

Citation: Wang (Re), 2023 BCSRE 18
Date: 2023-05-16
File No. #17-338

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

AND IN THE MATTER OF

**WEI (VICKY) WANG
(160830)**

AND

**VICKY WANG PERSONAL REAL ESTATE CORPORATION
(160830PC)**

**Corrected Decision: The text of the decision was corrected at paragraphs 102 and
103 where changes were made on May 25, 2023**

DECISION ON LIABILITY

[This Decision has been redacted before publication.]

Date of Hearing: January 25, February 27 and 28, 2023

Counsel for BCFSA: Catherine Davies
BCFSA

Licensees: Self-Represented

Hearing Officer: Andrew Pendray

Introduction

1. In a January 13, 2023 fifth amended Notice of Discipline Hearing, the B.C. Financial Services Authority (“BCFSA”) alleges that the respondent, Wei (Vicky) Wang, committed professional misconduct as contemplated by section 35(1)(a) of the *Real Estate Services Act* (“RESA”), by failing to avoid a conflict of interest as required by section 30(i) of the *Real Estate Services Rules* (“Rules”) and by failing to advise her clients of that conflict of interest as required by section 30(j) of the Rules.
2. Specifically, BCFSA says that Ms. Wang provided her client with a loan in the amount of \$50,000 in order to assist the client in paying the deposit required of a contract of purchase and sale for a property located at [Property 1], Richmond, B.C. (the “[Property 1]”), and that the provision of that loan created a conflict of interest between Ms. Wang and the client.
3. At the hearing, counsel for BCFSA took the position that the allegations set out in the fifth amended Notice of Discipline Hearing had been proven, and that Ms. Wang had been shown to have committed professional misconduct as contemplated by section 35(1)(a) of RESA by contravening the conflict of interest provisions of the Rules.
4. Ms. Wang took the position that the \$50,000 had not been a loan, that she had not created any conflict of interest, and that as a result she ought not to be found to have committed professional misconduct.
5. Both parties provided oral and written submissions in support of their positions.

The Notice of Discipline Hearing

6. The Fifth Amended Notice of Discipline Hearing alleged that:
 1. [Ms. Wang] committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that while licensed as a representative with [Brokerage 1] and acting as buyer’s agent in relation to the purchase of properties located on [Property 1] in Richmond, BC and on [Property 2] in Vancouver, BC:
 - a. You failed to avoid a conflict of interest when you provided the buyer a loan towards the deposit required under the contract of purchase and sale for the property located at [Property 1], contrary to section

30(i) [take reasonable steps to avoid any conflict of interest] (formerly s. 3-3(i) of the Rules;

- b. You failed to advise the buyer that the loan towards the deposit referred to in para 1(a) above constituted a conflict of interest, contrary to section 30(j) [promptly and fully disclose conflict of interest to client] (formerly 3-3(j) of the Rules;

Jurisdiction and Procedure

7. Pursuant to section 2.1(3) of RESA the Superintendent of Real Estate (the “Superintendent”) may delegate any of its powers. The Chief Hearing Officer and Hearing Officers of the Hearings Department of BCFSA have been delegated the statutory powers and duties of the Superintendent of Real Estate with respect to sections 42 through 53 of RESA.
8. Under Section 43 of RESA, after a discipline hearing held pursuant to section 42 of RESA, the Superintendent may determine that a licensee has committed professional misconduct, or, in any other case, dismiss the matter.
9. BCFSA must prove its case on the balance of probabilities, that is, it must prove that it is more likely than not that the facts as alleged occurred. In order to make a finding against the Ms. Wang, I must find that the evidence is “sufficiently clear, convincing and cogent” to satisfy that test: *FH v McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41.
10. Evidence is generally considered as a matter of procedure¹. As an administrative tribunal the Superintendent is not bound by court rules of evidence, and in the absence of any statutory provision to the contrary, may consider any evidence it considers relevant, including hearsay evidence: *Adams v. British Columbia (Superintendent of Motor Vehicles)*, 2019 BCCA 225 (CanLII).
11. Further, the fact that the legislation may provide for a formal structure for enforcement proceedings does not preclude hearsay evidence from being admitted at a hearing². There is no provision in RESA which imports civil or criminal rules of evidence into the administrative proceedings held by the Superintendent. The Superintendent may, however, draw upon principles underlying court rules of evidence to exclude or assess evidence.

¹ *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119, para. 38.

² *Cambie Hotel*, paragraph 38.

12. The Superintendent must also afford procedural fairness to a respondent where a decision may affect his or her rights, privileges or interests. This right includes a right to be heard. The Superintendent affords every respondent an opportunity to respond to the case against him or her by providing advance notice of the issues and the evidence, and an opportunity to present evidence and argument. The Superintendent must determine facts, and decide issues set out in the Notice of Discipline Hearing, based on evidence. The Superintendent may, however, apply its individual expertise and judgment to how it evaluates or assesses evidence.
13. In assessing the respondent's evidence at the hearing I have kept in mind the often referred to test used by the B.C. Court of Appeal in *Faryna v. Chorny*, 1951 CanLII 252 (BCCA), [1952] 2 D.L.R. 354 (B.C.C.A.) at 357:

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions...Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken.

Issues

14. The issue is whether Ms. Wang committed professional misconduct contrary to section 35(1)(a) of RESA.

Preliminary Issue

15. The hearing of this matter originally commenced on January 25, 2023. After hearing BCFSA's opening statement, and the direct examination of BCFSA's first witness, Ms. Wang applied for an adjournment of the hearing, on the basis that BCFSA was proceeding on a fifth amended Notice of Discipline Hearing, which had changed the allegations against her from allegations relating to a transaction involving property at [Property 2], Vancouver, B.C., to allegations relating to a transaction involving a property at [Property 1] in Richmond, B.C.
16. I allowed that adjournment application, and provided oral reasons for doing so. In summary, I concluded that Ms. Wang had not been provided with the fifth amended Notice of Discipline Hearing at least 21 days prior to the date of the hearing, as required by section 40(2)(a) of RESA. I found that the interests of fairness required that the adjournment requested by Ms. Wang be granted, and the hearing was scheduled to proceed on February 27 and 28, 2023.

17. Prior to the occurrence of the rescheduled hearing, Ms. Wang made two applications for general adjournment of the hearing of this matter. I issued written reasons denying both of those applications, on February 21, 2023 and February 24, 2023.
18. At the hearing of this matter, Ms. Wang once again submitted that the hearing of this matter ought to be adjourned. In summary, Ms. Wang took the position that this matter ought to be dismissed. Specifically, Ms. Wang submitted that she did not think it was fair to her to proceed with the hearing of the allegations set out in the fifth amended Notice of Discipline Hearing.
19. As I indicated in my February 24, 2023 reasons denying Ms. Wang's adjournment application, I consider the evidence to support a conclusion that, despite the fifth amended Notice of Discipline Hearing not being issued until January 13, 2023, I consider that Ms. Wang has in fact long known the nature of the allegations against her, as set out in that fifth amended Notice of Discipline Hearing. I rely on those reasons, repeat my findings that Ms. Wang had ample notice of the nature of the allegations against her, such that there was no unfairness in proceeding with the hearing of this matter on February 27, 2023.

Background and Evidence

20. The evidence at the hearing consisted of 12 exhibits, as well as the evidence of three witnesses, [Investigator 1], an investigator for BCFSA; [Licencee 1], a licensee under RESA; and the respondent.
21. I have reviewed and considered all of the evidence and information before me. The following is not intended to be a recitation of all of that evidence and information. Rather, it is intended to provide context for my reasons.

Ms. Wang

22. Ms. Wang has been licensed to provide trading services since 2011. Her personal real estate corporation has been licensed to provide trading services since 2013.

The Complaint

23. On October 10, 2017, the former Real Estate Council of British Columbia (RECBC)³ received a complaint regarding Ms. Wang.
24. That complaint, brought by [Complainant 1] (the client), contained two allegations. First, the client alleged that Ms. Wang had failed to provide the client with a 55%

³ RECBC integrated with BCFSA on August 1, 2021.

commission rebate. Second, the client alleged that Ms. Wang had collected rental payment cheques but had failed to deposit those cheques on time.

25. The client specifically alleged that Ms. Wang had agreed to pay the client 55% of the commission she earned in respect of the client's purchase of two properties, [Property 1], and a property at [Property 2], Vancouver, B.C. (the "[Property 2]").
26. The client further indicated in its complaint that Ms. Wang had offered to collect rental cheques in respect of [Property 1], but that she had failed to deposit those rental cheques on time for several months.

[Property 1] Transaction

27. A contract of purchase and sale in respect of [Property 1] was executed on June 9, 2016. That contract sets out a purchase price of \$1,688,000 for the property, and calls for a deposit of \$90,000 to be paid by way of bank draft.
28. The completion date of the sale is identified as October 4, 2016.
29. Two Receipt of Funds Records were obtained from Ms. Wang's brokerage in respect of [Property 1].
30. The first Receipt of Funds Record sets out that \$40,000 was received by bank draft, from the account of the client, on June 11, 2016. The Receipt of Funds Record sets out that the \$40,000 had been received for the purpose of paying the deposit for the purchase [of Property 1]. Of note, the Receipt of Funds Records sets out, in the section for "Other details concerning receipt of funds", that there were "two cheques together". The \$40,000 was deposited in the trust account of the brokerage at which Ms. Wang worked.
31. The second Receipt of Funds Record sets out that \$50,000 was received, by bank draft, from the account of Ms. Wang, on June 11, 2016. The Receipt of Funds Record sets out that the \$50,000 had been received for the purpose of paying the deposit for the purchase [of Property 1]. Of note, the Receipt of Funds Record sets out, in the section for "Other details concerning receipt of funds", the following:

...loaning to the Buyer temporarily...
32. The \$50,000 was deposited in the trust account of the brokerage at which Ms. Wang worked.
33. In her testimony at this hearing, Ms. Wang acknowledged having completed the two Receipt of Funds Record documents described above. She stated, however, that although she had written "loaning to the Buyer temporarily", she had not been

of the view that she was in fact providing a loan to the buyer. Ms. Wang indicated that she had used the word incorrectly, and that she now understood the meaning of the word “loan” differently. She noted that she had not made any interest or money off of the \$50,000, though she acknowledged that she had received a commission on the [Property 1] transaction.

34. [Licencee 1], the managing broker at [Brokerage 1] from 2015 to 2017, was asked to review the Receipt of Funds Record documents. He stated that his recollection of his review of the Receipt of Funds Record in 2016 was that the money for the deposit on [Property 1] had come from the buyer. [Licencee 1] stated he was not informed by Ms. Wang, in 2016, that she was involved in providing money for the deposit on [Property 1], and that if he had been he would have advised her not to do so, as to do so could create a potential or perceived conflict of interest, given that it would make her part of the transaction.
35. [Licencee 1] noted that his belief was that Ms. Wang had received a commission on the sale of the property. He reviewed a September 20, 2016 payment document from [Brokerage 1] to Ms. Wang, in the amount of \$22,538.78, and indicated that his view was that this payment represented the commission payment to Ms. Wang in respect of [Property 1], plus GST.

The \$50,000

36. As a result of those complaints, RECBC began an investigation into Ms. Wang’s dealings in respect of [Property 1] and [Property 2].
37. As part of its complaint, the client had provided RECBC with copies of WeChat⁴ messages between the client and Ms. Wang. RECBC had those messages translated into English.
38. That translation shows a discussion between the client and Ms. Wang regarding the commission payments.
39. Of interest, in a June 27, 2016 message, the client wrote to Ms. Wang and indicated that she could “return you 50,000 as well”.
40. On December 28, 2017 a RECBC investigator emailed the individual who had sent in the complaint on behalf of the client. In that email the RECBC investigator noted that:

I have reviewed your documents submitted in your complaint and have two questions. Can you tell me the amount you paid to [the

⁴ WeChat is an instant messaging and mobile payment application.

respondent] in the Chinese Red Package for the handling fee, and did she lend you funds to enable the transactions to proceed? It appears that you returned \$50,000 to her. Is this an amount she lent you?

41. On December 29, 2017 the client's husband, [Complainant 2], responded to the RECBC Investigator. In his email of that date, [Complainant 2] indicated that Ms. Wang had lent him \$50,000 as:

...I didn't have the deposit ready at the time, and was hesitant on the purchase, but [the respondent] offered to help by lending [me] 50,000 Canadian dollars.

42. The RECBC Investigator wrote to Ms. Wang on January 2, 2018. In a letter of that date the investigator noted that RECBC had received a complaint against her, and that RECBC was conducting an investigation to determine whether or not Ms. Wang had committed any professional misconduct or conduct unbecoming a licensee as contemplated by section 35 of RESA.
43. In the January 2, 2018 letter, the investigator requested that Ms. Wang "comment on the \$50,000 that the Complainant refer to on June 27, 2016 that she had arranged to return to you".
44. Ms. Wang responded to the investigator, by email, on February 14, 2018. In a letter attached to that email Ms. Wang indicated that:

[Complainant 1] asked me to lend her \$50,000 after we accepted the offer on [Property 1], Richmond on June 10, 2016 when I drove her around in Richmond and Vancouver Westside. She told me there were no [sic] enough money to pay deposit in their banks. I said OK, no problem without any hesitation and didn't ask her to sign on paper. Just verbally agreed when I drove on the way. Just because of 8 years friendship not because of the client. I believed her. I never lent money to any clients for any deals except [Property 1].

I went to my bank to get bank draft with \$50,000 as deposit of [Property 1], Richmond on June 11, 2016. I filed my account number with my business name in the Fintrac of receipt of funds. She gave me her bank draft with \$40,000 from HSBC bank.

...

After [Complainant 1] went back to China, the couple didn't mention when they would return my money \$50,000. But they wire-

transferred to times deposit on June 24, 2016 to [Brokerage 1] in Trust account from China for [Property 2]. On June 28th, I couldn't help to ask [Complainant 1] when they could return my \$50,000. Her husband [Complainant 2] contacted me and told me he wanted to ask his friend to bring a cheque with \$50,000 to me in some day in July. I didn't feel comfortable about the arrangement.

I couldn't understand why [Complainant 1] lied to me that there were not enough money in the bank. I told him I need the money urgently and hoped he could return to me earlier. I pushed him a few times. To be honest, I couldn't understand why they wouldn't mention to return my money actively. In May 2017, I met [Complainant 2] in Vancouver, asked him the reason, he couldn't answer me the reason. He only told me he was too busy in China. I couldn't appreciate his response.

Finally, he decided to wire transfer money to me. But actually it was \$49982.75 around. I told [Complainant 1] the real amount I received. Then she told me she could give me back [yuan] 100 by Red package in WeChat.

45. Ms. Wang also attached, to her February 14, 2018 email, a copy of a bank draft from her business account, in the amount of \$50,000. That bank draft indicates that it is for the "Deposit of [Property 1], Richmond".
46. Ms. Wang also provided a copy of her business bank account statement which showed a wire transfer into that account in the amount of \$49,982.50, on June 29, 2016.
47. In her testimony at the hearing of this matter, Ms. Wang indicated that she felt that the client had taken advantage of her when the client had requested the \$50,000 towards the deposit on [Property 1].
48. Ms. Wang testified that she did not consider the \$50,000 to have been a loan. She noted that there had not been any written loan agreement in respect of the \$50,000, and stated that there was no debt owed or due in the future. Ms. Wang stated further that she had never had any intention of having her interest be registered on [Property 1] in respect of the \$50,000, and noted that the \$50,000 had in fact been returned to her by the client on June 29, 2016, prior to the completion of the purchase of [Property 1].
49. When asked what she would call the \$50,000 towards the [Property 1] deposit, if it were not described as a loan, Ms. Wang indicated that she did not know, though she subsequently suggested that one could consider it to be a gift. Ms. Wang stated that she and the client were friends, and that she had not thought much of

providing the \$50,000 at the time. Ms. Wang again noted that she had not had any sort of lending agreement with the client, and that she had not collected interest on the \$50,000.

50. Ms. Wang stated that she did not at any point inform the client that Ms. Wang's provision of the \$50,000 towards the deposit at [Property 1] was a conflict of interest, as she did not consider that there was a conflict of interest.
51. Ms. Wang testified her view was that if she had provided the client with the \$50,000 prior to the writing of the offer to purchase [Property 1], that would have created a conflict of interest. She stated, however, that as she had only provided the \$50,000 after the offer had been accepted, she could not be seen to have induced the client to having entered into the purchase of [Property 1].
52. Ms. Wang indicated that the client's offer on [Property 1] was accepted on June 9, 2016, that the client had asked Ms. Wang for the \$50,000 on June 10, and that Ms. Wang had obtained the bank draft on June 11, 2016.
53. While she acknowledged having earned a commission on the [Property 1] transaction, Ms. Wang stated that she did not believe the \$50,000 was related to the making of that commission, because she had not agreed to providing the client with the \$50,000 prior to the making of the offer. Ms. Wang stated that she had not had an intention of making a commission, she was simply providing the money to the client due to their friendship.
54. Ms. Wang acknowledged having engaged in WeChat messages with the client regarding the repayment of the \$50,000, as well as the commission rebate that the client referenced in their complaint to RECBC.
55. Ms. Wang was specifically asked if she had felt pressured to agree to the commission rebate to the client in order to ensure repayment of her \$50,000. Ms. Wang indicated that on June 27, 2016, subjects had been removed from the [Property 1] purchase but the client had not yet informed her when the money would be repaid. Ms. Wang stated that she did not feel good about that fact, and that it was for that reason that she had written the client on June 27, 2016 to request repayment of the money.
56. Ms. Wang stated that in response to her request about whether the money could be repaid that day, the client had asked her about a commission rebate. Ms. Wang stated that a commission rebate had not previously been agreed to, but that she was "afraid", and that as a result she had made that agreement with the client on June 27, 2016.

57. Ms. Wang agreed that she had, in a letter she attached to a March 6, 2018 email to the RECBC investigator, indicated that she felt that the client had forced her to agree to the commission rebate, as Ms. Wang was worried that if she did not agree to that rebate the client would not return the \$50,000.
58. Ms. Wang acknowledged in her evidence that she was aware of RESA and the Rules, and that she was aware that licensees under RESA were required to comply with those.
59. Of interest, [Licencee 1] stated that during the period he was managing broker at [Brokerage 1], the brokerage had a very robust training program, including a policy manual all licensees were required to review, as well as in house meetings twice a month.

Reasons and Decision

Applicable Law

60. The term “professional misconduct” is defined under section 35 of the RESA:

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;
61. Section 30 of the Rules⁵ sets out rules governing licensee duties to clients:

30 Subject to section 31 [*modification of duties*] and 32 [*designated agency*], if a client engages a brokerage to provide real estate services to or on behalf of the client, the brokerage and its related licenses must do all of the following:

...

 - (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.

⁵ The Rules were revised effective August 1, 2021. At the time of Ms. Wang’s alleged conduct in 2016, section 30 of the Rules was section 3-3 of the Rules.

62. Section 10.9 of the Real Estate Services Regulation (the “Regulation”) sets out provisions of liability respecting individual licensees and their personal real estate corporations:

10.9 (1) If a personal real estate corporation commits

- (a) professional misconduct, or
- (b) conduct unbecoming a licensee,

The controlling individual is subject to discipline proceedings and other regulatory enforcement under Part 4 of the Act in relation to that conduct as if the controlling individual had committed the conduct.

(2) if a controlling individual commits

- (a) professional misconduct, or
- (b) conduct unbecoming a licensee,

The personal real estate corporation is subject to discipline proceedings and other regulatory enforcement under Part 4 of the Act in relation to that conduct as if the personal real estate corporation had committed the conduct.

Discussion

63. As set out above, the issue in this matter is whether Ms. Wang committed professional misconduct as contemplated by section 35(1)(a) of RESA in respect of her dealings with her clients regarding the purchase of [Property 1].
64. In order to make that determination, I consider it necessary to consider the following:
- Did Ms. Wang provide her clients a loan towards the deposit required under the contract of purchase and sale for [Property 1]?
 - Did Ms. Wang contravene section 30(i) of the Rules by failing to take reasonable steps to avoid any conflict of interest in respect of the client's purchase of [Property 1]?

- If a conflict of interest did exist between Ms. Wang and the clients in respect of [Property 1], did Ms. Wang contravene section 30(j) of the Rules by failing to promptly and fully disclose the conflict to the client?

65. I will consider each of the above in turn.

Did Ms. Wang provide her clients a \$50,000 loan towards the deposit required under the contract of purchase and sale for [Property 1]?

66. At the outset, I note that Ms. Wang is the controlling individual of her personal real estate corporation. Given the application of section 10.9 of the Regulation, I do not consider it to be of import that the \$50,000 bank draft came from Ms. Wang's personal real estate corporation, rather than Ms. Wang herself.
67. I find that the evidence and information before me supports a conclusion that the \$50,000 Ms. Wang provided towards the deposit on the purchase of [Property 1] was a loan.
68. Ms. Wang specifically indicated in her February 14, 2018 email to the RECBC investigator that she had obtained, on June 11, 2016, a bank draft in the amount of \$50,000 for the deposit on [Property 1]. Ms. Wang attached a copy of that June 11, 2016 bank draft from her business account to her February 14, 2018 email.
69. I note that Ms. Wang also provided the RECBC investigator with a copy of her business bank account statement showing a wire transfer into that account in the amount of \$49,982.50, which Ms. Wang explained was the repayment of the \$50,000 by the client, minus a processing fee. Ms. Wang further explained that the client had also subsequently reimbursed the processing fee.
70. Given the above facts, I do not consider that there can be any doubt that Ms. Wang provided the sum of \$50,000 as payment towards the \$90,000 total deposit on [Property 1]. Nor do I consider there can be any doubt that Ms. Wang was repaid that \$50,000 by the client on June 29, 2016.
71. In making those findings, I acknowledge that Ms. Wang, in her submissions, suggested that [Investigator 1], who testified at the hearing for the purposes of identifying the documents which were subsequently marked as exhibits in the hearing, was not a "reliable witness" as she did not have knowledge surrounding what Ms. Wang referred to as the "original book of documents". Ms. Wang also submitted that as the original RECBC investigator, [Investigator 2], had not testified at the hearing of this matter, "that was not reliable".
72. While I acknowledge Ms. Wang's submissions, I note that those submissions do not, in my view, cast any doubt on the relevance, authenticity, or reliability of the

- documents which were placed in evidence before me. Ms. Wang did not indicate, at any point in her testimony, that she did not consider the documents marked as exhibits to be unreliable. Ms. Wang did not, for example, deny that she had written the February 14, 2018 email to the RECBC investigator, which included her attachments setting out the information regarding the payment and repayment of the \$50,000. Ms. Wang also did not deny having been the person who wrote the Receipt of Funds Records related to [Property 1], which specifically identified that the \$50,000 was being loaned “to the Buyer temporarily”.
73. I find the evidence and information in the documents before me in this hearing to be relevant, and in light of Ms. Wang’s testimony, to be entitled to significant weight as to the nature of the transaction that occurred in June 2016. I do not consider the fact that [Investigator 1] was not the investigator who conducted the investigation into this matter in 2017 and 2018, and that she may not have had knowledge of every document in respect of the two contracts of purchase and sale Ms. Wang and the clients were involved in in 2016, to alter that finding. I further do not consider the fact that the RECBC investigator from 2017 and 2018 did not testify at the hearing of this matter to be of relevance in considering the reliability of the documents obtained in the course of that investigation, or the weight to be given to the information contained in those documents.
 74. To be clear, Ms. Wang did not, at any point in this proceeding, deny having provided the sum of \$50,000 towards the deposit on the purchase of [Property 1].
 75. Rather, Ms. Wang takes the position that the \$50,000 was not a loan. In support of that position Ms. Wang submits that she did not charge the client interest, or any handling fee, and that she had not done so as she did not view the provision of the \$50,000 a loan to the client. Ms. Wang refers to dictionary definitions of “loan”, and specifically definitions that suggest that a loan can be given to another party in exchange for future repayment of the loan value plus interest and other finance charges.
 76. I do not find Ms. Wang’s submission, made some six plus years after the date of the transaction, to be compelling, when compared to the evidence as to the nature of the transaction from 2016.
 77. In my view, the fact that Ms. Wang wrote, in 2016, that the \$50,000 she (or more particularly her personal real estate corporation) was providing towards the deposit on [Property 1] was money that she was “loaning to the Buyer temporarily” is the most compelling evidence as to what Ms. Wang’s view of the transaction was, and, in fact, what the nature of the transaction was.
 78. While I do not doubt Ms. Wang’s evidence that her willingness to provide the \$50,000 towards the deposit was, at least in part, based on her relationship with

- the client, who she described as being like a friend or a sister. I do not, however, consider that the fact of that relationship changes the nature of the transaction.
79. Again, I do not consider there to be any doubt that Ms. Wang's provision of the \$50,000 was a loan, which Ms. Wang expected to be repaid. The need for repayment is made clear not only by Ms. Wang's having expressly indicated that she was "loaning [the money] to the Buyer temporarily", but is also made clear by the WeChat messages, in which Ms. Wang specifically requested repayment from the client.
 80. Ms. Wang submitted, at the hearing of this matter, that she was not in fact "repaid", which in her view would make the provision of the \$50,000 a loan, but rather that her \$50,000 was simply "returned" to her. She sought to compare it to a situation in which someone borrowed her husband's car, and then gave it back.
 81. Again, in my view, the evidence from 2016 is compelling, and leads me to the conclusion that both Ms. Wang and the client knew that the \$50,000 was a loan. The fact that Ms. Wang described the money as being loaned to the client, and the fact that she asked for that money back from the client, in my view, makes clear that the \$50,000 was a loan, and not a gift.
 82. I note further that, even if I was to accept Ms. Wang's submission that in order for the \$50,000 to be considered to be a loan, it is necessary that the loan have been provided in exchange for future repayment plus something more, the facts of this case lead me to the conclusion that there was, in this case, something more.
 83. Ms. Wang received a commission on the purchase of [Property 1]. In order to receive that commission, the purchase of that property had to complete. In order for the purchase to ever have had the chance to reach completion, the deposit on the property, as required by the contract of purchase and sale, would have had to have been paid.
 84. In my view, it is clear that in the absence of Ms. Wang's provision of the \$50,000 towards the deposit, the contract and purchase of sale in respect of [Property 1] would not have gone forward, and Ms. Wang would then not have received a commission in respect of that purchase. In sum then, I consider it to be more likely than not that Ms. Wang provided the \$50,000 with a view to ensuring that she receive her commission upon the completion of the purchase of [Property 1].
 85. I note, in reaching this conclusion, that Ms. Wang specifically indicated, in her letter attached to the February 14, 2018 email to the RECBC investigator, that the client had asked Ms. Wang to lend her \$50,000 as she did not have enough money to pay the deposit. I note I do not doubt Ms. Wang's evidence that the client requested that Ms. Wang lend her the money. That fact, however, does not alter

my conclusion that Ms. Wang likely did so with a view to obtaining a commission when the purchase ultimately closed.

86. I find that, on June 11, 2016, Ms. Wang provided her client a \$50,000 loan towards the deposit required under the contract of purchase and sale for [Property 1].

Did the respondent fail to take reasonable steps to avoid any conflict of interest in respect of the client's purchase of [Property 1], contrary to section 30(i) of the Rules?

87. BCFSA submits that Ms. Wang ought to have realized that providing the \$50,000 loan to the client created a conflict of interest in the purchase of [Property 1]. BCFSA points to an October/November 2015 RECBC newsletter, which was sent by email to all licensees, as accurately specifically describing why the provision of a loan to a client ought to be avoided:

Most trading services licensees would probably agree that helping clients to buy their “dream home” is one of the most satisfying parts of the job. So when problems arise on the way to completing the transaction, it can be tempting to want to step in and fix things for your clients, to help them get the property they want so badly. But before you leap in and problem solve for your clients, take a moment to think about whether your assistance may actually be putting you in a conflict of interest.

One common example of helpful, problem-solving behavior that can have serious consequences for licensees is lending money to a client. ... You mean well, and your clients are delighted. But take a closer look.

Although on the surface this may seem like a kindly action, in reality the loan you've offered your clients is a self-serving business arrangement. By lending money to your clients, you've ensured that the sale will complete and you'll earn your commission. You've also created a financial obligation for your buyer-client, who must now repay their debt to you. In other words, you've just placed yourself in a conflict of interest.

88. Ms. Wang does not agree that the provision of the \$50,000 loan to the client created a conflict of interest. Rather, she takes the position that once the offer had been accepted, the transaction had, in effect, completed. Ms. Wang noted that she only provided the loan after the contract to purchase [Property 1] was made, and submitted that if the client had not paid the deposit as required by that contract, the client would have been in breach of contract. In summary, Ms. Wang's position was that even if she had not loaned the client the \$50,000, the contract of purchase

and sale on [Property 1] would have completed in any event, and that there was therefore no conflict of interest created by that loan.

89. I do not agree with Ms. Wang's submission in this respect.
90. In my view, the reason that Ms. Wang provided the \$50,000 loan to the client was to ensure that the purchase of [Property 1] went forward. The client indicated in an email to RECBC that it did not have the funds available to complete the deposit payment at the time it was due, and Ms. Wang's own evidence was that the client had indicated to Ms. Wang that she needed to borrow the \$50,000 as she did not have the money available to complete the deposit payment as required.
91. While I acknowledge that Ms. Wang's evidence is that she feels that the client tricked her, and that the client did in fact have sufficient funds available to complete the payment of the deposit, I consider the evidence to show that at the time she provided the loan of \$50,000 to the client, Ms. Wang did so in order to ensure that the deposit required by the purchase agreement for [Property 1] was paid and the purchase could proceed.
92. I consider that even if I were to accept that Ms. Wang's main reason for providing the loan was not to ensure that the purchase of [Property 1] proceeded, such that she would receive her commission associated with that purchase, but rather was to simply help out an individual she considered a friend, the reality of the situation is that once Ms. Wang's own money became part of the transaction for the purchase of [Property 1], she had a personal financial interest in the transaction beyond that which a licensee would normally have. I agree with BCFSA's submission that:

When a licensee makes a loan to a client, a conflict of interest arises because the licensee introduces their own interest into the transaction and cannot maintain their loyalty of fulfilment of agency duties owed to a client. For example, in a situation where a licensee loans funds towards the deposit or the purchase price or a property, a risk of the licensee being adverse in interest to their own client can arise should the transaction not complete for any reason. This could have occurred in the present case.

93. I find further support for my conclusion that the provision of the \$50,000 loan created a conflict of interest in the decision of RECBC in *Re Kim* 2019 CanLII 106127 (BC REC). In *Kim*, the licensee offered to loan his clients a shortfall in funds required in order to purchase a property as a means of enticing the clients to make an offer in excess of their budget. The clients relied on that loan offer from the licensee to make an offer on a property as a result. In finding that the offer of the loan created a conflict of interest the RECBC panel held that in making

the offer to lend money to the clients in relation to the purchase of a property, Kim had created a conflict of interest:

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

94. Although the circumstances in Ms. Wang's case are not identical to those in *Kim*, in that there is no evidence to suggest that Ms. Wang intended to earn interest on the loan to the client, as I have stated above, I consider it to be clear that in providing the loan Ms. Wang was working to ensure that the [Property 1] purchase would complete, which would ensure that she received a commission. In my view, that fact alone created a conflict of interest.
95. Given that the conflict of interest was created by Ms. Wang's own actions, that is the lending of the \$50,000 for the purposes of paying the deposit on [Property 1], I find that it cannot be said that Ms. Wang took steps to meet the duty to her client by taking all reasonable steps to avoid any conflict of interest as required by section 30(i) of the Rules.
96. I find that in failing to take all reasonable steps to avoid any conflict of interest as required by section 30(i), Ms. Wang contravened the Rules, and therefore can be found to have committed professional misconduct as contemplated by section 35(1)(a) of RESA.

If a conflict of interest did exist between the respondent and the clients in respect of [Property 1], did the respondent fail to promptly and fully disclose the conflict to the client contrary to section 30(j) of the Rules?

97. As set out above, I have found that a conflict was created when Ms. Wang loaned the client \$50,000 towards the deposit of [Property 1].
98. There is no evidence before me which would indicate that Ms. Wang disclosed the existence of that conflict to her client. Ms. Wang has specifically indicated that she did not provide such disclosure, as she did not believe that a conflict of interest had been created.
99. Given the above, I find that Ms. Wang contravened section 30(j) of the Rules, in that she failed to promptly and fully disclose to the client the fact that the loan of \$50,000 had created a conflict of interest.
100. As Ms. Wang contravened section 30(j) of the Rules, I find that she committed professional misconduct as contemplated by section 35(1)(a) of RESA.

Conclusion

101. I find that Ms. Wang committed professional misconduct within the meaning of section 35(1)(a) of RESA while licensed as a representative with [Brokerage 1] and acting as a buyer's agent in relation to the purchase of [Property 1].
102. Specifically, I find that Ms. Wang committed professional misconduct when she failed to avoid a conflict of interest, contrary to section 30(i) of the Rules, when she provided the client a loan towards the deposit required under the contract of purchase and sale for [Property 1].
103. I further find that Ms. Wang committed professional misconduct when she failed to advise the buyer that the loan towards the deposit for [Property 1] constituted a conflict of interest, contrary to section 30(j) of the Rules.

Sanctions

104. I retain jurisdiction to determine issues of sanctions and expenses, and will hear evidence and submissions from the parties concerning orders under section 43(2) of RESA, and expenses under section 44(1) of RESA, and any other actions available to the Superintendent, at a date, time and place to be set.
105. BCFSA and Ms. Wang must advise the Hearing Coordinator, by May 19, 2023 of any request for an in-person hearing respecting sanctions, and why an in-person

hearing is necessary or desirable. If an in-person hearing is directed, the Hearing Coordinator will contact the parties to arrange a suitable hearing date. Unless an in-person hearing is directed, any further evidence will be received through affidavits, and submissions respecting sanction will be received in writing. Subject to further directions, the parties must provide affidavit evidence and written submissions to the Hearing Coordinator and to each other as follows:

- a. BCFSA must provide any affidavits and written submissions by June 9, 2023;
 - b. Ms. Wang must provide any responding affidavits and written response submissions by June 30, 2023;
 - c. BCFSA must provide any reply affidavits and written reply submissions by July 7, 2023.
106. Any party may apply to vary these dates, seek leave to cross-examine on an affidavit, or address other procedural matters.
107. Once I have arrived at a decision on sanctions issues, I will issue additional reasons (a “Decision on Sanctions & Expenses”) that will form a part of this decision, make an order under section 43(2) of RESA, and make such other orders under RESA as I may deem appropriate.
108. Once an order has been made under Part 4, Division 2 of RESA, Ms. Wang will have a right to appeal to the Financial Services Tribunal under section 54(1)(e) of the RESA. Ms. Wang will have 30 days from the date of the sanction decision: *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at Kelowna British Columbia, this 16 day of May, 2023.

“ANDREW PENDRAY”

Andrew Pendray
Chief Hearing Officer