



Financial Services Tribunal

Citation: *Wei (Vicky) Wang and Vicky Wang Personal Real Estate Corp. v Superintendent of Real Estate*, 2024 BCFST 5

Decision No.: FST-RSA-24-A001(a)

Decision Date: 2024-10-29

Method of Hearing: Conducted by way of written submissions concluding on May 8, 2024.

Decision Type: Final Decision

Panel: Catherine McCreary, Panel Chair

Appealed Under: Section 54 of the *Real Estate Services Act*, SBC 2024, c 42

Between:

Wei (Vicky) Wang and Vicky Wang Personal Real Estate Corp.

Appellant(s)

And:

Superintendent of Real Estate

Respondent

Appearing on Behalf of the Parties:

For the Appellant(s): Wei (Vicky) Wang

For the Respondent: Kyle Ferguson

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INTRODUCTION

[1] The Appellants, Wei (Vicky) Wang (“**Ms. Wang**”) and Vicky Wang Personal Real Estate Corporation (“**VWPREC**”) (collectively, the “**Appellants**”), are licensees under the *Real Estate Services Act*, SBC 2004, c 42 (“**RESA**”). Ms. Wang has been licensed as a representative in the category of trading services since 2011. VWPREC, Ms. Wang’s personal corporation through which she provides real estate services, has been licensed to provide trading services since 2013.

[2] In June 2016, the Appellants represented ShuJun Li (“**Ms. Li**”) in her purchases of two properties. One property was located at 4571 Blundell Rd., Richmond, BC (the “**Richmond Property**”) and the other was located at 1268 48th Ave., Vancouver (the “**Vancouver Property**”). In 2017, a complaint was filed with the Real Estate Council of BC (the “**Council**”¹) signed by Ms. Li. In the complaint, it was alleged that Ms. Wang had failed to provide Ms. Li with a promised rebate on the commission earned on both transactions. Ms. Li also complained that Ms. Wang had not picked up rent cheques from the tenant at the Richmond Property and submitted them to the mortgagor, as she was to do (the “**Complaint**”).

[3] The Complaint ultimately resulted in disciplinary proceedings against the Appellants in which it was alleged² that the Appellants had engaged in professional misconduct by providing Ms. Li with a loan of \$50,000 for part of the required deposit on the Richmond Property.

[4] In 2023 a hearing was held by Andrew Pendray, a Delegate of the Superintendent of Real Estate (the “**Delegate**”). The Delegate found that the Appellants had engaged in professional misconduct (the “**Liability Decision**”³), and ordered that the Appellants pay an administrative penalty and enforcement expenses and that Ms. Wang complete courses in ethics and trading services (the “**Sanction Decision**”⁴).

[5] The Appellants appeal both the Liability and the Sanction Decisions.

¹ At the time of the complaint, the Council was the body designated in *RESA* to have responsibility for disciplining Realtors. On August 1, 2021, by virtue of the *Finance Statutes Amendment Act, 2021*, SBC 2021, c 2, the Council was dissolved and replaced by the Superintendent of Real Estate. All proceedings or activities commenced or conducted by the Council were deemed to be proceedings or activities commenced or conducted by the Superintendent.

² The first Notice of Disciplinary Hearing was issued in 2019. There were five subsequent amended notices, culminating in the notice issued in 2023, which was considered in the hearing.

³ *Re Wang*, 2023 BCSRE 18, online: <<https://www.bcfra.ca/media/3330/download>>.

⁴ *Re Wang*, 2024 BCSRE 1

[6] After filing the Notice of Appeal, Ms. Wang made a further application to introduce new evidence and to have it considered. The Respondent agreed to have consideration of the reasons issued concerning Ms. Wang's two applications for adjournments but opposed consideration of the other documents. The parties filed submissions on the question. As can be seen in my reasons below, I considered the reasons issued in respect of Ms. Wang's applications for adjournments. However, I did not need to consider the other evidence she sought to include, so I have not made any findings on that part of her application.

[7] Ms. Wang has represented herself during the investigation, the hearing and in this appeal. She states that English is her second language. As a result, I have given her arguments and her grounds of appeal a liberal interpretation and have not required her to use legalistic terms with precision. For example, while Ms. Wang uses the word "bias" in her arguments, it is evident that her allegations go beyond allegations of bias and that she is in fact raising a number of issues of fairness with the Delegate's process as well as substantive concerns with his findings. These are largely the same concerns that she raised before the Delegate himself. My role is to consider the decisions of the Delegate to determine whether they can be justified, taking into account the rules of natural justice and fairness. As such, I have endeavoured to get to the heart of Ms. Wang's argument and to determine whether the issues raised have merit, notwithstanding any label she may have used to describe them.

[8] For the reasons that follow, the appeal is allowed, and the Liability Decision of the Delegate is reversed. As a result of this finding, there is no need to address the question of sanction.

[9] I pause here to note that I have serious concerns with the way the Appellants were treated by the Council, the Superintendent, and the Delegate throughout the process from the investigation through to the hearing. More details of these concerns will be set out below, but in circumstances where parties are unrepresented, particularly where their livelihood and professional reputation is at stake, it is incumbent on all to ensure a high degree of fairness, including taking steps to confirm that the unrepresented party understands the process and that their position(s) is fully considered and addressed. From my review of the record, that did not occur in this case.

BACKGROUND

[10] Ms. Wang acted as realtor to Ms. Li, a woman she describes as her "8-years close family friend." Ms. Wang dealt with only Ms. Li in the two transactions where Ms. Li purchased property. The evidence in the hearing showed that Ms. Li's husband, Qiang Xu ("Mr. Xu"), was in China at the time of the transactions but in the contracts, he was designated to be named as the ultimate owner of the properties purchased by Ms. Li.

[11] On June 4, 2016, Ms. Wang showed Ms. Li the Vancouver Property. On June 9, Ms. Li made an offer on the Vancouver Property. That offer had conditions and was ultimately further revised. The revised offer was accepted on June 24, 2016.

[12] The evidence adduced at the hearing showed that Ms. Wang and Ms. Li viewed the Richmond Property on June 9, 2016, and on that day, Ms. Li made an unconditional offer to purchase the property. The offer required that a deposit of \$90,000 be paid within 24 hours. According to Ms. Wang, the offer was accepted by the sellers on June 9 at 9:45 pm. This is consistent with the documentary evidence. There was no other evidence of the time of acceptance. As a result, there was a binding offer to purchase the Richmond Property as of June 9, 2016 at 9:45 pm.

[13] On June 10, Ms. Li asked Ms. Wang for \$50,000 in order to help fund the deposit on the Richmond Property. Ms. Wang agreed and funded the \$50,000 from VWPREC. She did so by depositing a bank draft with the brokerage on June 11 and attributing it to the deposit on the Richmond Property. Ms. Wang testified that she did so because of her close personal relationship with Ms. Li.

[14] A few days later, Ms. Wang later learned from bank staff that Ms. Li and Mr. Xu had ready access to over 1 million US dollars. She explained that this made her feel deceived by Ms. Li.

[15] On June 27, when Ms. Wang asked Ms. Li to return the \$50,000, Ms. Wang received what she described as a “coercive” WeChat message. She says that, that Ms. Li “forced” her to agree to a 55% commission rebate. Ms. Wang says she agreed to the commission rebate because she feared Ms. Li would otherwise not return the \$50,000. The \$50,000 was then returned, without interest, to Ms. Wang, prior to the closing of the Richmond Property transaction.

[16] The transactions on both properties completed, as scheduled, in the fall of 2016, funded by Ms. Li and Mr. Xu. (the “**Buyers**”)

[17] In 2017, Ms. Li and Mr. Xu met with Ilan Heller, the managing broker at Ms. Wang’s firm. Mr. Heller testified that he mostly communicated with Mr. Xu. The Buyers complained to him that Ms. Wang had not provided the promised commission rebate. They did not talk to Mr. Heller about the loan for the deposit. Mr. Heller advised the Buyers that they should complain to the Council.

[18] On October 10, 2017, a complaint package was emailed to the Council by Sophia Xia (“**Ms. Xia**”), a person who worked for DanQiu Wealth Management which provides financial investment products. The package included a complaint signed by Ms. Li, who was the only complainant. Ms. Li did not mention the \$50,000 borrowed towards the deposit on the Richmond Property. The Complaint stated:

Vicky [Ms. Wang] failed to meet the commitment of paying the buyer 55% of commitment earned through the purchase transactions as rebate Vicky collected rental payment checks from the tenant for the buyer/landlord but failed to deposit them on time which almost caused mortgage issue.

[19] The Buyers also brought an action against Ms. Wang in BC Supreme Court to recover a commission rebate. That action appears to have been abandoned and the Buyers' counsel has advised the Superintendent that he had not been in contact with them and believed them both to be in China.

[20] Once the Council accepted the Complaint, it appointed Janet Murray, to be a Council Investigator. Ms. Murray secured documentation from Ms. Wang, her managing Broker, Ilan Heller, and some statements from the Buyers. At no time did anyone from the Council interview the Buyers. Rather, their statements were obtained by the Council investigator only through email correspondence, via a third party, DanQiu Wealth Management.

[21] In 2019 a Notice of Disciplinary Hearing ("**NODH**") was drafted and served on Ms. Wang.

[22] In this first NODH, and each one thereafter, it was alleged that the Appellants were guilty of professional misconduct due to a loan of \$50,000 from them to Ms. Li to fund part of the deposit required for the transaction. In all NODH, except the one served in January 2023, just days before the hearing commenced, the NODH described the Vancouver Property as the one for which the loan was made and for which the professional misconduct was alleged.

[23] On April 3, 2019, the Council sent Ms. Wang a book of relevant documents on a thumb drive. Another book of documents was provided to Ms. Wang in 2023, a few days before the initial hearing. However, as will be discussed below, it became clear at the hearing before the Delegate, that Ms. Wang continued to rely on the 2019 book of documents, and that this caused issues for her during the hearing, given the changes in the allegations set out below.

[24] An Amended NODH was issued October 8, 2019, with the same charges and setting the date of the hearing for November 25 and 26, 2019. The issuer was changed to the Superintendent of Real Estate of the BC Financial Services Authority. References to legislation were updated. Also, this Second Amended NODH did not include allegations concerning property management and the allegations concerning the commission rebate were reworded.

[25] The hearing scheduled for November 2019 did not occur. There was no evidence as to the reason for the postponement of the hearing.

[26] A Third Amended NODH was issued November 2, 2022, that set the hearing for January 25-26, 2023 and the allegations remained the same as in the Second Amended NODH.

[27] A Fourth Amended NODH was issued December 8, 2022, where the hearing dates remained the same but the allegations concerning the commission rebate were deleted

[28] On January 13, 2023, a paralegal from the BC Financial Services Authority ("**BCFSA**") sent a message to Ms. Wang stating that a further amended NODH had been issued. This

Fifth Amended NODH, for the first time contained the allegation that the \$50,000 was loaned regarding the Richmond Property.

[29] Throughout this period leading up to the Fifth Amended NODH, there were also a number of without prejudice discussions attempting to have Ms. Wang agree to a finding of misconduct on the basis of agreed statements of facts that were drafted by BCFSA staff. Ms. Wang says she found this process unfair and that she was being pressured to agree to things that were clearly incorrect.

Initial Hearing

[30] At the hearing commencing on January 25, 2023, which was conducted via videoconference, there were no opening remarks by the Delegate to explain the process of the hearing to Ms. Wang. From the conduct of Ms. Wang at the hearing, it appears as if she did not know what was expected of her.

[31] Counsel for the BCFSA, Catherine Davies, advised in her opening remarks that the complainant, Ms. Li, would not be testifying as a witness. She said that the BCFSA had learned that Ms. Li had been in China since at least 2020 and that the BCFSA had been unable to locate Ms. Li. Ms. Davies said Ms. Li had been unresponsive to the BCFSA as well as to her own legal counsel. As a result, the Appellants were not provided with an opportunity to question the Buyers at the hearing, and the only evidence from them came in the form of unsworn statements or hearsay from other witnesses (or in some cases double hearsay).

[32] The BCFSA's position in the opening statement was that Ms. Wang's conduct of loaning the money for the deposit constituted a breach of the duty to take reasonable steps to avoid a conflict of interest and a breach of the duty to promptly and fully disclose to her client the conflict of interest, contrary to sections 30(i) and(j) of the *Real Estate Services Rules*, BC Reg 209/2021 (the "**Rules**"), and section 35(1)(a) of the *RESA*.

[33] Counsel for the BCFSA also described the incorrect reference to the Vancouver Property in the five earlier versions of the NODH as a "typo."

[34] The first witness was Danica Law, an Investigator at BCFSA. Ms. Law had been the investigator on the file since December 2021. She testified about the entire investigation, even though the majority of the investigation was conducted by Ms. Murray, who did not testify. Ms. Law referred to a Book of Documents consisting of 19 tabs. Included in the book was the Fifth Amended NODH, and documents relating to the lawsuit for the commission rebate.

[35] Ms. Law gave evidence about her interpretation of what the documents revealed. Early in Ms. Law's testimony, she confirmed that she did not conduct the investigation, nor did she contact any witnesses. She said she familiarized herself with the file. Ms. Law testified that she had no contact with the original investigator, Ms. Murray. Ms. Law said

she had access to all the previous documents but did not review them all. She said she was working from the Book of Documents that Ms. Wang received on January 17, 2023.

[36] After counsel for the BCFSa finished questioning Ms. Law, Ms. Wang was called on to cross-examine her.

[37] Ms. Wang began to ask questions of Ms. Law arising from the Fourth Amended NODH. She asked her questions regarding the deal for the Vancouver Property. As noted above, Ms. Wang had an earlier Book of Documents from the planned 2019 hearing, and she referred to some of those documents when questioning Ms. Law. Ms. Law confirmed that she did not review that book of documents. The Delegate intervened to question Ms. Wang's understanding of the proceedings. It then became clear that Ms. Wang was proceeding on the 4th Amended NODH. The Delegate asked if Ms. Wang took the position that the hearing should not be allowed to proceed on the Fifth Amended NODH and instead proceed on the Fourth Amended NODH.

[38] Ms. Wang had been using the available chat function during the hearing to direct questions at the Delegate. Unfortunately, the content of the chat function was not included in the transcript of the hearing. The Delegate told Ms. Wang not to use the chat, just to ask her questions aloud. He refers to a concern raised by Ms. Wang that she had not received the documents. Without referring to the contents of the chats, the Delegate suggests that Ms. Wang complained of not receiving the book of documents. The Delegate then stated:

Okay. So you can give evidence saying that, "I didn't receive that document," or, "I hadn't read that document," or whatever you want to say about it when you give your evidence. Okay? So you have the opportunity to say that then. Do you understand what I mean?

To which Ms. Wang replied in the affirmative.

[39] There followed some confusion where Ms. Wang attempted to ask questions of the BCFSa counsel, Ms. Davies. The Delegate advised that those were not questions Ms. Wang could ask because Ms. Davies was not testifying, she was "just counsel for BCFSa." He advised Ms. Wang that she could raise those issues in her arguments instead.

[40] The Delegate tried to confirm that Ms. Wang had received a copy of the Fifth Amended NODH prior to the hearing commencing on Wednesday, January 25, 2023). Ms. Wang advised that she had not received the Fifth Amended NODH until Monday, January 23, 2023, when she checked her email.

[41] The Delegate asked Ms. Wang what she was seeking. Ms. Wang replied that she was seeking to close the file. The Delegate stated:

So that -- so I'll stop you. That's not the application that's going to happen. I'm going to give Ms. Davies a chance to respond, but I suppose that one of the things you could say is "I think it's unfair that I only got notice of this change in address in the notice of hearing so close in time

to the hearing." But what would end up happening then if I said, "You know what? You're right, that is unfair," which I'm not saying, but if I said that what would end up happening was that your hearing would be rescheduled. It's not going to go away. Do you follow?

[42] Ms. Wang replied as follows:

Okay. ... last year, January, the schedule, the January hearing was postponed ...

So after, after further assessment by the whole legal team, maybe after March, on April 7th I received an email from Ms. Davies. She told me there was, there was no finding to, to determine any misconduct. ... So, I don't know why Ms. Davies on January 13 suddenly provided -- changed the property reference to the Blundell. I want to know the question -- I want to know the answer. Of course I understand a hearing is not to question Ms. Davies, but as the licensee, I think it should be fair to, to know clear, to know the proceeding clearly.

[43] The Delegate called on Ms. Davies to respond to Ms. Wang's concerns about receiving notice of the hearing and the change of address in the Fifth Amended NODH. Ms. Davies said:

That being said, in my submission there's no issues of breach of any natural justice or procedural justice. And I'll just give some background as to that. As we have seen from some of the evidence and from my opening, there were two properties that were the subject of the complaint, two purchases by the same client with Ms. Wang acting as the buyer's agent. There was, **for whatever reason**, the incorrect property of these two properties was referred to in the conflict of interest charge. Yes, I agree from all the notices.

However, that being said, **there have been numerous without prejudice communications between myself and Ms. Wang. I won't get into what they were, but over the course of many years in attempts to resolve this matter in numerous different ways, all of the communication and certain documents that we've exchanged make it very clear that we were of the same mind about which property, namely the Blundell, was the subject of the conflict of interest charge.** Although it was incorrectly identified in the notice, every other communication made it clear that the Blundell property was the subject of that charge. And the disclosure, all of the documents, the documents that were referred to by Ms. Law, clearly refer to the Blundell property. In my submission, there is no, no miscommunication as to that being the property that we're dealing with respect to the allegations set out in the fifth notice for that. You know, so that clearly was a typo for whatever

reason. Just in respect of your last comment, Ms. Wang, about some of the more recent communication regarding the adjournment of last January's hearing and other communication in April, **I will say that those communications between yourself -- or the legal department and yourself were without prejudice.** But just comment on your -- the word "findings". Findings are -- it's a legal term where it's a finding of fact or a finding of law that only the superintendent or a hearing officer can make. And so where I may have referred to there no actual findings, it's because there has been no decision arising from a hearing. The allegations have always remained and we've never taken away those allegations. And so this file has never been closed. And so we are here today. I -- we are here prepared to proceed. If you are going to seek an adjournment, I do acknowledge that the 21 days has not been strictly adhered to. But I do think that there is no prejudice to you necessarily. And I will leave it at that. **(emphasis added)**

[44] Thereafter, the Delegate stated:

So, Ms. Wang, what Ms. Davies has just raised is the crux of the issue. Yes, section 40 in the Act requires that you have notice of the type and nature of the allegations at 21 days. Ms. Davies has said, essentially, yes, **there was a typographical error in the original** -- the previous notices. It's been amended now. But that you were largely aware and more importantly, she says, it wouldn't be unfair to you to proceed today. Given that you're not planning on calling any witnesses, which you indicated you were not in your previous correspondence, what's the issue for you with proceeding today on these allegations? It's not as though, given the documentation, that you were not aware of the issues with respect to the \$50,000 loan. So can you explain to me why you say you need an adjournment so that we would come back and continue **this hearing at some other time when you can be more prepared for the issue that, you know, it seems to me largely you would have known about?** **(emphasis added)**

[45] Ms. Wang again raised her concern about the timing of the change to the Richmond Property on Blundell Road and the Delegate repeated Ms. Davies' comments that it was a typographical error. He said that the "why" didn't matter to him and confirmed that Ms. Wang was saying she needed time to prepare to deal with the matter. The Delegate adjourned for him to consider the application.

[46] When the Delegate returned, he then acknowledged Ms. Davies' submissions were that the loan at issue related to the Richmond Property and that that could not be said to come as a surprise to Ms. Wang as she appeared to be aware of an issue relating to that loan. He found that:

So in my view then that fact, as well as the reality that the change in the typographical error that has now be rectified in the fifth amended notice of hearing means that **Ms. Wang was not, as is required by section 40 of RESA, provided with a notice of discipline hearing which described the nature of the complaint that is to be the subject of the discipline hearing in section 40(2)(a) at least 21 days before the time set for the hearing.** And Ms. Wang's position that she requires the required time period to prepare for the amended allegations. All that leads me to a conclusion that in the interest of fairness the adjournment requested today should be granted. **(emphasis added)**

[47] The Delegate granted this adjournment application and noted that after review of the various correspondence that Ms. Wang had sent to the hearing division in advance of the scheduled discipline hearing, it was plain that in preparing for the hearing Ms. Wang had been solely focused on the transaction related to the Vancouver Property. In particular, he referred to a letter of December 15, 2022 to Ms. Davies in which Ms. Wang noted that she did not consider that there was any evidence to prove there had been a loan towards the Vancouver Property.

[48] The Delegate concluded that the Fifth Amended NODH was not provided to Ms. Wang at least 21 days before the hearing, as required by the *RESA*.

[49] In granting the adjournment, the Delegate noted that the allegations set out in the notice of hearing date to 2016 and that it had been adjourned on a number of previous occasions. He noted that Ms. Wang had previously agreed to the dates of February 27 and 28, 2023. The Delegate found that it is in the public interest to proceed with the hearing on those dates and that to do so would not interfere with Ms. Wang's right to a fair hearing.

[50] Ms. Wang had also provided letters and materials in which she put forth arguments regarding her position that the matter should be dismissed in its entirety. The Delegate noted that Ms. Wang was free to make submissions in that regard during the hearing of the matter.

Adjournment Applications

[51] During the intervening period, Ms. Wang twice applied for an adjournment of the discipline hearing.

[52] In a separate applications, Ms. Wang applied for two adjournments:

- a) because she had a client from out of town who needed to be shown properties
- b) her stated intention to request legal advice.

[53] The Delegate issued decisions denying each adjournment.⁵ (In this appeal before the Financial Services Tribunal, the Respondent Superintendent has agreed to have the decisions on the adjournment applications included in the appeal record.)

[54] Regarding the first application, the Delegate noted, in describing the background of the matter, that the matter was proceeding on the basis of a Fifth Amended NODH dated January 13, 2023, and set out the charges therein. The Delegate also noted that the hearing had been subject to previous adjournments. It was originally scheduled to proceed June 10 and 13, 2019, November 25 and 26, 2019, and adjourned again on January 7, 2022, ostensibly on the basis that the parties were discussing settlement. When the hearing was rescheduled to January 25 and 26, 2023, the Delegate presided at a pre-hearing conference held on November 30, 2022. The Delegate did not describe the reasons for the previous adjournments nor if they were at Ms. Wang's request.

[55] With respect to the application for an adjournment to obtain legal advice, the Delegate noted that Ms. Wang had said that she needed to seek legal advice as a result of the amendment made to the notice of hearing dated January 13, 2023. The Delegate noted the BCFSA's objection to the application and that it took the position that Ms. Wang had long been aware of the nature of the allegations against her and that she has had sufficient time to seek legal advice. The BCFSA largely relied on the without prejudice discussions with the Appellants to support its position that Ms. Wang was aware of the allegations.

[56] The Delegate noted Ms. Wang's submissions that she was seeking legal advice. He referred to her indication that she did not know how to defend herself legally and that she was seeking justice and fairness. He also noted that Ms. Wang submitted that she was seeking to have the discipline action brought against her dismissed.

[57] The Delegate stated that Ms. Wang had indicated only at the last moment that she wished to seek legal advice. He said he does not consider that Ms. Wang's "sudden" indication that she wishes to seek legal advice to constitute an appropriate ground for granting an adjournment. He noted Ms. Wang had previously appeared at "a number" of pre-hearing conferences at which the Richmond Property was identified as the reason for the loan and the conflict of interest.

[58] The Delegate described Ms. Wang's submissions at pre-hearing conferences. He found that Ms. Wang had "long been aware" that the allegations of conflict of interest concerned the Richmond Property. On the issue of needing an adjournment to obtain legal advice, he also found that there was insufficient evidence to support a conclusion that Ms. Wang had "diligently" been seeking counsel and she appeared to be simply seeking delay of the hearing.

⁵ *Re Wang*, 2023 BCSRE 7, and *Re Wang*, 2023 BCSRE 8.

Hearing Recommences

[59] The hearing recommenced on February 27, 2023.

[60] Ms. Wang declined to further cross-examine Ms. Law.

[61] Mr. Heller, the Managing Broker at Ms. Wang's firm was the next to testify. He testified that he had met with the Buyers about the commission rebate, and that Mr. Xu, sent him WhatsApp excerpts to show the conversation about the commission rebate that had transpired between Ms. Wang and Ms. Li. He also reviewed an email from Mr. Xu purporting to explain what took place.

[62] Mr. Heller confirmed that the transaction completed, and Ms. Wang earned commission of \$22,538.78.

[63] The BCFSA closed its case.

[64] Ms. Wang was then sworn in, and she said she wanted to start with her submission that she had sent the day before. The Delegate told her that some of what she put in that submission were arguments and that arguments need to go in only after she gave her evidence. He did not explain the basis for his direction, nor did he describe the difference between "evidence" and "submission." Ms. Wang replied that she wanted to focus on the submission she had prepared. A further interaction between the Delegate and Ms. Wang ensued in which she continued to try to make submissions regarding the merits of the case but the Delegate continued to interrupt to advise her that she could not make those submissions until her evidence was concluded.

[65] Eventually, the Delegate suggested Ms. Wang focus on the part of her submission titled "Factual Background Feb. 24, 2023".

[66] Ms. Wang then testified and made these points:

- a) Ms. Wang claimed Ms. Li had a "special purpose" for borrowing money and that the special purpose Ms. Li had was to secure a commission rebate.
- b) Ms. Wang said that Ms. Li took advantage of eight years of close friendship and trust to exercise undue influence on her.
- c) Ms. Li asked to borrow the money only after her unconditional offer on the Richmond Property was accepted.
- d) Ms. Wang argued that after the unconditional offer on the Richmond Property was accepted, it became a binding contract and the Richmond Property could not be identified as a "potential" transaction anymore.
- e) Ms. Wang said that there was no loan agreement or lending agreement with Ms. Li, either verbal nor in writing, which specified the amount of money borrowed or any interest or repayment terms.

- f) She argued that the money could be considered as a gift on the basis of no loan agreement.
- g) Ms. Wang pointed out that Ms. Li returned the money back to her on June 29, 2016, as per her request before the completion date on the Richmond Property in October 2016. Ms. Wang had no intention to put her own interest on the title upon completion date.
- h) Ms. Wang also notes that Ms. Li did not complain to anyone about the loan towards the deposit of the Richmond Property.
- i) Ms. Wang pointed out that in the BCFSa's book of documents there was no evidence that Ms. Li had formally complained at all about the \$50,000 loan towards the deposit of the Richmond Property. Ms. Wang submitted that the \$50,000 did not constitute a conflict of interest under the definition of loan or debt, or under the BCFSa guidance related to conflict of interest⁶.
- j) Ms. Wang argued that there was no conflict of interest involved in the Richmond Property transaction.
- k) Ms. Wang continued to demonstrate concern and confusion with respect to the changes in the NODH and the new Book of Documents. For example, she continued to refer to documents from the 2019 Book of Documents and refer to communications with BCFSa staff regarding the Vancouver Property.
- l) Ms. Wang argued, after presenting these points, that "following the order of law", the file should be dismissed which would be fair and just for the licensee.

[67] Ms. Wang testified that the provision of the \$50,000 was not related to the receipt of commission. It was her position throughout that because the \$50,000 was not requested or provided until after the unconditional offer was accepted, the contract was fully binding, and it could no longer be characterized as a "potential" transaction. She said that if Ms. Li didn't or couldn't pay the deposit then Ms. Li would have been in breach of the Contract of Purchase and Sale.

[68] Ms. Wang addressed the BCFSa guidance regarding conflict of interest in loaning money to clients. She described that she understood a lending agreement or a loan agreement to be a "formal contract" between a lender and a borrower and that lending agreements spell out all the details of the loan, such as the principal amount, interest rate, amortization, term, fees, payment terms, and the rights to a lender to collect payment if the borrower defaults. She referred to the definition of "loan" in the Oxford dictionary which identifies the essence a debt as an agreed sum that is due under the terms of a contract.

⁶ BC Financial Services Authority, "Conflict of Interest (Trading Services) Guidelines", online <<https://www.bcfesa.ca/industry-resources/real-estate-professional-resources/knowledge-base/guidelines/conflict-interest-trading-services-guidelines>>.

[69] The Delegate said that he wanted to ask a couple of questions before he gave Ms. Davies a chance to ask her questions as well. I note that before this discussion took place, the Delegate did not ask Ms. Wang whether her evidence had been completed.

[70] The Delegate sought to confirm that Ms. Wang did not view the \$50,000 as a loan. She agreed and said she didn't think it's a loan because of the nature of the \$50,000 being just between Ms. Li and herself, because they didn't have any loan or lending agreement (either verbal or written), because she did not take any interest in the property, and because it happened after the seller had accepted Ms. Li's unconditional offer.

[71] The Delegate asked if it was not a loan then what would Ms. Wang call it? Ms. Wang replied that based on the fact that they had been friends for eight years and that she did not collect any interest, the transaction did not match the Oxford definition of loan and it did not match the legal term for loan.

[72] The Delegate persisted by referring Ms. Wang to WeChat messages in evidence. Ms. Wang resisted using the term "repaid" with regards to the \$50,000. The Delegate persisted and asked whether Ms. Wang had the expectation that Ms. Li would pay her back this money.

[73] The Delegate said:

I'm asking you in respect of what your expectation was. Did you think that she was going to pay you back the \$50,000 once you gave it to her?

[74] To which Ms. Wang replied:

If she didn't -- in the message that, actually, the Ms. Li, actually, to trick me to get this money to -- for her purpose. She wanted to-- actually, from the WeChat she asked me to get a commission rebate under duress, so it could be called duress. So, she didn't give me, yeah, gift -- it could consider gift.

[75] During cross-examination by BCFSa counsel Ms. Wang confirmed that she gave Ms. Li the money and that the \$50,000 was returned to her. Ms. Wang noted there was nothing in writing. Ms. Wang also said she did not tell Ms. Li it may have been a conflict of interest. Ms. Davies asked Ms. Wang to confirm that she did not tell Ms. Li that it may have been a conflict of interest. In response, Ms. Wang said:

Oh, I don't think it is a conflict interest, because I know the definition of a conflict of interest it means before for any potential transaction. I understand that for any potential transaction is that, mean that before, just to showing and before writing the offer, or writing the offer, before accepted offer. But I did (inaudible) she didn't ask me; I of course know she has (inaudible) funds. She is rich lady, so I of course I never thought I induce her to (inaudible) \$50,000 to -- for some transaction. No. I never thought of that.

[76] Ms. Wang indicated that she used the word “loan” without understanding what it meant because now she knows that loan is not only the principle it is also the interest. Ms. Wang said there was no interest on this transaction and Ms. Li asked for the loan for a “special purpose”. Ms. Wang said she wasn't aware of Ms. Li's intentions when she advanced the funds. By this, I understand that Ms. Wang later came to believe that Ms. Li asked for the loan for the purpose of withholding repayment until Ms. Wang agreed to give Ms. Li a rebate on the commissions for the purchase of the Richmond Property and the Vancouver Property.

[77] Ms. Wang confirmed, when asked by counsel, that she had received a commission on the sale of the Richmond Property, however Ms. Wang testified that the purpose of providing her friend with the \$50,000 was not to earn that commission. Ms. Wang stated that it might have been different if she agreed to provide the funds to Ms. Li before making the offer or acceptance of the offer. Ms. Wang repeated that this was not what happened because there was already a binding Contract of Purchase and Sale in place when the loan was requested and given. Instead, Ms. Wang said that she provided the funds because of eight years of close friendship. Many of Ms. Wang's answers were interrupted by further questions by BCFSA counsel and thus appeared to be incomplete. There was no direction from the Delegate to allow Ms. Wang to complete her answers.

[78] Ms. Wang noted that June 27, 2016, the day that the subjects were removed on the Vancouver Property, was when she asked Ms. Li to give back the \$50,000. Ms. Wang confirmed that in order to secure repayment of the \$50,000, she agreed with Ms. Li to a commission rebate on both the Vancouver Property and the Richmond Property purchases. Ms. Wang said it was Chinese culture to make good friends, and so she felt cheated by Ms. Li when it became apparent that in order to secure the return of the \$50,000, Ms. Wang would have to agree to a rebate on the commission for both properties. When Ms. Wang testified about the commission rebate, she confirmed that Ms. Li had not asked her for a rebate prior to this, and she had never agreed on such a thing. Ms. Wang said that when she agreed to the commission rebate, it was under duress and done in order to secure the return of her \$50,000. This was the only direct evidence about the timing of Ms. Li's request for a commission rebate.

Positions of the Parties

[79] The Delegate then heard oral arguments.

[80] BCFSA counsel also submitted a written argument that had been provided to Ms. Wang and the Delegate that morning. BCFSA counsel argued that this was a fairly simple, straightforward case with respect to very discrete, simple allegations.

[81] BCFSA counsel acknowledged that they must prove their case on a balance of probabilities. Ms. Davies argued that hearsay evidence was acceptable and admissible to prove their case.

[82] Ms. Davies was seeking findings that Ms. Wang committed professional misconduct within the meaning of section 35(1)(a) of *RESA*, while licensed as a representative with Sutton Group West Coast Realty, and acting as a buyer's agent in relation to the purchase of the Richmond Property and the Vancouver Property. She also alleged that contrary to section 30(i) of the *Rules*, Ms. Wang failed to avoid a conflict of interest when she provided Ms. Li with a loan towards the deposit required under the Contract of Purchase and Sale for the Richmond Property, and contrary to section 30(j) of the *Rules* she failed to advise the buyer that the loan towards the deposit constituted a conflict of interest.

[83] BCFSA counsel relied on the following case authorities in support of their position that the facts gave rise to a conflict of interest: *Re Gasser*, 2020 CanLII 103125 (BC REC); *Re Kim*, 2019 CanLII 106127 (BC REC); *Re Hsiao*, 2019 CanLII 26022 (BC REC); and *Re Hachey* 2015 CanLII 41250 (BC REC).

[84] In summary, BCFSA counsel submitted:

- a) 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 the licensee cannot maintain their **loyalty of fulfilment of agency duties owed to a client**.
- b) The fact that Ms. Li did not make a complaint directly related to the loan was irrelevant to liability.
- c) The fact that the loan did not have specified terms as to interest or repayment is irrelevant to liability.
- d) The fact that the loan was made towards the deposit on a subject-free offer and was repaid before the transaction concluded is irrelevant to liability.
- e) The very act of loaning money to a client on a transaction where the licensee is acting as their client's agent creates the conflict of interest, as it introduces their own financial interest into the transaction **and affects their ability to fulfill their agency duties to their client. (emphasis added)**

[85] BCFSA counsel provided no explanation for the length of time it took to arrive at a hearing. Nor was the change of property address in the Fifth Amended NODH referred to in the closing argument.

[86] Notwithstanding that it had been Ms. Wang's position from the outset that the timing of the loan impacted the question of whether a conflict of interest arose, BCFSA counsel did not address this other than to make the bare assertion that the timing had no bearing on liability. BCFSA counsel did not submit any argument on what "agency duties" remained for Ms. Wang to perform after the unconditional offer was accepted.

[87] BCFSA counsel submitted that obtaining a financial interest in her client's purchase was risky. Counsel submitted that the loan in fact resulted in adverse consequences. Counsel did not address Ms. Wang's position that she may have been victimized by the Buyers. Counsel argued that Ms. Wang herself admitted that in order to ensure repayment of the loan, she promised Ms. Li a commission rebate. This promise and

eventual failure to pay the commission rebate, was what led to both the complaint to the Council, as well as the civil claim against Ms. Wang.

[88] In her submissions, Ms. Wang argued a number of points:

- a) Neither Mr. Xu nor Natalie Ge, (another staff member at DanQiu Wealth Management who handled correspondence for Mr. Xu), were involved in the showing of the properties nor the completion of the offers to purchase. Neither did they have Powers of Attorney to entitle them to make decisions about the offers.
- b) The original investigator, Ms. Murray, was not a witness in the hearing. Based on the 2019 Book of Documents, Ms. Murray did not meet Ms. Li at all. However, the 2019 Book of Documents shows that:
 - i. Ms. Murray had email communication with Mr. Xu, but never received emails directly from Ms. Li.
 - ii. There was no documentation of a loan agreement which should have included amount of money borrowed, the borrower's name, the lender's name, interest incurred, repayment date, etc.
 - iii. WeChat messages in evidence related only to inconsequential handling fees for the return of the \$50,00. The messages did not specify that the \$50,000 was for the deposit for the Richmond Property and didn't disclose any information related to loan interest, repayment, or fees.
- c) BCFSa investigators and counsel never had direct communication with Ms. Li including person-to-person, email communications, or other communications.
- d) There had been no indirect contact between the BCFSa and Ms. Li since 2020.
- e) Ms. Li was not available as a witness so she could not give contrary evidence to that of Ms. Wang.
- f) Allegations that referred to an alleged conflict of interest towards the deposit for the Vancouver Property remained in the Notices of Hearing for many years until January 12, 2023. These allegations appeared to have been based on an email communication from DanQiu staff member Natalie Ge on December 20, 2018, which erroneously referred to the Vancouver Property transaction.
- g) It appears that Counsel drafted the allegations of conflict of interest and commission rebate on the basis of Natalie Ge's 2018 email communication, rather than on the basis of the investigation files from the 2019 Book of Documents.
- h) Based on the investigation files included in the original 2019 Book of Documents, the Contract of Purchase and Sale on the Richmond Property (signed by Ms. Li) indicated that the Buyers' agent's commission came from the

seller's proceeds. This is the standard arrangement according to the Standard Contract of Purchase and Sale in British Columbia.

- i) Ms. Law was not a reliable witness because she joined BCFSa in 2021 and was not involved in the investigation. Her evidence confirmed that she only reviewed the current Book of Documents which was cut down significantly from the original 2019 Book of Documents. Accordingly, Ms. Law did not have a complete understanding of the matter.
- j) Mr. Heller was also not a reliable witness because he confirmed that he only met Ms. Li one time in his office before she delivered her complaint to Council. Mr. Heller confirmed that in the meeting, Ms. Li did not mention the \$50,000 towards the deposit on the Richmond Property.
- k) Ms. Wang's case was not similar to the cases relied on by the BCFSa counsel.
- l) According to the definition of conflict of interest referred to by BCFSa, it is stated very clearly that the offending loan is to any "potential" transaction. However, because the \$50,000 happened after Ms. Li's unconditional offer was accepted, it was no longer a potential transaction. Rather Ms. Li was already bound by the Contract of Purchase and Sale regardless of if she paid the deposit, and that contract provided Ms. Wang would still earn a commission if the deal collapsed due to a lack of deposit.
- m) Ms. Wang's matter was special because Ms. Li intentionally borrowed the \$50,000 even though Ms. Li had access to sufficient funds in local banks and Ms. Li had an active plan to purchase not one but two investment properties. The WeChat Message proved that Li's purpose was to obtain a commission rebate.
- n) Overall, Ms. Wang argued that the evidence did not prove a conflict of interest.

Liability Decision

[89] The Liability Decision, *Re Wang*, 2023 BCSRE 18⁷, was issued May 16, 2023.

[90] In the decision, the Delegate characterized the issues to be decided as whether Ms. Wang committed professional misconduct contrary to section 35(1)(a) of *RESA* and section 30 of the *Rules*. He stated the issue to be determined as:

- a) Did Ms. Wang provide her clients a loan towards the deposit required under the contract of purchase and sale for the Richmond Property?

⁷ *Re Wang*, 2023 BCSRE 18, online: <<https://www.bcfsc.ca/media/3330/download>>.

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

[91] The Delegate detailed the original complaint, filed by Ms. Li on October 10, 2017, as the basis of the charges against the Appellant. The complaint was that Ms. Wang had refused to give the Buyers a rebate of 55% of her commission earned despite a promise to do so, and Ms. Wang's failure to deposit rent cheques collected from the Richmond Property tenants. He also described evidence that the payment received by Ms. Wang's brokerage in regard to the Richmond Property, including that \$50,000, was from Ms. Wang's corporation.

[92] The Delegate then focused on the \$50,000 and noted that the investigation into the complaint led the BCFSa investigator to contact Ms. Li and ask her about a WeChat message that concerned the repayment of the \$50,000.

[93] The Delegate noted Ms. Wang's testimony that she did not view the transaction as a loan to the buyer because she had not made any interest or other fees, and it was not recorded in writing. In addition, he noted Ms. Wang's testimony that she felt Ms. Li had taken advantage of her. Ms. Wang argued that she did not consider the \$50,000 to be a loan because there was no loan agreement and she had no intention to have her interest registered on the Richmond Property. She also submitted that the money was reimbursed before the transaction completed. The Delegate noted that Ms. Wang characterized the transaction as a gift and that she received no interest. The Delegate also noted that Ms. Wang admitted that she did not advise Ms. Li that the loan created a conflict of interest. The Delegate also noted Ms. Wang's evidence that the Buyers' offer on the Richmond Property was accepted on June 9, 2016, that Ms. Li had asked Ms. Wang for the \$50,000 on June 10, and that Ms. Wang had obtained the bank draft on June 11, 2016. He noted Ms. Wang's stated belief that the \$50,000 was not motivated by making a commission on the purchase of the Richmond Property because she had not agreed to providing the client with the \$50,000 prior to making the offer to purchase. Ms. Wang acknowledged that the WeChat messages also concerned to commission rebate that was the foundation of the Complaint filed October 17, 2017.

[94] The Delegate noted Ms. Wang's evidence that she had been forced to agree to the commission rebate in order to achieve the return of the \$50,000 as she was worried if she did not agree to the rebate, the Buyers would not return the \$50,000.

[95] The Delegate held that the evidence and information supported a conclusion that the \$50,000 Ms. Wang provided towards the deposit on the purchase of the Richmond Property was a loan. He also held that there cannot be any doubt that Ms. Wang provided the sum of \$50,000 as payment towards the \$90,000 total deposit on the Richmond

Property. Finally, he found there was no doubt that Ms. Wang was repaid the \$50,000 by the Buyers on June 29, 2016.

[96] From those factual findings, the Delegate concluded that Ms. Wang advanced the funds for the deposit in order to make a commission, because without the advance of those funds, the sale would not have proceeded and therefore Ms. Wang would not have received a commission. These conclusions were reached despite the only evidence on these points coming from Ms. Wang, who testified that:

- a) The reason Ms. Wang provided the \$50,000 was because of her close friendship with Ms. Li and not in order to obtain the commission; and
- b) Ms. Li had sufficient funds to pay the deposit even without the Appellants providing her with \$50,000.

[97] The Delegate does not explain why he rejected or ignored that evidence of Ms. Wang, or why he chose to rely almost exclusively on hearsay evidence that had been submitted to the investigator by staff of DanQiu Wealth, on behalf of the Buyers.

[98] In that respect, the Delegate did confirm that as an administrative tribunal, he was not bound by court rules of evidence, and in the absence of any statutory provision to the contrary, he may consider any relevant evidence, including hearsay evidence: *Adams v. British Columbia (Superintendent of Motor Vehicles)*, 2019 BCCA 225 at para 56, citing *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119 at paras 36, 38.

[99] The Delegate did not address the Appellants' concern that neither the initial investigator nor the Buyers testified. As a result, there had been no way for the Appellants to test the hearsay evidence, through cross-examination or otherwise. The Delegate did not address the impact this had on the admissibility or the weight to be given this hearsay evidence. Nor did the Delegate say how or why he came to prefer the hearsay evidence over Ms. Wang's direct evidence, where that evidence differed.

[100] In determining that providing the loan created a conflict of interest, the Delegate relied on *Re Kim*, 2019 CanLII 106127 (BCREC) ("**Kim**"), where a conflict of interest had been found where a realtor loaned money to a client to entice them to make an offer in excess of their budget.

[101] The Delegate acknowledged that the circumstances in Ms. Wang's case were not identical to those in *Kim*, and that there was no evidence to suggest that Ms. Wang intended to earn interest on the loan to the client. However, he found that in providing the loan, Ms. Wang was working to ensure that the Richmond Property purchase would complete which would ensure that she received a commission. In his view that alone created a conflict of interest.

[102] The Delegate also found that by failing to take all reasonable steps to avoid any conflict of interest, Ms. Wang contravened the *Rules* and therefore can be found to have committed professional misconduct under by section 35(1)(a) of *RESA*. The Delegate also

made findings that Ms. Wang committed professional misconduct when she failed to disclose the conflict of interest to Ms. Li.

[103] The Delegate came to a number of conclusions about Ms. Wang's provision of the \$50,000 and whether, without it, the transaction would have completed. However, he did not grapple to any real extent with Ms. Wang's argument that the irrevocable acceptance of the offer undermined the existence of a conflict of interest. He simply rejected it out of hand without analysis, such as identifying what agency duties could have gone unfulfilled. He also did not explain how he came to the conclusion that Ms. Wang had acquired an "interest" in the property, in the absence of documentation of the "loan."

Sanctions Decision

[104] The Sanctions Decision, *Re Wang*, 2024 BCSRE 1, was issued on January 5, 2024. In it, the Delegate determined:

Having found in *Wang (Re)*, 2023 BCSRE 18, that Ms. Wang committed professional misconduct within the meaning of section 35(1)(a) of RESA, when in respect of the [Property 1] purchase she contravened section 30(i) of the Rules by failing to take reasonable steps to avoid any conflict of interest by providing a \$50,000 loan to the client towards the purchase of [Property 1], and by failing to promptly and fully disclose that conflict of interest to the client as required by section 30(j) of the Rules, I would now make the following orders:

- Pursuant to section 43(2)(i) of RESA, I order that Wei (Vicky) Wang and Vicky Wang Personal Real Estate Corporation are jointly and severally liable to pay an administrative penalty to BCFSA in the amount of \$5,000, within 90 days of the date of this Order;
- Pursuant to section 43(2)(f) of RESA, I order that Wei (Vicky) Wang, at her own expense, enrol in and successfully complete the Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia, within three (3) months of the date of this Order;
- Pursuant to section 43(2)(f) of RESA, I order that Wei (Vicky) Wang, at her own expense, enrol in and successfully complete the REIC2600 Ethics in Business Practice course offered by the Real Estate Institute of Canada, within six (6) months of the date of this Order; and
- Pursuant to section 43(2)(h) of RESA, I order that Wei (Vicky) Wang and Vicky Wang Personal Real Estate Corporation are jointly and severally liable to pay enforcement expenses to BCFSA in the amount of \$22,958.18, within 90 days of the date of this Order

[105] The Delegate also ordered:

If Wei (Vicky) Wang and/or Vicky Wang Personal Real Estate Corporation fail to comply with any term of the above orders, the Superintendent may suspend or cancel their licenses without further notice to them, pursuant to sections 43(3) and 43(4) of RESA.

APPEAL

[106] Ms. Wang and VWPREC filed an appeal of both the Liability and Sanction Decisions to this tribunal.

Appellants' Position

[107] In this appeal, Ms. Wang has asked the tribunal to rescind the Liability and Sanction Decisions and to compensate her for her costs in bringing this appeal, including her \$850 filing fee.

[108] Ms. Wang argues that the Respondent did not meet the burden of proving that lending \$50,000 constituted a conflict of interest on the basis of the submissions in the hearing before the Superintendent and the information in the record of the investigation.

[109] She referred to BCFSa guidance about conflict of interests related to loaning money to a client for a "potential" transaction. Ms. Wang argues that the Delegate did not apply this guidance appropriately in determining his decision on liability. She points out that the guidance prohibits loaning money to clients, thereby introducing your own financial interests into a "potential" transaction. Ms. Wang consistently argued that the Richmond Property transaction was irrevocable, once Ms. Li's unconditional offer was accepted on June 9, 2016, and therefore it was a not merely a "potential" transaction.

[110] Ms. Wang submits that the Superintendent didn't present any documentary evidence of the loan. Ms. Wang submitted that on a balance of probabilities BCFSa counsel had not proven that the loan of \$50,000 constituted a conflict of interest as stipulated in the Fifth Amended NODH. She argues that the Delegate could not find any evidence to prove their case that met the bar the BCFSa articulated as evidence that was "sufficiently clear, convincing and cogent."

[111] While Ms. Wang went on to argue that there had been no proof that she was the source of funds, I believe the evidence is clear that VWPREC was the source of the \$50,000 that was used for the deposit for the Richmond Property. There was also evidence that the money was returned by the end of June and that the transaction closed in October due to funds provided by Ms. Li and not Ms. Wang or VWPREC.

[112] Ms. Wang submits that the Liability Decision reflected confirmation bias and reasonable apprehension of bias. Ms. Wang submits that the BCFSa counsel must have proven its case on the balance of probabilities, that is, it must have proven that it is more

likely than not that the facts as alleged occurred. She referred to *F.H. v McDougall*, 2008 SCC 53, for authority on this point.

[113] Ms. Wang points to several of the Delegate's findings and argues that they amount to bias. She points to what she says were false statements the Buyers made in the investigation process that were relied on by the Delegate, despite Ms. Wang's contradictory evidence and the absence of their direct testimony.

[114] Ms. Wang submitted that I should be guided by the principles in the doctrine of procedural fairness and then quoted *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 to advance the position that administrative tribunals must be free from an appearance of bias. Ms. Wang provided a description of confirmation bias and described it as the tendency to selectively search for or interpret information in a way that confirms one's preconceived ideas.

[115] Ms. Wang argues with legal authorities that there were what she described as a number of "evidence issues." These included situations where the Delegate accepted evidence of Mr. Xu, notwithstanding neither he nor Ms. Li testified and their evidence was unreliable, circumstantial, and it contradicted the direct evidence of Ms. Wang. She argued that the Delegate improperly relied on circumstantial evidence and that with no documentary evidence of the loan, she was the one at risk of loss, not Ms. Li.

[116] Ms. Wang also made submissions about an "abuse of process." Ms. Wang pointed to a January 7, 2022 e-mail from BCFSA counsel that advised her that the amalgamation of the Council and BCFSA led the legal department to review her case, and submitted she had communication with counsel in April 2022 where she was informed that "there is no finding to determine any misconducts" from 6 years worth of investigation documents and process. Notwithstanding this communication, the hearing was rescheduled and proceeded in January 2023.

[117] Ms. Wang relies on *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 and *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, in which the Supreme Court of Canada addressed the issue of delay in administrative proceedings and its impact on procedural fairness. Ms. Wang argues that the cases provided by Ms. Davies and utilized by the Delegate were not similar cases to her matter.

[118] Ms. Wang argued also that the reason the civil claim with respect to the commission rebate did not proceed was that there was no basis for it. She argued that the Delegate did not consider her arguments about why it had been pending in court for four years without any further action taken by the Buyers.

Respondent's Position

[119] The Respondent submits that the Liability and Sanction Decisions should be confirmed, and this appeal should be dismissed. It has also sought leave to make submissions on costs.

[120] The Respondent acknowledged that support for the finding that Ms. Wang advanced funds for the deposit, including a quote from correspondence from Mr. Xu, was not tested in the hearing and that it conflicted with the direct evidence of Ms. Wang. The Respondent also addressed the findings of the Delegate regarding whether the \$50,000 amounted to an “loan”. The Respondent submits:

... The Delegate found that the contemporaneous documentation prepared by Ms. Wang, her subsequent requests for repayment, the fact that the Buyer repaid the \$50,000, and Ms. Wang’s statements to RECBC during the investigation, all supported a finding that the provision of the \$50,000 was a loan to the Buyer which the Appellants expected to be repaid.

Moreover, even if there was a requirement that the Appellants benefit for the \$50,000 to be considered a loan, as the Appellants had argued, the Delegate found that the Appellants provided the \$50,000 for the deposit to ensure that the purchase of the Richmond Property went forward, thereby ensuring they would receive a commission.

The Delegate found that by making the loan, the Appellants’ money became part of the transaction, and they had a personal financial interest beyond that which a licensee would normally have, and that this created a conflict of interest. The Delegate found that once the conflict of interest arose, it should have been promptly and fully disclosed to the Buyer.

[121] The Respondent further argues that the issues can be framed this way:

- a) Was there a breach of procedural fairness because:
 - i. there was a reasonable apprehension of bias displayed by the Delegate?
 - ii. BCFSA failed to call the “appropriate investigator” to testify at the hearing?
 - iii. the proceeding was an “abuse of process” and/or there was “undue delay” due to “false” or “overlapping” allegations?
 - iv. BCFSA “fabricated fake evidence” and/or made “misrepresented statements” in its closing submissions at the hearing?
- b) In the Liability Decision, did the Delegate err in finding that the Appellants had failed to avoid a conflict of interest?
- c) In the Sanction Decision, did the Delegate err in ordering the Appellants to pay a \$5,000 penalty and complete educational requirements?
- d) In the Sanction Decision, did the Delegate err by making an unreasonable enforcement expenses award?

[122] With regards to the appropriate standard of review in this appeal, the Respondent argues that I should follow *TruNorth Warranty Plans of North America, LLC v Superintendent of Financial Institutions*, 2020 BCFST 2 ("**TruNorth**"), where the Panel Chair canvassed the law on standards of review as they apply to appeals to this tribunal in the wake of the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 ("**Vavilov**").

DECISION

Standard of Review

[123] I agree with the Respondent that the standard of review to be applied is as set out in *TruNorth*:

- a) the correctness standard of review should apply to questions of law;
- b) the standard of reasonableness should apply to questions of mixed fact and law, with more deference afforded to questions that are more fact-intensive and less law-focussed;
- c) questions of fact and discretionary decisions, including remedy, should be reviewed on the reasonableness standard;
- d) With respect to questions of procedural fairness, the appropriate standard of review to apply is that of fairness within the statutory, administrative and common law parameters of fairness, and therefore the standard of review is also whether, in all the circumstances, the Respondent acted fairly. Allegations of bias are matter of procedural fairness.

[124] When reviewing a decision on the reasonableness standard, this tribunal should be guided by the Supreme Court of Canada's decision in *Vavilov*. Specifically, a decision is reasonable if it falls within a range of possible, acceptable outcomes, and is reached in a justified, transparent, and intelligible manner. A reasonable decision is one that makes sense in light of the law and facts, and there can be more than one "reasonable" outcome.

[125] The focus should be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. When applying the reasonableness standard, this tribunal should not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis, or seek to determine the "correct" solution to the problem. Instead, I must consider only whether the decision made by the Delegate—including both the rationale for the decision and the outcome to which it led —was unreasonable.

[126] In order for a decision to be justified, transparent and intelligible so as to meet the standard of reasonableness, in addition to being logically coherent, and consistent with

the law and facts, it must also be responsive to the issues raised by the parties. In *Vavilov*, the majority put it this way at paras 127-128:

The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: *Baker*, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.

Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para. 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

Discussion and Analysis

[127] As noted in the Liability Decision, the charge against Ms. Wang is that she committed professional misconduct under section 35 of *RESA*:

Misconduct by licensee

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

(a) contravenes this Act, the regulations under this Act or under section 43 of the *Property Law Act* or the rules;

[128] Section 30 of the *Rules* that Ms. Wang is also alleged to have contravened sets out licensee duties to clients:

Duties to clients

30 Subject to section 31 and 32, 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 of Part 5, if a conflict of interest does exist, promptly and fully disclose the conflict to the client.

[129] The term “conflict of interest” is not defined in the legislation or the *Rules*.

[130] Ms. Wang represented herself. She is not a lawyer. She, nonetheless, raised many issues in her arguments. Her issues were raised during the investigation, during her evidence and in her argument during the hearing. They are also part of her submissions on appeal.

[131] My review has shown that there were many areas argued by Ms. Wang that the Delegate did not address, where his reasons were insufficient to meet the standard of reasonableness, or where he arrived at conclusions that were unreasonable. I have also identified breaches of procedural fairness.

Reliance on Hearsay Evidence

[132] In this case, the Delegate relied heavily on hearsay evidence, and in some instances, what amounts to double-hearsay evidence. The Delegate’s reliance on hearsay evidence in this case has impacts both on the fairness of the process and on the reasonableness of the decision.

[133] I agree with the Delegate that as an administrative tribunal, he was not bound by court rules of evidence, and in the absence of any statutory provision to the contrary, he may consider any evidence that he considers relevant, including hearsay evidence.

[134] However, the discretion to admit hearsay evidence is not the end of the matter. Before relying on hearsay evidence, it is important to assess its reliability as well as its impact on the fairness of the process. That is particularly so where the hearsay evidence is contradicted by direct, first-hand, sworn evidence. In those circumstances, it is important for a decision-maker to address these issues directly in their reasons in order that the parties and the appellate tribunal or court can understand why certain evidence was preferred.

[135] Although it is not always clear from the reasons what evidence the Delegate relied on for which of his findings, there were a number of instances where the Delegate made findings that appear to have been based largely or exclusively on hearsay or double hearsay evidence. For example, the Delegate appears to have accepted hearsay evidence attributed to Mr. Xu, notwithstanding that no investigator spoke with Mr. Xu and that his comments in writing were never further tested nor explained. In addition, the remarks attributed to Mr. Xu often were contradictory to Ms. Wang’s sworn oral evidence.

[136] The Delegate noted that the original investigator's (Ms. Murray's) inquiry to Ms. Li was answered by Ms. Li's husband, Mr. Xu, with the following statement:

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

[137] These comments were contradicted by Ms. Wang's evidence that the request for the loan was made by Ms. Li (not Mr. Xu) and that the request took place after the unconditional offer had been irrevocably accepted.

[138] There was also hearsay evidence from an email dated December 20, 2018 to BCFSA counsel from Natalie Ge, staff of DanQiu Wealth Management, who claimed to be forwarding the information from Ms. Li. The email said:

... My husband and I decided on the [Richmond Property] after agreeing on the rebate and visiting other houses. ... Then, Vicky recommended the [Vancouver Property] and lent money to us for filling shortage in the deposit. What Vicky did, seriously influenced our purchasing decision and cost huge financial loss.

[139] Once again, this unsworn statement, purportedly from Ms. Li, is contradicted by Ms. Wang's testimony as well as by the documents themselves.

[140] In the face of contradictory evidence, the Delegate's reliance on these and other examples of hearsay, without explanation or analysis as to its reliability, undermines both the transparency and the intelligibility of the Liability Decision. In short, it makes the decision unreasonable.

[141] In addition, the Superintendent's decision to prosecute the case without calling on Ms. Li or Mr. Xu (or the original investigator, Ms. Murray) to testify, while relying on their statements to ground their disciplinary action, fatally undermined the fairness of the process. Ms. Wang was not able to test their evidence through cross-examination. Ms. Wang claims she did not know until the first day of the hearing that Ms. Law had never been in touch with Ms. Li and that Ms. Li would not be testifying. It is apparent that the lack of direct evidence contradictory to Ms. Wang's testimony did not lead to the Delegate's assessing the relative credibility of that evidence. It appears that facts were accepted by the Delegate based on hearsay and without analysis, notwithstanding the questionable provenance.

Delegate's Conclusion Regarding Reasons for the Loan

[142] Related to the hearsay issue is the Delegate's conclusion on the reason the Appellants loaned Ms. Li the \$50,000. It is clear from his reasons that the Delegate's conclusion regarding professional misconduct relied heavily on his finding that the reason for the loan was for Ms. Wang to earn a commission. This conclusion seems to be based

on a combination of the above statements attributed to Ms. Li and Mr. Xu and the Delegate's "common sense" conclusion that this must have been the reason.

[143] However, the only direct evidence on the motivation was from Ms. Wang herself, who was clear from the outset that she provided the money only because of her close friendship with Ms. Li.

[144] Moreover, the Delegate's conclusion in this regard ignores Ms. Wang's evidence and arguments with respect to the earning of the commission. In particular, Ms. Wang's position that she had already earned her commission was made clear in her evidence under cross-examination, and is supported by the documentary evidence. In particular, the Contract of Purchase and Sale, which was already binding at the time Ms. Li asked for the \$50,000, provided that the commission was due and payable by the seller. The Delegate did not appear to review the actual language of this contract including terms as to when the commission became due and by whom it was payable. Similarly, there was no review of the sale contract to determine what would occur if the buyer reneged on the acceptance of the irrevocable offer. Thus, there were no reasons to explain the conclusion that if Ms. Wang had not advanced the deposit funds, the deal would not have closed. The Delegate did not consider the intention of Ms. Li to acquire the Richmond Property nor the potential consequences to Ms. Li of reneging on the deal, nor her apparent access to the necessary funds to pay the deposit if Ms. Wang had not assisted with the deposit.

[145] Finally, Ms. Wang argued there was no ongoing debt because Ms. Li returned the money back to her before the completion date of the Richmond Property. So, Ms. Wang says that after June 29, 2016 (well before the transaction closed), she had no financial interest involved in the transaction of the Richmond Property. This argument was also not addressed by the Delegate.

[146] While the email statements attributed to the Buyers outlined above may suggest something more in terms of motive, to the extent they do so it is directly contradicted by Ms. Wang's evidence and could not be tested by cross-examination or otherwise.

[147] The Delegate was unreasonable in making his findings about the existence of a conflict of interest without analysing the terms of the contracts. The Delegate does not explain how he came to this conclusion notwithstanding Ms. Wang's evidence. As a result, the Delegate's conclusion in this respect is unreasonable and the product of unfairness.

Analysis of Conflict of Interest

[148] The Delegate made a finding of fact that the \$50,000 constituted a loan from the Appellants to the Buyers. Notwithstanding the Appellants' argument to the contrary, this conclusion is reasonable in the circumstances.

[149] However, having made that finding, the Delegate concluded that this necessarily meant that a conflict of interest existed. Much of the discussion in the Liability Decision was on the topic of whether the advancing of the \$50,000 amounted to a "loan" and once he determined it be a loan, the Delegate appears to have considered the fact of the loan

to be the same as a finding that there was a conflict of interest. That conclusion was reached without conducting an analysis on that point or meaningfully engaging with the Appellants' arguments as to why it did not.

[150] While Ms. Wang's argument that there was no loan may have distracted the Delegate, her other argument, that the timing of the advancement of the funds after the acceptance of the irrevocable offer did not amount to a conflict of interest were not dealt with. The impact of the timing was not addressed in a meaningful way by the Delegate so as to require him to determine what agency duties Ms. Wang continued to have a responsibility to perform for Ms. Li that could have been impacted by the loan. Nor did he address the extent to which the case law referred to were distinguishable based on the particular contractual obligation, the timing of the loan, or the motivation behind the loan.

[151] Other than the discussion concerning commission, which was addressed above, the Liability Decision does not describe any circumstances where Ms. Wang was or would have been unable to act in Ms. Li's best interest.

[152] The Delegate did not consider what duties of Ms. Wang's continued to exist that would interfere with her interest of the return of the \$50,000. He does not conclude that Ms. Wang had any duty to share her commission with Ms. Li. There was no analysis in the Liability Decision to show how any of these duties were impacted by the advancement of the funds for use in the deposit.

[153] There is no doubt that the provision of the loan created or could have created some issues in this case. Accordingly, it is possible that the Delegate's conclusion that the transaction gave rise to a conflict of interest was reasonable in terms of outcome. However, having failed to conduct the necessary analysis in his reasons to arrive at that conclusion, his decision does not meet the test for reasonableness set out in *Vavilov*.

Without Prejudice Evidence

[154] All of the above is enough to ground my decision to allow the appeal and to set aside the Delegate's decision. However, I would be remiss not to mention a concern that arose regarding the manner that without prejudice evidence was dealt with in this case.

[155] This issue concerns mostly the adjournment applications (which are not included as a ground of appeal) but demonstrates a double standard that appears to have been in effect.

[156] As noted, Ms. Wang represented herself and has no legal training. It appears that during the investigation, in between the dates set for hearings, representatives of the Superintendent or the BCFSA presented Ms. Wang with a number of proposed Statements of Agreed Facts and Consent Orders.

[157] Ms. Wang claims that she did not sign the proposed orders because they contained errors. Ms. Wang argued that she was pressured by BCFSA counsel and she submitted

examples of documents seeking her consent to Statements of Agreed Facts and Consent Orders, all in support of her contention that the proceedings were an abuse of process.

[158] The Superintendent objected to the admissibility of these documents for the purpose of demonstrating an abuse of process, but nonetheless relied on them in resisting the adjournment request by showing that Ms. Wang must have known that the hearing would be about the loan on the Richmond Property. This is notwithstanding that all of that information was crafted by the BCFSa counsel and did not amount to an admission by Ms. Wang that she knew the Vancouver property address in the NODH was irrelevant.

[159] The Delegate relied on without prejudice evidence to impose a requirement on Ms. Wang that she proceed with a hearing notwithstanding that the wrong property had been the subject of the allegations for over 5 years, however the Delegate refused to address the implications of some of that evidence that Ms. Wang urged upon him. This inconsistency in treatment, among other things, lent support to the Appellants' concerns about bias. While this is not sufficient, by itself, to meet the test for a reasonable apprehension of bias in this case, given the strong presumption of impartiality, it is important, particularly in cases with self-represented parties, to take extra care to ensure consistent application of the rules of evidence and procedure amongst the parties.

CONCLUSION

[160] For the reasons set out above, I am persuaded that there was a lack of procedural fairness and that the Delegate's decision is unreasonable.

[161] As such, the appeal is allowed.

[162] I have considered whether to exercise my remedial discretion under section 242.2(11) of the *Financial Institutions Act*, RSBC 1996, c 141 ("**FIA**"), to send the matter back to the Delegate for reconsideration. However, I have determined that it would not be appropriate to do so in these circumstances. First, it has been over eight years since the impugned transactions took place, and the delay in bringing this matter to hearing in the first place has already led to concerns about the fairness of the process – concerns which would only be exacerbated at this stage. Second, it seems clear from the evidence here that neither Ms. Li nor Mr. Xu are available to testify at a new hearing. As such, the procedural unfairness that I have found here would not be cured by a new hearing. Finally, the unusual circumstances surrounding this case, together with the way in which the Appellants were treated throughout this process, leads me to the conclusion that it is not in the public interest to subject the Appellants to further administrative proceedings, nor would that be necessary for the protection of the public.

[163] Accordingly, the Liability Decision is set aside, leaving no basis for the Sanctions Decision.

Costs

[164] The Appellant asked me to grant her the costs of bringing this appeal, including her \$850 filing fee. The Appellant made no substantive submissions on costs, and did not refer to any authorities to support the position for an order granting costs. The Respondent did not seek an order for their costs but has sought leave to make submissions in that regard.

[165] Without substantive submissions from the parties on costs, I cannot consider the Appellant's request. I grant the parties leave to make submissions on costs, should either of them wish to do so.

[166] With that said, I note the following for the benefit of the parties.

[167] This tribunal does not routinely award costs to the successful party in appeals before it. Although I have the authority to order costs under section 242.1(7)(g) of the *FIA*, success in the proceeding is only one of many considerations. Other considerations are outlined in section 47(1) of the *Administrative Tribunals Act*, SBC 2004, c 45, and in sections 3.23 and 3.24 of the *Financial Services Tribunal Practice Directives and Guidelines*. Furthermore, this tribunal has previously found that costs will only be ordered in exceptional circumstances; see for example *Inglis v. Real Estate Council of BC*, Decision No. 2019-RSA-001(b) (17 July 2020)⁸ and *Andrew Brian Laity v Superintendent of Real Estate*, 2022 BCFST 3.

[168] The \$850 fee for filing an appeal to this tribunal is set out in the *Financial Services Tribunal Regulation*, BC Reg 222/2004 ("**Regulation**"). Neither the *Regulation* nor the *FIA* give me the authority to waive, reduce, or refund the fee.

"Catherine McCreary"

Catherine McCreary, Panel Chair
Financial Services Tribunal

⁸ *Inglis v. Real Estate Council of BC*, Decision No. 2019-RSA-001(b) (17 July 2020), online: <<https://www.bcfst.ca/decision/2019rsa001b>>.