistencies between Mr. Behroyan's evidence and the submission statement prepared by Mr. Shields. We found that the same considerations should apply to Mr. Behroyan's evidence.
- [73] The last element of the methodology reviewed in *Bradshaw* requires a determination of which version of the events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions". We concluded that the combined effect of Mr. [REDACTED] evidence, the text messages, and Mr. Behroyan's unconvincing explanations for the texts, established that [REDACTED] testimony was the most consistent with the preponderance of probabilities. In the circumstances, we determined [REDACTED] evidence should be preferred where it conflicts with the evidence of Mr. Behroyan.
- [74] In summary we find that Mr. Behroyan:
- advised [REDACTED] on November 7, 2014, there was a full price offer on the property; but that the agent for the prospective buyer would not present the offer unless he paid a \$100,000 bonus;
  - did not provide any advice to obtain independent legal advice, apart from that contained at page 5 of the contract of purchase and sale;
  - did not disclose that he had acted for the [REDACTED] and sold their home on November 5, 2014;

- did not advise [REDACTED] that [REDACTED] had agreed to split one half of her commission with Mr. Behroyan;

### C - PROFESSIONAL MISCONDUCT

- [75] We next turned to deciding whether the evidence supported the allegations of professional misconduct as set out in the Amended Notice of Discipline Hearing.
- [76] The standard of proof for determining whether professional misconduct has been proven is a balance of probabilities. The applicable authority continues to be *F.H. v. McDougall*, [2008] 3 S.C.R. 41 which held that:

[40] 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 a 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.

...

[45] 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.

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. (emphasis added)

- [77] Professional misconduct is defined at s.35 of *RESA* as follows:

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;
- (b) breaches a restriction or condition of their licence;
- (c) does anything that constitutes wrongful taking or deceptive dealing;
- (d) demonstrates incompetence in performing any activity for which a licence is required;
- (e) fails or refuses to cooperate with an investigation under section 37 [*investigation by council*] or 48 [*investigations by superintendent*];
- (f) fails to comply with an order of the real estate council, a discipline committee or the superintendent;

(g) 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.

[78] We now turn to the specific allegations.

**i - 1 a: In or about November, 2014, Mr. Behroyan caused the seller of the Property and/or H.G., her son and power of attorney, to purport to agree to pay a bonus of \$75,000 over the remuneration called for in the Listing Agreement (the "Bonus") without H.G.'s and/or the seller's informed consent, contrary to his duty to act in the best interests of his client and/or to avoid conflicts of interest pursuant to section 3-3 of the Council Rules;**

[79] This allegation focuses on the consequences arising from Mr. Behroyan's failure to advise ██████ that paying a bonus could create a conflict of interest.

[80] Rule 3-3 provides:

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;
- (c) act only within the scope of the authority given by the client;
- (d) advise the client to seek independent professional advice on matters outside of the expertise of the licensee;
- (e) maintain the confidentiality of information respecting the client;
- (f) without limiting the requirements of Division 2 *[Disclosures] of Part 5 [Relationships with Principals and Parties]*, disclose to the client all known material information respecting the real estate services, and the real estate and the trade in real estate to which the services relate;
- (g) communicate all offers to the client in a timely, objective and unbiased manner;
- (h) use reasonable efforts to discover relevant facts respecting any real estate that the client is considering acquiring;
- (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)

[81] The nature of the relationship between a realtor and his client is that of a fiduciary. (See: *Mulligan v. Stephenson*, 2016 BCSC 1941 (CanLII)). At all times the fiduciary must act in the best interest of the client and with the utmost of good faith. (See: *Re Crackle*, 1983 CanLII 296 (BCCA)). A request for a bonus requires that particular care be exercised to

ensure the interests of the party to the fiduciary relationship are protected. (See: *Nathanson, Schachter & Thompson v. Inmet Mining Corp.*, 2009 BCCA 385 (CanLII), *969625 Ontario Ltd. v. Goldstone Resources Inc.*, 2017 ONSC 879).

- [82] We had little difficulty accepting that Mr. Behroyan's demand for a bonus created a conflict of interest between himself and [REDACTED]. This is because the amount of the commission had previously been agreed upon and the payment of a bonus would benefit Mr. Behroyan at the expense of [REDACTED].
- [83] Mr. Shields argued that the evidence shows that [REDACTED] was advised to obtain legal advice, stressing that he had initialed term #7 of the contract of purchase and sale. However, at this stage [REDACTED] had not been provided with any other information that might have alerted him to the nature of the problem created by the bonus. The term was part of a number of documents that were initialed in the context of a perfunctory review. In the circumstances the term looked more like standard boilerplate as opposed to meaningful advice.
- [84] Furthermore the offer was only open for acceptance until 9 p.m. that evening. November 11, 2014 was a holiday. Even if [REDACTED] had been alerted to the need to obtain advice, it would have been impractical to do so. This underscores the pressured nature of the transaction, as well as reinforces that the term appeared to be largely a matter of formality. Mr. Behroyan's insistence that this was sufficient notice in the circumstances was more consistent with sharp practice than a genuine intent to protect [REDACTED] interest.
- [85] We conclude that paragraph 1 a of the notice of hearing has been proven.
- ii - 1 b: Mr. Behroyan represented to H.G. and/or the seller that the Bonus was required by the representative of persons interested in acquiring the Property, J.C. and A.C., and/or in order to secure an offer for the Property, when one or both of these representations was untrue, which constitutes deceptive dealing pursuant to section 35(1)(c) of RESA and/or a breach of the duty to act honestly pursuant to section 3-4 of the Council Rules;**
- [86] This allegation addresses the heart of the misconduct alleged by the RECBC, namely the demand that a bonus was required in order to be presented with the offer for purchase.
- [87] Deceptive dealing is defined in s. 1 of the *RESA* as follows:
- "deceptive dealing", in relation to a person providing real estate services as a licensee, means any of the following:
- (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 an intentional omission to disclose such a material fact;



(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;

(c) an artifice, agreement, device or scheme to obtain money, profit or property by illegal means;

(d) a promise or representation about the future that is beyond reasonable expectation and not made in good faith;

[88] Rule 3-4 provides:

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

[89] Mr. Behroyan informed [REDACTED] that the offer to purchase the property would not be presented unless he agreed to pay a bonus to the buyer's agent. This was not true and was an intentional misrepresentation of a material fact that deceived [REDACTED]. At the same time, the representation was dishonest, as it forced [REDACTED] to pay a bonus that he was not obliged to pay in order to receive the offer. In view of our decision to accept [REDACTED] evidence, we had little difficulty finding Mr. Behroyan's actions constituted deceptive dealing within the meaning of the *RESA* and was a breach of his duty to act honestly. This allegation has therefore been proven.

**iii - 1 c: At around the time of presentation of the offer for the purchase of the Property from J.C. and A.C., Mr. Behroyan caused H.G. to sign a seller's fee agreement dated November 11, 2014, which indicated that neither the buyer or seller were represented, when the Brokerage had previously entered a listing agreement to provide agency services to the seller in which Shahin Behroyan Personal Real Estate Corporation was identified as the designated agent, contrary to Mr. Behroyan's duty to act in the best interests of his client pursuant to section 3-3(a) of the Council Rules and/or to act with reasonable care and skill pursuant to section 3-4 of the Council Rules;**

[90] This allegation flows from Mr. Behroyan's use of the Seller's Fee Agreement form that stated the buyer and seller were not represented. It is uncontested that this was plainly the wrong form. There is no evidence that [REDACTED] was misled, acted to his detriment, or otherwise suffered any additional harm through the use of this form. He knew that both he and the prospective purchasers were represented. Mr. Behroyan testified that he made a simple mistake. There was nothing in the balance of the evidence to contradict this.

[91] Mr. Shields relied on the authority of *Westwin Realty Ltd. (Re)*, 2010 CanLII 56277 (BC REC) to support that a simple mistake that was not calculated to seek unfair advantage did not amount to professional misconduct. Ms. Whittow countered that the decision in *Re Lai*, 2010 CanLII 61966 (BC REC) established that the use of an incorrect form constituted professional misconduct. Mr. Shields pointed out that this decision was a review

of consent order following an admission of professional misconduct. We note that the decision consisted of a recitation of the facts and provided no analysis or discussion of whether a simple mistake resulting in the use of a wrong form constituted professional misconduct. In the circumstances, we were unable to conclude that this allegation has been proven.

**iv - 1 d: Mr. Behroyan permitted the seller and/or H.G. to enter the contract for the purchase and sale of the Property to J.C. and A.C. which contained a term that the seller had been advised to seek independent legal advice, when Mr. Behroyan had not so advised the seller and when it would have not been reasonable to obtain such advice in the period between presentation of the offer and its expiration, contrary to Mr. Behroyan's duty to act in the best interests of his client pursuant to section 3-3(a) of the Council Rules and/or to act with reasonable care and skill pursuant to section 3-4 of the Council Rules;**

- [92] This allegation specifically addressed Mr. Behroyan's reliance on term #7 of the offer of purchase and sale.
- [93] As reviewed in the discussion of allegation 1a at paragraph [76] above, the simple inclusion of this term without anything else, fell far short of what was required by the circumstances. [REDACTED] had not been alerted to any facts that might require legal advice, and in any event, it would have been impractical to obtain that advice within a few hours on a holiday. As we have previously discussed, Mr. Behroyan's presentation of an offer that was only open for acceptance until 9 p.m. that day created a pressured environment. We found that as a consequence, Mr. Behroyan failed to act with reasonable care and skill and did not act in the best interests of [REDACTED]. This allegation was therefore proven.

**v - 1 e: Mr. Behroyan failed to disclose to the seller and/or H.G. at any material time that he had signed a Working With a Realtor form indicating that he was to provide agency services to J.C. and A.C., contrary to his duty to disclose all material information to his client pursuant to section 3-3(f) of the Council Rules;**

- [94] This allegation relates to Mr. Behroyan's failure to advise [REDACTED] about his prior relationship with the [REDACTED]
- [95] Ms. Whittow cited the authority of *Ocean City Realty v. A&M Holdings Ltd.*, 1987 CanLII 2872 (BC CA) that explained the duty to inform in analogous circumstances. This decision considered whether a real estate agent is "obliged to disclose to its principal the fact that it has agreed to rebate to the purchaser a portion of its real estate commission from the sale". The court held that:

[20] The obligation of the agent to make full disclosure extends beyond these three categories and includes "everything known to him respecting the subject-matter of the contract which would be likely to influence the conduct of his principal" (*Canada Permanent Trust Co. v. Christie, supra*) or, as expressed in I Hals., 3rd ed., p. 191, para. 443, everything which "... would be likely to operate upon the

principal's judgment". In such cases the agent's failure to inform the principal would be material nondisclosure.

...

[23] I would emphasize that the agent cannot arbitrarily decide what would likely influence the conduct of his principal and thus avoid the consequences of non-disclosure. If the information pertains to the transaction with respect to which the agent is engaged, any concern or doubt that the agent may have can be readily resolved by disclosure of all the facts to his principal. In the instant case the very withholding from the principal of the information concerning the payments to the purchaser of a portion of the commission could be evidence from which one might properly infer that the agent was aware that such circumstances would be a matter of concern to the principal.

[96] We have found that Mr. Behroyan failed to advise [REDACTED] that he had acted for the [REDACTED] and had sold their home on November 5, 2014. This was clearly material information that could have signalled to [REDACTED] that there was a need for further inquiry in the circumstances.

[97] Based on the authority of *Ocean City Realty*, we found that this allegation also been proven.

**vi - 1 f: Mr. Behroyan failed to disclose to the seller and/or H.G. at any material time that he expected to receive or did receive one half of the selling agent's commission, contrary to his duty to disclose all material information to his client pursuant to section 3-3(f) of the Council Rules and/or to disclose all remuneration pursuant to section 5-11(2) of the Council Rules;**

[98] This allegation is based on Mr. Behroyan's failure to advise [REDACTED] that [REDACTED] had agreed to split her commission with him.

[99] Rule 5-11(2) provides:

5-11...(2) Subject to subsection (3), the licensee must promptly disclose to the client all remuneration paid or payable to the licensee's related brokerage in relation to the real estate services provided, and the disclosure must include all of the following:

- (a) the source of the remuneration,
- (b) the amount of the remuneration or, if the amount of the remuneration is unknown, the likely amount of the remuneration or the method of calculation of the remuneration, and
- (c) all other relevant facts relating to the remuneration.

[100] Ms. Whittow argued that such information could have been material to the seller's assessment of the suitability of the price. She relied upon the authorities of *Nielson v. RECBC* [2001] B.C.C.O. No. 18 and *Re Mazhari*, 2015 CanLII 90652 (BC REC) that stressed

the potential for mischief when profits are concealed from the parties in a fiduciary relationship.

- [101] As previously stated, we found that Mr. Behroyan did not advise [REDACTED] of his agreement with [REDACTED]. This is a clear failure to comply with rule 5-11(2). This allegation has therefore been proven.

**vii - g: Mr. Behroyan permitted H.G. to apply the seller's name to documents relating to the sale of the Property, and without indicating H.G.'s authority, contrary to his duty to act with reasonable care and skill pursuant to section 3-4 of the Council Rules**

- [102] This last allegation is based upon Mr. Behroyan permitting [REDACTED] to sign a number of documents on behalf of his mother without recording or otherwise indicating Mr. [REDACTED] authority to do so.

- [103] Ms. Whittow argued that the Real Estate Council's Professional Standards Manual provides important guidance to licensees on this matter. It states:

When a person who has been granted a Power of Attorney signs a contract on behalf of the person granting the Power of Attorney, the correct way for the contract to be completed is as shown in this example:

*"Mary Smith grants a Power of Attorney to her friend Ted Lee to enter into contracts for the sale of her property." Ted Lee would then sign both the Listing Contract and Contract of Purchase and Sale using the following statement: "Mary Smith by her attorney in fact, Ted Lee", followed immediately by Ted Lee's signature.*

- [104] Ms. Whittow relied upon the decision *Re Melan* 2011 CanLII 87441 (BC REC). This was another consent order review that confirmed professional misconduct of an agent who failed to notice the signature on a contract was not that of the seller, but rather the executor of the seller's estate. While the conduct was very similar to this matter, the authority of this decision was diminished for the reasons we discussed in considering *Re Lai* in relation to allegation 1c.

- [105] Mr. Shields submitted that Mr. Behroyan was aware that [REDACTED] had a lawful power of attorney, that there was no legal requirement for [REDACTED] to indicate his authority when exercising the power of attorney and that no mischief had occurred. He argued there was no complaint from any party as to [REDACTED] entitlement to execute the documents. He submitted that the Professional Standards Manual was not binding upon registrants.

- [106] While we agree that the Professional Standards Manual provided some authority for the appropriate standard of care, there was nothing to show that this was anything other than another mistake. Although there is a potential for mischief in the event of a dispute as to authority and enforceability of the agreements, this was not an issue in these proceedings. In the absence of any other aggravating factors, we were unable to conclude that Mr. Behroyan's conduct constituted professional misconduct. We accordingly concluded that this allegation was not proven.

## CONCLUSION

[107] The allegations of professional misconduct brought by the RECBC against Mr. Behroyan as set out at in the Notice of Hearing at paragraphs 1a, 1b, 1d, 1e, and 1f have been proven. The remaining allegations at paragraphs 1c and 1g are dismissed.

FOR THE DISCIPLINE HEARING COMMITTEE, Dated at VANCOUVER, BRITISH COLUMBIA this 30<sup>th</sup> day of October 2017.



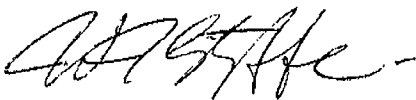
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Barry Long  
Discipline Hearing Committee Chair



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Len Hrycan  
Discipline Hearing Committee Member



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Tom Styffe  
Discipline Hearing Committee Member

File 14-431

**APPENDIX 1 – AMENDED NOTICE OF DISCIPLINE HEARING**

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

**AND**

**IN THE MATTER OF  
SHAHIN BEHROYAN AND  
SHAHIN BEHROYAN PERSONAL REAL ESTATE CORPORATION,**

**AMENDED NOTICE OF DISCIPLINE HEARING**

To: Shahin Behroyan  
Shahin Behroyan Personal Real Estate Corporation  
RE/MAX Masters Realty  
1453 Bellevue Avenue,  
West Vancouver, BC V7T 1C3

**TAKE NOTICE** that a Discipline Committee of the Real Estate Council of British Columbia (the “Council”) will hold a discipline hearing under sections 40-42 of the *Real Estate Services Act* (“RESA”) on **September 13-15, 2017** commencing at **9:30 am** in the Hearing Room at the Council’s offices at **900 - 750 West Pender Street in Vancouver, BC** to determine whether your conduct contravened RESA, regulations made under RESA (“Regulations”), or rules made by Council (“Council Rules”).

**AND TAKE NOTICE** that the allegations against you are as follows:

1. Shahin Behroyan and/or Shahin Behroyan Personal Real Estate Corporation, while licensed as a representative with RE/MAX Masters Realty (the “Brokerage”), committed professional misconduct within the meaning of section 35(1)(a) and/or (c) of RESA and contravened sections 3-3 (duties to clients), 3-4 (duty to act honestly and with reasonable care and skill) and/or 5-11 (disclosure of remuneration) of the Council Rules in that, while acting as the designated agent on the listing of property located at [REDACTED] Kings Ave., West Vancouver (the “Property”) pursuant to a listing agreement dated September 22 and/or October 27, 2014 (the “Listing Agreement”):
  - a. In or about November, 2014, Mr. Behroyan caused the seller of the Property and/or H.G., her son and power of attorney, to purport to agree to pay a bonus of \$75,000 over the remuneration called for in the Listing Agreement (the “Bonus”) without H.G.’s and/or the seller’s informed consent, contrary to his duty to act in the best interests of his client and/or to avoid conflicts of interest pursuant to section 3-3 of the Council Rules;
  - b. Mr. Behroyan represented to H.G. and/or the seller that the Bonus was required by the representative of persons interested in acquiring the Property, J.C. and

A.C., and/or in order to secure an offer for the Property, when one or both of these representations was untrue, which constitutes deceptive dealing pursuant to section 35(1)(c) of RESA and/or a breach of the duty to act honestly pursuant to section 3-4 of the Council Rules;

- c. At around the time of presentation of the offer for the purchase of the Property from J.C. and A.C., Mr. Behroyan caused H.G. to sign a seller's fee agreement dated November 11, 2014, which indicated that neither the buyer or seller were represented, when the Brokerage had previously entered a listing agreement to provide agency services to the seller in which Shahin Behroyan Personal Real Estate Corporation was identified as the designated agent, contrary to Mr. Behroyan's duty to act in the best interests of his client pursuant to section 3-3(a) of the Council Rules and/or to act with reasonable care and skill pursuant to section 3-4 of the Council Rules;
- d. Mr. Behroyan permitted the seller and/or H.G. to enter the contract for the purchase and sale of the Property to J.C. and A.C. which contained a term that the seller had been advised to seek independent legal advice, when Mr. Behroyan had not so advised the seller and when it would have not been reasonable to obtain such advice in the period between presentation of the offer and its expiration, contrary to Mr. Behroyan's duty to act in the best interests of his client pursuant to section 3-3(a) of the Council Rules and/or to act with reasonable care and skill pursuant to section 3-4 of the Council Rules;
- e. Mr. Behroyan failed to disclose to the seller and/or H.G. at any material time that he had signed a Working With a Realtor form indicating that he was to provide agency services to J.C. and A.C., contrary to his duty to disclose all material information to his client pursuant to section 3-3(f) of the Council Rules;
- f. Mr. Behroyan failed to disclose to the seller and/or H.G. at any material time that he expected to receive or did receive one half of the selling agent's commission, contrary to his duty to disclose all material information to his client pursuant to section 3-3(f) of the Council Rules and/or to disclose all remuneration pursuant to section 5-11(2) of the Council Rules; and, or in the alternative,
- g. Mr. Behroyan permitted H.G. to apply the seller's name to documents relating to the sale of the Property, and without indicating H.G.'s authority, contrary to his duty to act with reasonable care and skill pursuant to section 3-4 of the Council Rules.

**AND FURTHER TAKE NOTICE** that in the event of your non-attendance at the hearing, the Discipline Committee may proceed with the hearing in your absence upon proof of service of this Notice of Discipline Hearing. The Discipline Committee may hear evidence and make findings regarding your conduct and may make orders under sections 43 and 44 of RESA, all without further notice to you.

**AND TAKE FURTHER NOTICE** that you are entitled, at your own expense, to be represented by legal counsel at the hearing and you and your counsel will have the full right to cross-examine all witnesses called and to call evidence in your defence and reply in answer to the allegations.

Dated at the City of Vancouver, BC this "30" day of "June", 2017.

Real Estate Council of British Columbia

"G. Thiele"  
Per: Geoff Thiele  
Director, Legal Services