

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF a Hearing under Part 3 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5 (the "*Real Estate Act*")

AND IN THE MATTER OF a Hearing regarding the conduct of SHELLEY BONWICK, Real Estate Associate, currently not registered, previously registered with 1853147 Alberta Ltd. o/a Engel & Volkers Calgary; 2008863 Alberta Ltd. o/a The Alberta Collection; The Alberta Collection Inc.; Grand Realty & Management Ltd. o/a Grand Realty; Discover Real Estate Ltd.

Hearing Panel Members: [K.K], Chair (Public Member)
[S.P] (Industry Member)
[B.R] (Industry Member)

Appearances: Tracy Leonardo, Case Presenter on behalf of the Executive Director of the Real Estate Council of Alberta

Shelley Bonwick, on her own behalf

Hearing Date: March 2nd - March 13th, 2020

Location: Real Estate Council of Alberta
1506 – 11 Avenue SW, Calgary, Alberta T3C 0M9

DECISION ON CONDUCT DESERVING OF SANCTION

INTRODUCTION

1. Pursuant to the *Real Estate Act*, RSA 2000, c. R-5 and its *Regulations* and *Rules*, the powers of the Real Estate Council of Alberta ("RECA") include setting and enforcing standards for the real estate industry and the business of real estate industry members in Alberta as RECA determines necessary to promote the integrity of the industry, and to protect consumers affected by the industry.
2. In this capacity the RECA Executive Director ("ED") issued a Notice of Hearing dated January 16, 2020 to Shelley Bonwick. The Notice of Hearing alleges conduct deserving of sanction for breaches of the *Real Estate Act* and the *Real Estate Act Rules*.

3. This hearing involves Ms. Bonwick's alleged conduct in connection with the proposed purchase and sale of [Address 1] and [Address 2] beginning in approximately February 2014, and such other conduct of Ms. Bonwick which is described further in this decision.
4. Ms. Bonwick is currently not licenced or registered with the Real Estate Council of Alberta ("RECA"). She ceased being registered on September 30, 2018. She was previously registered with 1853147 Alberta Ltd. o/a Engel & Volkers Calgary, 2008863 Alberta Ltd. o/a The Alberta Collection, The Alberta Collection Inc., Grand Realty & Management Ltd. o/a Grand Realty, and Discover Real Estate Ltd.
5. The parties did not object to the composition of the Hearing Panel.
6. Ms. Bonwick was not represented by legal counsel nor anyone else at the hearing. In response to specific questions from the Hearing Panel about her being unrepresented, Ms. Bonwick confirmed she is aware of her right to legal counsel. When asked if she wished to proceed with the hearing unrepresented, she stated she did not wish to proceed, then asked for the hearing to be adjourned or to have this hearing discontinued.
7. The ED and Ms. Bonwick submitted substantial amounts of documentary evidence and exhibits in this hearing. The ED also called 12 witnesses who provided viva voce evidence. Ms. Bonwick testified on her behalf. All witnesses were affirmed prior to giving evidence. The parties also made several applications during the hearing. The Hearing Panel has considered all submissions, evidence and applications in making its decision.
8. The Hearing Panel notes that on or around December 1, 2020 the *Real Estate Act* and *Real Estate Act Rules* have replaced "industry member" with "licensee". The majority of this decision was written prior to that change taking effect. Accordingly, this decision refers to persons licensed through RECA as an "industry member" or "industry members".

EVIDENCE

9. In making its decision, the Hearing Panel considered and weighed all evidence and submissions provided by the ED and Ms. Bonwick, including:
 - a. opening statements and closing arguments made by the ED and Ms. Bonwick;
 - b. all documents and records entered as Exhibits;

- c. all submissions, supporting documents, records and legal authorities in connection with all applications the parties made during and after the 10 day hearing;
- d. affirmed viva voce testimony from the following witnesses:
- Holly Childs, a RECA investigator since 2015; she investigated cases 006025, 007825, 008395, and 008556 in relation to Ms. Bonwick;
 - Anthony Merah, a lawyer retained by JN and NN in 2017 in connection with their proposed sale of [Address 2] to MB;
 - Rey Umbalin, a residential real estate associate;
 - Kristine Semrau, a broker who worked with Ms. Bonwick;
 - Cheryl Rumpel, who assisted Holly Childs during the RECA investigation;
 - HR, named as buyer in a Residential Purchase Contract involving [Address 1];
 - CE, co-owner of [Address 1];
 - AE, co-owner of [Address 1];
 - SF, named as buyer in a Residential Purchase Contract involving [Address 2];
 - James Porter, RECA Professional Conduct Review Manager;
 - David Lem, broker;
 - William Osunde, realtor who represented JN and NN when they purchased [Address 2] in 2014;
 - RB, HR's wife and formerly Ms. Bonwick's assistant;
 - Shelley Bonwick;
(individually and collectively the "evidence").

APPLICATION TO ADJOURN THIS HEARING

10. Ms. Bonwick made an application to adjourn the hearing, and the Case Presenter opposed the application.
11. The Case Presenter submitted that it would be prejudicial to the ED to adjourn the hearing. Ms. Bonwick had legal counsel for several months beginning in or around March 2019. She also filed several applications in the Court of Queen's Bench, including for judicial review of her licence suspension, and to direct RECA to proceed with the hearing against her. Multiple applications were made to move the hearing along.
12. The Case Presenter also produced emails between RECA and Ms. Bonwick, wherein Ms. Bonwick confirmed she was available from January to May 2019, and she asked RECA to book her hearing at the earliest possible time. Ms. Bonwick already possessed many of the documents relating to the conduct hearing due to the litigation she was involved in. The Case Presenter submitted that Ms. Bonwick had displayed a pattern of trying to push matters forward, and blaming RECA on not moving them forward.
13. The Case Presenter further submitted that this conduct hearing is a complex matter, and it will be very lengthy with many witnesses and challenges to reschedule the hearing. Ms. Bonwick had legal counsel until December 2019, she had seen RECA's disclosure materials, and she had ample time to find new legal counsel, and she had been referred to a self-referral program. Ms. Bonwick only asked the Case Presenter for an adjournment approximately one week before the hearing when she saw the ED's disclosure materials. Granting the adjournment request now will have an effect on the conduct proceedings, and on the witnesses and complainants.
14. Ms. Bonwick submitted in response that the Alberta Real Estate Association ("AREA") had provided legal counsel for her a year ago. She was willing and able to proceed with the conduct proceedings at that time. However, being unable to work for all this time, and the effect this had on her name and reputation, wore her down.
15. Ms. Bonwick filed an application with the Court of Queen's Bench in December 2019, seeking, among other remedies, a stay of the RECA Notice of Suspension or a dismissal of the cases that form the subject matter of this hearing, or alternatively, direction regarding judicial review. She also sought an order for RECA to cease and desist from stating that Ms. Bonwick is responsible for putting up and taking down advertisements featuring pornography.
16. Ms. Bonwick submitted that she did not renew her licence with RECA in September 2018, and she emailed RECA investigators to inform them that her mental health has been affected and she is seeking medical attention. RECA

then issued a suspension in October or November 2018. RECA is seeking information from Ms. Bonwick more often and they are giving her shorter timelines to comply. She further submitted that she was hospitalized at some point. When she had legal counsel, she sought a stay of her suspension so that she could work so that she would be able to mount a defence to the conduct proceedings. She ran out of money after the AREA funds for her legal representation had been used up. The Alberta Government determined she had a disability. She believes Calgary Legal Guidance will provide legal counsel for her and it would be easier for a lawyer to articulate her case.

17. The Hearing Panel considered the submissions and evidence of both parties regarding the Industry Member's application to adjourn the hearing. The Hearing Panel finds that Ms. Bonwick confirmed with RECA when she would be available to proceed with the hearing, and she asked RECA to book the hearing at the earliest possible time. It also finds that she had sufficient time to seek new legal counsel. Also, she only requested an adjournment a short time prior to the scheduled hearing date and also on the opening day of the hearing. The Hearing Panel finds from the parties' submissions and evidence that the ED provided Ms. Bonwick with notice of the hearing and with the ED's disclosure well in advance of the hearing date. The ED also disclosed well in advance the 14 witnesses it intends to call at the hearing. The Hearing Panel accepts the ED's submissions that adjourning the hearing would be prejudicial to the ED, as well as causing unnecessary scheduling challenges. For the reasons given, Ms. Bonwick's application to adjourn the hearing is dismissed, and the hearing will proceed as scheduled.

ISSUES

- A. Did Ms. Bonwick participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings, contrary to section 42(b) of the *Real Estate Act Rules*?
- B. Did Ms. Bonwick fail to disclose to her clients, RB and HR at the earliest practical opportunity, any conflict of interest she may have in the course of providing services to or in her dealings with a client, contrary to section 41(f) of the *Real Estate Act Rules*?
- C. Did Ms. Bonwick fail to provide competent service, contrary to section 41(b) of the *Real Estate Act Rules*?
- D. Did Ms. Bonwick accept a commission or other remuneration, directly or indirectly, outside the brokerage with which she was registered, contrary to section 54(1) of the *Real Estate Act Rules*?

- E. Did Ms. Bonwick deal as a mortgage broker between February 2014 and February 2016 without holding the appropriate authorization for that purpose issued by RECA, contrary to section 17(b) of the *Real Estate Act*?
- F. Did Ms. Bonwick fail to fulfil her fiduciary obligations to her client, contrary to section 41(d) of the *Real Estate Act Rules*?
- G. Did Ms. Bonwick fail to disclose to her client, SF at the earliest practical opportunity any conflict of interest she may have in the course of providing services to, or in her dealings with a client, contrary to section 41(f) of the *Real Estate Act Rules*?
- H. Did Ms. Bonwick fail to disclose in a timely manner to the buyer all relevant facts known to Ms. Bonwick affecting a property or transaction, contrary to section 58(j) of the *Real Estate Act Rules*?
- I. Did Ms. Bonwick deal as a mortgage broker between February 2017 and October 2017 without holding the appropriate authorization for that purpose issued by RECA, contrary to section 17(b) of the *Real Estate Act*?
- J. Did Ms. Bonwick fail to cooperate with the RECA investigator, contrary to section 38(4.1) of the *Real Estate Act Rules*?
- K. Did Ms. Bonwick make representations or carry on conduct that was reckless or intentional and that misled or deceived any person or was likely to do so, contrary to section 42(a) of the *Real Estate Act Rules*?
- L. Did Ms. Bonwick trade in real estate in the name of the brokerage with which she was not registered, contrary to section 53(a) of the *Real Estate Act Rules*?
- M. Did Ms. Bonwick fail to hold the appropriate authorization from October 1, 2018 to present to trade in real estate as a real estate broker or to advertise herself, or in any way hold herself out as, a real estate broker, contrary to section 17(a) and (d) of the *Real Estate Act*?
- N. Did Ms. Bonwick fail to cooperate with the RECA investigator, contrary to section 38(4)(a) of the *Real Estate Act Rules*?
- O. Did Ms. Bonwick engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute, contrary to section 42(g) of the *Real Estate Act Rules*?

FACTS AND EVIDENCE

18. The ED makes several allegations against Ms. Bonwick in the Notice of Hearing and entered as exhibits five binders to support its allegations. The Hearing Panel has reviewed and summarized key evidence for each allegation in the order they are made.

File 006025:

- a) *You participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings, contrary to section 42(b) of the Real Estate Act Rules:*
- i. *You created a scheme that you represented as "seller financing", in which buyers believed they were buying a home, but they were only tenants, did not acquire equity in the property, and the property remained at risk of foreclosure if the owner defaulted on the original mortgage.*
19. Holly Childs testified that during the course of the RECA investigation against Ms. Bonwick, RECA discovered 28 advertisements posted on Kijiji where Ms. Bonwick offers seller financing services. Ms. Childs said that seller financing traditionally means that the seller provides financing to the buyer to facilitate the transfer of the property. The complainants were directed to the properties as a result of these types of advertisements. RECA was concerned that the two properties in the complaints against Ms. Bonwick had mortgages registered on title, and one of the properties had a high ratio mortgage, and the seller would need the lender's approval to facilitate this type of transaction. Mortgage associates, not realtors, would determine the financing terms. Ms. Bonwick does not have a mortgage associate licence. RECA takes seller financing seriously, because mortgagees' rights need to be protected.
20. Anthony Merah testified that he was retained by JN and NN in 2017 in connection with their proposed sale of [Address 2] to MB. Prior to retaining Mr. Merah, they had signed an Agreement for Sale with MB. JN and NN indicated to Mr. Merah that MB had taken possession of [Address 2] as a tenant and had breached the Agreement for Sale by failing to make the monthly payments when due. Mr. Merah had never dealt with seller financing in residential real estate before this transaction.
21. Realtor Rey Umbalin testified that HR and RB approached him in December 2015 to list and sell their house located at [Address 1]. Mr. Umbalin did a title search and discovered that HR and RB were not the registered owners of [Address 1], and the actual owners were CE and AE. HR and RB showed him the real estate contract and the Agreement for Sale of Land that contained seller financing terms. Mr. Umbalin told HR and RB that a seller can only finance a property when they have clear title, with no mortgages registered on title. He discovered that The Toronto-Dominion Bank had a mortgage registered on title.

He perused the Agreement for Sale, which he interpreted as being illegal. Mr. Umbalin's understanding of seller financing is that it can only be done when there is clear title. He told RB that she had no right to sell the property and this proposed transaction was a "sham". He encouraged HR and RB to speak to a lawyer. Mr. Umbalin made a complaint to RECA against Ms. Bonwick on May 16, 2016, because realtors are licenced to protect the public, and he felt he had to do something about it.

22. Kristine Semrau, an associate broker at Engel & Volkers, has never done a seller financing deal. She understands seller financing to be where the seller is financing rather than a financial institution, and title to a property would only transfer to the buyer when the purchase price was paid in full, unless there was an Agreement for Sale. She would hope and expect that Ms. Bonwick would explain seller financing to her clients, and that the clients should get legal approval.
23. David Lem, an associate broker/manager with Engel & Volkers, was never involved in seller financing transactions. Seller financing is where a seller of a property would hold the mortgage rather than the bank. He believes that with seller financing, the mortgage in favour of a bank would be discharged from title and the seller's mortgage would then become the first mortgage. Another term he would use for seller financing is a vendor take back mortgage. He believes that he and Ms. Bonwick only had general discussions about seller financing, but they never discussed specific details on seller financing transactions. He also said that industry members should give the proper amount of advice regarding seller financing, and they should not step outside their area of expertise.
24. CE testified that he understood seller financing to mean that he and his wife, AE would carry the mortgage until the purchasers could qualify for their own mortgage. AE testified that seller financing is the Agreement for Sale. Ms. Bonwick explained to her that in an Agreement for Sale, title does not transfer until the purchasers have made the required payments.
25. RECA sent Ms. Bonwick a Notification of a Professional Conduct Review dated July 7, 2016. In that document, RECA asked her to explain her "experience with seller financing and practical considerations when dealing with these types of transactions." Ms. Bonwick's written response dated July 7, 2016 (Binder 3, Tab 21) provided her detailed explanation of seller financing. The majority of her explanation is reproduced here:

"Seller financing transactions are difficult and time consuming to execute. Not always, but often, seller financing attracts desperate people in difficult situations-sellers who desperately need to sell (often to avoid foreclosure of extreme financial loss) or buyers who are desperate to purchase but can't at the

moment often due to being newly divorced, newly self-employed or new to the province.

"Sellers understand Seller Financing is a sale and that the buyers are not simply glorified renters. Sellers are still responsible for paying the bank, taxes and insurance, even if the Buyers default, because the contract is between the Sellers and the Buyers and does not affect contracts between the Sellers and other parties. Sellers have no problem understanding this, and are usually concerned with ensuring that the Buyers honour their payment obligations. If they have questions of a legal nature I direct them to consult with their lawyer. I also consider if the property I'm Seller Financing has a CMHC insured mortgage. If it does, I look at how long ago the mortgage was acquired and whether or not the Seller actually resided on the property.

"CMHC borrowers generally sign a declaration at the time the mortgage is placed, indicating the property is intended for their personal residence and not investment purposes. Buyers that acquire a property are at risk if the Seller collects a Buyer's monthly payment without making the bank payment and allowing the mortgage to go into default. I am happy to report that bank fraud and fraudulent Sellers like I just described don't happen now (in my experience) but I used to hear of it occurring around 2009 (before they changed the mortgage rules).

"A very small percentage of buyers will default on their contractual obligations and lose the property and their deposit. The nature of Seller Financing under Agreements for Sale is that the Buyer acquires equity during the term of the agreement, provided that they are not default. This is very important to Sellers, as it gives them assurances that the Buyers will honour their ongoing payment obligations. In my experience, the smaller the deposit, the greater the chance this will happen. I won't consider 0 down or \$5,000 down buyers. I will tell them they are not quite ready to purchase but I encourage them to come back when they have saved more of a down payment. This is neither a law or brokerage policy I am aware of, but a guideline I use because I want positive outcomes for all parties involved in my transactions.

"In my experience, even if the buyers swear they can make higher payments or balloon payments, buyers with low down payments are often what I call "train wrecks". They will go into default every other month, damage the property and cause all sorts of trouble for the seller (who maintains his position on title in most cases). I initially advise buyers they will need to consider a minimum down payment of 5% down of the purchase price. If they are not at 5%, but they can demonstrate they have the financial capability, I may discuss scheduled balloon payments.

"I want all buyers to succeed in successfully transferring title into their own names. All seller financing buyers understand that the responsibility to maintain their payments, fix their credit and maintain the property is theirs. I want everyone to succeed but if the buyer continuously defaults on payments and makes no arrangements to remedy the situation with the Seller by bringing the arrears of the seller financing account into good standing, then the terms of the contract govern and the Seller may exercise their remedies, in the same way that a mortgagee can. There is no money back guarantee if they change their minds after a few months. In general, there are forfeiture provisions providing that serious or repeated default of the Buyers leads to the property reverting back to the Sellers along with any equity they would have built up. This is the trade-off that Buyers make, and the benefit they receive for this is that they have obtained the property for a set price rather than speculating on what the value might be at the end of the contract's term. RB and HR were fully aware of this."

ii. *You advertised your services and specialization in seller financing to your buyer clients, HR and his wife, RB and to your seller clients, AE and CE ["the E.'s"].*

26. HR met Ms. Bonwick through his wife, RB. She might have found Ms. Bonwick on Kijiji. HR and RB made a Complaint to RECA against Ms. Bonwick with a supporting written statement on May 31, 2016 (Binder 3, Tab 3, page 838). In that statement, RB states that HR bought [Address 1] "as a sellers financing purchase". They "used a licenced realtor Shelley Bonwick and licenced lawyer [LAWYER] for the purchase of [Address 1]. Ms. Bonwick advised that the seller financing was RECA approved; everything's done as a normal purchase would have been on MLS." She continued that "this is extremely high risk to the public and all her ad's state "RECA approved" so what is the public to think when a licence agent has this on her ads. I was CREB certified assistant and fell for it too so anyone else can fall victim as I did."
27. CE testified that his wife, AE found out about Ms. Bonwick through internet searches. They used Ms. Bonwick to sell their property [Address 1]. AE testified that she was seeking ways to sell [Address 1] and she saw Ms. Bonwick's Kijiji advertisements that provided sellers with options for selling their home.
28. Ms. Bonwick's written response to RECA dated July 7, 2016 (Binder 3, Tab 21) states that AE called her one day as she was researching seller financing on the internet and she wanted Ms. Bonwick to list and sell [Address 1] on MLS. "Option A was to sell the property conventionally, even if I had to accept a much lower offer and Option B was to sell the property at full price with seller financing." Ms. Bonwick showed [Address 1] to RB and "explained to her how my seller financed

contracts work and that I couldn't represent both the seller's (already a client) and her."

iii. *In or around February 2015, you agreed to assist HR and RB with finding a "seller financing" arrangement for them on a property with a \$10,000 down payment.*

29. HR testified that Ms. Bonwick brought [Address 1] to RB's attention. RB testified that she found several Kijiji ads where Ms. Bonwick offered seller financing. She contacted Ms. Bonwick about the ads and asked Ms. Bonwick what properties she currently had for a \$10,000 down payment.

30. Ms. Bonwick's written response to RECA dated July 7, 2016 states that RB told Ms. Bonwick she needed to see properties where she only had to pay a \$10,000 down payment (Binder 3, Tab 21, pages 1042 - 1044). Ms. Bonwick told RB that the only property she had for \$10,000 down was [Address 1]. Ms. Bonwick presented RB's offer to AE and the parties reached an agreement. HR was in a rush and wanted go over the terms of the transaction quickly. This made Ms. Bonwick uncomfortable, because she had told HR and RB that it would take at least an hour to review everything.

iv. *You then approached your existing clients, [{"the E.'s"}], with the option to participate in "seller financing" for the sale of their property at [{"Address 1"}].*

31. CE testified that when their listing for [Address 1] expired in February 2015, CE and AE continued to have a relationship with Ms. Bonwick. They pursued a different avenue to sell [Address 1] by using an Agreement for Sale. Ms. Bonwick assisted them with this. Ms. Bonwick brought the purchaser to them. She knew of some purchasers for their property, and the purchasers agreed to the conditions in the Agreement for Sale.

32. Ms. Bonwick confirms that she represented the E.'s in connection with [Address 1] and "option A was to sell the property conventionally, even if I had to accept a much lower offer and Option B was to sell the property at full price with seller financing." (Binder 3, Tab 21, page 1042).

33. AE testified that Ms. Bonwick called her and said there was a potential purchaser for [Address 1] and asked if the E.'s would be interested. Ms. Bonwick presented them with some rough details of an offer. AE and CE already had an idea of the type of options they wanted in an Agreement for Sale. They discussed the down payment and balloon payments on the phone with Ms. Bonwick. They were not happy with a \$10,000 initial deposit, so they negotiated the balloon payments in an effort to reduce the risk.

- v. *["the E.'s"] had an outstanding high ratio mortgage and were required to reside in the property. You did not advise your seller clients, ["the E.'s"], to contact their mortgage lender to ensure that they could enter into a "seller financing" arrangement with a high ratio mortgage on the property.*
34. CE testified that he did not consult with the bank before selling [Address 1], and Ms. Bonwick did not tell CE to consult with the bank. AE had some phone discussions with the bank. CE said you don't need to consult with the bank to sell your house. This was not a sale; it was an assignment of sale. He knew that he could legally engage in seller financing without consulting with the bank, because he had industry professionals who set up the deal for him. He did not know what a high ratio mortgage is.
35. AE said she and CE had a mortgage registered on title to [Address 1] at the time of the transaction with HR and RB. A title search for [Address 1] dated May 25, 2016 confirms that at the time of that transaction the E.'s were the registered owners of [Address 1] subject to a mortgage in favour of The Toronto Dominion Bank (Binder 3, Tab 5, pages 842 - 845). Section 7(iii) of that mortgage confirms it is a high ratio mortgage (Binder 3, Tab 6, pages 846 - 877). The general mortgage terms that formed part of their mortgage did not change when they renewed the mortgage. She was not sure what a high ratio mortgage is. She believed their bank would have the primary interest in their house until AE and CE sold it.
- vi. *You failed to advise your seller clients, ["the E.'s"], about the confidential information that you knew about the buyers.*
36. RB testified that when she and Ms. Bonwick did the walkthrough of [Address 1], Ms. Bonwick asked her if she wanted to be her assistant and to bring her connections with her. She worked as Ms. Bonwick's assistant in 2015.
37. CE testified that Ms. Bonwick did not explain much about her history with HR and RB. She had met them previously through some sort of real estate relationship, but he doesn't recall her mentioning how long she knew them. Ms. Bonwick brought HR and RB to the E.'s. In addition to CE's testimony, Ms. Bonwick states in her written response to RECA dated July 7, 2016 that she had already spoken with HR and RB years before March 2015 (Binder 3, Tab 21, pages 1041 - 1044).
- vii. *You lied to your seller clients, ["the E.'s"], about the buyer's financial information, the status of the sale of their current residence, and whether the buyers smoked, which would affect the seller's home insurance.*

38. CE testified that he and AE wanted any interested buyer to be a non-smoker, because they were non-smokers, their insurance didn't cover smokers and they would get a better insurance premium if the buyers were non-smokers.
39. AE testified that she and CE were not happy when Ms. Bonwick presented them with HR's and RB's offer of a \$10,000 initial deposit. Ms. Bonwick told AE and CE that HR and RB were selling their property so that they could afford to pay more money in three months. Ms. Bonwick told AE that HR and RB had a nice property in Calgary which they hadn't sold yet, but when they sold it they would be in very good financial position and would easily be able to make payments. AE and CE are non-smokers and they didn't want smokers in their house because it would devalue their property. They also had non-smoking insurance on [Address 1].
40. RB testified that she doesn't know why Ms. Bonwick sent her a text indicating she told AE and CE that RB doesn't smoke. RB smokes and everyone knows it, and she didn't tell Ms. Bonwick to lie to AE and CE about her smoking (Binder 3, Tab 10, page 949). Ms. Bonwick stated to RECA that she explained to the E.'s that HR and RB didn't smoke (Binder 3, Tab 21, page 1043). Ms. Bonwick also texted RB on March 10, 2015 and said she told the E.'s that HR and RB don't smoke (Binder 3, Tab 10, page 949).
- viii. You advised your seller clients, [("the E.'s")], that they should inflate the purchase price of the property at [("Address 1")] because of the "seller financing" option available to potential buyers.*
41. CE testified that he and AE reduced the listing price on [Address 1] three times between November 2014 and February 2015 because their listings weren't generating any interest. They listed the property for more than the appraisal and comparative market analysis amounts because of the seller financing option. The MLS Feature Sheet for [Address 1] shows that the E.'s decreased the listing price at least three times (Binder 3, Tab 7, page 882). A comparative market analysis dated February 24, 2016 and prepared by Trina Reinhart concludes that "in the current market, your property is most likely to sell for \$419,900." (Binder 3, Tab 26, pages 1130 - 1138)
- ix. You told the buyers that they had to pay an inflated purchase price for the property because they were entering into a "seller financing" arrangement.*
42. In relation to the above allegation, HR testified that he trusted and had faith in Ms. Bonwick as his realtor to get him the property for a reasonable price. He was not shown an MLS Feature Sheet for [Address 1], comparable market listings or a comparative market analysis (Binder 3, Tab 7, page 881). Ms. Bonwick, AE and CE had already decided the purchase price. Ms. Bonwick also told HR that he could not negotiate the purchase price because of the seller financing terms.

43. Evidence entered by the ED shows an MLS Feature Sheet (Binder 3, Tab 7, page 881) and a comparative market analysis for [Address 1] (Binder 3, Tab 26, pages 1130 - 1138).
44. CE also testified that Ms. Bonwick told him the purchase price could not be negotiated, because seller financing is a unique type of financing that adds value to the purchase price and people who can't qualify for a mortgage could purchase the property. CE and AE relisted [Address 1] in February 2016, because HR and RB had not complied with the terms of their Agreement for Sale. Realtor Trina Reinhart did a comparative market analysis and arrived at a list price of \$419,900. HR had lived in [Address 1] for nine months and had made two balloon payments. However, he did not have any equity in the property when he wanted to sell it. When HR wanted to sell [Address 1], he would have needed to sell it for \$20,000 - \$30,000 more than market price to make a profit. CE and AE decided that they were offering value to the marketplace and their property was worth slightly more money than comparable properties, because they were offering seller financing to potential buyers.
45. AE testified that they lowered their list price three times between November 2014 and February 2015 due to market conditions at that time. She chose a list price of \$456,789 because it sounded good. Ms. Bonwick provided verbal information of properties that had sold in their area, however AE does not recall receiving any market analysis in writing. [Address 1] received some but not a lot of interest when they listed the property before November 2014. They listed the property in November 2014 with Ms. Bonwick at \$30,000 higher than before, because Ms. Bonwick thought [Address 1] had a lot of good value in the marketplace. They quickly reduced the list price when they realized that the higher price wasn't going to work. They believed that seller financing might give them an advantage in the market, and their higher list price was due to them offering the seller financing option. Ms. Bonwick had said she found seller financing gave homeowners more options to sell their property because owners would be listing their property to the regular market as well as to buyers who were self-employed or had credit challenges. AE, CE and Ms. Bonwick felt it would be okay to raise the list price to try and attract a buyer.
- x. *You led your seller clients, [("the E.'s")], and buyer clients, RB and HR, to believe that they were entering into a real estate purchase and not a tenancy.*
46. A letter dated June 23, 2016 from HR and RB to James Porter of RECA stated that Ms. Bonwick described the transaction involving [Address 1] as seller's financing, where HR would purchase the property and make monthly payments to AE and CE as though he was paying a mortgage (Binder 3, Tab 9, page 887). HR stated that "unlike a straightforward purchase, I would not be registered as

owner of the property, but would instead have a caveat registered against title for the property that would list my purchaser's interest in the property." Also, the Residential Purchase Contract between the E.'s as seller and HR as buyer refer to the "Seller" and "Buyer" throughout the contract, as do the Amendment/Addendum Form, Financing Schedule and Agreement for Sale of Land. For example, the Amendment/Addendum Form includes terms such as "Buyer shall be entitled to register notice of the AFS by caveat." (Binder 3, Tab 9, page 920). Additionally, the Agreement for Sale of Land between the E.'s as Sellers and HR as Buyer states in the recital "WHEREAS the Sellers have agreed to sell to the Buyer, and the Buyer has agreed to purchase from the Sellers, the lands and premises set out in this agreement for sale of land..." (Binder 3, Tab 9, page 934).

47. RB testified that she thought she and HR could sell [Address 1] pursuant to the Agreement for Sale. She didn't believe it when Rey Umbalin told her she couldn't sell the property. The City of Airdrie turned off the water to [Address 1], because it determined that HR and RB were renters.
48. CE was aware that the buyer, HR could register the Agreement for Sale as a caveat on title to [Address 1] to give HR a stake in the property.
49. A Residential Purchase Contract names CE and AE as the sellers of [Address 1] and HR as the buyer (Binder 3, Tab 9, pages 899 - 933). Ms. Bonwick is named as buyer's representative in that contract.
50. AE testified that the seller financing is the Agreement for Sale. Ms. Bonwick explained to her that with seller financing, title in the property does not transfer until the buyers have made their required payments, and the sellers did not provide financing to the buyer. AE understood an Agreement for Sale to be an agreement to complete the property sale on certain terms, where the agreement is complete when the terms are met. She did not consider HR to be a tenant, because he had an agreement to purchase [Address 1].
 - xi. *You told your buyer clients that they would "own" the property if they entered into a seller financing arrangement and an Agreement for Sale ("AFS").*
51. HR understood that AE and CE would transfer title to him if he slowly paid them the down payment over two years (Binder 3, Tab 9, page 887). The Agreement for Sale was an agreement to buy the property. Ms. Bonwick explained to him that the property would be safe as long as he made the payments, and AE and CE could not sell the property out from under him. She also explained to HR that the lawyer would hold title to [Address 1] in trust.

52. AE testified that an Agreement for Sale is an agreement to complete the property sale on certain terms, and when the terms are met the agreement is complete. She did not consider HR to be a tenant, because he had an agreement to purchase [Address 1].
53. The Agreement for Sale of Land signed by CE and AE as sellers and HR as buyer and dated March 20, 2015 states that "the Sellers agree to sell to the Buyer, and Buyer agrees to purchase from the Sellers, the lands and premises located at [Address 1]" (Binder 3, Tab 9, pages 934 - 943).
- 43
- xii. *You drafted a purchase contract for [("Address 1")], with an addendum that included terms to be replicated in an Agreement for Sale ("AFS") to be drafted by the parties' lawyer at a later date.*
54. HR assumed that Ms. Bonwick drafted the Agreement for Sale. Ms. Bonwick told HR to go to [LAWYER]'s office to sign it. She did not provide HR with any other lawyers' names. The Agreement for Sale was ready to sign when HR arrived at [LAWYER]'s office, so he assumes that Ms. Bonwick provided some guidance.
55. CE testified that Ms. Bonwick drafted the Residential Purchase Contract and presented it to him.
56. Ms. Bonwick states in her letter to RECA dated July 7, 2016 that she "drafted and reviewed all the AREA and RECA forms" (Binder 3, Tab 21, page 1047).
57. A Financing Schedule that formed part of the Residential Purchase Contract includes a term in section 2: Other Value, which states that "The Buyer will provide the following to the Seller as part of the Purchase Price:... "Seller Financing, pursuant to Agreement for Sale of Land ("AFS") to be formalized by the parties lawyer's using the Lawyer's AFS form (which will not contradict anything contained in this contract), further particulars of which are set out in the Addendums."
58. An Amendment/Addendum Form attached to the Residential Purchase Contract provides the following financing terms:
- "Financing Terms:
- "Seller Financing will be formalized in an Agreement for Sale of Land ("AFS"), on the Lawyer's AFS Form, and will include the following terms:
- "1. Principle sum of Four Hundred and Fourty Six Thousand, Seven Hundred and Eighty Nine Dollars (\$446,789) with interest thereon at the rate of Four Point Five Percent (4.5%) per annum, calculated semi-annually, not in advance, from the Twentieth (20th) day of March 2015, and to be paid in the following manner:

- a) By equal monthly installments of Two Thousand, Four Hundred and Seventy Two Dollars and Eighty Six Cents (\$2,472.86) to be applied semi-annually, not in advance, commencing on the Twentyth (20th) day of March, 2015, and continuing thereafter on the Twentyth (20th) day of each month up to and including the Twentyth (20th) day of March, 2016.
- b) Buyer will pay a balloon payment of Ten Thousand Dollars (\$10,000) on or before June 20th, 2015.
- c) Buyer has the option to refinance under the same financing terms for an additional year, provided he pay a balloon payment of Twenty Five Thousand Dollars (\$25,000) on or before the Twentyth (20th) day of March, 2016.

2. The Buyer may pay down or pay out the entire balance owing at time without notice, bonus or penalty. Any existing mortgage may be replaced or modified by the Seller provided the amount not exceed Three Hundred and Ninety Thousand Dollars (\$390,000)."

xiii. *You included a term in the purchase contract for the property located at [("Address 1")] that "title will not transfer but will be held in Trust" for the buyer, which is not possible.*

59. Section 7.6 of the Residential Purchase Contract between CE, AE and HR (Binder 3, Tab 9, page 903) reads as follows:

"Additional terms of sale (if any):

*Seller will sign and agree to follow the Exclusive Seller Representation Agreement ~~SELLER CUSTOMER STATUS ACKNOWLEDGEMENT AND FEE AGREEMENT~~ form between the Seller and Discover Real Estate Ltd., payable to Shelley Bonwick indicating a commission of ~~3.5% on first look and 1.5% on remaining balance of sale plus gst (see Addenda)~~. **Seller discloses and the Buyer acknowledges that the Seller is a licenced Realtor in the province of ~~Ontario~~.***This transaction will be completed as an Agreement for Sale (AFS) in which title will not transfer but will be held in Trust.***Additional terms of sale will be explained in the attached Financing Schedule and Addenda."

60. CE testified that section 7.6 means that title to [Address 1] would not transfer to HR until HR fulfilled his obligations under the agreement. CE believed that [LAWYER] would hold title in trust. AE testified that she doesn't know what it means to hold a title in trust.

xiv. *You listed yourself as buyer's representative on the purchase contract, but forged the signature of the buyer, HR, on a Customer Acknowledgement form.*

61. HR testified that he did not recognize the Customer Acknowledgement Form when the case presenter presented it to him (Binder 3, Tab 21, pages 1091 - 1092). He was not aware that CE and AE were Ms. Bonwick's clients and that he was a customer and not a client. The signature above his name, and the initials in that form, are not his. He did not receive a copy of that document; it was only brought to his attention afterwards.

62. HR provided his signature sample to RECA pursuant to their demand (Binder 3, Tab 22). His signature sample is noticeably different from his purported signature found in the Customer Acknowledgement Form (Binder 3, Tab 21, page 1092).

xv. *You directed both parties to use the same lawyer, whom you had worked with previously, that you knew would accept the arrangement and the AFS terms that you drafted and inserted into the purchase contract.*

63. HR testified and also stated in his RECA complaint that [LAWYER] is the lawyer that Ms. Bonwick pointed him to and recommended he use (Binder 3, Tab 9, page 887). He had never heard of [LAWYER] before signing the Residential Purchase Contract. Ms. Bonwick told him that [LAWYER] has everything ready for HR, and she never provided him with any other lawyers' names. [LAWYER]'s name was already inserted in the purchase contract as the buyer's lawyer when HR signed it. The Residential Purchase Contract signed by the E.'s and HR shows [LAWYER]'s name typed into the document as seller's and buyer's lawyer (Binder 3, Tab 9, page 909). HR was aware that [LAWYER] was representing both the buyer and seller, but he didn't think it was an issue. Ms. Bonwick did not explain the advantages and disadvantages of both parties using the same lawyer. Ms. Bonwick texted RB on March 10, 2015 that "If the lawyer can do it that quickly... Will be faster if there is only one..." (Binder 3, Tab 10, page 949). HR had a 10 to 15 minute meeting with [LAWYER], and [LAWYER] did not describe the transaction to HR and offered little or no explanation to him. Ms. Bonwick and [LAWYER] had everything drafted before HR attended [LAWYER]'s office. He only met with [LAWYER] again to pick up the keys to [Address 1].

64. CE testified that [LAWYER]'s name was already inserted in the purchase contract as lawyer for the buyer and seller when CE signed it. He didn't have any contact with [LAWYER] prior to signing the purchase contract. Ms. Bonwick told CE that [LAWYER] had experience with these types of transactions, and she had used his services in previous real estate transactions. CE and AE used [LAWYER] because Ms. Bonwick recommended him. They discussed other options and decided to

use [LAWYER], based on Ms. Bonwick's familiarity with him. CE and AE didn't speak to any other lawyers.

65 AE testified that [LAWYER] was the lawyer that handled the transaction. His name was already inserted in the purchase contract when AE and CE signed it. AE and CE wanted to do the transaction quickly. Ms. Bonwick suggested that they seek a lawyer or she could recommend one, and she knew of a lawyer who was familiar with these types of agreements. AE and CE discussed it and decided to use [LAWYER]. They aren't sure if they decided this before or after signing the purchase contract. She isn't sure if Ms. Bonwick provided any other lawyers' names.

xvi. *You provided legal advice to your seller clients, [("the E.'s")], about enforcing the terms of the AFS against the buyer, without directing them to their legal counsel.*

66. AE testified that after RB contacted her and indicated she wanted to sell [Address 1], AE contacted Ms. Bonwick and asked her if RB could sell the property and list it on January 1, 2016, and Ms. Bonwick said that yes, there is a way she could sell it. She told AE that HR could sell the property at any time, because it was a term of the agreement between the parties. Ms. Bonwick stated in her letter to RECA dated July 7, 2016 that "on or around January of 2016, [AE] contacted me and asked if it was true that [RB] and [HR] couldn't sell the property. I told [AE] that no, [RB] and [HR] could sell the property at any time." (Binder 3, Tab 21, pages 1047 - 1048).

xvii. *You used your position as representative for the seller to prejudice the buyer's interest in the property at [("Address 1")], without the buyer's knowledge, by attending at the real estate lawyer's office to witness a withdrawal of caveat after the real estate transaction closed and when the "seller financing" arrangement between the buyers and sellers had broken down. You engaged in this conduct despite the following:*

- *You had inserted a term into the purchase contract that a withdrawal of caveat was to be signed at the same time as the AFS, which was to be held in "trust" in case of default of payment by the buyer;*
- *You did not discuss with your buyer client, HR, whether he was still represented by the lawyer, if he agreed to the withdrawal and discharge of the caveat, or if he was aware of the withdrawal being signed or subsequently filed with Land Titles on his behalf;*
- *You knew that the lawyer had been suspended by the Law Society of Alberta.*

67. HR testified that Ms. Bonwick told him a caveat would protect [Address 1] for him so it couldn't be sold behind his back. He was not aware and didn't see a withdrawal and discharge of caveat when he signed the Agreement for Sale at [LAWYER]'s office. He also wasn't aware of a withdrawal and discharge of caveat being held in trust. He believes Ms. Bonwick said something about [LAWYER]'s suspension, and he also called [LAWYER]'s office to confirm. He later found out that a withdrawal and discharge of caveat had been signed and registered at the Land Titles Office. He did not instruct [LAWYER] to sign that document on his behalf or to register it at Land Titles (Binder 3, Tab 9, page 888). He was not aware that Ms. Bonwick had witnessed [LAWYER] signing the withdrawal and discharge of caveat. She did not discuss that document with HR.
68. An Amendment/Addendum Form to the Residential Purchase Contract included financing terms which entitle the buyer "to register notice of the AFS by caveat". This document also states that the "Buyer will also sign a withdrawal of the Caveat to be held in trust in the event of default in payment", and if the Buyer is in default of any payment for 30 days, "the Seller will be entitled to receive *[sic]* and register notice of a discharge of the Buyer's caveat." (Binder 3, Tab 9, page 931). The Caveat Forbidding Registration dated March 20, 2015, signed by [LAWYER] is entered as an exhibit (Binder 3, Tab 9, page 943). [LAWYER] was suspended by the Law Society of Alberta on June 15, 2015 (Binder 3, Tab 9, page 945). Ms. Bonwick witnessed [LAWYER] sign the withdrawal and discharge of caveat on February 23, 2016, eight months after [LAWYER] was suspended (Binder 3, Tab 21, pages 1099 - 1100).
69. Ms. Bonwick detailed when she became aware of [LAWYER]'s suspension and her role as witness to [LAWYER]'s signature on the withdrawal and discharge of caveat in her response to RECA dated July 7, 2016 (Binder 3, Tab 21, pages 1049 - 1050):

"I became aware of [LAWYER]'s suspension when I called his office one day and I heard a recording indicating that he was no longer practicing law.

"I was informed that this was a replacement caveat, and that part of the lawyer's responsibilities were to keep a registerable discharge of caveat on file for immediate delivery to the Sellers in the event of a default of the Buyers that was not remedied. I acted only as a witness to the signature, nothing more. The disposition of the discharge was not anything I had any say in, and it was clear from the Buyers' abandonment of the property and failure to make any effort to remedy their default that they had walked away from the property and any interest they may have built up prior to their default.

"[HR] knew that a default in payment would result in a forfeiture of any interest and entitle the Sellers to a withdrawal of caveat. Bottom line is the buyer was in serious and repeated default, was given notice and chose to abandon the

property, so the sellers were entitled to a discharge and to pursue their legal remedies. If the Sellers could not obtain this discharge, it would be them who would be complaining, and their complaint would be completely justified. The only possible advantage the buyers could have after abandoning their occupancy would be to get tenants in and tie the property up in expensive, fruitless litigation.”

She also stated that “[HR] was not my client like [AE] and [CE].”

70. CE was aware that [LAWYER] was suspended but he doesn’t know when he became aware. AE spoke to Ms. Bonwick about the suspension. CE did not instruct [LAWYER] to sign the withdrawal and discharge of caveat. He doesn’t know how the withdrawal and discharge of caveat was held in trust if it was signed in February 2016. He doesn’t know who instructed [LAWYER] to sign it. Most conversations were between AE, Ms. Bonwick and [LAWYER]. He wasn’t aware that Ms. Bonwick witnessed [LAWYER] sign it, and he did not instruct her to do that.
71. AE knew there was going to be a withdrawal and discharge of caveat. She told [LAWYER] that HR had defaulted on the agreement and had vacated [Address 1]. [LAWYER] told her he would do the withdrawal and discharge of caveat. She didn’t discuss that document with Ms. Bonwick and she did not instruct Ms. Bonwick to witness [LAWYER] sign it. She didn’t know Ms. Bonwick was meeting with [LAWYER] on February 23, 2016 when Ms. Bonwick and [LAWYER] executed the withdrawal and discharge of caveat.
72. Ms. Bonwick contacted RB to inform her that [LAWYER] had been suspended, right around the time HR’s second balloon payment was due. RB believes Ms. Bonwick knew about the suspension right after it happened.
73. James Porter testified that Ms. Bonwick could have contacted her broker or RECA or obtained legal advice if she was unsure she should sign the withdrawal and discharge of caveat. A licensed real estate associate doesn’t necessarily always need to know what document they are witnessing, but they should in some circumstances. They should have knowledge of the document when they are signing as a witness to someone else’s signature. Ms. Bonwick did more than just witness a signature. She told Mr. Porter in her first phone discussion with him that AE told her they needed to withdraw the caveat, so he had some awareness of it. Audio recordings of three phone discussions Mr. Porter had with Ms. Bonwick on August 24, 2016 are entered as Exhibits A, B and C. Ms. Bonwick confirmed to Mr. Porter that she found out [LAWYER] was suspended “pretty quickly” after his suspension on June 15, 2015. She said that [LAWYER] signed the withdrawal and discharge of caveat as HR’s agent, and Ms. Bonwick witnessed his signature. She did not have any concerns about [LAWYER] signing

the withdrawal and discharge of caveat on February 23, 2016, after he was suspended, because he wasn't acting as a lawyer.

b) *You did not disclose to your client, at the earliest practical opportunity, any conflict of interest you may have in the course of providing services to, or in your dealings with a client, contrary to section 41(f) of the Real Estate Act Rules:*

i. *You did not disclose to your buyer clients, RB and HR, that you had established a client relationship with the sellers, [(“the E.’s”)];*

74. HR testified that Ms. Bonwick did not explain to him the difference between a customer and a client. He didn't know about Ms. Bonwick's relationship with AE and CE before he signed the purchase contract.

75. CE testified that he and AE enlisted Ms. Bonwick's services in November 2014 to sell [Address 1]. He doesn't know why he would sign a representation agreement after HR signed the purchase contract. He also doesn't know the difference between a Customer Status Acknowledgement and a Representation Agreement.

76. AE first met Ms. Bonwick in 2014, and Ms. Bonwick was her realtor in 2014 and 2015. She saw Ms. Bonwick's Kijiji ads about options for selling your home. AE and CE called Ms. Bonwick, because [Address 1] wasn't selling and AE and CE wanted to explore options. Ms. Bonwick was their realtor during November 2014 to February 2015. She believes she entered into a Representation Agreement with Ms. Bonwick at that time. Ms. Bonwick went over the Consumer Relationships Guide with her but she doesn't believe it was discussed in depth. She doesn't know the difference between a customer and a client. Ms. Bonwick was their agent for the [Address 1] transaction.

ii. *You did not disclose to your seller clients, [(“the E.’s”)], that you had established a client relationship with the buyers, RB and HR.*

77. HR testified that Ms. Bonwick was his realtor ever since he lived in Elbow Valley six to seven years ago. She had been to his property several times.

78. RB was the listing agent when she and HR listed their Elbow Valley property for sale. Ms. Bonwick showed the property several times and was listed as the agent on the MLS feature sheet.

79. CE testified that Ms. Bonwick told him she had met HR and RB previously in some sort of real estate relationship.

80. AE testified that Ms. Bonwick didn't disclose much information about her history with HR and RB other than they seemed to be good clean people. She had been to their house once but she didn't know in what capacity. She doesn't know why Ms. Bonwick is listed as the buyers' representative on the purchase contract, or what that means. She understood that Ms. Bonwick was her representative, and no one is listed as the seller's representative. AE and CE had no choice but to use Ms. Bonwick as their agent, because they signed an Exclusive Seller Representation Agreement with Ms. Bonwick in connection with [Address 1]. The term of that agreement was from March 11, 2015 to March 20, 2017.

c) You did not provide competent service, contrary to section 41(b) of the Real Estate Act Rules:

i. You drafted a purchase contract for the property at ["Address 1"] and did not explain the terms of the contract to your buyer client, HR;

81. HR met with Ms. Bonwick at [Address 1] on March 11, 2015. AE and CE showed up after HR to sign the purchase contract. HR did a walk-through of the property with Ms. Bonwick. She did not provide much explanation of the purchase contract. She did not explain section 7.6 of the purchase contract, or what an Exclusive Seller Representation Agreement is. He is not sure why "Seller Customer Status Acknowledgement and Fee Agreement" is crossed out and replaced with "Exclusive Seller Representation Agreement" in section 7.6. He doesn't know the difference between those documents. HR's meeting with Ms. Bonwick at [Address 1] went from 6:00 pm to 7:00 pm. She did not review all of the documents with him for an hour, as he first did the walk through. AE and CE signed the purchase agreement at 7:00 pm. Ms. Bonwick briefly reviewed the Agreement for Sale terms with HR, but she did not explain them in detail. Everything seemed to be in a big rush, because AE and CE showed up at [Address 1], and they had to complete their part of the purchase contract.

ii. You entered the wrong date that your buyer client, HR, signed the purchase contract.

82. HR met with Ms. Bonwick on March 11, 2015 to sign the purchase contract, not on February 6, 2015 as indicated in that contract.

83. Ms. Bonwick testified that she entered the wrong date in the purchase contract, but it was a typo.

d) You accepted a commission or other remuneration, directly or indirectly, outside the brokerage with which you were registered, contrary to section 54(1) of the Real Estate Act Rules:

- i. You directed your buyer client, HR, to pay one of the balloon payments directly to the sellers instead of through the lawyer, as per the terms of the purchase contract. You further directed your client, HR, to offset your remuneration from the balloon payment in exchange for money owed by you to HR's wife, RB. This remuneration was accepted outside your brokerage.*
84. HR paid the first balloon payment in the sum of \$10,000 in full to [LAWYER]. Part of this payment was Ms. Bonwick's commission. He went to AE's and CE's residence to give them the second balloon payment. He paid approximately \$7,000 instead of \$10,000 because Ms. Bonwick owed RB some commissions for work they were doing together.
85. RB testified that when she, HR and Ms. Bonwick did the walk through at [Address 1], Ms. Bonwick asked her if she wanted to be her assistant. RB worked as Ms. Bonwick's assistant in 2015, and they verbally agreed that Ms. Bonwick would pay RB 50% of the deals that came in. When [LAWYER] was suspended, Ms. Bonwick told RB to tell HR to take the second balloon payment directly to AE and CE. The commission money Ms. Bonwick owed RB was paid from the second balloon payment. HR paid AE and CE \$7,500 because Ms. Bonwick owed RB \$2,500 for her share of a commission.
86. CE testified that HR came by his residence and paid the second balloon payment in cash. He believes HR did not pay him the full \$10,000 because a portion of it was supposed to be given to Ms. Bonwick.
87. AE testified that HR contacted her and CE about [LAWYER]'s suspension, because he didn't know where to deliver the second balloon payment. HR brought AE and CE \$7,000 and HR dealt with Ms. Bonwick for the remainder of the second payment. AE called Ms. Bonwick to confirm everything was fine with the second balloon payment and to confirm HR had given her the money, so that Ms. Bonwick didn't expect AE to pay her. Ms. Bonwick said everything was taken care of. AE thought [LAWYER] was going to collect all of the balloon payments.
 - e) Between February 2014 and February 2016, you did not hold the appropriate authorization to deal as a mortgage broker, contrary to section 17(b) of the Real Estate Act:*
 - i. You negotiated the terms of a mortgage on the property at [{"Address 1"}] on behalf of the sellers, [{"the E.'s"}], and buyer, HR, by calculating the following:*
 - a) interest rate;*
 - b) monthly payments;*

- c) down payment;
- d) amortization period;
- e) financing term.

88. Holly Childs testified that a mortgage associate who has a mortgage associate licence would determine the mortgage financing terms, not a real estate associate. Ms. Bonwick does not have a mortgage associate licence. The financing terms and conditions were more than a client asking what they could afford. They went beyond the scope of a real estate associate's authority and they were within the scope of a mortgage associate's authority.
89. HR testified that Ms. Bonwick reviewed the financing schedule and all the numbers with him. The financing terms were already filled in the purchase contract when he signed it. He did not negotiate any of the financing terms, because Ms. Bonwick told him it was non-negotiable. HR assumed Ms. Bonwick was representing his best interests to give him the best terms. Ms. Bonwick explained the purpose of balloon payments to HR as forming part of the deposit, to break down the deposit into smaller payments that HR would have to pay every so often.
90. CE testified that Ms. Bonwick determined the financing terms. He had no input in determining those terms and no negotiation with the buyer.
91. AE testified that Ms. Bonwick decided on the interest rate for the [Address 1] transaction, and she doesn't know who came up with the rest of the terms. She doesn't know who drafted the financing schedule but the terms were already filled in the purchase contract when she saw it. AE and CE did not negotiate any of the financing terms with the buyer. AE determined the interest rate and provided it to Ms. Bonwick, but she is not sure how she arrived at that rate. She doesn't know how the financing terms were in her best interest, and she expected that a lawyer would tell her. Ms. Bonwick did not refer her to anyone else to review the financing terms.
92. David Lem testified that if your ads state you are a seller financing expert, it would not fall under real estate licencing sectors. It might fall more towards to the mortgage side.
- ii. *You received compensation in the form of commission for the negotiation of the mortgage terms of the seller financing arrangement for [("Address 1")].*
93. To HR's knowledge, Ms. Bonwick collected all commissions owing to her for the [Address 1] transaction.

94. CE testified that Ms. Bonwick's commissions were supposed to come out of the balloon payments and it formed part of the purchase price. The lawyer kept his fees and the realtor commission from the first balloon payment.
95. AE testified that the commission was paid to Ms. Bonwick from the balloon payments. The balloon payments were supposed to be paid to [LAWYER] and then he would pay Ms. Bonwick. For the first balloon payment, AE received a statement of account showing that [LAWYER] took his fees and the commission. She isn't sure if the commission was paid to Ms. Bonwick or the brokerage.
96. The Addendum/Amendment Form to the purchase contract between the E.s' and HR (Binder 3, Tab 9, page 922) includes the following wording regarding payment of realtor commissions:

"Manner of Payment Continued:

"10. Payment of the real estate commission payable to Shelley Bonwick of Discover Real Estate Ltd. will be Ten Thousand Dollars (\$10,000). Payment dates of said commission will be as follows:

- a) Three Thousand Three Hundred and Thirty Three Dollars (\$3,333) upon March 20th, 2015, the Completion Date.
- b) Three Thousand Three Hundred and Thirty Three Dollars (\$3,333) upon June 20th, 2015, (the first balloon payment date) and upon the Seller being in receipt of such payment.
- c) Three Thousand Three Hundred and Thirty Three Dollars (\$3,333) upon March 20th, 2016, (the second balloon payment date) and upon the Seller being in receipt of such payment.
- d) Shelley Bonwick of Discover Real Estate Ltd. reserves the right to caveat the property for any and all of this commission amount owing until fully paid."

File 007825:

- a) *You participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings, contrary to section 42(b) of the Real Estate Act Rules:*
 - i. *You created a scheme that you represented as "seller financing", in which buyers believed they were buying a home, but they were only tenants, did*

not acquire equity in the property, and the property remained at risk of foreclosure if the owner defaulted on the original mortgage;

97. As summarized in paragraphs 31 – 37 of this decision, the parties in File 006025 understood or described seller financing as follows:

- Holly Childs testified that that seller financing traditionally means that the seller provides financing to the buyer to facilitate the transfer of the property. The complainants were directed to the properties as a result of these types of advertisements. RECA was concerned that the two properties in the complaints against Ms. Bonwick had mortgages registered on title, and one of the properties had a high ratio mortgage, and the seller would need the lender's approval to facilitate this type of transaction. Mortgage associates, not realtors, would determine the financing terms. Ms. Bonwick does not have a mortgage associate licence. RECA takes seller financing seriously, because mortgagees' rights need to be protected.
- Anthony Merah had never dealt with seller financing in residential real estate before this transaction.
- Rey Umbalin's understanding of seller financing is that it can only be done when there is clear title.
- Kristine Semrau understands seller financing to be where the seller is financing rather than a financial institution, and title to a property would only transfer to the buyer when the purchase price was paid in full, unless there was an Agreement for Sale.
- David Lem was never involved in seller financing transactions. He described seller financing as where a seller of a property would hold the mortgage rather than the bank. He believes that with seller financing, the mortgage in favour of a bank would be discharged from title and the seller's mortgage would then become the first mortgage. Another term he would use for seller financing is a vendor take back mortgage. Industry members should give the proper amount of advice regarding seller financing, and they should not step outside their area of expertise.
- CE understood seller financing to mean that he and his wife, AE would carry the mortgage until the purchasers could qualify for their own mortgage. AE testified that seller financing is the Agreement for Sale. Ms. Bonwick explained to her that in an Agreement for Sale, title does not transfer until the purchasers have made the required payments

98. AE also testified that she understood seller financing was similar to rent to own.

99. As summarized in paragraph 37, RECA sent Ms. Bonwick a Notification of a Professional Conduct Review dated July 7, 2016. In that document, RECA asked her to explain her "experience with seller financing and practical considerations when dealing with these types of transactions." Ms. Bonwick's written response dated July 7, 2016 provided her detailed explanation of seller financing, including:

"Seller financing transactions are difficult and time consuming to execute. Not always, but often, seller financing attracts desperate people in difficult situations-sellers who desperately need to sell (often to avoid foreclosure of extreme financial loss) or buyers who are desperate to purchase but can't at the moment often due to being newly divorced, newly self-employed or new to the province.

"Sellers understand Seller Financing is a sale and that the buyers are not simply glorified renters. Sellers are still responsible for paying the bank, taxes and insurance, even if the Buyers default, because the contract is between the Sellers and the Buyers and does not affect contracts between the Sellers and other parties. Sellers have no problem understanding this, and are usually concerned with ensuring that the Buyers honour their payment obligations. If they have questions of a legal nature I direct them to consult with their lawyer. I also consider if the property I'm Seller Financing has a CMHC insured mortgage. If it does, I look at how long ago the mortgage was acquired and whether or not the Seller actually resided on the property.

"The nature of Seller Financing under Agreements for Sale is that the Buyer acquires equity during the term of the agreement, provided that they are not default.

"I want all buyers to succeed in successfully transferring title into their own names. All seller financing buyers understand that the responsibility to maintain their payments, fix their credit and maintain the property is theirs. I want everyone to succeed but if the buyer continuously defaults on payments and makes no arrangements to remedy the situation with the Seller by bringing the arrears of the seller financing account into good standing, then the terms of the contract govern and the Seller may exercise their remedies, in the same way that a mortgagee can. There is no money back guarantee if they change their minds after a few months. In general, there are forfeiture provisions providing that serious or repeated default of the Buyers leads to the property reverting back to the Sellers along with any equity they would have built up. This is the trade-off that Buyers make, and the benefit they receive for this is that they have obtained the property for a set price rather than speculating on what the value might be at the end of the contract's term. RB and HR were fully aware of this."

- ii. *You were contacted by SF because of your advertising for services and specialization in "seller financing".*
100. SF replied to a Kijiji ad for [Address 2] that Ms. Bonwick had listed for sale. The listing offered seller financing. SF responded to the ad and received an auto reply from Ms. Bonwick with a link attached. The auto reply email contains a copy of this email dated July 30, 2017. The email contains a link to a Kijiji ad with pictures of [Address 2] (Binder 1, Tab 14, page 358). SF only contacted Ms. Bonwick because of her advertising.
101. RECA sent Ms. Bonwick a Notification of a Professional Conduct Review dated February 7, 2018 regarding SF's complaint made against Ms. Bonwick to RECA. Ms. Bonwick's written response dated February 22, 2018 stated that another realtor recommended her to SF, and SF contacted her directly after finding her Kijiji ad (Binder 2, Tab 15, page 690).
- iii. *In or around July 2017, you proposed a "seller financing" arrangement to your buyer client, SF, for the property located at [{"Address 2"}], Calgary, AB.*
102. SF spoke to Ms. Bonwick on the phone, and then Ms. Bonwick texted SF on July 30, 2017 about [Address 2] and the terms. This text message mentions that SF "can do 5% down! No qualifying!" (Binder 1, Tab 13, page 343).
- iv. *The owners of the property at [{"Address 2"}] were JN and NN [{"the N.'s"}], who entered into a "seller financing" arrangement and signed an Agreement for Sale ("AFS") with your previous client, MB.*
103. A Land Title Certificate dated December 22, 2017 confirms that JN and NN were the registered owners of [Address 2] when Ms. Bonwick dealt with SF about that property (Binder 1, Tab 7, page 55). JN and NN entered into a Residential Purchase Contract with MB dated February 2, 2016. The purchase contract names the N.'s as seller, MB as buyer, and Ms. Bonwick as the buyer's representative (Binder 1, Tab 9, pages 116 - 122). The N.'s and MB also entered into an Agreement for Sale dated March 3, 2016 (Binder 1, Tab 10, pages 140 - 151).
- v. *You represented MB in the "purchase" of the property from [{"the N.'s"}] at [{"Address 2"}].*
104. The Residential Purchase Contract between the N.'s and MB names Ms. Bonwick as the buyer's representative (Binder 1, Tab 9, page 120).

- vi. *You purposely did not advise your client, SF, that you represented MB in the purchase of [“Address 2”].*
105. SF testified that Ms. Bonwick did not tell her about Ms. Bonwick’s history with [Address 2]. When she signed the purchase agreement, she found out MB was selling [Address 2]. She didn’t know who was representing MB but “it sounded like it was probably Ms Bonwick as she did state once that she was “doing a favour for a friend”. (Binder 1, Tab 13, page 341). SF texted Ms. Bonwick on September 5, 2017 that “...you guys all seem to have some kind of business/personal relationship with each other.” (Binder 1, Tab 15, pages 360 - 361).
- vii. *You led your client to believe that she would “own” the property at [“Address 2”] if she entered into a “seller financing” arrangement and an AFS.*
106. Ms. Bonwick told SF that if she ever wanted to sell [Address 2], she could sell it at any time and get her equity out of the house (Binder 1, Tab 13, pages 347 - 350). SF entered into a Residential Purchase Contract with MB on August 1, 2017, which names MB as seller and SF as buyer. Ms. Bonwick is named as the buyer’s representative in that contract (Binder 2, Tab 9, pages 597 - 604). Also, The Notice Re: Waiver/Satisfaction of Conditions dated August 9, 2017 and bearing the “seller” MB’s electronic signature states “Seller unilaterally waives all conditions and is thereby giving notice to the Buyer THIS IS NOW A FIRM SALE!” (Binder 2, Tab 9, page 618).
- viii. *You led your client, SF, to believe that she was entering into a legitimate real estate purchase, rather than a tenancy.*
107. Ms. Bonwick’s text messages with SF from July 30 to August 2, 2017 indicate SF could buy [Address 2] for a 5% down payment without having to qualify for a mortgage, and she had spoken with the owner who is willing to finance for two years or SF could get financing for a third year “only if another balloon payment of \$10,000 is made at the end of the second year”. SF sought confirmation that she needed to pay an additional \$5,000 in 9 months and another \$10,000 within 24 months, and Ms. Bonwick said “yes...or sell at any time” (Binder 1, Tab 13, pages 343 - 357). Also, The Notice Re: Waiver/Satisfaction of Conditions dated August 9, 2017 and bearing the “seller” MB’s electronic signature states “Seller unilaterally waives all conditions and is thereby giving notice to the Buyer THIS IS NOW A FIRM SALE!” (Binder 2, Tab 9, page 618).
108. SF was further led to believe she was buying [Address 2], as indicated by her signing the Residential Purchase Contract with MB on August 1, 2017, which names MB as seller and SF as buyer (Binder 2, Tab 9, pages 597 - 604).

- ix. *You drafted a purchase contract for [“Address 2”], with an addendum that included terms to be replicated in an AFS to be drafted by the parties’ lawyer at a later date.*
109. Ms. Bonwick drafted the Agreement for Sale and SF paid her \$300 to draft that document. An Addendum to the Residential Purchase Contract added additional terms of sale which, among other things, indicates that “Seller Financing will be formalized as an Agreement for Sale of Land (“AFS”), on the Buyers lawyers AFS form, to be formalized by the parties lawyers...” (Binder 2, Tab 9, pages 607 - 608). SF understood an Agreement for Sale to be a sale contract to buy [Address 2], and she is not sure if it is a separate document from the Residential Purchase Contract. She doesn’t recall any discussion about the lawyers finalizing the terms of the Agreement for Sale.
- x. *You crossed out the term in the purchase contract that ensures that title to the property is free of encumbrances, liens, and interests. This was done in an effort to avoid your obligation to show the land title to SF and to conceal the true owner of the property.*
110. Kristine Semrau testified that it was standard procedure that her associates were required to provide their buyer clients with a copy of the land title. Associates were obligated to provide a land title to their buyer clients so the buyer is aware and can determine if the title would indicate any red flags. Section 5.1 of the Residential Purchase Contract between MB and SF is crossed out and the deletion is initialed by MB and SF. Before being crossed out, section 5.1 read that
- “Title to the Property will free of all encumbrances, liens and interests except for
- (a) those implied by law;
 - (b) non-financial obligations now on title, such as easements, utility rights of way, covenants and conditions that are normally found registered against property of this nature;
 - (c) homeowner association caveats, encumbrances and similar registrations;
 - and
 - (d) items the buyer agrees to assume in this contract.” (Binder 2, Tab 9, page 598).
111. SF testified that Ms. Bonwick told her section 5.1 was crossed out because the parties were doing seller financing. SF would not get title to [Address 2] until she got her own financing the property would remain in MB’s name. SF didn’t know anything about land titles and she doesn’t know what they contain. She didn’t know that MB had registered a Caveat on title to [Address 2], and Ms. Bonwick did not tell her about priority of interests on title. SF believed that MB owned [Address 2].

- xi. *You included a term in the purchase contract for the property located at [“Address 2”] that “title will not transfer but will be held in Trust”, which is not possible.*
112. Kristine Semrau doesn’t know how title would be held in trust, and the Land Titles Office won’t hold title in trust. Section 9.2 of the Residential Purchase Contract states that “this transaction will be completed as an Agreement for Sale (AFS) in which property will not transfer but will be held in Trust.” (Binder 2, Tab 9, page 600).
- xii. *You directed your client, SF, to contact lawyers that you had previously worked with in “seller financing” agreements and that you knew would accept the terms that you inserted into the purchase contract.*
113. SF testified that at first Ms. Bonwick provided the name of one lawyer that she had previously worked with. Eventually, Ms. Bonwick gave SF another lawyer’s name, but neither lawyer called her back.
- xiii. *You inserted a term in the exclusive buyer representation agreement that your buyer client, SF, must hire a lawyer with previous experience with your “seller financing” contracts.*
114. Section 12 of the Exclusive Buyer Representation Agreement contained an additional term that SF “must agree to hire a lawyer with previous experience and knowledge of creative financing contracts such as Seller Financed Agreements for Sale. In addition, the lawyer you retain should have previous experience in dealing directly with my contracts.” (Binder 2, Tab 9, page 595). Kristine Semrau testified that associates should recommend at least one, but probably three lawyers to a client to give them a choice. SF confirmed with Holly Childs in a May 31, 2018 email that she never met with a lawyer to sign an Agreement for Sale, and she never met with a lawyer to sign any documents in connection with her attempted purchase of [Address 2] (Binder 1, Tab 19, page 419).
- xiv. *You inserted a term in the exclusive buyer representation agreement that if your buyer client, SF, did not hire a lawyer with previous experience with your seller financing contracts, she must arrange for a telephone consultation between you and the lawyer.*
115. Section 12 of the Exclusive Buyer Representation Agreement also stated that “if you wish to use a lawyer I haven’t worked with, you must arrange for a telephone consultation with between your lawyer and I, before I start work on your contract.” (Binder 2, Tab 9, page 595).

- xv. *After your client, SF, was unable to hire one of your recommended lawyers, you drafted an amendment to the purchase contract to redirect her \$15,000 deposit from her lawyer to your brokerage.*
116. In a series of texts, Ms. Bonwick told SF she would prepare an amendment to the Residential Purchase Contract, directing SF to transfer \$15,000 to The Alberta Collection's trust account (Binder 1, Tab 15, pages 362 - 369). SF told Holly Childs in an email dated May 31, 2018 that she doesn't know why she was told to pay the \$15,000 deposit to The Alberta Collection instead of the buyer's lawyer (Binder 1, Tab 19, page 419). The Real Estate Purchase Contract was amended so that SF had to pay an additional \$15,000 deposit to The Alberta Collection instead of to the buyer's lawyer (Binder 1, Tab 12, page 340).
- xvi. *You proceeded with the sale transaction, despite the fact that your buyer client, SF, did not hire a lawyer and an AFS was not drafted or signed between the parties, as per the terms of the purchase contract.*
117. Kristine Semrau testified that neither the buyer nor the seller could meet the condition to have the Agreement for Sale drafted by a lawyer if neither of them were represented by a lawyer. If a client refused to get a lawyer, it would have to be stated in writing. The brokerage file didn't indicate anywhere that SF refused to get a lawyer. To Ms. Semrau's knowledge, an Agreement for Sale was not drafted for this transaction. She would have been aware if there was a lawyer because the brokerage file would have included documentation confirming that. The brokerage file did not contain an amendment to the term that required the Agreement for Sale to be drafted and reviewed by a lawyer. SF reviewed the Residential Purchase Contract with a lawyer at the courthouse. She understood that the Residential Purchase Contract was also the Agreement for Sale.
118. In a text exchange with Kristine Semrau on or about January 26, 2018, Ms. Bonwick said SF "was given legal council [sic] before she signed her waiver". She then said SF explicitly went against her advice by not hiring a lawyer to complete the transaction "and then she LIED to me saying she did." (Exhibit I). However, SF told Ms. Bonwick in a text dated August 9, 2017 that she didn't think she would hear back from a lawyer that day, and she asked if that would affect anything. Ms. Bonwick did not reply to that text (Binder 1, Tab 20, page 430). SF didn't recall any discussion about the Agreement for Sale terms being finalized by lawyers. Neither she nor MB had lawyers, so nothing was finalized. Ms. Bonwick acted like it was okay to not hire a lawyer, as long as SF was okay with buying [Address 2]. An Agreement for Sale formalized on a standard form. Ms. Bonwick didn't ask her if an Agreement for Sale had been formalized on her lawyer's standard form. SF did not give Ms. Bonwick a formalized Agreement for Sale before she waived conditions.

xvii. You proceeded with the sale transaction, despite knowing that the owners of the property at ["Address 2"] had initiated litigation against your seller client, MB.

119. Anthony Merah sent a letter to The Alberta Collection to Ms. Bonwick's attention in September 2017. He used the contact information given in the Residential Purchase Contract and did not receive a response to his letter. He then called Ms. Bonwick and she confirmed she received his letter. She told him to read the contract between the N.'s and MB, and she said maybe Mr. Merah didn't understand the contract. He was advised that the contract between the N.'s and MB was in order. His conversation with Ms. Bonwick was brief, but she wanted him to read the contract, and he didn't get a sense that she wanted to discuss the matter further.
120. Kristine Semrau assumes the fax number Mr. Merah sent the letter to was an i-fax number and she assumed it was Ms. Bonwick's number. I-fax messages go straight to email. The fax number in Mr. Merah's letter does not belong to the brokerage or Ms. Semrau. Cheryl Rumpel testified that Ms. Semrau stated to RECA during an interview that the fax number belongs to Ms. Bonwick. Ms. Semrau put that number in her phone during that interview and the fax number came back to Ms. Bonwick. She stated during the interview that the brokerage did not have a physical fax machine or general fax number, and each person in the brokerage had their own i-fax number.
121. The Financing Schedule that forms part of the Residential Purchase Contract between the N.'s as seller and MB as buyer states that "Where there is Seller Financing, the Seller must approve any assignment of this Contract by the Buyer" (Binder 1, Tab 11, page 192). There is no evidence to indicate that the N.'s approved of MB assigning the Residential Purchase Contract to anyone.

xviii. You were aware that SF's deposit of \$15,000 was released to the seller, MB, prior to the closing of the transaction for ["Address 2"], without an amendment to the purchase contract.

122. Kristine Semrau told Holly Childs in some emails that she would have received direction from Ms. Bonwick or SF to release the deposit. The contract should have been amended if the deposit was released before the closing date. The brokerage file did not contain an amendment to change the closing date (Binder 2, Tab 10, pages 656 - 657). SF stated she didn't know the \$15,000 deposit had been released to MB before the closing date. She did not instruct Ms. Bonwick or the brokerage to release the deposit before the closing date.

xix. You failed to meet several fiduciary duties owed to your client, SF, throughout the transaction to further the fraudulent scheme.

123. SF testified that Ms. Bonwick reviewed the Consumer Relationships Guide with her. She understood it to mean Ms. Bonwick was her real estate agent and she had to adhere to its terms. SF does not believe Ms. Bonwick upheld her responsibilities that the Consumer Relationships Guide placed on her. There seemed to be several conflicts of interest that SF didn't find out about until after the transaction had transpired. She assumed that the financing terms were in her best interests because Ms. Bonwick was her real estate agent. No terms were ever discussed or negotiated. SF does not recall any conversations with Ms. Bonwick about waiving conditions, and she doesn't know if there was an amendment to change the condition about the need for a lawyer's approval. She never felt Ms. Bonwick gave her undivided loyalty, full disclosure, reasonable care and skill or full accounting.
124. Kristine Semrau stated that it was standard procedure for associates to give their buyer client a land title, and they were obligated to do so. This is required so that the buyer is aware and can see if there are any red flags. It should have been brokerage policy to provide a land title. Nothing in the brokerage file indicated SF refused to get a lawyer; she just waived the condition. Neither the buyer nor the seller could satisfy the condition to have the Agreement for Sale reviewed by their lawyer if they didn't have lawyers. They would have to waive the condition or amend the contract. She would advise her own client for their protection that they should have the Agreement for Sale reviewed by their lawyer. If they refused to follow her advice, that would be their prerogative, but Ms. Semrau would get that in writing. The brokerage file did not contain an amendment to the term that the Agreement for Sale had to be reviewed by a lawyer. An amendment should have been made if the \$15,000 deposit was released before the closing date, and she did not see an amendment on the brokerage file.
- b) *You did not fulfil your fiduciary obligations to your client, contrary to section 41(d) of the Real Estate Act Rules:*
- i. *You established an agency relationship with SF.*
125. SF signed a Consumer Relationships Guide (Binder 1, Tab 12, pages 316 - 317). SF and Ms. Bonwick also signed an Exclusive Buyer Representation Agreement (Binder 1, Tab 12, pages 318 - 321). The Residential Purchase Contract between MB and SF lists SF as buyer and Ms. Bonwick as the buyer's representative (Binder 1, Tab 12, pages 328 - 333).
- ii. *You had a fiduciary duty to represent the true value of the property at ["Address 2"] to your client, SF.*

126. Kristine Semrau stated that a real estate associate is obligated to provide a property's MLS history to buyer clients. The brokerage file should contain a comparative market analysis to show how the associate arrived at the numbers, such as a property's estimated value.
127. SF stated that Ms. Bonwick did not provide her with a comparative market analysis or comparable listings for [Address 2]. She believed that Ms. Bonwick, as her real estate agent, was looking out for SF's best interests, but she wasn't allowed to negotiate on the purchase price. Ms. Bonwick did not inform her that the listing price for [Address 2] decreased twice since she was provided with the MLS feature sheet. Ms. Bonwick didn't make her aware that [Address 2] sold for \$492,000 in February 2016. However, Ms. Bonwick stated that the market value was higher than \$492,000 because of the seller financing.
- iii. You did not provide your buyer client, SF, with a comparative market analysis for the property at [("Address 2")].*
128. As stated above, Kristine Semrau stated that a real estate associate is obligated to provide a property's MLS history to buyer clients. The brokerage file should contain a comparative market analysis to show how the associate arrived at the numbers, such as a property's estimated value. SF stated that Ms. Bonwick did not provide her with a comparative market analysis or comparable listings for [Address 2].
- iv. You provided your buyer client, SF, with an outdated feature sheet from a 2015 MLS listing that showed a higher value for the property at [("Address 2")], without bringing to your client's attention that it was outdated.*
129. SF stated that Ms. Bonwick gave her an MLS feature sheet with all other documents she received when she signed the documents for the purchase, but she doesn't know why it was given to her. Ms. Bonwick didn't explain to her that the MLS feature sheet was from 2015.
130. Kristine Semrau stated that the MLS sheet provided to SF is different than the copies in the brokerage file. For example, the listing price in the MLS sheet that SF received was \$524,888. She doesn't know why SF received an MLS sheet from 2015.
- v. You advised your client, SF, that the purchase price for [("Address 2")] was a reasonable price and did not attempt to negotiate a lower purchase price on her behalf.*
131. SF stated that Ms. Bonwick determined the purchase price, and she told SF that was the price. There were no negotiations on the purchase price. Ms. Bonwick told her that the market value was higher because of the seller financing.

vi. You did not pull a certificate of title for the property at [{"Address 2"}] until after your client, SF, had signed the purchase contract.

132. SF testified that she did not receive a copy of the land title certificate before she signed the Residential Purchase Contract.
133. The evidence provided in this hearing shows that SF signed the Residential Purchase Contract on August 1, 2017 with Ms. Bonwick as her witness (Binder 2, Tab 9, page 602). The brokerage file contained a land title certificate dated August 3, 2017 (Binder 2, Tab 9, pages 585 - 587).

vii. You did not show the certificate of title for [{"Address 2"}] to your client, SF.

134. SF testified that she did not receive a copy of the land title certificate before she signed the Residential Purchase Contract on August 1, 2017. She expected that Ms. Bonwick would provide it to her. She believed that MB owned [Address 2].
135. The N.'s were the registered owners of [Address 2] when SF signed the Residential Purchase Contract, as shown on the land title certificate dated August 3, 2017 (Binder 2, Tab 9, pages 585 - 587).

viii. You inserted a term in the purchase contract that your commission would be releasable upon removal of the conditions, not upon closing of the transaction, which put SF's money at risk if the transaction did not close.

136. Kristine Semrau stated that realtor commissions are generally paid after a transaction closes.
137. The Residential Purchase Contract contained an added term in section 9.2 which states that "this transaction will be completed as an Agreement for Sale (AFS) in which property will not transfer but will be held in Trust. **Commission for the sale of this transaction will be \$2,000 and will be fully payable upon removal of Conditions (August 7th, 2017). ***Additional Terms of Sale will be explained in the attached Financing Schedule and Agenda. ***Buyer will take possession of the property on or before September 1st, 2017 as a tenant at will. Initial \$5,000 deposit fully releasable to Seller upon removal of Conditions." (Binder 2, Tab 9, page 600).
138. SF stated that Ms. Bonwick did not explain why the commission would be paid when the conditions were removed. She didn't know when a commission generally gets paid in a real estate transaction.

- ix. You did not fully explain the risks associated with the term added by the buyer to the purchase contract that directed SF's \$5000 initial deposit to be released upon removal of conditions, putting SF's money at risk if the transaction did not close;
139. Kristine Semrau testified that releasing the commission before the possession date would not protect the buyer. The seller would be protected because they would receive the deposit funds. If the transaction didn't close, the buyer would have to involve a lawyer to recover the buyer's deposit.
140. SF testified that she doesn't know why the additional term for the \$5,000 deposit was added to the Residential Purchase Contract. She received no other explanation, other than a text from Ms. Bonwick asking her to initial the changes, and to "...just text or email me something like you acknowledge and agree to both" (Binder 1, Tab 13, pages 352 – 356). There were no further discussions about those changes other than Ms. Bonwick's text. SF doesn't recall Ms. Bonwick explaining the risks associated with releasing the commission or the \$5,000 deposit upon removal of conditions. SF didn't know of the risks because she had never done this before.
- x. *When your client, SF, discovered that MB did not own the property and that he was subject to litigation by the [{"the N.'s"}], you did not take steps to rectify the situation for your client even though she asked you to return her deposits and to nullify the sale.*
141. SF testified that she tried to contact Ms. Bonwick and MB, but Ms. Bonwick told her that no one could do anything but everything was fine. Ms. Bonwick told her that MB had her money, however, MB told SF that Ms. Bonwick had her money. Ms. Bonwick was not responding to SF and eventually stopped talking to her.
142. A series of texts between SF and Ms. Bonwick starting on October 13, 2017 indicate SF had discovered that MB did not own [Address 2] when the N.'s showed up. SF demanded the return of the \$20,000 she had paid towards purchasing [Address 2] (Binder 1, Tab 15, pages 374 – 386). Some of Ms. Bonwick's responses to SF's texts include: MB is working things out with the N.'s and he'll keep SF updated; lawyers have told Ms. Bonwick that the N.'s won't be successful, and SF needs to "just work things out with [MB]"; SF demanded her money be returned or she'll start legal proceedings, and Ms. Bonwick replied "doesn't matter if the contract says they can shoot you after 30 days it's not legal"; "you have to follow the law. [MB] tells me he is paying them back or the [N.'s] will have to give him his money back (but that's not likely to happen) and their actions have clearly resulted in damages. If he gets money back and they mutually decide to reverse the deal then he will have to give that money to you.

Do you want to sell? I have someone looking in [area where [Address 2] is located] with 25k down. They have a lawyer and he knows about AFS.”

- c) *You did not disclose to your client, at the earliest practical opportunity, any conflict of interest you may have in the course of providing services to, or in your dealings with a client, contrary to section 41(f) of the Real Estate Act Rules:*
- i. *You did not disclose to your client, SF, that you had a client relationship with the seller, MB.*
143. SF testified that Ms. Bonwick:
- a) did not discuss any conflicts of interest with her;
b) told her that MB was her friend and she was doing him a favour;
c) did not tell her she was representing MB as a client.
144. Kristine Semrau testified that an associate must disclose in writing to their client if they previously assisted a seller. In her response to RECA dated February 22, 2018, Ms. Bonwick confirms that she has sold properties for MB in the past (Binder 2, Tab 15, page 689).
- ii. *You did not disclose to your client, SF, that you had previously represented MB in the purchase of the property at [“Address 2”] nor did you disclose all of the details regarding that transaction.*
145. Kristine Semrau testified that:
- a) an associate must disclose in writing to their client if they previously assisted a seller;
b) it would be difficult for a previous client to become a customer;
c) if a conflict of interest exists, the associate should advise the brokerage and the client in writing;
d) she has now learned that a conflict of interest arose in the [Address 2] transaction;
e) the brokerage file does not contain any written notice of the conflict of interest.
146. SF testified that Ms. Bonwick did not tell her anything about MB. If she had known Ms. Bonwick had a history with MB, she would have stayed far away from the [Address 2] transaction.

- d) *You did not disclose, in a timely manner, to the buyer all relevant facts known to you about affecting a property or transaction, contrary to section 58(j) of the Real Estate Act Rules:*
 - i. *You did not disclose to your client, SF, that the seller, MB, had entered into a "seller financing" arrangement and an AFS on the property at ["Address 2"].*

147. SF testified that she only learned the N.'s owned [Address 2] when they came to the house. She never saw the Agreement for Sale between the N.'s and MB (Binder 1, Tab 10, pages 140 – 151) in January 2018, and Ms. Bonwick did not tell her anything about it, or that MB bought [Address 2] from the N.'s with an agreement that was identical to the agreement SF and MB signed.

- ii. *You did not disclose to your client, SF, that the seller, MB, had not made his monthly payments, as per his AFS with the original owners, for the property at ["Address 2"].*

148. SF testified that after the N.'s showed up at [Address 2], Ms. Bonwick was talking to MB but not to SF. It seemed to SF that Ms. Bonwick already know what was going on because she mentioned to MB that he had already made payment arrangements. SF stated in her RECA complaint that neither Ms. Bonwick nor MB informed her that MB had defaulted on his purchase agreement with the N.'s or of "any court dealings or anything that could be a problem at all. When I speak to each person they say the other should have informed me. But no one at all informed me at the time I signed my agreement with [MB] or I would not have entered into an agreement with him." (Binder 1, Tab 12, page 273).

- iii. *You did not disclose to your client, SF, that the owners of the property at ["Address 2"] had initiated litigation against MB in an effort to recoup their missed payments and, further, to prevent the future sale of the property to your client, SF.*

149. Anthony Merah faxed a letter to Ms. Bonwick informing her of the N.'s lawsuit against MB. That letter was received by Ms. Bonwick on September 6, 2017 and it states that the N.'s "instruction is to oppose the purported sale of their property by [MB], who appears to be trying to dispose of an interest he does not have over the subject property." (Binder 2, Tab 28, pages 804 - 805).

150. Kristine Semrau testified that that Ms. Bonwick had a fiduciary duty to SF as her client to notify her of the litigation, because they were still under the terms of the Exclusive Buyer Representation Agreement.

151. SF stated that Ms. Bonwick did not tell her about Mr. Merah's letter.

iv. *You did not disclose to your client, SF that the tenants living at the property located at [{"Address 2"}] had not been provided proper notice or vacated the property prior to the date of SF's possession.*

152. SF testified that when she arrived at [Address 2] on September 1, 2017 to take possession, the tenants had not moved out. She wasn't sure how Ms. Bonwick knew how many tenants were at [Address 2]. She believes Ms. Bonwick was speaking to a tenant. Ms. Bonwick told her that the tenants send things to Africa for charity, but she doesn't know how she knew that. Ms. Bonwick seemed to know the tenants personally, and they moved their possessions to Ms. Bonwick's residence. Ms. Bonwick told SF that she was the property manager for [Address 2].

e) *Between February 2017 and October 2017, you did not hold the appropriate authorization to deal as a mortgage broker, contrary to section 17(b) of the Real Estate Act:*

i. *You negotiated the terms of a mortgage on the property at [{"Address 2"}] on behalf of your seller client, MB, and your buyer client, SF, by calculating the following:*

- a) interest rate;*
- b) monthly payments;*
- c) down payment;*
- d) amortization period;*
- e) financing term.*

153. Holly Childs testified that a mortgage associate, not a real estate associate, would determine the mortgage terms in a transaction. A person would require a mortgage licence to determine the mortgage terms. Ms. Bonwick does not have a mortgage associate licence. The financing terms and conditions were more than a client simply asking what they could afford, and they went beyond the scope of a real estate associate. It is within the scope of a mortgage associate.

154. Kristine Semrau testified that real estate associates don't get education about calculating and creating financing terms. A mortgage associate would get the appropriate education and they would also require a mortgage associate licence.

155. SF testified that Ms. Bonwick proposed the financing terms for the [Address 2] transaction. She doesn't know if MB had any input in the financing terms for this transaction. SF didn't negotiate any of the financing terms because they were already inserted in the Residential Purchase Contract when she signed it. Ms. Bonwick did not really discuss the financing terms with her. She told SF to speak with a mortgage broker but not to solidify the purchase contract, and SF would

have to get financing when the Agreement for Sale term ended. Ms. Bonwick showed SF how she did mortgage calculations with her mortgage calculator.

156. David Lem testified that if your advertisements state you are a seller financing expert, it would not fall under real estate licencing sectors, and it might fall more into the mortgage sector. SF was not referred to a financing professional or expert.
- ii. *You received compensation in the form of commission for the negotiation of the mortgage terms of the seller financing arrangement for [{"Address 2"}].*
157. Kristine Semrau's records show that Ms. Bonwick received a \$2,000 commission from the [Address 2] transaction (Binder 2, Tab 25, page 799). \$2,000 was deducted from the \$15,000 deposit SF paid and was released to MB. She assumes it was Ms. Bonwick's commission. The commission was paid even though the transaction did not complete.
- f) *You did not cooperate with the investigator, contrary to section 38(4.1) of the Real Estate Act Rules:*
- i. *You did not provide a copy of a comparative market analysis for the property located at [{"Address 2"}], as requested by the investigator.*
158. Holly Childs sent Ms. Bonwick a Professional Conduct Review: Request for Information dated October 4, 2018. She asked Ms. Bonwick to provide a copy of the market analysis and city tax assessment she prepared and provided to SF. Ms. Bonwick did not respond to RECA's request. David Lem confirmed with Ms. Childs that his office received the Professional Conduct Review: Request for Information and emailed it to Ms. Bonwick (Binder 2, Tab 17, page 764).
159. SF stated that she did not receive a comparative market analysis or market listings. Kristine Semrau testified that the brokerage file did not contain a comparative market analysis.
- ii. *You did not provide your phone records for the period of May 2017 to November 2017, as requested by the investigator.*
160. Holly Childs requested Ms. Bonwick's phone records for the period of May 2017 to November 2017 (Binder 2, Tab 21, page 782). She testified that she did not receive those records from Ms. Bonwick or her lawyer.
- iii. *You did not provide a copy of the lease agreement between you and MB for your residence located at [{"Address 3"}] Calgary, AB, as requested by the investigator.*

161. Holly Childs requested a copy of that lease agreement (Binder 2, Tab 21, page 782). [Address 3] is listed as Ms. Bonwick's address on her licence history and the CRM system. Ms. Childs obtained a land title search on [Address 3] and discovered that MB owns it. She sent Ms. Bonwick and Jonathan Denis an email to remind them that Ms. Childs required the lease agreement. She testified that she did not receive it.

File 008395

a) *You made representations or carried on conduct that was reckless or intentional and that misled or deceived any person or was likely to do so, contrary to section 42(a) of the Real Estate Act Rules:*

i. *You represented yourself as an "expert" in seller financing in your online advertisements.*

162. The ED's evidence included RECA's Advertising Guidelines (Binder 4, Tab 7, pages 1208 - 1239). Page 1219 discusses industry professionals' stated experience. "Industry professionals often advertise that they have special qualifications, experience or expertise in specific industry sectors or in certain geographic areas. Consumers often rely on these claims. When making these claims, industry professionals must ensure they are in a position to demonstrate the qualification or experience they are claiming. If an industry professional advertises special qualifications or expertise, the Courts and RECA typically hold them to a higher standard."

163. Holly Childs testified that RECA made several requests to Ms. Bonwick for information about her advertising because she wasn't complying or responding to those requests. The ED provided several of Ms. Bonwick's advertisements containing wording where Ms. Bonwick mentions she can help buyers and sellers with seller financing. Several of her ads contained the following wording: "If you're looking for a Seller Financed Property I can help. As a licensed real estate agent I can offer you the security of knowing your investment is in the hands of a qualified professional." (Binder 4, Tab 1, page 1191; Binder 4, Tab 2, page 1195; Binder 4, Tab 4, page 1200; Binder 4, Tab 5, page 1203; Binder 4, Tab 17, page 1339).

164. Kristine Semrau testified that she had heard about Ms. Bonwick in the industry prior to working with her, and she knew Ms. Bonwick specialized in seller financing. She saw some of Ms. Bonwick's advertisements prior to working with her and based her opinion of Ms. Bonwick specializing in seller financing somewhat from those ads. David Lem testified that if an industry professional's

advertisements state someone is a seller financing expert, it would not fall under real estate licencing sectors but might fall more towards the mortgage side.

165. Ms. Bonwick's August 24, 2018 response letter to RECA's Notification of a Professional Conduct Review (Binder 4, Tab 16, pages 1332 - 1335) states that

"I have been a realtor specializing in Seller Financing for many, many years and most realtors already know and respect what I do."

"If you would like to find out more about Seller Financing, I suggest you hire a lawyer and get one of them to explain it to you. Most of the people participating in Seller Financed Agreement for Sales do not have the benefit of working with a licensed realtor. It's not in the best interest of the public for this legitimate and 100% legal type of sale transaction to be completely relegated to those individuals or companies that are doing it without a license.

"Also, please do not contact or harass any of the buyers, sellers or lawyers involved with any of the addresses I provided to you. That would be entirely inappropriate and unacceptable. I can assure you, there is nothing wrong, morally or legally with Seller Financed Agreement for Sales and I am very proud of the work I do."

- ii. *Your online advertisements stated that real estate transactions are monitored by the Real Estate Council of Alberta.*

166. Holly Childs testified that RECA made several requests to Ms. Bonwick for information about her advertising because she wasn't complying or responding to those requests. RECA would not have asked Ms. Bonwick about the word "monitored" in her advertisements if RECA didn't want her to change the wording of her ads. This was brought up when RECA investigated Ms. Bonwick in 2016 and again in 2018 in case 008395 with Mr. Lem, because the brokerage is ultimately responsible for advertising.

167. Several of Ms. Bonwick's advertisements contain the following wording: "Every real estate transaction facilitated by a Real Estate Associate is monitored to insure that it conforms to legal and ethical standards set out by the Real Estate Council." (Binder 4, Tab 1, page 1191; Binder 4, Tab 2, page 1196; Binder 4, Tab 3, page 1198; Binder 4, Tab 4, page 1200; Binder 4, Tab 5, pages 1202 and 1203).

168. David Lem testified, and stated in his August 24, 2018 response to RECA's August 2, 2018 letter (Binder 4, Tab 15, page 1272), that when looking at those advertisements, it sounds like RECA would look at every real estate transaction. Mr. Lem and Ms. Bonwick were in continuous discussions regarding any seller financing initiatives and transactions. He advised her to ensure she consults him on such matters as they occur. He thinks there was some confusion with the

wording of Ms. Bonwick's ads, and maybe she didn't intend to show that every transaction was being monitored, but he can see in a literal sense that consumers could interpret the ads that way. Ms. Bonwick told him she would remove that wording to ensure it does not confuse consumers. He discussed with her about possibly changing the wording to state that RECA monitors industry members' behaviour so it would not be confusing. He doesn't recall if he called her to ask if she had changed her advertisements. Realtors know that not every transaction would be monitored, however, "monitored" could have a different meaning to consumers. If RECA told him his advertising was misleading, he would take a serious look at it and change it so it wasn't confusing. He would not consider Ms. Bonwick was confused about the wording of her advertisements if he knew the same issue was also raised in 2016.

169. Ms. Bonwick's August 24, 2018 response letter to RECA's Notification of a Professional Conduct Review states that "it is ridiculous to suggest by underlining the word "monitored" that it somehow implies the real estate industry is going to check in every month to see whether an individual's monthly payments are made every month. The statement clearly is meant to provide the public with assurances that the practice of real estate in Alberta is regulated and that realtors are held to a high standard." (Binder 4, Tab 16, page 1331).

b) *You traded in real estate in the name of the brokerage in which you were not registered, contrary to section 53(a) of the Real Estate Act Rules:*

i. *You advertised properties online using either your previous brokerage's name or no brokerage name.*

170. Some of Ms. Bonwick's Kijiji advertisement name Ms. Bonwick as an Associate, or Associate, Commercial/Residential/Property Management, or an Affiliate, with The Alberta Collection / Christie's International while she was registered with Engel & Volkers (Binder 4, Tab 1, page 1189; Binder 4, Tab 3, page 1197; Binder 4, Tab 4, page 1199). Holly Childs testified that Christie's International is a luxury real estate organization, not a brokerage. RECA industry members must comply with regulations and legislations and advertising guidelines. Ms. Bonwick's May 18, 2018 Kijiji advertisement names Ms. Bonwick as an Advisor with The Alberta Collection / Engel & Volkers Calgary while she was registered with Engel & Volkers (Binder 4, Tab 2, page 1194). Ms. Childs testified that RECA made several requests for information to Ms. Bonwick about her advertising because she wasn't complying or responding. She added that an industry member is obligated to update their advertising, regardless of how many times they change brokerages. Ms. Bonwick posted a Kijiji advertisement on September 5, 2018 which names her as an Associate,

Commercial/Residential/Property Management with The Alberta Collection /
Engel & Volkers Calgary.

171. Ms. Bonwick posted this ad after she had received RECA's Notification of a Professional Conduct Review and after her written response to RECA where she stated she would change her advertising. In that written response, she states she had to change brokerages in the past three years, due to brokerages closing. She states further that "understand there is there is absolutely zero advantage for me to be advertising properties under the name of a brokerage I am not registered to. I have had to redo all of my advertising and materials at a considerable cost of money and time spent. Information on the internet cannot always be updated immediately and it may take years before all of my content advertising Discover Real Estate and The Alberta Collection disappears. Any advertisement still appearing as The Alberta Collection is obviously because I have just recently changed brokerages. I am perfectly aware that my website needs updating, along with all of my advertising materials. It really is a slap in the face to bring this up while simultaneously requiring me to waste a bunch of my time when I should be concentrating on restoring my business to its full capacity." (Binder 4, Tab 16, page 1132). Ms. Bonwick indicated she is aware that the brokerage is ultimately responsible for advertising. In her August 24, 2018 response letter to RECA's Notification of a Professional Conduct Review (Binder 4, Tab 16, at page 1330) "My standard Kijiji ad write up has been approved by my broker, Graham Mayne, the Calgary Real Estate Board, and RECA. The wording was adapted from one of RECA's or CREB's own publications.

"Not only was my ad approved by Graham, he said it was "very good". The exact wording was also on the front page of my website (shelleybonwick.com) which the brokerage helped me set up and maintain."

172. David Lem stated that Ms. Bonwick used the brokerage team name The Alberta Collection while she was registered with Engel & Volkers. He did not try to refresh the advertisements when he looked at them. Ms. Bonwick sent him nothing to show that it was only a problem related to refreshing the browser.

File #008856

- a) *From October 1, 2018 to present, you did not hold the appropriate authorization to trade in real estate as a real estate broker or to advertise yourself, or in any way hold yourself out as, a real estate broker, contrary to section 17(a) and (d) of the Real Estate Act:*
- i. *You failed to renew your registration with RECA as a real estate associate by the annual deadline on September 30, 2018.*

173. Holly Childs testified that David Lem told her Ms. Bonwick didn't renew her real estate associate licence because she wanted to take a break from real estate. Also, Ms. Bonwick's Licence History dated February 4, 2020 (Binder 1, Tab 3, pages 44 – 45) indicated that Ms. Bonwick has not been licenced with RECA after September 30, 2018.
- ii. *You advertised property listings on Kijiji, while unauthorized, with your name and phone number as a contact.*
174. Holly Childs testified that she pulled screenshots from the Engel & Volkers website around October 2018 to determine if Ms. Bonwick was still advertising on that site. She also searched Ms. Bonwick's cell phone number on Google to make sure it still belonged to her. That phone number appeared in the Kijiji ads. Ms. Childs pulled 28 Kijiji ads after Ms. Bonwick did not renew her licence. She searched for seller financing to see what ads appeared. When Ms. Childs interviewed her, Ms. Bonwick stated she had an arrangement and a service agreement with the owners of the Canals property who didn't want to use a real estate agent. Ms. Bonwick said she wasn't trading in real estate but was marketing properties for sale. Ms. Childs testified that marketing properties is considered trading real estate according to the legislation. She asked Ms. Bonwick for a copy of the service agreement but did not receive it.
175. The ED produced documents to support Ms. Childs' evidence that Ms. Bonwick's cell phone number had not changed, and that she continued to advertise, while unauthorized: Google search of Ms. Bonwick's cell phone number (Binder 4, Tab 34, pages 1413 - 1414); Ms. Bonwick's Kijiji ads posted while she was unauthorized (Binder 4, Tab 35, pages 1415 – 1418; Binder 4, Tab 36, page 1419; Binder 4, Tab 37, pages 1420 – 1422; Binder 4, Tab 38, pages 1423 – 1424).
176. David Lem confirmed that the screenshots contained at Binder 4, Tab 33, pages 1409 – 1412 are from the Engel & Volkers website. He saw a Heritage Lake property on the Engel & Volkers website and in a Kijiji advertisement. To his knowledge, this property was not being listed through seller financing. When he reached out to Ms. Bonwick after she didn't renew her licence, she told him she only had advertisements on Facebook. He didn't try to refresh the advertisements when he looked at them. Ms. Bonwick sent him nothing to show that it was only a problem related to refreshing the browser (Binder 4, Tab 46, pages 1442 – 1445; David Lem's November 14, 2018 written response to RECA).
177. RECA interviewed Ms. Bonwick on December 6, 2018. Ms. Bonwick seemed confused about the difference between marketing and advertising (Exhibit S, transcript of Holly Childs and Cheryl Rumpel interviewing Ms. Bonwick, at pages 53, 54, 56, 57).
- iii. *You promoted "seller financing" in advertisements while unauthorized.*

178. The ED's evidence included Ms. Bonwick's Kijiji advertisements that were posted while she was unauthorized as a real estate associate (Binder 4, Tab 37, page 1421; Binder 4, Tab 38, pages 1423 - 1424).
- iv. You promoted the benefits of not using an authorized real estate associate in real estate transactions in your advertisements.
179. Ms. Bonwick testified she was not sure if promoting the benefits of not using a licenced real estate agent brings positivity to the industry. People have the right to choose and they don't have to use an agent. For some people, not using an agent is a benefit according to their level of expertise. Some people don't want to be associated with realtors or RECA. Ms. Bonwick thinks it's fair to give people options and to let them make their own decisions about whether or not they want an agent or whether they would be better off representing themselves. She believes it is better to work with a realtor, but it is not her manner to state that to someone else. She chooses to present the information in such a way that people can draw their own conclusion. If presented properly, a person should be able to conclude that a professional is their best option, however, some people may not want to do that.
- v. *When you were notified by RECA that you cannot trade in real estate while unauthorized, you altered the Kijiji advertisements to hide your identity.*
180. Holly Childs testified that screenshots of some Kijiji advertisements from around October 2018 show the same ads with "Kelli" as the user. The only difference between these ads and Ms. Bonwick's ads is the posting date and user name. When Ms. Childs interviewed her, Ms. Bonwick stated that Kelli was her cousin. Ms. Childs confirmed some Kijiji advertisements posted by "Kelli" (Binder 4, Tab 41, pages 1434 - 1435; Binder 4, Tab 43, pages 1439) were the same as some Kijiji advertisements posted by "Kijiji User", which Ms. Childs stated is Ms. Bonwick (Binder 4, Tab 35, pages 1415 - 1418; Binder 4, Tab 36, pages 1420 - 1422). The only difference between those advertisements is the posting date and user name. RECA requested Kelli's contact information, but Ms. Bonwick did not provide it.
181. Ms. Bonwick stated that Kelli is her cousin, and they had worked together in the past. At first Ms. Bonwick thought Kelli was posting the advertisements. She didn't want to provide Kelli's contact information to RECA because she didn't want to drag her into the investigation. Since that time, Ms. Bonwick thinks that RB was trying to set her up. She believes it was RB because she heard an audio recording where RB said she saw several Kijiji ads online belonging to Ms. Bonwick. She doesn't know if RB would change the name to "Kelli" if she was trying to set her up. Ms. Bonwick wouldn't benefit from the ads if RB posted

them with Ms. Bonwick's phone number because it could be illegitimate calls or people set up by RB to call her.

b) *You did not cooperate with the investigator, contrary to section 38(4)(a) of the Real Estate Act Rules:*

i. *You did not respond to the questions posed by the investigator in a Notification of a Real Estate Investigation dated October 19, 2018.*

182. Holly Childs testified that a Notification of and Investigation Under the Real Estate Act was sent to both of Ms. Bonwick's addresses listed in CRM (Binder 4, Tab 39, pages 1425 – 1429) and by email (Binder 4, Tab 40, pages 1430 – 1433). A Canada Post notification shows the Notification was signed for and successfully delivered to Ms. Bonwick. Ms. Bonwick did not respond to that RECA Notification.

ii. *You did not provide the contact information for the individual that assumed your Kijiji ads, as requested by the investigator.*

183. Holly Childs testified that on December 6, 2018 she emailed Ms. Bonwick and requested her to provide Kelli's contact information as part of RECA's investigation (Binder 4, Tab 47, page 1446). Ms. Bonwick did not provide Kelli's contact information.

c) *You engaged in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute, contrary to section 42(g) of the Real Estate Act Rules:*

i. *Throughout the investigation process, you exhibited clear contempt for the governance of your regulator.*

184. David Lem testified that he was not happy about receiving correspondence from RECA regarding Ms. Bonwick. He discussed it with Ms. Bonwick and they were both confused about what RECA wanted her to do. The sentiment during his discussions with her was that the investigations were frivolous, and Ms. Bonwick has better things to do with her time.

185. Ms. Bonwick testified that RECA alleged she was advertising on pornography websites. After the pornography video, the attacks by RECA did not stop. Their notifications came with greater intensity. All she was doing was responding to their investigations. RECA's questions were irrelevant, particularly with a civil court action involving Ms. Bonwick. She suggested that RECA staff were watching pornography because there was no other reason why RECA staff would be looking at age 18-plus websites. She doesn't think it's professional for RECA to send her pornography. RECA never came up with any other reason for

why they found the link to the OMG Youtube website. The only logical explanation was that RECA staff were watching pornography. Ms. Bonwick believed at the time of her interview that perhaps the RECA investigators were supplying RB and HR with information about how to further their complaint. RECA needs multiple complaints to take something seriously. Ms. Bonwick responded to James Porter's August 13, 2018 email by sending him an article about how to check your computer for pornography, as "it may help you to avoid any future embarrassment for you or other the RECA investigators." (Binder 4, Tab 12, pages 1259 – 1261).

186. On October 15, 2018 Holly Childs emailed Ms. Bonwick a Demand for Information Relevant to an Investigation. Ms. Bonwick replied on October 23, 2018, stating she may consider a date when she can attend a meeting, but she is "taking a leave of absence from real estate due to health issues related to extreme emotional distress." (Binder 2, Tab 19, pages 771 – 776). Ms. Bonwick said that in order to prepare for a potential meeting, she would require, among other things, the code of conduct for RECA investigators and industry members in an investigation, list of meeting attendees, and the questions Ms. Childs would be asking so Ms. Bonwick could prepare for the meeting.
187. On October 2, 2018 Ms. Childs replied to Ms. Bonwick's email and provided a link, Guide to a Professional Conduct Review for Industry Professionals", which Ms. Childs said had previously been provided to Ms. Bonwick. On October 26, 2018 Ms. Bonwick replied that she is "still traumatized by recent events, such as "the recent inflammatory accusations of James Porter, who accused me of advertising on porn sites and then sent me and my broker a link to pornography. His actions deeply affected me and I will probably have trust issues with RECA for some time." She repeated that she would need a list of questions RECA would ask her and names of interview attendees. (Tab 2, Tab 20, pages 777 – 781). Ms. Bonwick considered RECA's professional conduct review to be harassment (Binder 4, Tab 16, page 1329: Ms. Bonwick's August 24, 2018 response to RECA).
 - ii. *You have persistently shown that you are not governable as a real estate professional.*
188. Holly Childs testified that an industry member is obligated to update their contact information in the CRM system. RECA needs industry members' most current information so that it can contact them. A lot of times with advertising complaints, RECA contacts the broker, the advertisements get changed, and RECA closes the investigation file without sanction. An industry member can discuss with their broker or RECA if they are confused about their advertisements. Ms. Bonwick did not contact RECA to indicate she was confused about the concerns regarding her ads.

189. RECA suspended Ms. Bonwick's authorization to trade in real estate under section 53(1)(1) of the *Real Estate Act* on November 13, 2018 (Binder 4, Tab 45, page 1441).
190. James Porter testified that Ms. Bonwick filed a court application within a week of his phone call with her, even though he told her he expected to complete RECA's investigation the following month. The basis for governability is having respect for your regulator and following the rules.

SHELLEY BONWICK'S TESTIMONY

191. After the ED closed his case, the Hearing Panel informed Ms. Bonwick that she now has the opportunity to respond to the ED's case against her and to present evidence she feels the Hearing Panel needs to hear in support of her response. The independent legal counsel explained to Ms. Bonwick that this is her one and only chance to present her case. Ms. Bonwick confirmed she understood the Hearing Panel's and the independent legal counsel's explanations. She believed she will call herself as a witness, and possibly one other witness (MB), whom she did not produce to testify at this hearing. She was told:
 - a. she may or may not include herself as a witness;
 - b. if she chooses to testify, she will take the witness stand and be affirmed, present her testimony, be subject to cross-examination, then provide additional testimony to clarify any evidence that arises in cross-examination; and
 - c. then the Hearing Panel may ask her questions.

Ms. Bonwick confirmed that she understands the above explanation, and she chooses to testify. Ms. Bonwick was affirmed and testified on her own behalf.

192. Ms. Bonwick testified and wrote in her responses to RECA that RECA abused other people involved in the investigations of her. When it suits RECA, there is an investigation of Ms. Bonwick. It affects her because there is always someone next, and she wondered who will be next. RECA cast a wide net to isolate Ms. Bonwick from all of her friends and associates. She questioned why she would cooperate with an investigation if RECA is going to get what they want. RECA asking her to provide screenshots of the OMG website and cat videos came up. To show she was watching cat videos is an example of gaslighting. James Porter uses the word "kitties" in his email to Ms. Bonwick, and she wanted to clarify that she did not use that word; only Mr. Porter did. It is harassment, and a person is out to abuse you, if they send you pornography, especially if you haven't asked for it. She is not sure if RECA was putting realtors on pornography sites to try to entrap them. Ms. Bonwick cannot do real estate anymore because

she's sick of it. She can't be at a job where the authority think it's alright to send her pornography. If she stays in real estate, that would make her a prostitute.

193. Ms. Bonwick has made some calls, she tried to call the minister, and she tried to figure out the code of conduct to discover whether there were any circumstances where pornography can be sent. The RECA investigators encouraged HR and RB to contact REIX (Real Estate Insurance Exchange) and to pursue lawsuits against Ms. Bonwick. RECA wanted to let them know they could make some money. If RECA has concerns about Ms. Bonwick's practice of real estate, bring them forward in a timely manner so she can learn from them and not repeat them. RECA shouldn't keep their concerns on the back burner and then see how much garbage they can collect on a person. She calls it garbage because she questions why Cheryl Rumpel was in a back room digging up internet porn on her.
194. The pornography is not relevant to the charges against Ms Bonwick. She doesn't know how she is supposed to speak appropriately to someone that sends her pornography. She doesn't have any respect for them, and she questioned how she can respect someone that comes up with spurious arguments. She doesn't care if she ever practices real estate again. She doesn't know how she can work for someone that has done this to her, because it is abusive. She is sorry that the witnesses lost money in real estate, but that was not because of her. If the market had been different, HR, RB and SF would not have complained against her. They wanted these transactions, but they didn't work out, and as a result HR, RB and SF have personally attacked Ms. Bonwick. It is not good for RECA to encourage RB to pursue vexatious lawsuits that the general public has to be exposed to.
195. As far as she is concerned, everyone has wasted their time at this hearing. She does not understand how someone can be in a back room digging up dirt just to get a kick and see what power they have. The only way to respond to a RECA investigation is to admit to what you did, say sorry, and ask how much money they want you to pay. If you try to fight it, you are obviously a bad person. She would rather RECA not inform her of listings on sites with a pornographic website. She doesn't care what is on the dark web, and she would never look at what her computer blocks. She doesn't think her clients would care if their listings were on a site with pornographic content. If they are visiting a site like that, they will not be offended watching real estate videos.
196. If other people other than clients are looking on the OMG website, then they have already agreed to click on an age 18-plus website that has objectionable content. She doesn't think that it reflects negatively on the industry to have real estate listings on a website containing pornographic advertising. She believes her suspension was retaliatory, and not because of her conduct, because she

objected to the allegations that she was willingly advertising on pornographic pop up websites.

197. This matter has been very upsetting for Ms. Bonwick. Before January and February 2016, she had not had any unfair dealings with RECA. She called RECA to let them know about agents not receiving their commissions. RECA told her it is not a public concern, and she can change brokerages. RECA very sternly warned her to never speak of this matter again or there might be repercussions. This is around the time the [Address 2] transaction occurred. RECA was very angry at Ms. Bonwick and she was not allowed to do anything. A few months later RECA sent her notification of her first complaint, which RB made. Maybe in hindsight she would have responded differently and not use such strong language in her response.
198. Ms. Bonwick said documents her former broker, Graham Mayne of Discover Real Estate had preserved some emails relating to RB and her complaint. The case presenter objected to Ms. Bonwick submitting these documents into evidence on the grounds that the relationship between Ms. Bonwick and RB are not relevant to this hearing, and stated that the Hearing Panel had previously ruled on those emails and did not allow them to be admitted into evidence due to lack of relevance. Ms. Bonwick took the position that RB's complaint is based on a vendetta by RB, and the emails are relevant because they were attached to the first complaint which was sent to Graham Mayne. They were contained in an Additional Information folder: Email Supporting Documents that Ms. Bonwick had provided to the RECA Hearings Administrator in the evening of March 5, 2020. The Hearing Panel heard submissions from Ms. Bonwick and the case presenter and deliberated to consider the objection and the emails Ms. Bonwick sought to enter into evidence. After considering the parties' submissions, the Hearing Panel concluded that the emails were not relevant to this hearing and they will not be entered into evidence.
199. Ms. Bonwick relayed to the RECA investigators a written report she wrote about the personal issues she had with RB, and said RB's testimony should be taken with a very fine grain of sand, because RB's memory would not be reliable due to medication she mentioned to Ms. Bonwick, and RB had a dependence on drugs. The case presenter objected to this testimony being allowed into evidence on the grounds that it was not relevant to this hearing. The Hearing Panel considered the parties' positions on the case presenter's objection. After considering the parties' positions, the Hearing Panel sustained the case presenter's objection and informed the parties that it would consider each witness's evidence individually.
200. RB proposed a working relationship with Ms. Bonwick. Ms. Bonwick told RECA about it and discussed it with Graham Mayne. Mr. Mayne said he was familiar with RB and said she is trouble. RB was advertising in Ms. Bonwick's name.

When Ms. Bonwick confronted RB about this, RB became very angry and said Ms. Bonwick was trying to kill her and she was the reason why RB would die on the operating table. RECA ignored Ms. Bonwick's concerns.

201. Ryan Deluca and Graham Mayne told Ms. Bonwick not to change anything about her online ads and they approved her ads.
202. Ms. Bonwick thought everything was okay, and then she had big issues with SF. The biggest issue was that SF might have thought the tenants in [Address 2] were Ms. Bonwick's tenants, but they were MB's tenants. Ms. Bonwick was always licenced for property management and she took all required education but she didn't do much property management. The tenants were not moving out of [Address 2] and Ms. Bonwick and MB were trying to help SF by trying to figure out how to remove the tenants' belongings. Ms. Bonwick said she and MB obtained a Restraining Order from Alberta Court of Queen's Bench against two of the tenants, OB and SB (as mentioned in Ms. Bonwick's Affidavit in a civil action she commenced against RECA (Binder 5, Tab 8, pages 1591 – 1592). Ms. Bonwick said OB was a violent individual who basically kidnapped MB, forced him into a car and assaulted MB.
203. Ms. Bonwick referred to a transcript where RECA interviewed Kristine Semrau. The case presenter objected to the transcript being entered as evidence on the grounds that it is not relevant to this hearing. The Hearing Panel allowed Ms. Bonwick to identify the document and Ms. Bonwick was allowed to go into detail regarding the contents of the transcript, to enable the Hearing Panel to consider its potential relevance. Ms. Bonwick stated that the transcript made reference to a specific individual. The Hearing Panel listened to Ms. Bonwick's statements about the transcript and then reviewed the transcript to determine whether it was relevant to this hearing. The Hearing Panel allowed the case presenter's objection. The Hearing Panel considered the excerpts Ms. Bonwick brought to the Hearing Panel's attention, and concluded that the Kristine Semrau transcript was not relevant to this hearing.
204. Ms. Bonwick asked James Porter for a month extension to respond to RECA's Notification of a Professional Conduct Review. Mr. Porter only allowed her to have a one-week extension. She acknowledged that one of her Kijiji advertisements contained a pornographic pop up, and she did not know how it appeared in that advertisement. She also said Mr. Porter called her unprofessional for allowing that to happen.
205. Responding to RECA's investigation requests and demands in a timely manner is more important to RECA than Ms. Bonwick's mental health. She referenced her mental health to Holly Childs many times and no one from RECA ever considered her mental health. RECA was only interested in asking her to send them more documents. She found it thoroughly humiliating and disgusting that

she was sent pornography. She had been asking since 2018 who found the pornography pop up, and she did not find out until this hearing.

206. It was a difficult decision to not renew her licence. She spoke to the Alberta Real Estate Association about her situation, and they provided a lawyer and some funding.
207. She did a comparative market analysis for [Address 2], but she doesn't keep them and she is not required to keep copies. She explained everything to her lawyer, and he told her to he would respond to RECA and she didn't have to do anything. He said he would attend the RECA meeting, and she felt like she had someone on her side. Her lawyer for REIX is not communicating with her at all. She asked her lawyer to respond and let her know what is going on. She feels like she has no one helping her. Broker Graham Mayne, and [LAWYER], the lawyer she used in her seller financing transactions, passed away and is not here to speak to this matter. They are both very relevant to these proceedings.
208. She felt that the meeting with her lawyer would get everything done. Then all of a sudden RECA suspended her licence without given any reasons. You have to ask them to provide reasons. Then after her licence was suspended, HR and RB added Ms. Bonwick to their lawsuit. The RECA investigators were not speaking respectfully to Ms. Bonwick, and they were yelling at her. She said RECA encouraged HR, RB and SF many times to add Ms. Bonwick as a party to their lawsuits arising from the [Address 1] and [Address 2] transactions. RB and SF are making personal attacks against Ms. Bonwick.
209. RECA should have brought forth its concerns about Ms. Bonwick in a timely manner. They are covering up the fact that they sent her pornography and defending their actions against Ms. Bonwick's actions. She believes that by sending her pornography, RECA is calling her a loose woman. RECA has been able to decide for itself throughout the investigation against her what RECA feels is or is not relevant. RECA decided to suspend Ms. Bonwick's licence before she received a hearing. This experience has caused huge distress to Ms. Bonwick, and the process is abusive.
210. She thought this hearing would be the same as the RECA investigations, and she is very thankful that it has not been the same. She apologized for being late on the first day of this hearing, and she thought the Hearing Panel would be screaming at her and that it would not be fair. Even though she does not agree with the process, she appreciated that the Hearing Panel has been asking her questions and giving her a chance to state her case and to be heard.
211. Ms. Bonwick's life, reputation and social life has been a mess due to the RECA investigation, and she contemplated suicide. A career is not worth it, and the truth is not worth it. She is not going to lie and say that she did the things she is

accused of. If she did something wrong, tell her in sensitive manner. She doesn't see the value in these proceedings. She has been waiting four years for the opportunity to state her case. It is not even about her case, but rather the abuse she has endured throughout the investigation process.

212. The Hearing Panel asked Ms. Bonwick if she had provided all of her evidence in relation to her application for procedural fairness (which will be discussed later in this decision) and in answer to the case against her. She could not think of anything else at that time, and she mentioned:
- a. the length of time it took for the investigation and to hold this hearing;
 - b. witnesses not being treated fairly;
 - c. evidence from [LAWYER] and Graham Mayne, and her emails (due to her email being shut down), not being preserved;
 - d. RECA had made its decision against Ms. Bonwick from the start;
 - e. harsh treatment towards her;
 - f. an Assured Income for the Severely Handicapped ("AISH") hearing panel concluded she has a severe handicap and is eligible for AISH benefits.
213. The Hearing Panel again asked Ms. Bonwick if she has completed her case, and she confirmed that she had.
214. The case presenter cross-examined Ms. Bonwick. She testified that she did not make a formal complaint to RECA against RB, because Graham Mayne said he would do it. When asked if she followed up, she said other issues arose shortly afterward, such as Discover Real Estate not paying its agents, and Graham Mayne not being available. When asked what the tenants in the SF transaction have to do with Ms. Bonwick's conduct as real estate associate, she answered they were an issue, and relevant for many reasons, all of which she has already said. OB and SB moved in as tenants at the property where Ms. Bonwick was living, which she believed MB owned. Ms. Bonwick later obtained a Restraining Order against OB and SB. SF and OB were working against Ms. Bonwick in connection with the RECA investigation.
215. James Porter never came up with a logical or plausible explanation why the pornographic links appeared in Ms. Bonwick's online advertisements. So many untrue allegations were made against Ms. Bonwick that she could not respond to all of them. Ms. Bonwick will take some time to decide if she will practice real estate again if RECA drops its charges against her.
216. The Hearing Panel gave Ms. Bonwick an opportunity to present her case, which is not what she experienced throughout the RECA investigations. She believes the Hearing Panel has given her more procedural fairness than she had expected.

217. The case presenter said Ms. Bonwick did not provide RECA with her cousin Kelli's contact information, which means she is subject to sanction for not complying with RECA's investigation. Ms. Bonwick responded that she has a distant cousin named Kelli, and she believes RB might have posted an online advertisement with Kelli's name as contact person. RB was trying to set up Ms. Bonwick by posting online ads under Kelli's name.
218. Ms. Bonwick understands what agency is, but she is unclear about the difference between advertising and marketing. She thinks it is fair to give people options on whether they want to use an agent or whether they would be better off representing themselves.
219. During her re-examination, Ms. Bonwick testified that she asked RECA for the source of a complaint made against her and RECA did not provide it to her. She believes RECA was trying to show complainants like HR how to make a complaint, because RECA needs multiple complaints to take something seriously.
220. Ms. Bonwick did research to determine her mistaken belief about what she was not allowed to do in relation to advertising. RECA was asking her to explain things she didn't know. The RECA investigators continually cut off Ms. Bonwick when she tried to respond, which she found quite harsh.
221. The ED recalled James Porter as a rebuttal witness. The pornographic links were from OhMyGodYouTube.net, which Mr. Porter never sent to Ms. Bonwick. Cheryl Rumpel sent Mr. Porter a video on August 2, 2018. Cheryl Rumpel recorded the video, which show a computer searching Shelley Bonwick and clicking on several of Ms. Bonwick's videos of properties. The same pornographic link appears at the bottom of each of Ms. Bonwick's videos. Mr. Porter emailed the link to Ms. Bonwick on August 14, 2018 but he did not view it before sending it. He does not know if he sent the identical link to Ms. Bonwick on August 14, 2018 or if the link's content may have been identical to the link that he received on August 2, 2018. He does not know the date when Ms. Bonwick's link was no longer active. RECA would record the videos as a matter of process. The recording was done on a program called LINK, which records the user's actions.
222. After all witnesses had testified, Ms. Bonwick and the case presenter stated their preference to provide written closing arguments. Prior to receiving the parties' closing arguments, the parties initiated several applications after the final day of the hearing.

POST-HEARING APPLICATIONS

MS. BONWICK'S APPLICATION ON PROCEDURAL FAIRNESS

223. Ms. Bonwick made an application on the grounds that procedural fairness was not applied to the investigation and RECA's decision to suspend her license. She had a reasonable expectation that RECA will follow standardized processes in managing the complaints filed against her. She provides several examples where she believes RECA acted without the impartiality and fairness that is expected in its role as investigator. These examples include:

- a) Right to receive notice: she received notice of her suspension to trade in real estate via email on November 14, 2018, but the RECA Chair signed the suspension on November 13, 2018.
- b) Right to a timely hearing: she "was not provided with swift justice and justice delayed is justice denied." RECA began its investigation of her conduct as a realtor in 2015 and received her first written notice in 2016. She was suspended for more than one year without receiving a hearing. "The suspension and its publication destroyed the business I had spent years building, and negatively affected my personal and professional reputation as well as my ability to earn a living. This negatively impacted and prevented me from defending myself against the allegations into my conduct as a realtor."
- c) Timely disclosure: RECA did not disclose relevant information to her in a timely manner, which undermines a key component of procedural fairness. RECA withheld crucial information about the nature and origins of the allegations and complaints against her, only providing most of their disclosure on or around September 2019. Some complaints started in 2016, and she has not been able to properly to defend herself as a result. Also, RECA did not disclose the origin and circumstances of their evidence of the internet videos found on omgyoutube.net that contained pornographic pop-up advertisements. RECA preserved videotaped evidence of this evidence and refused to disclose who originally found and reported this information to RECA, even though Ms. Bonwick requested it several times. The video containing the pornographic evidence was not presented until the last two days of this hearing.
- d) Inequitable treatment of witnesses:

- [LAWYER] was an important witness for file 006025. He passed away in March 2019, and RECA did not preserve any of his evidence, which harms Ms. Bonwick's ability to defend herself.
- She did not complete cross-examining RB, as RB abruptly left the hearing during cross-examination. This harmed Ms. Bonwick's ability to defend herself.
- RECA did not thoroughly investigate witnesses' credibility and motivations:
- SF made comments against Ms. Bonwick that were very personal in nature. She told RECA that Ms. Bonwick attended the [Address 2] property inspection "practically naked in a skin-tight, see-through green dress, and that I was noticeably disappointed that the property inspector wasn't male." The RECA investigator did not take into account SF's clear bias against Ms. Bonwick, which allowed biased testimony to influence the ED's recommendation to suspend her license, "and this may potentially affect the Hearing Panel's decision."
- HR gave untruthful evidence during cross-examination about his and RB's history of foreclosures and seller financing. "This evidence is well documented as fact on the MLS history." RECA should not have allowed this false information in the hearing record, which influenced the ED's decision to suspend her license.
- Rey Umbalin provided false information about HR and RB having equity in [Address 1], which was proven by the licensed appraisals obtained by the E.'s. Neither RECA nor HR and RB obtained similar appraisals "in support of their position when certainly (especially in the case of RECA), it would have been appropriate and within their ability to have this done if in fact their complaints had merit."
- Witnesses were allowed to make false statements and were not properly investigated and "the witnesses whose statement, testimony and position that were consistent with my innocence, my position and statements of fact were treated very poorly." For example, the E.'s and MB "were treated poorly and threatened by RECA with \$25,000 fines." RECA harassed and severely punished MB and David Lem because of their association with Ms. Bonwick. They were not able to give honest testimony without the threat and fear of additional reprisal and consequences from RECA, which made it difficult for Ms. Bonwick to defend herself.

224. Ms. Bonwick states she was owed a high degree of procedural fairness “yet I was forced to suffer the consequences” before it was determined that her conduct deserved sanction. She referred to *Paranych (Re)*, 2017 CanLII 147872 (AB RECA) at paragraph 48, which states that a high degree of procedural fairness is warranted when an individual’s career and livelihood is being affected:

We find that citing the incorrect section of the Rules and also reproducing the incorrect text of the Rules in Exhibit D to the Notice of Hearing is a significant defect. We recognized that conduct hearings can have significant impact on an individual’s career and adversely impact one’s ability to maintain a livelihood. As such, there is a need to be precise in drafting a Notice of Hearing. This sentiment is expressed by the Supreme Court of Canada in Kane v. University of British Columbia, 1980 CanLII 10 (SCC), [1980] 1 S.C.R. 1105 at p 113:

While the content of procedural fairness is to be determined in the specific context of each individual case, it has been consistently held that individuals facing a possible loss of their livelihood through a disciplinary sanction are entitled to a high degree of procedural fairness (para. 48, Paranych (RE), 2017 CanLII 147872 (AB RECA).

225. Ms. Bonwick states she “was forced to serve a sentence before being found guilty and this stems from a lack of procedural justice as a result of unjust delay.” She cited *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, which sets out at paragraphs 153 – 154 what is considered unreasonable or unjust delay, which amounts to procedural unfairness:

In Ratzlaff v. British Columbia (Medical Services Commission) (1996), 1996 CanLII 616 (BC CA), 17 B.C.L.R. (3d) 336 (C.A.), at para. 22, Hollinrake J.A. set out a theoretical framework within which the courts may consider unreasonable delay, along with some of the relevant factors in assessing it:

153. *Abuse of power is a broader notion, akin to oppression. It encompasses procedural unfairness, conduct equivalent to breach of contract or of representation, and, in my view, unjust delay. I should add that not all lengthy delays are unjust; regard must be had to the causes of delay, and to resulting reasonable changes of position. [Emphasis added.]*

This analytical method, in which unreasonable delay is assimilated to a type of abuse, helped Hollinrake J.A. to recognize that adverse effects other than on hearing fairness can be considered independently. He writes at para. 19, “where the delay is so egregious that it amounts to an abuse of power or can be said to be oppressive, the fact that the hearing itself will be a fair one is of little or no consequence”.

154. *Abusive administrative delay is wrong and it does not matter if it wrecks only your life and not your hearing. The cases that have been part of this evolution have sometimes expressed the point differently, but the key consideration is this: administrative delay that is determined to be unreasonable based on its length, its causes, and its effects is abusive and contrary to the administrative law principles that exist and should be applied in a fair and efficient legal system.*
226. Ms. Bonwick cited section 11(b) of the *Canadian Charter of Rights and Freedoms*, which states that “any person charged with an offence has the right...to be tried within a reasonable time.” She states that “the principles of procedural fairness permeates all areas of Canadian society including the Real Estate Act and administrative law.”
227. Ms. Bonwick cited *R. v. Morin*, [1992] 1 S.C.R. 771 where the Supreme Court of Canada held that “it is appropriate for this Court to suggest a period of institutional delay of between 8 and 10 months as a guide to Provincial Courts.”
228. The ED submitted his Response, and stated that the means in which procedural fairness was denied or in what circumstances she feels that it should have applied is not very clear. The ED agreed that “Ms. Bonwick is entitled to procedural fairness in the administrative process.” The ED cites *Blencoe* at paragraph 102, where the Court stated “the principles of natural justice and the duty of fairness are part of every administrative proceeding”. The ED added that the duty of fairness is triggered when an administrative decision affects “the rights, privileges, or interests of an individual”, as stated in *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817 at para. 20, citing *Cardinal v Director of Kent Institution* [1985] 2 S.C.R. 643 at p. 653).
229. *Baker* lays out the factors that must be considered to determine whether a duty of fairness applies to an administrative decision at pages 836 – 840:
- 1) The nature of the decision being made and the process followed in making it;
 - 2) The nature of the statutory scheme and the terms of the statute pursuant to which the
body operates;
 - 3) The importance of the decision to the individual or individuals affected;
 - 4) The legitimate expectations of the person challenging the decision;
 - 5) The choices of procedure made by the agency itself.
230. These factors must be applied to determine whether a party owed another party procedural fairness and the degree to which it was owed. The ED argues that “apart from her suspension, Ms. Bonwick has failed to specifically identify

any other administrative decision that she wants to challenge. She did not cite the decision of *Baker*, nor did she apply the factors to demonstrate that she was owed procedural fairness in a decision made during the investigative process.”

231. Section 38 of the *Real Estate Act* outlines RECA’s investigative powers. It is within the ED’s authority to appoint a person to commence an investigation into conduct upon receipt of a complaint or if the ED believes there is conduct deserving of sanction. The *Act* provides investigators with the authority to take steps in an investigation to collect the necessary evidence. However, it does not outline the specific procedures to follow in an investigation or enforce a deadline for the completion of an investigation. Section 39(1) of the *Act* provides the ED the discretion to determine what action to take next. The ED:

- a) may direct that no further action be taken if a complaint is determined to be frivolous or vexatious or if there is insufficient evidence of conduct deserving of sanction;
- b) may refer a matter to a hearing panel if the ED believes there is sufficient evidence;
- c) can exercise their discretion and issue a reprimand letter or an administrative penalty;
- d) determines whether a matter will be referred to a hearing panel;
- e) reviews the investigator’s file and/or report, taking into consideration the evidence collected during the investigation.

The decision to refer a matter to a hearing panel is made in consideration of the standard of proof applied in administrative proceedings. If the ED determines the evidence could prove the allegations of conduct deserving of sanction on a balance of probabilities, the matter will be referred to a hearing panel.

232. An investigation must occur before the ED can exercise his discretion to dismiss a complaint, refer a conduct matter to a hearing panel, or issue a reprimand letter or administrative penalty. If an investigation does not occur, a decision related to an administrative matter may lack procedural fairness.

233. The ED cites *Law of Administrative Investigations and Prosecutions* (Manuel, W.J. & Donszelmann, C. (1999) Aurora, ON: Canada Law Book Inc., at page 282-284) to support the position that the “courts will not closely inquire into the sufficiency or quality of an investigation when an investigation has been carried out by the appropriate body in accordance with legislatively required procedure”. In citing the case of *Slattery v. Canada (Human Rights Commission)*

(1994), 73 F.T.R. 161, the Manuel textbook highlights what the court has said about investigation procedural fairness:

"In determining whether the degree of thoroughness of investigation required to be in accordance with the rules of procedural fairness, one must be mindful of the interests that are being balanced: the complainant's and respondent's interests in procedural fairness and the CHRC's interests in maintaining a workable and administratively effective system"

"Deference must be given to administrative decision-makers to assess the probative value of evidence and to decide to further investigate or not to further investigate accordingly. It should only be where unreasonable omissions are made, for example, where an investigator failed to investigate obviously crucial evidence, that judicial review is warranted."

234. When considering the court's position above, an administrative body should be given the freedom and ability to manage investigative files and their own process, subject to their enabling statute, and procedural fairness will not be affected unless there is a significant and clear oversight in the investigation.
235. In response to Ms. Bonwick's statement that she had "a reasonable expectation that RECA will follow standardized processes in the management of the complaints" against her, the ED assumes Ms. Bonwick is providing the following as examples to support her statement:
- a) Right to receive notice of the suspension Order:
The ED states that they served the Order on Ms. Bonwick as soon as was reasonably possible the day after it was signed. The ED states "it is not clear how this would violate standard process. Further, Ms. Bonwick neglects to identify how procedural fairness would apply to this process."
 - b) Right to a timely hearing:
The conduct occurred in 2015 but Rey Umbalin, HR and RB did not submit complaints to RECA until May 2016 (Binder 1, Tabs 1 and 3). Ms. Bonwick was notified when RECA received and processed the complaints. The ED acknowledges that the suspension Order occurred during RECA's ongoing investigation, however, Ms. Bonwick has not shown how RECA did not follow its standard process. As a result, "the suspension did not influence or impact the investigative process."
 - c) Timely disclosure:
The ED stated that an investigator does not provide disclosure to an industry member during an investigation, because doing so could result in bias. The ED's legal counsel arrange for the file contents to be disclosed after the investigation is complete. RECA communicated with Ms. Bonwick early

during all four investigative files. The ED's written submission then provides the dates RECA sent notifications to Ms. Bonwick at every instance that RECA commenced a professional conduct review or investigation.

"Ms. Bonwick was also afforded the opportunity to attend two interviews, with her legal counsel present, to meet with the investigator, answer questions, and respond to the allegations against her. If she was unsure as to the nature and origins of the complaints against her at that time, she could have posed those questions to the investigator. In addition, and most importantly, Ms. Bonwick had the advantage of receiving a copy of the section 53 recommendation provided to the Chair in support of the decision to suspend her licence prior to her interviews."

The ED states that Ms. Bonwick provided no evidence to support her statement that she did not know the nature and origins of the complaints against her during the investigation. "Ms. Bonwick had more information available to her than other industry members under investigation because she received a copy of the section 53 recommendation."

Ms. Bonwick has not explained why the identity of the person that found the material displayed in Ms. Bonwick's online advertising and pornographic material is relevant or necessary. In response to Ms. Bonwick's statement that the video evidence was purposely preserved and then presented on the last two days of this hearing, the ED counters that "the introduction of the video was not dissimilar to the same process afforded to Ms. Bonwick in introducing evidence on short notice to counsel for the ED throughout the hearing. Even with the short notice, Ms. Bonwick was given the opportunity to view the video one day in advance and to ask Mr. Porter questions in cross-examination about it." Ms. Bonwick is well aware that the video is irrelevant to her defence against the allegations of conduct, and trying to use that issue to have the proceedings dismissed is inappropriate. The ED asks the Hearing Panel to disregard Ms. Bonwick's submissions in this regard.

d) Inequitable treatment of witnesses.

In response to Ms. Bonwick's statement that SF is a biased witness, the ED states that Ms. Bonwick received the section 53 suspension Order on November 19, 2019 (Binder 5, Tab 2, page 1507-1511), and the ED based his decision to suspend Ms. Bonwick's license on all four investigative files, and not solely on SF's complaint. SF's potential bias did not influence the ED's decision to recommend a suspension.

Ms. Bonwick's suspension should influence the Hearing Panel's decision, because her suspension "was presented as evidence at the hearing to exemplify Ms. Bonwick's escalating conduct and to support the allegation that she is ungovernable. If Ms. Bonwick believes that the suspension should

not be considered or given any weight by the hearing panel, she should properly make this argument in her closing submissions.”

Investigating the credibility and motivations of witnesses is outside the scope of the investigator’s role. Ms. Bonwick has also “made an overreaching assumption that SF is a biased witness because of one comment she made. Similarly, Ms. Bonwick’s arguments regarding the credibility of Rey Umbalin’s and HR’s evidence at this hearing should be discounted. The ED continues that it is inappropriate for Ms. Bonwick to comment about witnesses’ credibility or to ask the Hearing Panel to determine their credibility before issuing a decision on Ms. Bonwick’s conduct.

In response to Ms. Bonwick’s assertion that RECA treated witnesses that supported her innocence poorly and threatened them with \$25,000 fines, the ED states that all witnesses, whether industry members or members of the public, are obligated to answer RECA’s questions and provide documentary evidence upon request or they may face punishment under the Act. The ED further infers that Ms. Bonwick implied that Kristine Semrau and David Lem lied to RECA. Ms. Semrau and Mr. Lem know their obligations as industry members to cooperate with an investigation. If they were threatened with repercussions for providing honest statements, which the ED denies, section 38(4)(b)(iii) protects them prosecution if they incriminate themselves by answering questions during a RECA investigation. Also, if Ms. Bonwick needed evidence from them to support her case and defend herself against the allegations in the Notice of Hearing, she had the opportunity to obtain such evidence when she cross-examined them. Holly Childs testified that MB did not cooperate with the investigation and did not provide any evidence. Ms. Bonwick could have MB as a witness at this hearing if she felt his evidence would support her case. “He could have provided full and honest testimony without consequence, as he too would have also been protected under section 38(4)(b)(iii) of the REA. Ms. Bonwick cannot make a claim that there was a breach of procedural fairness when she had options available to her to remedy the issue.”

236. Ms. Bonwick applied to Alberta Court of Queen’s Bench for judicial review and a stay of the suspension Order. The ED’s legal counsel set the application for the earliest possible date, taking into consideration the Court imposed brief filing deadlines. Ms. Bonwick missed her brief filing deadline and her application was rescheduled to a later date. The Court dismissed her application.
237. Ms. Bonwick raised the issue of procedural fairness in her brief before the Court, but only in relation to the delay in conducting a hearing. She did not challenge the procedural fairness of the suspension Order at that time. The ED argued that any breach of procedural fairness due to delay would have to be addressed by a

panel at the time of the hearing. The Court agreed with the ED's submission. Ms. Bonwick has had the opportunity to have the suspension decision reviewed, and the Court denied her request for a stay. Ms. Bonwick has also attempted to litigate this matter again and the Court denied her application. The Court dismissed her application again and determined that the issue was *res judicata*, as the issue had previously been litigated and the Court had issued a decision (Binder 5, Tab – Hearing Exhibits). It would be inappropriate for the Hearing Panel to re-hear submissions on an application to stay the suspension decision, which the Court previously denied. The ED states that "any and all submission regarding procedural fairness, as it relates to her suspension should be disregarded."

238. The ED states that "throughout Ms. Bonwick's submissions, she makes the following references to her suspension:

- 1) "publicly suspended for over a year without the right and benefit of a hearing";
- 2) "negatively affected my personal and professional reputation as well as my ability to earn a living";
- 3) "negatively impacted and prevented me from defending myself against the allegations into my conduct as a realtor";
- 4) "forced to suffer the consequences before it was determined that I was deserving of any sanction under the *Real Estate Act*";
- 5) "forced to serve a sentence before being found guilty and this stems from a lack of Procedural justice as a result of unjust delay".

The Court considered the impact of Ms. Bonwick's suspension on Ms. Bonwick's reputation and finances and determined that she had not suffered irreparable harm (as defined in *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311. In that decision, the Supreme Court of Canada that at the second stage of the *Metropolitan Stores* test, "the applicant is required to demonstrate that irreparable harm will result if the relief is not granted." The Court of Queen's Bench decided that it would not be in the public interest to stay the suspension. Accordingly, the ED states that the Hearing Panel should disregard points 1), 2) and 4) above. The ED said it is unclear whether Ms. Bonwick is referring in point 3) to defending herself at the investigation or at this hearing.

239. The ED states that Ms. Bonwick's application appears to focus on procedural fairness as it pertains to the investigation. She cited *Paranych* to support her argument that she is entitled to a high degree of procedural fairness if facing a

possible loss of livelihood in a disciplinary sanction. The ED does not disagree with that argument, but submits that it applies to the hearing process and not the investigation.

240. The ED recognizes that a fair hearing requires that delays and improper disclosure can impact a subject's opportunity to make full answer and defence to the case before them. Delay can impact an individual's right to a fair hearing. However, delay alone does not justify a discontinuance of an administrative process. It must first be determined whether a delay is unreasonable or inordinate. If the delay is found to be inordinate and it results in prejudice against the party, then there has been a breach of natural justice or an abuse of process, which would justify the provision of a remedy. Unreasonable or inordinate delay can breach the duty of fairness. *Blencoe* at paragraph 122 outlines the factors that determine whether a delay is inordinate:

"The determination of whether a delay has become inordinate depends on the nature of the case and its complexity, the facts and issues, the purpose and nature of the proceedings, whether the respondent contributed to the delay or waived the delay, and other circumstances of the case. As previously mentioned, the determination of whether a delay is inordinate is not based on the length of the delay alone, but on contextual factors, including the nature of the various rights at stake in the proceedings, in the attempt to determine whether the community's sense of fairness would be offended by the delay."

241. The ED refers to *Blencoe* at paragraph 102, which provides that "where delay impairs a party's ability to answer the complaint against him or her, because, for example, memories have faded, essential witnesses have died or are unavailable, or evidence has been lost, then administrative delay may be invoked to impugn the validity of the administrative proceedings and provide a remedy".
242. The ED again cited *Blencoe* to illustrate that personal prejudice can arise when inordinate delay has caused "significant psychological harm to a person, or attached a stigma to a person's reputation, such that the human rights system would be brought into disrepute". (paragraph 115) However, the delay must be "clearly unacceptable and have directly caused a significant prejudice to amount to an abuse of process" that a remedy would be considered" (paragraph 115). It is only in the clearest of cases, where there may be harm to the public interest and the interests of justice, that an abuse of process for personal prejudice will be established." (paragraph 120) The ED submits that Ms. Bonwick has not provided any evidence to support that she suffered significant psychological harm or damaged reputation, and therefore she has not established an abuse of process due to personal prejudice. The ED further submits that Ms. Bonwick has not provided any reasons why she believes the delay in receiving a hearing was unreasonable or inordinate.

243. In response to Ms. Bonwick's statement that [LAWYER]'s evidence was not preserved, the ED states that RECA did not collect any evidence from him and therefore there was no evidence to preserve. The ED further submits that Ms. Bonwick has not established that she suffered significant prejudice because of the lack of evidence from [LAWYER]. Ms. Bonwick failed to identify in her submissions what particular evidence [LAWYER] could have provided to assist in her defence against the allegations in the notice of hearing. Any evidence related to [LAWYER] was provided through other witnesses. Ms. Bonwick had the opportunity to cross-examine those witnesses and to provide her own evidence about her dealings with [LAWYER]. Ms. Bonwick also has not established that [LAWYER] was an essential witness. The ED submits he is not, because he had limited interaction with the buyer and seller in the transaction for file 006025, and his involvement had very little bearing on Ms. Bonwick's conduct as a real estate associate. Accordingly, she has not shown that she suffered significant prejudice due to no evidence from [LAWYER].
244. The ED disagrees that Ms. Bonwick was unable to defend herself because RB left the hearing while Ms. Bonwick was cross-examining her. Further, Ms. Bonwick did not establish that RB was an essential witness, or that RB had, or may have had, evidence to support Ms. Bonwick's defence. She was not a party to the transaction involving HR, and the ED described her as "merely a third party that could speak to peripheral events surrounding the transaction and provide information about her own personal dealings with Ms. Bonwick."
245. The ED addresses Ms. Bonwick's submission that section 11(d) of the *Canadian Charter of Rights and Freedoms* provides her the right to be tried within a reasonable amount of time. The ED refutes Ms. Bonwick's submission by citing the Supreme Court of Canada in *Blencoe* at paragraph 88, which states that
- "The qualifier to this right is that it applies to individuals who have been 'charged with an offence'. The s. 11(b) right therefore has no application in civil or administrative proceedings. *This Court has often cautioned against the direct application of criminal justice standards in the administrative law area.*"
- ...*"There is no analogous provision to s. 11(b) which applies to administrative proceedings, nor is there a constitutional right outside the criminal context to be 'tried' within a reasonable time."*
246. The ED submits that the Hearing Panel could not grant Ms. Bonwick's request to dismiss the cases against her for lack of procedural fairness. "The circumstance in which procedural fairness was owed must be clearly identified. Then, there must be detailed analysis of how the principles of procedural fairness or natural justice was breached. Any remedy would need to address both parts of this analysis. The ED submits that Ms. Bonwick has not done that in her

submissions.” The ED further submits that if Ms. Bonwick had brought the issue of disclosure to the Hearing Panel’s attention when the hearing began, the Hearing Panel, if it determined that Ms. Bonwick had been denied relevant evidence, could have ordered that this hearing should be adjourned. Further, Ms. Bonwick could have asked the Hearing Panel to compel RB to re-attend the hearing as a witness so that she could finish her cross-examination. Also, if Ms. Bonwick felt that MB’s evidence was necessary to support her defence, she could have asked the Hearing Panel to compel him to attend as a witness at the hearing. Or, in the alternative, asked for an adjournment so that he could attend at a later date.

247. Ms. Bonwick bears the burden to show that she suffered an abuse of process due to delay before she is entitled to a remedy. The ED cited *Blencoe* at paragraph 102 to submit that a stay of proceedings for delay that is not inordinate and does not amount to an abuse of process essentially creates a limitation period that is not intended by the legislation.

248. The ED states that if the Hearing Panel is satisfied that Ms. Bonwick has demonstrated that procedural fairness was breached during RECA’s investigation, then a reduction in penalty or relief from costs, and not a dismissal or a stay of proceedings, would be the appropriate remedy.

249. The ED concludes that:

- a) Ms. Bonwick has not adequately identified the circumstances in which procedural fairness was owed to her and how it was denied;
- b) she has not provided evidence to support her assertion that standard process was not followed in the investigation;
- c) she has not identified a particular decision that was made during the investigation or the conduct hearing where she was denied procedural fairness;
- d) she did not cite or apply the factors laid out in the *Baker* decision that must be considered when deciding whether a duty of fairness applies;
- e) she did not apply the principles in *Blencoe*, nor did she provide adequate argument, evidence, or caselaw to support that the delay was inordinate or that it prejudiced the fairness of the hearing;
- f) she did not establish an abuse of process under the premise of legal or personal prejudice;

- g) she did not establish that she has been denied relevant disclosure that would affect her ability to provide full answer and defence, either at the investigative phase or at the conduct hearing;
- h) any reference to the fairness of the decision to suspend Ms. Bonwick's licence should be disregarded, as the Alberta Court of Queen's Bench has previously decided that matter, and it is outside the Hearing Panel's authority to review the decision further;
- i) Ms. Bonwick has not met the burden to justify a dismissal or a stay of these proceedings.

250. Ms. Bonwick provided a Rebuttal submission to the ED's Response. In response to the ED's submission that the means in which procedural fairness was denied or in what circumstances she feels that it should have applied is not very clear, Ms. Bonwick states:

"The ED in their response also stated that I did not apply the appropriate legal test that included a detailed argument with supporting caselaw authority. I am not a lawyer and I am not experienced or educated in identifying specific processes or decisions related to administrative law, nor have I been trained to apply the appropriate legal tests, or cite and argue case law properly, as Ms. Leonardo pointed out in her response. Therefore, I am thankful to be afforded the opportunity to clarify my position with specific examples of where I was denied procedural fairness in the decisions made throughout the investigation and how this has prevented me from receiving a fair trial.

"I was reluctant to bring up specific examples because this has resulted in RECA characterizing me as ungovernable and punishing me. However, since the ED has raised the issue, I am obliged to describe in greater detail specific accounts of where unreasonable omissions to investigate and disclose crucial evidence were made by RECA and how that prevented me from defending myself or having a fair trial."

251. By providing in her Rebuttal examples where she was denied procedural fairness, Ms. Bonwick would be introducing new issues where the ED would not be able to respond. Ms. Bonwick may challenge or refute the ED's response if these challenges do not introduce new issues that her procedural fairness application did not address. Therefore, the Hearing Panel will not discuss any examples that were not mentioned in Ms. Bonwick's procedural fairness application.

252. Ms. Bonwick states that "it is well established that one of the principles of fairness in administrative law is the right of an individual to know the case being made against them and to answer that case. I did not receive adequate notice of

the evidence against me, nor did I receive adequate or timely document disclosure. When I finally received RECA's entire file it was extremely large. As noted by Ms. Leonardo in the trial, it is one of the largest files RECA ever compiled, the result of a thoroughly exhaustive and intrusive investigation, encompassing a very wide circle of friends, clients, customers, associates and brokers within the industry."

"There were several hundred files to download, review and organize. I have never been able download or reviewed the entire file, due to the huge magnitude of every meaningless conversation and/or email being recorded over years and years. The files as they were available for download appeared extremely disorganized containing many emails and audio files which I couldn't open or download. Some files I know I've only seen once I am unable to locate again.

"According to the ED in their response, I received disclosure of investigative files within a reasonable period to review, but they did not explain why the investigations were all completed by the spring of 2019 but it took months for me to receive that information."

253. Ms. Bonwick's Rebuttal contains case law that was not mentioned in her procedural fairness application. The Hearing Panel reviewed these cases and finds that they were being used to support new issues she raises in her rebuttal and to bolster her procedural fairness application. Again, the ED would not have an opportunity to respond to this case law being used to support new issues not mentioned in Ms. Bonwick's procedural fairness application. Ms. Bonwick and the ED must both be afforded procedural fairness, and to allow new issues, and case law to support those new issues, in Ms. Bonwick's rebuttal would be detrimental to the ED. The same principle would apply if the ED chose to focus its response on issues not raised in Ms. Bonwick's initial application. Accordingly, the Hearing Panel has not summarized these cases in this decision.
254. The Hearing Panel has considered the parties' submissions and supporting authorities on procedural fairness and finds that:
- a) Ms. Bonwick has not adequately identified the circumstances where procedural fairness was owed to her and how it was denied.
 - b) she did not provide evidence to support her position that RECA did not follow standard process during its investigation.
 - c) She did not identify any particular decisions made during the investigation or this hearing where she was denied procedural fairness.
 - d) She did not cite or apply the factors laid out in the *Baker* decision that must be considered when deciding whether a duty of fairness applies.

- e) She did not apply the principles in *Blencoe* or provide adequate argument, evidence, or case law to support that the delay was inordinate or that it prejudiced the fairness of this hearing.
- f) She did not establish an abuse of process to support a premise of legal or personal prejudice.
- g) She did not establish that she has been denied relevant disclosure that would affect her ability to provide a full answer and defence, either during the investigative phase or at the conduct hearing.
- h) Ms. Bonwick's argument that section 11(d) of the *Canadian Charter of Rights and Freedoms* provides her the right to be tried within a reasonable amount of time cannot succeed, due to the Supreme Court of Canada's clarification in *Blencoe* that it only applies to individuals charged with an offence and it does not apply to administrative proceedings such as this hearing.

For these reasons, Ms. Bonwick's application on procedural fairness is dismissed.

ED's APPLICATION TO STRIKE PORTIONS OF MS. BONWICK'S REBUTTAL

255. The ED submitted an application to the Hearing Panel on May 14, 2020 seeking certain relief with respect to Ms. Bonwick's Rebuttal argument and materials submitted on May 12, 2020. Particularly, the ED sought that certain aspects of Ms. Bonwick's Rebuttal should be struck and disregarded by the Hearing Panel, on the basis that, among other things,

- a) Ms. Bonwick did not restrict her Rebuttal submissions only to the issues and arguments raised by the ED in his Response to her application;
- b) the Rebuttal referred to matters that are irrelevant to her procedural fairness application and matters not properly before the Hearing Panel in evidence;
- c) her Rebuttal raised new issues;
- d) her Rebuttal submission included argument that pertains to the allegations against her in the Notice of Hearing, and she tried to introduce evidence that the Hearing Panel previously deemed to be irrelevant to this hearing, "in an effort to circumvent the hearing process";
- e) "Ms. Bonwick presented new evidence in her response to support her application without documentary evidence to support it, which denied the ED the ability to respond. She should not be permitted to introduce new evidence at this stage of the process, however, if it were to be permitted, it

should be restricted to evidence that is required to rebut an issue raised in the ED response;”

- f) “She presented new issues that were not addressed in her application, thereby denying the ED the ability to respond;”
- g) “Ms. Bonwick made submissions on issues that are outside the jurisdiction of the hearing panel (i.e. Chair’s decision to suspend, Charter application/statutory interpretation);”
- h) “She provided new caselaw and/or new submissions on caselaw to support her position that should have been provided at the outset with her application so that the ED could properly respond.”

256. In essence, the ED’s application was akin to an objection that would have been made in the course of Rebuttal argument by Ms. Bonwick if the submissions had been made orally rather than in writing.
257. When reviewing the submissions provided by Ms. Bonwick and the ED with respect to Ms. Bonwick’s procedural fairness application, including the Rebuttal materials Ms. Bonwick provided, the Hearing Panel was well aware of what was properly before it by way of evidence and what was not. Further, when reviewing the Rebuttal materials, the Hearing Panel was well aware of the scope of the procedural fairness application, which was framed first by the submissions provided by Ms. Bonwick on or about April 13, 2020 and then by the ED’s response provided on or about May 5, 2020. Therefore the Hearing Panel was fully equipped to properly consider Ms. Bonwick’s application, including what was properly before it and what was not properly before it, and the Hearing Panel decided that Ms. Bonwick’s application pertaining to procedural fairness must be dismissed.
258. Accordingly, the ED’s application to strike, being akin to an objection to the contents of Ms. Bonwick’s Rebuttal and essentially subsumed within the larger application brought by Ms. Bonwick, became entirely moot when the Hearing Panel concluded it was dismissing Ms. Bonwick’s application pertaining to procedural fairness. Therefore, there the Hearing Panel does not need to make a ruling on the ED’s application.

MS. BONWICK’S APPLICATION TO RESTART HER PROCEDURAL FAIRNESS APPLICATION

259. After the Hearing Panel dismissed Ms. Bonwick’s procedural fairness application, Ms. Bonwick made a subsequent application on June 27, 2020 for “adjourning, extending and then restarting my application pertaining to procedural fairness

from the very beginning so that it may be edited and expanded upon. The future date for my new application will be determined after several necessary activities and changes are accomplished.”

260. Her reasons for this application were that “it is necessary that the following activities and/or changes occur:
- a) treatments for my therapy that have stopped due to covid 19, are resumed and I am healthy enough to revisit the events, action and position of the ED, that from 2016 to present, I have experienced as abusive and traumatizing,
 - b) Ms. Leonardo and the ED are removed from acting in this procedure and from all future duties and procedures involving hearings, licensing and investigations in accordance with the new legislation that gained Royal Assent on June 17th, 2020, and
 - c) a new registrar completely separate from the ED, will determine how to proceed with my new application for procedural fairness in accordance with the new legislation that gained Royal Assent on June 17th, 2020.”
261. Ms. Bonwick sought to rely on “a) any evidence that was collected by the ED in the investigation and then presented in their disclosure file b) the medical information I presented at the hearing c) new updated medical information I may present regarding my current treatment and health d) evidence that was entered and presented at previous court proceedings that are related to the investigation e) the KPMG Governance Review of the Real Estate Council of Alberta f) Alberta Legislative Assembly Session 30”.
262. She sought to rely upon the a) *Real Estate Amendment Act, 2020* b) the *Real Estate Act*.
263. The ED responded on June 30, 2020 and gave the following reasons why the ED does not agree with Ms. Bonwick’s application:
- “Ms. Bonwick’s “application is completely without merit and should be dismissed outright. Ms. Bonwick has been involved in several applications with written submissions since March 2020 and has not raised any issues with her ability to complete these tasks due to mental health/disability. There has been no indication that these have been impacted by her mental health. Ms. Bonwick’s written submissions, to date, have been lengthy and included both legal argument, evidence, and caselaw. Although Ms. Bonwick has repeatedly raised issues of mental health since the commencement of the hearing, she has yet to provide evidence to confirm a mental health

diagnosis or how it might impair her participation in the conduct proceedings process, prior to or after March 2020.

"If her ability to engage with the process had been impacted because of mental disability, Ms. Bonwick could have requested an adjournment of the proceedings until such time that she was prepared to continue. She did not make that request prior to submitting her procedural fairness application or at any time in the past three months. Our position is that the timing of this application is a result of Ms. Bonwick is trying to delay the hearing panel decisions that are currently outstanding or is an attempt to remedy an incomplete and flawed procedural fairness application.

"Bill 20, not yet proclaimed and not in effect, has no bearing on the current conduct proceedings. Even if it was in effect, the Registrar would not determine the application process. The application process, while in the midst of conduct proceedings, is established by the hearing panel, not the Registrar or Executive Director. Further, the new legislation, not yet proclaimed, does not affect the authority of RECA to prosecute under Part 3 of the *Real Estate Act* (Conduct Proceedings) nor does it prevent Ms. Leonardo from acting as legal counsel for the Executive Director.

"Ms. Bonwick is attempting to re-litigate her procedural fairness application by relying on irrelevant grounds. She is not entitled to a new application. As per the legal principle of *res judicata*, this application should be dismissed. Parties should be restricted from litigating the same issues more than once to avoid conflicting decisions and to ensure fairness. It would be procedurally unfair and highly prejudicial to the Executive Director to allow Ms. Bonwick to present another procedural fairness application after she reviewed the position of the Executive Director in their response submissions. It is imperative that the hearing panel consider that she was given full opportunity, with extended time, to present her initial application to the hearing panel. It should be expected that she provided all of her arguments, materials, evidence, and caselaw that she intended to rely on at the time of the application, just as it would be expected that the Executive Director do the same.

"It is the position of the Executive Director that this is a meritless, frivolous, and vexatious application and should be dismissed. For these stated reasons, as well as the number of applications that Ms. Bonwick has made since the beginning of the proceedings, it is our position that she should also be restricted from submitting any further applications at this time."

264. The ED sought to rely on hearing exhibits and Bill 20 (not yet proclaimed), and Part 3 of the *Real Estate Act*.

265. The Hearing Panel reviewed Ms. Bonwick's application to restart her procedural fairness application, and the ED's response. The Hearing Panel notes that Ms. Bonwick previously made a procedural fairness application, to which the ED responded, and Ms. Bonwick submitted a rebuttal to the ED's response. The Hearing Panel reviewed and considered all submissions and supporting materials submitted by Ms. Bonwick and the ED in connection with Ms. Bonwick's procedural fairness application, and it dismissed her procedural fairness application and gave reasons for its decision to dismiss that application.
266. Section 42(a) of the *Real Estate Act* provides that "*the Hearing Panel shall receive evidence that is relevant to the matter being heard, and the industry member who is the subject of the hearing shall*
- (i) *be given a reasonable opportunity to provide relevant evidence.*"
267. The Hearing Panel finds that Ms. Bonwick was given the opportunity to make a procedural fairness application, and she was given a reasonable opportunity to provide relevant evidence in support of that application. The Hearing Panel finds that allowing Ms. Bonwick's application to restart her procedural fairness application, an application that the Hearing Panel has already considered and decided, would amount to *res judicata*. The Hearing Panel would be adjudicating the same matter again in the same hearing. The Hearing Panel has been given the authority pursuant to the *Real Estate Act* to consider and render a decision on Ms. Bonwick's procedural fairness application, and it acted according to its statutory authority. Ms. Bonwick was given a reasonable opportunity to provide relevant evidence in support of her procedural fairness application, and the Hearing Panel considered and dismissed her application. Now she seeks to have the Hearing Panel adjudicate the same issue where it has already rendered a decision. The Hearing Panel is satisfied, after reviewing and considering Ms. Bonwick's application and the ED's response, that her application to restart her procedural fairness application is without merit. For these reasons, the Hearing Panel dismisses Ms. Bonwick's application to restart her procedural fairness application.

MS. BONWICK'S APPLICATION TO APPEAL THE HEARING PANEL'S DECISIONS OF HER PREVIOUS APPLICATIONS

268. Ms. Bonwick filed an application on July 20, 2020 "to appeal several decisions/ rulings/judgements that were made by the hearing panel without the hearing panel providing or establishing reasons for their decisions. The decisions I am appealing are as follows:
- I. To deny or dismiss my application to adjourn the hearing for medical reasons on March 2nd, 2020;

- II. To deny or dismiss my application for a summary dismissal at the conclusion of the ED's case against me in March 2020;
- III. To dismiss my application regarding RECA's lack of procedural fairness and abuse of process.
- IV. To dismiss my application to have my procedural fairness application adjourned, and/or restarted."

269. Her reasons for this application are because she "was not given adequate reasons, or any, for why the hearing panel made these 4 decisions/rulings/judgements". She states that decision makers have to duty to provide reasons for their decisions to ensure "a fair and unbiased legal process" because reasons: a) inform affected parties why an adjudicator made its decision; b) provides public accountability of their decision; c) permit appellate courts to effectively review the decision; d) "ensures that the focus is on the live issues in the case and it provides assurance that the decision maker did not overlook important facts or legal points"; e) "provide guidance to courts dealing with similar issues in the future to ensure that the law is applied in a fair and uniform manner."

270. Ms. Bonwick makes several claims regarding the previous dismissed applications, including:

- a) the Hearing Panel should have communicated and explained its decisions to her "properly to ensure that the reasons for these decisions were adequate."
- b) If the Hearing Panel provided reasons for its decisions on her previous applications, "I did not see, hear or understand them as my mental and physical state was seriously compromised."
- c) "The hearing panel should have consistently provided reasons for all important decisions that were made as it is crucial to maintaining a proper level of transparency, accountability, and public confidence in the legal process."
- d) "Since no reasons were given as to why these 4 decisions were made, I do not know that my position or claims have been heard, understood and adjudicated upon in an objective and reasonable fashion according to well-known legal principles."
- e) "Because so many decisions have been made without there being clear reasons given, or with "reasons to follow," I have no faith with the current hearing process."

- f) "It appears that the panel has not heard or considered my applications and has arrived at predetermined conclusions to dismiss."
- g) "I cannot continue to participate in hearing process with a hearing panel that is unfair and does not provide transparency or explanations for their decisions."
- h) "The failure of the hearing panel to provide reasons for these 4 decisions listed in this application amounts to an error in law that requires a remedy to squash all of these decisions and order a new hearing."

Ms. Bonwick also provided two cases in support of her application: *R. v. R.E.M., [2008] 3 S.C.R. 3, 2008 SCC 51* and *R. v. Sliwka, 2017 ONCA 426*.

- 271. The ED stated he would not provide a response to this application unless the Hearing Panel determined it was prepared to consider this application. It took the position that "this is another frivolous and vexatious application brought by Ms. Bonwick in an effort to impede the conduct proceedings. Further, it is not within the jurisdiction of the hearing panel to review their own decisions under an appeal."
- 272. The Hearing Panel acknowledges receiving Ms. Bonwick's application submitted regarding no reasons being given by the Hearing Panel on the parties' applications to date. The Hearing Panel previously gave clear direction to Ms. Bonwick and the ED that its reasons would be provided at a later date. A hearing panel cannot hear an appeal of one or more of its own decisions it previously made. The Hearing Panel has no jurisdiction to consider this application, and accordingly it will not consider it.

MS. BONWICK'S APPLICATION TO ADJOURN THE HEARING

- 273. On July 22, 2020 Ms. Bonwick filed an application with the Hearings Administrator, seeking an adjournment of this hearing for medical reasons. She gave the following reasons for her application:
 - a) She had recently been admitted to the hospital on or around March 2, 2020, the first day of the hearing.
 - b) Before March 2, 2020, she had been seeing a psychiatrist who prescribed a change in medication pending the results of tests and blood work.
 - c) The hearing, the ongoing hearing process, and COVID-19 restrictions prevented her from completing the medical tests and she had not been able

to resume treatments or hospital visits to see her doctor, psychiatrist or therapists.

- d) Her ability to respond and participate in this hearing process was severely compromised as a result of not being able to focus on her health, resume her ongoing medical appointments or find "covid friendly" alternative treatment options.
- e) The longer the hearing goes without her receiving an adjournment, the more her health deteriorates.
- f) She believes she sought an adjournment at the beginning of the hearing for medical reasons, but she cannot recall the reasons why her request was denied.
- g) She "can no longer continue to participate in hearing process without the medical support of mental health professional such as my psychiatrist and trauma therapist."
- h) She does not yet know when she expects her mental health programs will return or when she "will be able to resume this trial process."

274. Ms. Bonwick submitted 10 pages of documents in support of her adjournment application. These documents consisted of a letter from Dr. Sofian Abukhadir dated January 15, 2020 with some redacted content. She also provided pages 1 – 9 of a 13 page substantially redacted Assured Income for the Severely Handicapped ("AISH") Panel Decision for an appeal hearing that occurred on December 16, 2019.

275. The ED stated that he is unable to provide his position and/or response for the following reasons:

- a) Ms. Bonwick did not specify how long of an adjournment she was seeking; and
- b) she "is relying on a redacted outdated document as evidence of her current medical condition."

276. The Hearing Panel had previously set the dates for the parties' written closing submissions to be filed. The ED's closing submissions were due on July 27, 2020. The ED stated that he would not provide his closing submissions by that deadline if the Hearing Panel granted Ms. Bonwick's adjournment request, on the grounds that it would be procedurally unfair to the ED if Ms. Bonwick received the ED's closing submission during the adjournment period.

277. The Hearing Panel considered Ms. Bonwick's adjournment application and supporting documents, and the ED's position. Dr. Sofian Abukhadir's letter and the AISH Panel Decision both predate this hearing's March 2, 2020 commencement date. Also, Ms. Bonwick did not provide details for why the AISH Panel Decision was substantially redacted and was missing pages 10 – 13. This in-person hearing lasted 10 full days from March 2 – 13, 2020, and Ms. Bonwick applied for an adjournment on July 22, 2020. She previously applied for the hearing to be adjourned on March 2, 2020 and the Hearing Panel considered the parties' submissions and dismissed that application. The Hearing Panel finds that Ms. Bonwick's adjournment application filed on July 22, 2020 did not provide fresh evidence or compelling reasons why the hearing should be adjourned further. For these reasons, the Hearing Panel dismisses Ms. Bonwick's adjournment application that she filed on July 22, 2020.

MS. BONWICK'S APPLICATION TO DISCLOSE EVIDENCE, EXTEND, ADJOURN OR REMEDY

278. On August 9, 2020 Ms. Bonwick filed an "Application to Disclose Evidence, Extend, Adjourn or Remedy". She states she is "seeking an Order for the Executive Director (ED) to properly identify and disclose to me the Documentary Evidence presented by the ED in their Closing Submissions as attachments named File #00625-Table A, File #007825-Table B, File #008395-Table C, and File #008556-Table D; and/or for the hearing panel to Adjourn and Extend the deadline for the my response another 10 days from the time I receive the proper disclosure of the information contained in these attachments; and/or for the hearing panel to strike all numbered paragraphs in the ED's Closing Submissions that contains references to Documentary Evidence, and to strike all references the refers to the Documentary Evidence in the Table A, Table B, Table C and Table D attachments; and/or for the hearing panel to apply another suitable remedy consistent with past decisions and procedural fairness."

279. She gave the following reasons for this application:

- a) "I have not received the Documentary Evidence as it is identified in the Tables the ED submitted as part of their Closing Submission, or at all."
- b) "It is possible that I may have received some of the evidence at some point in time from the ED; however, the files I received from the ED as documentary evidence were not identified as having Binders with Tabs or Exhibits, and so there is no way I can be sure that I have located and identified the correct document the ED is referring to in her closing submissions."

- a. "I have attached a copy of the email I received from the Conduct Proceedings Administrator dated Feb. 24th, 2020, that shows I was given a link to download the disclosure binders."
- c) "I have attached a screen shot of how the disclosure file appears on my computer after downloading the files on that link."
- d) "Examination of the screen shots reveal that the Conduct Proceedings Administrator at RECA gave me disclosure as a link that indexed almost 1,000 files which had been given random, numerical names, and not the Binders and Tabs the ED refers to in her Closing Submissions."
- e) "Examination of the screen shots also reveal that zip files containing the file loads are labeled Part 1, Part 2, etc. and it appears several Parts may have been missing or did not download before the link expired."
- f) "It is impossible to tell if there are missing disclosure files because of the way the ED named, labeled and sent me the disclosure files in the disclosure link."
- g) "There is no way I am able to locate, identify and process the Documentary Evidence as it was disclosed to me."
- h) "The differential presentation and identification of the Documentary Evidence to the hearing and to me creates a situation that is unfair and prejudicial for preparing my defense and responding to the ED's Closing Submissions."
- i) "I have no way of knowing what the ED is referring to as Documentary Evidence in her Closing Submissions and I cannot prepare a proper Response or Rebuttal, or any, until I am given this evidence in a format or a manner that corresponds to how the ED gave and identified this evidence to the hearing panel."
- j) "Without disclosure of the Documentary Evidence properly identified, the ED's attachment titled ED Closing Submissions - July 27, 2020.pdf, is useless and nonsensical to me and I cannot prepare or provide a proper response, or any."
- k) "Once I receive this Documentary Evidence in a properly identified manner that corresponds to what has been provided to the hearing panel, I will need time (10 days) to review it and prepare a suitable response or rebuttal."

- l) "Alternately, if the hearing panel or the ED objects to yet another adjournment or extension, the hearing panel could, or perhaps should, strike all references the ED made of the Documentary Evidence in her Closing Submissions."
- m) She requested that paragraphs 1, 2, 12, 27, 28, 37 – 39, 41, 42, 46, 62, 78 – 81, 84 – 89, 101, 112, 120 and 124 "should be struck because it contains or refers to evidence that was not properly identified or disclosed to me".
- n) She also requested that the fourth column entitled "Documentary Evidence" of Tables A, B, C and D of the ED's closing submissions be struck.
- o) Her grounds for striking that documentary evidence were that "striking these paragraphs and attachments is appropriate because the ED has also asked for the hearing panel to strike information and evidence I have presented to the hearing panel that the ED interpreted as being unfair or prejudicial to the ED."
- p) "It was not as apparent until I studied the ED's Closing Submissions how differently the Documentary Evidence was presented to me compared to how it was presented to the hearing panel."
- q) "This has further demonstrated that the ED has consistently and methodologically sought to undermine procedural fairness particularly as it pertains to the disclosure of evidence."
- r) "This new development and realization should be allowed as new evidence in my procedural fairness application and the hearing panel should reconsider their decision to dismiss that application and make a new decision in my favour."
- s) "The issue of the ED not properly naming and identifying and disclosing the Documentary Evidence must be addressed and a proper remedy must be obtained before any more submissions are accepted and due; and/or before another decision is made by the hearing panel."

280. The ED responded as follows:

"Further to Ms. Bonwick's email and application received on August 10, 2020, the Executive Director will not be providing a response unless the hearing panel determines that they are prepared to consider the application.

"It is the position of the Executive Director that this is another frivolous and vexatious application brought by Ms. Bonwick in an effort to impede the

conduct proceedings. The hearing panel has already been provided with evidence that document exchange protocol was followed by the ED in advance of the hearing. This included a list of the exhibits, binders, tab numbers, and audio files that the ED expected to rely on at the hearing. The files were uploaded for Ms. Bonwick in advance of the hearing. Any additional exhibits beyond that were entered at the hearing in her presence, so she would be aware of the exhibit numbers. If she needed clarification on the ED closing submissions, she could have got that from ED legal counsel or Madam Hearings Administrator in advance of her deadline today.”

281. The ED also sought direction whether the case presenter should submit the ED’s rebuttal prior to Ms. Bonwick’s application.
282. The Hearing Panel considered Ms. Bonwick’s application to disclose evidence, extend, adjourn or remedy. The documentary evidence Ms. Bonwick sought to be disclosed to her or struck had been admitted into evidence on the first day of this hearing. Therefore, Ms. Bonwick was aware of this evidence for five months before she brought this application. Ms. Bonwick’s grounds for seeking the removal of the ED’s documentary evidence referred to in Tables A, B, C and D was because she stated it “is appropriate because the ED has also asked for the hearing panel to strike information and evidence I have presented to the hearing panel that the ED interpreted as being unfair or prejudicial to the ED.” While the Hearing Panel previously considered the ED’s application to strike portions of Ms. Bonwick’s Rebuttal in her procedural fairness application, it decided that it did not need to make a ruling on the ED’s application to strike. The Hearing Panel finds that Ms. Bonwick has not proven that the ED has sought to undermine procedural fairness as it pertains to the disclosure of evidence. The Hearing Panel also finds that Ms. Bonwick has not proven that the ED did not properly name, identify and disclose the documentary evidence referred to in Tables A, B, C and D. For these reasons, the Hearing Panel dismisses Ms. Bonwick’s application to disclose evidence, extend, adjourn or remedy.

ANALYSIS

283. The ED must prove the allegations against Ms. Bonwick on a balance of probabilities. To prove that Ms. Bonwick’s alleged conduct is deserving of sanction, the ED needs to satisfy the Hearing Panel that it is more likely than not that Ms. Bonwick breached the sections of the *Real Estate Act* and *Real Estate Act Rules* as alleged in the Notice of Hearing. To determine if the ED has proven its case, the Hearing Panel will now address each issue.

A. Did Ms. Bonwick participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings, contrary to section 42(b) of the *Real Estate Act Rules*?

284. Rule 42(b) of the *Real Estate Act Rules* provides that:

42. *Industry members must not:*

(b) *participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings.*

285. The *Real Estate Act Rules* do not provide a specific definition of “fraudulent”. The ED submitted that a caselaw review indicates that “fraudulent” and “fraud” have been analysed and dissected in many different forums and, depending on the context, can be achieved through different types of conduct. The ED cited the Supreme Court of Canada decision of *R. v. Olan* [1978] 2 S.C.R. 1175 (S.C.C.) which states at page 1182 that “to amount to fraud the conduct must be deliberately dishonest”, and the two essential elements to prove fraud are dishonesty and deprivation. “To succeed, the Crown must establish dishonest deprivation.” The court continued that “the element of deprivation is satisfied on proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim. It is not essential that there be actual economic loss as the outcome of the fraud.”

286. The ED also provided the decision of *R. v. Zlatic*, [1993] 2 S.C.R. 29 (S.C.C.), where the Supreme Court of Canada at page 45 laid out the standard required to establish that an alleged fraud was dishonest:

“The fundamental question in determining the *actus reus* of fraud within the third head of the offence of fraud is whether the means to the alleged fraud can properly be stigmatized as dishonest: *Olan, supra*. In determining this, one applies a standard of the reasonable person. Would the reasonable person stigmatize what was done as dishonest? Dishonesty is, of course, difficult to define with precision. It does, however, connote an underhanded design which has the effect, or which engenders the risk, of depriving others of what is theirs.”

“The dishonesty of “other fraudulent means” has, at its heart, the wrongful use of something in which another person has an interest, in such a manner that this other’s interest is extinguished or put at risk.”

287. The ED submitted that “Ms. Bonwick has unequivocally engaged in fraud. Her seller financing scheme was specifically designed to deceive the parties into believing that they were entering into a legitimate real estate transaction. This ultimately led to their deprivation.”

288. The ED acknowledged in his closing submissions that “seller financing, in and of itself, is a legitimate concept” and Ms. Bonwick’s version of seller financing is not. “In a traditional seller financing arrangement, a seller owns a property that has a free and clear land title, with no mortgage, and agrees to finance a buyer under their own financing conditions. As per the *Real Estate Act*, this would be an acceptable arrangement.”
289. The ED submits that:
- a) in Ms. Bonwick’s version of seller financing, the seller does not provide any financing to the buyer, and they have mortgages with their mortgage lender that are registered against their property. “They are obligated to the bank and the terms under which that financing was extended to them.”
 - b) Ms. Bonwick directs the sellers to continue making their mortgage payments so their lender won’t become suspicious, and she does not advise or direct her clients to check with their lender that they aren’t violating their mortgage terms. “This creates significant risk to the seller, given that the lender could pull the financing if they are found to be violating their mortgage terms. It puts the seller at further risk should the “buyer” default on their payments, as the seller would be left to pay the outstanding mortgage (possibly in conjunction with payments for their new property) and be the only one subject to legal action by the bank.”
 - c) To further her scheme, Ms. Bonwick drafts extensive seller financing terms in addenda that are incorporated into the purchase contract, which “provide a false sense of legality and validity to the contract.” She tells her clients she has done these kinds of transactions before “and bolsters her claims of credibility by providing names of lawyers that she has worked with in previous transactions. Then, she provides a guarantee that a caveat on title will protect the buyers’ interest.”
 - d) Her seller financing method was thought out and she meticulously carried out each step of the transaction. She “effectively acted as real estate associate, mortgage associate, and lawyer in the transactions.” As the real estate agent, she would convince the sellers and buyers “she was their agent and acting in their best interests, so that she could maintain complete control over the transaction.”
 - e) “In an effort to benefit going forward, she would get the clients to enter into representation agreements that lasted for years, binding the parties to use her as their real estate associate for extended periods of time. And, given that the parties understood that at the end of their financing term, they would be purchasing the property, she created agreements that would continue to benefit her over and over.”

- f) "She calculated and drafted terms (i.e. interest rate, amortization period, etc.) without the knowledge and education of a mortgage associate. She drafted extensive financing terms that outlined payment schedules for deposits and large balloon payments. And, despite the fact that the contract stated that the terms were to be finalized in an AFS by a lawyer, she included an additional term that the lawyer's form could not contradict those that she had created. So, in essence, she superseded the role of legal counsel because her terms were meant to be what ultimately bound the parties."
- g) She took any steps necessary to ensure the transaction would be completed, and she would not involve professionals who might question the transaction. She would only use third parties she had a previous relationship with or that would follow along with the scheme, such as MB, [LAWYER] and other lawyers she referred SF to.
- h) "Ms. Bonwick's scheme relies on the fact that the parties to the transactions are in a vulnerable position. Ms. Bonwick herself identified that the individuals attracted to her seller financing option are "desperate people in difficult situations" (Binder 3, Tab 21, Page 1040) and that it is appealing to buyers and sellers for different reasons. She identifies that the sellers are those who "desperately need to sell (often to avoid foreclosure or extreme financial loss)" and the buyers are "desperate to purchase but can't at the moment often due to being newly divorced, newly self-employed or new to the province".
- i) Her scheme appeals to sellers for several reasons. It gives them "an option to "sell" their property when traditional methods have failed" and also makes them money. She inflates the purchase price, which benefits the seller. "The seller then collects large balloon payments and larger monthly payments than their mortgage from the buyer. They are essentially making money off the bank's money. The balloon payments can be quite large and the seller profits by collecting them at intervals throughout the seller financing term. This wholly benefits the seller, as there are no terms of the contract that direct them to pay the balloon payments to pay down the mortgage." If the property sells and there is not enough equity to pay out the seller's mortgage, "the bank would be paid out first and the buyers' caveat would be meaningless."
- j) Buyers are also attracted to Ms. Bonwick's seller financing scheme, because a licenced real estate associate assures them "this is a legitimate and fool-proof option to purchase a property" that is too good to be true and gives buyers a quick solution. Buyers pay smaller balloon payments over time instead of a large down payment, make monthly payments to the seller, and they believe that after they build equity over a few years, they will get their

own financing and the seller will transfer title to them. "However, unbeknownst to the buyer, Ms. Bonwick has inflated the value of the property, almost eliminating their equity from the beginning of the transaction. Without a drastic improvement in the real estate market over the seller financing term, the buyer is unlikely to benefit when they actually purchase the property in the future." Ms. Bonwick assures the buyer that seller financing is a way for them to become a property owner, but in reality "the "buyer" has not entered into a true purchase contract and they have become nothing more than a tenant with little to no rights over the property."

- k) [W.O] testified that Ms. Bonwick knew [Address 2] had been listed for sale for some time, and he believed Ms. Bonwick purposely looked for properties that been listed for extended periods. Also, Kristine Semrau stated Ms. Bonwick contacted her before she worked with her, to propose seller financing on properties she had listed but weren't selling. The ED states that "Ms. Bonwick purposely and methodically seeks out opportunities to take advantage of people who are struggling in the real estate market. This ultimately benefits her because she makes commission from the transactions. Her actions demonstrate that she is willing to go above and beyond to further her scheme and to present it to other industry members."
- l) "Ms. Bonwick is convincing in her presentation of seller financing to people. She will rely on her professional designation or her relationship with other industry members to assure them that her version of seller financing is legitimate." Industry members Rey Umbalin, Kristine Semrau and David Lem, and lawyer Anthony Merah, could not explain Ms. Bonwick's concept of seller financing and how the seller is providing financing to the buyer. Mr. Umbalin, Ms. Semrau and Mr. Lem all testified that they had never engaged in seller financing.
- m) "The parties to the transactions trusted her and were made to feel secure by her apparent knowledge of seller financing transactions. They expected that a licenced real estate professional would know what they were doing." However, witnesses involved in the transactions testified that they were confused about the terms of the purchase contract, the parties' responsibilities in the transaction, and clarity about Ms. Bonwick's role in the transaction. "There was blurred lines between customer and client, all in an effort to disguise obligations and fiduciary duty."
- n) "Ms. Bonwick's seller financing scheme is fraudulent. It not only takes advantage of the parties in the transaction, it creates significant risk to them and the public. It is a false concept purposely promoted by Ms. Bonwick as a legitimate real estate transaction with complete disregard for the consequences that may follow, especially in the circumstance that a

transaction breaks down. The ED submits that fraud must be taken seriously in the real estate industry and prevented at all costs.”

- o) “In relation to File #006025, the steps taken by Ms. Bonwick in the transaction with the [the E.’s] and [HR] were calculated and purposeful. She engaged in dishonest conduct at the very outset and throughout the transaction in an effort to bring the transaction to a close. At first, she convinced both parties that she was representing them, so they would believe that she was acting in their best interests. She intentionally withheld from both parties that she had established an agency/client relationship with each of them. The evidence provided by [the E.’s] and [HR] confirmed this point.”

290. Ms. Bonwick submitted in response that:

- a) On March 2nd, 2020 to March 12thth *[sic]*, 2020, the Executive Director (“ED”) finally presented their case against me to the hearing panel after investigating and preparing for nearly 4 years. Obviously, the ED is heavily invested in defending their case against me as well as defending the actions the ED has taken against me that I have consistently maintained are abusive, unfair, and untrue and motivated by personal and improper motives of individuals within RECA’s organization and the complainants. Yet despite the considerable time, effort and resources the ED has wasted, the ED has not proven their case against me. The hearing panel should not be impressed with the mountain of irrelevant, prejudicial and erroneous content the ED has presented as it is merely an illusion given in order to “pad” the file, giving the false impression of having reliable, conclusive evidence when there is none; the ED has failed to prove any of their charges against me to the high standard of proof required.”
- b) “The ED has provided absolutely no proof that my seller financing transactions are fraudulent. They have been accepted and approved by countless brokers and lawyers over the course of my real estate career.” She continued that “there was no fraud omitted *[sic]* by me, the realtor and witness [W.O], or any other realtor that participated in seller financed agreement for sales.” She also submitted that “the ED has not proven dishonesty or depravation, or risk of depravation on my part.”
- c) “If anyone has acted dishonest, or fraudulent, it is the complainants, the investigators and the ED, and they should be ashamed.
- d) “It is the lying, scheming complainants, the ED and the investigators that have acted fraudulently.

- e) "It is the lying, scheming complainants, the ED and the investigators that have withheld information."
- f) "Nearly every single person that bought real estate in 2015 and after has experienced some type of economic loss due to the declining prices."

291. At the hearing, Ms. Bonwick did not provide testimony or documentary evidence, or call any witnesses, that substantiates any of her assertions or that contradicts the allegation that she participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings. In contrast, the ED called several witnesses, including Holly Childs, Rey Umbalin, Anthony Merah, HR, RB and SF, and provided documentary evidence, including Exclusive Representation Agreements, Residential Purchase Contracts, Financing Schedules, Addenda and Agreements for Sale, which indicate the following:

File 006025:

- a) HR and RB approached Rey Umbalin in December 2015 to list and sell their house located at [Address 1]. Mr. Umbalin did a title search and discovered that HR and RB were not the registered owners of [Address 1], and the actual owners were CE and AE. HR and RB showed him the real estate contract and the Agreement for Sale of Land that contained seller financing terms. Mr. Umbalin told HR and RB that a seller can only finance a property when they have clear title, with no mortgages registered on title. AE testified that Ms. Bonwick told her that RB could sell [Address 1] at any time. Ms. Bonwick confirmed that she made this statement to AE in her letter to RECA dated July 7, 2016. In other words, she told the registered owners of [Address 1] that someone who did not own [Address 1] could sell that property whenever they chose to.
- b) HR testified that Ms. Bonwick did not explain the difference between a client and a customer. Ms. Bonwick advised HR and RB that RECA approved of the seller financing and that everything is done as a normal purchase would have been on MLS.
- c) [LAWYER]'s name was already inserted in the purchase contract as lawyer for the buyer and seller when CE signed it. He didn't have any contact with [LAWYER] prior to signing the purchase contract. Ms. Bonwick told RECA in her letter dated July 7, 2016 that she drafted and reviewed all the legal documents. This means she drafted the Addenda and Financing Schedules, and the additional terms of sale contained in section 7.6 of the purchase contract, which indicates that, among other things, the transaction would be completed as an Agreement for Sale, and title will not transfer but will be held in trust. CE believed that [LAWYER] would hold title to [Address 1] in trust. AE testified that she doesn't know what it means to hold a title in trust.

This also means she drafted purchase contracts that identified “sellers” who did not own the properties, and “buyers” who, because of the balloon payments and other terms, including the fact that the “sellers” did not own the properties, might never be able to become the registered owners of the properties.

- d) Although Ms. Bonwick told RECA that she discussed all aspects important to seller financing with each party, the testimony of HR, RB, CE and AE indicates otherwise. Their testimony indicates a lack of certainty and understanding among them about important aspects of the transactions, including what seller financing means, what the parties’ responsibilities were, who owned the properties, and whom Ms. Bonwick represented. She also recommended that all parties use [LAWYER] or other lawyers she had used in other transactions. The parties also did not recall Ms. Bonwick showing or reviewing title searches with them, which would show the registered owner of the properties and the presence of registered financial encumbrances.
- e) Ms. Bonwick drafted a purchase contract that named MB as the seller of [Address 2] in a Residential Purchase Contract that she presented to SF to sign. A title search showed that the N.’s owned [Address 2], meaning MB could not convey title in that property to SF.
- f) The parties testified that they were deeply impacted when the transactions were not completed. CE and HR both testified that they suffered significant financial costs as a result of lawsuits commenced by the parties when the transactions did not close. SF testified that she signed a Withdrawal of Caveat that she had registered on title to [Address 2] because she found out she had no rights to [Address 2]. SF also denies Ms. Bonwick’s accusation in Ms. Bonwick’s letter to RECA dated February 22, 2018, where she says that SF and N.’s lawyer “are now working together for the mutual benefit of furthering their fraudulent claims, dealing directly with each other in the sale, while simultaneous *[sic]* suing and slandering everyone involved in making that sale happen for them. I believe their mutual objective is to erase [MB]’s equity by preventing and denying him the ability to remedy the alleged arrears by completing an assignment or a sale, provisions which are explicitly provided for in both contracts. I am also appalled that [SF] is going around saying I committed fraud and I am seriously contemplating a counter-suit against her...”. SF finds Ms. Bonwick’s accusations “disgusting”. She also testified that Ms. Bonwick committed fraud against her and Ms. Bonwick did not give SF her undivided loyalty. SF now believes seller financing is not legitimate, and it is just a scheme to screw people out of their money and you end up with nothing at the end of the day. Ms. Bonwick provided no evidence at the hearing to substantiate her accusations against SF.

292. After considering the evidence adduced in this hearing, the Hearing Panel finds that the ED has proven on a balance of probabilities that Ms. Bonwick participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings contrary to Rule 42(b) of the *Real Estate Act Rules*. In support of the ED's allegation, the Hearing Panel finds that the ED has proven the following allegations on a balance of probabilities:

- a) Ms. Bonwick created a scheme that she represented as seller financing, where buyers believed they were buying a home but were only tenants, did not acquire equity in the property, and the property remained at risk of foreclosure if the owner defaulted on the original mortgage. The evidence of Holly Childs (paragraph 17), Anthony Merah (paragraph 18), Rey Umbalin (paragraph 19), Kristine Semrau (paragraph 20), David Lem (paragraph 21), CE and AE (paragraph 22), Ms. Bonwick (paragraph 23) and SF (paragraph 96) support this finding. The Hearing Panel found Ms. Childs, Mr. Merah, Ms. Semrau, Mr. Lem and SF to be truthful and credible witnesses. The Hearing Panel felt CE and AE were believable and credible as to their participation in the execution of the agreement. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute the ED's allegation.
- b) Ms. Bonwick advertised her services and specialization in seller financing to her buyer clients, HR and his wife, RB and to her seller clients, AE and CE [("the E.'s")]. The evidence of HR (paragraph 24), CE and AE (paragraph 25) and Ms. Bonwick (paragraph 26) support this finding.
- c) In or around February 2015, Ms. Bonwick agreed to assist HR and RB with finding a "seller financing" arrangement for them on a property with a \$10,000 down payment. HR's evidence (paragraph 27) supports this finding. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation.
- d) Ms. Bonwick then approached her existing clients, [("the E.'s")], with the option to participate in "seller financing" for the sale of their property at [("Address 1")]. The evidence of CE (paragraph 29), AE (paragraph 31) and Ms. Bonwick (paragraph 30) support this finding. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation.
- e) The E.'s had an outstanding high ratio mortgage and were required to reside in the property. Ms. Bonwick did not advise her seller clients, the E.'s, to contact their mortgage lender to ensure that they could enter into a "seller financing" arrangement with a high ratio mortgage on the property. The evidence of CE and AE (paragraphs 32 - 33) support this finding. Ms.

Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation.

- f) Ms. Bonwick failed to advise her seller clients, the E.'s, about the confidential information she knew about the buyers, HR and RB. The evidence of RB (paragraph 34), CE and Ms. Bonwick (paragraph 35) support this allegation. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation.
- g) Ms. Bonwick lied to her seller clients, the E.'s, about the buyer's financial information, the status of the sale of their current residence, and whether the buyers smoked, which would affect the seller's home insurance. The evidence of CE (paragraph 36), AE (paragraph 37) and RB (paragraph 38) support this finding. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation.
- h) Ms. Bonwick advised her seller clients, the E.'s, that they should inflate the purchase price of the property at [{"Address 1"}] because of the "seller financing" option available to potential buyers. CE testified that he and AE reduced the listing price on [Address 1] three times between November 2014 and February 2015 because their listings weren't generating any interest. They listed the property for more than the appraisal and comparative market analysis amounts because of the seller financing option. CE testified (paragraph 42) that Ms. Bonwick told him the purchase price could not be negotiated, because seller financing is a unique type of financing that adds value to the purchase price and people who can't qualify for a mortgage could purchase the property. AE testified (paragraph 43) she and CE believed that seller financing might give them an advantage in the market, and their higher list price was due to them offering the seller financing option. Ms. Bonwick had said she found seller financing gave homeowners more options to sell their property because owners would be listing their property to the regular market as well as to buyers who were self-employed or had credit challenges. AE, CE and Ms. Bonwick felt it would be okay to raise the list price to try and attract a buyer. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation.
- i) Ms. Bonwick told the buyers that they had to pay an inflated purchase price for the property because they were entering into a "seller financing" arrangement. HR testified (paragraph 40) that he trusted and had faith in Ms. Bonwick as his realtor to get him the property for a reasonable price. He was not shown an MLS Feature Sheet for [Address 1], comparable market listings or a comparative market analysis (Binder 3, Tab 7, page 881). Ms. Bonwick, AE and CE had already decided the purchase price. Ms. Bonwick also told HR that he could not negotiate the purchase price because of the

seller financing terms. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation.

- j) Ms. Bonwick led her seller clients, “the E.’s, and buyer clients, RB and HR, to believe that they were entering into a real estate purchase and not a tenancy. A letter dated June 23, 2016 from HR and RB to James Porter of RECA stated that Ms. Bonwick described the transaction involving [Address 1] as seller’s financing, where HR would purchase the property and make monthly payments to AE and CE as though he was paying a mortgage (Binder 3, Tab 9, page 887). HR stated that “unlike a straightforward purchase, I would not be registered as owner of the property, but would instead have a caveat registered against title for the property that would list my purchaser’s interest in the property.” (paragraph 58) RB testified (paragraph 45) that she thought she and HR could sell [Address 1] pursuant to the Agreement for Sale. She didn’t believe it when Rey Umbalin told her she couldn’t sell the property. AE testified (paragraph 46) that she did not consider HR to be a tenant, because he had an agreement to purchase [Address 1]. Also, the Residential Purchase Contract between the E.’s as seller and HR as buyer refer to the “Seller” and “Buyer” throughout the contract, as do the Amendment/Addendum Form, Financing Schedule and Agreement for Sale of Land. For example, the Amendment/Addendum Form includes terms such as “Buyer shall be entitled to register notice of the AFS by caveat.” (Binder 3, Tab 9, page 920). Additionally, the Agreement for Sale of Land between the E.’s as Sellers and HR as Buyer states in the recital “WHEREAS the Sellers have agreed to sell to the Buyer, and the Buyer has agreed to purchase from the Sellers, the lands and premises set out in this agreement for sale of land...” (Binder 3, Tab 9, page 934).” Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation.
- k) Ms. Bonwick told her buyer clients that they would “own” the property if they entered into a seller financing arrangement and an Agreement for Sale (“AFS”). HR testified (paragraph 49) that he understood that AE and CE would transfer title to him if he slowly paid them the down payment over two years (Binder 3, Tab 9, page 887). The Agreement for Sale was an agreement to buy the property. Ms. Bonwick explained to him that the property would be safe as long as he made the payments, and AE and CE could not sell the property out from under him. She also explained to HR that the lawyer would hold title to [Address 1] in trust. AE testified (paragraph 50) that an Agreement for Sale is an agreement to complete the property sale on certain terms, and when the terms are met the agreement is complete. She did not consider HR to be a tenant, because he had an agreement to purchase [Address 1]. The Agreement for Sale of Land signed by CE and AE as sellers and HR as buyer and dated March 20, 2015 states that “the Sellers

agree to sell to the Buyer, and Buyer agrees to purchase from the Sellers, the lands and premises located at [Address 1]" (Binder 3, Tab 9, pages 934 - 943). Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation.

- l) Ms. Bonwick drafted a purchase contract for [Address 1], with an addendum that included terms to be replicated in an Agreement for Sale ("AFS") to be drafted by the parties' lawyer at a later date. The testimony of HR (paragraph 52) and CE (paragraph 53), combined with Ms. Bonwick's statement in her letter to RECA dated July 7, 2016 that she "drafted and reviewed all the AREA and RECA forms" (Binder 3, Tab 21, page 1047), and the Financing Schedule (paragraph 55) and Amendment / Addendum to the Residential Purchase Contract between CE, AE and HR (paragraph 56) support this allegation.
- m) Ms. Bonwick included a term in the purchase contract for the property located at [Address 1] that "title will not transfer but will be held in Trust" for the buyer, which is not possible. Section 7.6 of the Residential Purchase Contract between CE, AE and HR (Binder 3, Tab 9, page 903) states that "this transaction will be completed as an Agreement for Sale (AFS) in which title will not transfer but will be held in Trust." CE believed that [LAWYER] would hold title in trust, and AE testified that she doesn't know what it means to hold a title in trust (paragraph 58).
- n) Ms. Bonwick directed both parties to use the same lawyer, whom she had worked with previously, that she knew would accept the arrangement and the AFS terms that she drafted and inserted into the purchase contract. HR, CE and AE (paragraphs 61 – 63) all testified that [LAWYER]'s name was already inserted in the purchase contract as lawyer for the seller and buyer when they signed it. Ms. Bonwick and [LAWYER] had everything drafted before HR attended [LAWYER]'s office. Ms. Bonwick did not explain the advantages and disadvantages of both parties using the same lawyer. Ms. Bonwick texted RB on March 10, 2015 that "If the lawyer can do it that quickly...Will be faster if there is only one..." (Binder 3, Tab 10, page 949). Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation.
- o) Ms. Bonwick provided legal advice to her seller clients, the E.'s, about enforcing the terms of the AFS against the buyer, without directing them to their legal counsel. AE testified (paragraph 64) that after RB contacted her and indicated she wanted to sell [Address 1], AE contacted Ms. Bonwick and asked her if RB could sell the property and list it on January 1, 2016, and Ms. Bonwick said that yes, there is a way she could sell it. She told AE that HR could sell the property at any time, because it was a term of the agreement between the parties. Ms. Bonwick stated in her letter to RECA dated July 7, 2016 that "on or around January of 2016, [AE] contacted me and asked if it

was true that [RB] and [HR] couldn't sell the property. I told [AE] that no, [RB] and [HR] could sell the property at any time." (Binder 3, Tab 21, pages 1047 - 1048). There is no evidence to suggest that Ms. Bonwick directed the E.'s to seek legal advice about whether HR and RB could sell the property. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation.

- p) Ms. Bonwick used her position as representative for the seller to prejudice the buyer's interest in the property at [Address 1], without the buyer's knowledge, by attending at the real estate lawyer's office to witness a withdrawal of caveat after the real estate transaction closed and when the "seller financing" arrangement between the buyers and sellers had broken down. She engaged in this conduct despite the following:

-she had inserted a term into the purchase contract that a withdrawal of caveat was to be signed at the same time as the AFS, which was to be held in "trust" in case of default of payment by the buyer;

-she did not discuss with her buyer client, HR, whether he was still represented by the lawyer, if he agreed to the withdrawal and discharge of the caveat, or if he was aware of the withdrawal being signed or subsequently filed with Land Titles on his behalf;

-she knew that the lawyer had been suspended by the Law Society of Alberta.

Paragraphs 65 - 71 support this allegation, and Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation.

File 007825

- a) SF contacted Ms. Bonwick because of her advertising for services and specialization in seller financing. SF replied to a Kijiji ad for [Address 2] that Ms. Bonwick had listed for sale. The listing offered seller financing. SF only contacted Ms. Bonwick because of her advertising (paragraph 98). Ms. Bonwick's written response dated February 22, 2018 to RECA's Notification of a Professional Conduct Review stated that another realtor recommended her to SF, and SF contacted her directly after finding her Kijiji ad (paragraph 99). The Hearing Panel accepts SF's evidence that she only contacted Ms. Bonwick because of her advertising.
- b) In or around July 2017, Ms. Bonwick proposed a "seller financing" arrangement to her buyer client, SF for the property located at [Address 2]. The Hearing Panel accepts SF's evidence as summarized in paragraph 100.

- c) The owners of [Address 2] were the N.'s, who entered into a seller financing arrangement and signed an Agreement for Sale ("AFS") with Ms. Bonwick's previous client, MB. A Land Title Certificate dated December 22, 2017 confirms the N.'s were the registered owners of [Address 2] when Ms. Bonwick dealt with SF about that property. JN and NN entered into a Residential Purchase Contract with MB dated February 2, 2016. The purchase contract names the N.'s as seller, MB as buyer, and Ms. Bonwick as the buyer's representative. The N.'s and MB also entered into an Agreement for Sale dated March 3, 2016 (paragraph 101).
- d) Ms. Bonwick represented MB in the "purchase" of the property from the N.'s at [Address 2]. The Residential Purchase Contract between the N.'s and MB names Ms. Bonwick as the buyer's representative (paragraph 102).
- e) Ms. Bonwick purposely did not advise her client, SF that she represented MB in the purchase of [Address 2]. The Hearing Panel accepts SF's testimony (paragraph 103) that Ms. Bonwick did not tell her about Ms. Bonwick's history with [Address 2]. When she signed the purchase agreement, she found out MB was selling [Address 2]. She didn't know who was representing MB but "it sounded like it was probably Ms. Bonwick as she did state once that she was "doing a favour for a friend".
- f) Ms. Bonwick led her client, SF to believe that she would "own" the property at [Address 2] if she entered into a seller financing arrangement and an AFS. The Hearing Panel accepts SF's evidence (paragraph 104) that Ms. Bonwick told her that if she ever wanted to sell [Address 2], she could sell it at any time and get her equity out of the house. SF entered into a Residential Purchase Contract with MB on August 1, 2017, which names MB as seller and SF as buyer. Ms. Bonwick is named as the buyer's representative in that contract. Also, The Notice Re: Waiver/Satisfaction of Conditions dated August 9, 2017 and bearing the "seller" MB's electronic signature states "Seller unilaterally waives all conditions and is thereby giving notice to the Buyer THIS IS NOW A FIRM SALE!" (Binder 2, Tab 9, page 618). The Hearing Panel finds this document to be misleading to SF and it further shows how Ms. Bonwick led her client, SF to believe she was purchasing [Address 2] and not entering into a tenancy.
- g) Ms. Bonwick led her client, SF to believe that she was entering into a legitimate real estate purchase, rather than a tenancy. The Hearing Panel accepts SF's testimony (paragraphs 104 - 106) which support this allegation. Further, SF was also led to believe she was buying [Address 2], as indicated by her signing the Residential Purchase Contract with MB on August 1, 2017, which names MB as seller and SF as buyer. Also, The Notice Re: Waiver/Satisfaction of Conditions dated August 9, 2017 and bearing the

"seller" MB's electronic signature states "Seller unilaterally waives all conditions and is thereby giving notice to the Buyer THIS IS NOW A FIRM SALE!" (Binder 2, Tab 9, page 618). The Hearing Panel finds this document to be misleading to SF and it further shows how Ms. Bonwick led her client, SF to believe she was purchasing [Address 2] and not entering into a tenancy.

- h) Ms. Bonwick drafted a purchase contract for [Address 2], with an addendum that included terms to be replicated in an AFS to be drafted by the parties' lawyer at a later date. The Hearing Panel accepts SF's evidence as summarized in paragraph 107 which supports this allegation.
- i) Ms. Bonwick crossed out the term in the purchase contract that ensures that title to the property is free of encumbrances, liens, and interests. This was done in an effort to avoid her obligation to show the land title to SF and to conceal the true owner of the property. The Hearing Panel accepts SF's testimony (paragraph 109) that Ms. Bonwick told her section 5.1 of the Residential Purchase Contract was crossed out because the parties were doing seller financing. SF would not get title to [Address 2] until she got her own financing and until that time the property would remain in MB's name. SF didn't know anything about land titles and she doesn't know what they contain. She didn't know that MB had registered a Caveat on title to [Address 2], and Ms. Bonwick did not tell her about priority of interests on title. SF believed that MB owned [Address 2].
- j) Ms. Bonwick included a term in the purchase contract for the property located at [Address 2] that "title will not transfer but will be held in trust", which is not possible. The Hearing Panel believes Kristine Semrau's testimony that she doesn't know how title would be held in trust, and the Land Titles Office won't hold title in trust. Section 9.2 of the Residential Purchase Contract states that "this transaction will be completed as an Agreement for Sale (AFS) in which property will not transfer but will be held in Trust."
- k) Ms. Bonwick directed her client, SF to contact lawyers that Ms. Bonwick had previously worked with in seller financing agreements and that she knew would accept the terms that she inserted into the purchase contract. The Hearing Panel accepts SF's testimony (paragraph 111) that at first Ms. Bonwick provided the name of one lawyer that she had previously worked with. Eventually, Ms. Bonwick gave SF another lawyer's name, but neither lawyer called her back.
- l) Ms. Bonwick inserted a term in the exclusive buyer representation agreement that her buyer client, SF must hire a lawyer with previous experience with Ms. Bonwick's seller financing contracts. The ED's documentary evidence included Section 12 of the Exclusive Buyer

Representation Agreement, which contained an additional term that SF “must agree to hire a lawyer with previous experience and knowledge of creative financing contracts such as Seller Financed Agreements for Sale. In addition, the lawyer you retain should have previous experience in dealing directly with [Ms. Bonwick’s] contracts.”

- m) Ms. Bonwick inserted a term in the exclusive buyer representation agreement that if her buyer client, SF did not hire a lawyer with previous experience with Ms. Bonwick’s seller financing contracts, she must arrange for a telephone consultation between Ms. Bonwick and the lawyer. Section 12 of the Exclusive Buyer Representation Agreement also stated that “if you wish to use a lawyer I haven’t worked with, you must arrange for a telephone consultation with between your lawyer and I, before I start work on your contract.”
- n) After Ms. Bonwick’s client, SF was unable to hire one of Ms. Bonwick’s recommended lawyers, she drafted an amendment to the purchase contract to redirect her \$15,000 deposit from her lawyer to Ms. Bonwick’s brokerage. The ED’s documentary evidence included a series of texts, where Ms. Bonwick told SF she would prepare an amendment to the Residential Purchase Contract, directing SF to transfer \$15,000 to The Alberta Collection’s trust account (Binder 1, Tab 15, pages 362 - 369). SF told Holly Childs in an email dated May 31, 2018 that she doesn’t know why she was told to pay the \$15,000 deposit to The Alberta Collection instead of the buyer’s lawyer. The Real Estate Purchase Contract was amended so that SF had to pay an additional \$15,000 deposit to The Alberta Collection instead of to the buyer’s lawyer.
- o) Ms. Bonwick proceeded with the sale transaction, despite the fact that her buyer client, SF did not hire a lawyer and an AFS was not drafted or signed between the parties, as per the terms of the purchase contract. The Hearing Panel accepts Kristine Semrau’s evidence (paragraphs 115 – 116) that the brokerage file did not indicate anywhere that SF refused to get a lawyer. The Hearing Panel finds SF’s evidence more believable than Ms. Bonwick’s evidence, where SF testified that Ms. Bonwick acted like it was okay to not hire a lawyer, as long as SF was okay with buying [Address 2].
- p) Ms. Bonwick proceeded with the sale transaction, despite knowing that the owners of [Address 2] had initiated litigation against her seller client, MB. In addition to this litigation, the Financing Schedule that forms part of the Residential Purchase Contract between the N.’s as seller and MB as buyer states that “Where there is Seller Financing, the Seller must approve any assignment of this Contract by the Buyer” (Binder 1, Tab 11, page 192). There is no evidence to indicate that the N.’s approved of MB assigning the Residential Purchase Contract to anyone. Based on the evidence of

Anthony Merah, Kristine Semrau and Cheryl Rumpel (paragraphs 103 - 105), the Hearing Panel finds that Ms. Bonwick knew that the N.'s had initiated litigation against MB, and that she chose to proceed with the sale transaction. In addition to having knowledge of the litigation, Ms. Bonwick also failed to disclose this relevant information to SF, and she did not abide by the Residential Purchase Contract and Financing Schedule requirements that the N.'s had to approve of MB assigning the contract to anyone.

- q) Ms. Bonwick was aware that SF's deposit of \$15,000 was released to the seller, MB prior to the closing of the transaction for [Address 2] without an amendment to the purchase contract. The Hearing Panel accepts the evidence of Kristine Semrau and SF (paragraph 120) that: i) Ms. Semrau would have received direction from Ms. Bonwick or SF to release the deposit, and the contract should have been amended if the deposit was released before the closing date; ii) the brokerage file did not contain an amendment to change the closing date; iii) SF didn't know the \$15,000 deposit had been released to MB before the closing date, and she did not instruct Ms. Bonwick or the brokerage to release the deposit before the closing date.
- r) Ms. Bonwick failed to meet several fiduciary duties owed to her client, SF throughout the transaction to further Ms. Bonwick's fraudulent scheme. The Hearing Panel accepts SF's testimony (paragraph 121) that i) SF understood Consumer Relationships Guide to mean Ms. Bonwick was her real estate agent and she had to adhere to its terms; ii) SF does not believe Ms. Bonwick upheld her responsibilities that the Consumer Relationships Guide placed on her; iii) there seemed to be several conflicts of interest that SF didn't find out about until after the transaction had transpired; iv) she assumed that the financing terms were in her best interests because Ms. Bonwick was her real estate agent; v) no terms were ever discussed or negotiated; vi) SF does not recall any conversations with Ms. Bonwick about waiving conditions, and she doesn't know if there was an amendment to change the condition about the need for a lawyer's approval. She never felt Ms. Bonwick gave her undivided loyalty, full disclosure, reasonable care and skill or full accounting.

293. For Files 006025 and 007825, Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute the ED's allegations participated in fraudulent and unlawful activities.

294. The Hearing Panel accepts the evidence of Ms. Childs, Mr. Merah, Ms. Semrau, AE, CE, RB and SF (as summarized in paragraphs 17 - 71 and 95 - 122) regarding the ED's allegation that Ms. Bonwick participated in fraudulent and unlawful activities in connection with the provision of services or in any dealings. Ms.

Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation.

295. The Hearing Panel finds that Ms. Bonwick knowingly participated in fraudulent and unlawful activities. Ms. Bonwick's conduct was deliberately dishonest and caused detriment, prejudice, or risk of prejudice to the economic interests of the parties to the transaction. She was listed as buyer's representative in the purchase contract between the E.'s as sellers and HR as buyer, and no seller's representative is listed. Ms. Bonwick did not fully explain important terms of the purchase contract or financing terms to HR, including that she would be signing an Exclusive Seller's Representation Agreement with the E.'s. She did not disclose to the E.'s or HR that she had established an agency-client relationship with all of them. She witnessed [LAWYER], whom the Law Society of Alberta had suspended, sign the Withdrawal of Caveat, which was then registered at the Land Titles Office. Ms. Bonwick led HR to believe that this Caveat would protect his interest in [Address 1]. She was complicit in signing the Caveat, which was then discharged from title without HR's knowledge or consent. She breached her fiduciary duty to her clients. Her actions throughout this transaction were intentional and deceitful towards the parties to the transaction. The parties believed she would look out for their interests, and her actions caused deprivation to the parties. For example, Ms. Bonwick led HR and SF to believe they would actually own [Address 1] and [Address 2] respectively, and due to Ms. Bonwick's deliberate and fraudulent actions they ended up having no interest in those properties.
296. The ED alleged that Ms. Bonwick listed herself as buyer's representative on the purchase contract, but forged the signature of the buyer, HR, on a Customer Acknowledgement form. HR testified (paragraphs 59 - 60) that he did not sign the Customer Acknowledgement form. When Ms. Bonwick took the witness stand, she did not dispute HR's testimony on this point. Also, she did not challenge HR on this point in cross-examination. The Hearing Panel accepts HR's evidence that he did not sign the Customer Acknowledgement form, and it also finds that someone involved in the transaction other than HR signed the document. However, the Hearing Panel cannot conclude from the evidence that Ms. Bonwick signed the Customer Acknowledgement form.
- B. Did Ms. Bonwick fail to disclose to her clients, RB and HR at the earliest practical opportunity, any conflict of interest she may have in the course of providing services to or in her dealings with a client, contrary to section 41(f) of the *Real Estate Act Rules*?**

297. Rule 41(f) of the *Real Estate Act Rules* provides that:

41. *Industry members must:*

(f) *disclose to their clients, at the earliest practical opportunity, any conflict of interest they may have in the course of providing services to, or in their dealings with, a client.*

298. Rule 1(1)(h) of the *Real Estate Act Rules* provides that "conflict of interest means a real or apparent incompatibility between an industry member's interests and the interests of the client or potential client."

299. The Hearing Panel accepts HR's evidence that he did not know about Ms. Bonwick's relationship with the E.'s before he signed the purchase contract (paragraph 72). It also accepts CE's testimony that Ms. Bonwick did not disclose to the E.'s that she had established a client relationship with RB and HR. The E.'s testified that they had to use Ms. Bonwick as their agent, because they signed an Exclusive Seller Representation Agreement with her. She did not disclose much information about HR and RB to the E.'s (paragraphs 75 - 78). The Hearing Panel finds that by acting for the buyers and sellers in the same transaction, Ms. Bonwick created a situation where a real or apparent incompatibility between her interests and the interests of her clients or potential clients existed. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to suggest that she did not, or may, have a conflict of interest, or that she disclosed to HR, RB, and the E.'s that she may have a conflict of interest.

300. After considering the evidence adduced in this hearing, the Hearing Panel finds that the ED has proven on a balance of probabilities that Ms. Bonwick failed to disclose to her client, at the earliest practical opportunity, any conflict of interest she may have in the course of providing services to or in her dealings with a client, contrary to Rule 41(f) of the *Real Estate Act Rules*.

C. Did Ms. Bonwick fail to provide competent service, contrary to section 41(b) of the *Real Estate Act Rules*?

301. Rule 41(b) of the *Real Estate Act Rules* provides that:

41. *Industry members must:*

(b) *provide competent service.*

302. After considering the evidence before it, the Hearing Panel finds that:

a) Ms. Bonwick did not provide much explanation of the purchase contract to HR, nor did she explain section 7.6 of the purchase contract to him, or what an Exclusive Seller Representation Agreement is.

- b) Ms. Bonwick briefly reviewed the Agreement for Sale terms with HR, but she did not explain them in detail. The Hearing Panel accepts HR's testimony as summarized in paragraph 93.
- c) Ms. Bonwick entered the wrong date that her buyer client, HR signed the purchase contract. The evidence of HR and Ms. Bonwick (paragraphs 94 and 95) confirms this.

303. Based on the evidence before it, the Hearing Panel finds that:

- a) Ms. Bonwick did not give the best possible service and advice to clients;
- b) her service and advice did not meet reasonable standards of competence;
- c) she did not, or did not satisfactorily, explain the various options available to deal with specific issues a consumer encounters during a trade in real estate;
- d) she did not successfully meet the skill level expected of a specialist in the real estate industry;
- e) she participated in the creation of contracts or documents she knew or ought to have known are confusing or not legally binding; and
- f) she failed to provide competent service, contrary to Rule 41(b) of the *Real Estate Act Rules*.

D. Did Ms. Bonwick accept a commission or other remuneration, directly or indirectly, outside the brokerage with which she was registered, contrary to section 54(1) of the *Real Estate Act Rules*?

304. Rule 54(1)(c) of the *Real Estate Act Rules* provides that:

54. (1) *A real estate broker, associate broker or associate, as the case may be, must not:*
- (c) *accept a commission, referral fee or other remuneration, directly or indirectly, for a trade in real estate except through the brokerage with which he is registered.*

305. The testimony of HR, RB, CE and AE (as summarized in paragraphs 82 - 85) indicates that HR paid the first balloon payment to [LAWYER], and part of this payment was Ms. Bonwick's commission. HR went to AE's and CE's residence to

give them, instead of [LAWYER], the second balloon payment. HR paid approximately \$7,000 instead of \$10,000 because Ms. Bonwick owed RB some commissions for work they were doing together. RB testified that when [LAWYER] was suspended, Ms. Bonwick told her to tell HR to take the second balloon payment directly to AE and CE. The commission money Ms. Bonwick owed RB was paid from the second balloon payment. HR paid AE and CE \$7,500 because Ms. Bonwick owed RB \$2,500 for her share of a commission.

306. CE testified that HR came by his residence and paid the second balloon payment in cash. He believes HR did not pay him the full \$10,000 because a portion of it was supposed to be given to Ms. Bonwick. AE testified that HR contacted her and CE about [LAWYER]'s suspension, because he didn't know where to deliver the second balloon payment. HR brought AE and CE \$7,000 and HR dealt with Ms. Bonwick for the remainder of the second payment. AE called Ms. Bonwick to confirm everything was fine with the second balloon payment and to confirm HR had given her the money, so that Ms. Bonwick didn't expect AE to pay her. Ms. Bonwick said everything was taken care of. AE thought [LAWYER] was going to collect all of the balloon payments.

307. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation. The Hearing Panel accepts the evidence of HR, RB, CE and AE.

308. After considering the evidence before it, the Hearing Panel finds that Ms. Bonwick accepted a commission or other remuneration, directly or indirectly, outside the brokerage with which she was registered, contrary to Rule 54(1) of the *Real Estate Act Rules*.

E. Did Ms. Bonwick deal as a mortgage broker between February 2014 and February 2016 without holding the appropriate authorization for that purpose issued by RECA, contrary to section 17(b) of the *Real Estate Act*?

309. Rule 17(b) of the *Real Estate Act* provides that:

17. *No person shall*

(b) *deal as a mortgage broker,*

unless that person holds the appropriate authorization for that purpose issued by the Council.

310. Holly Childs testified (paragraph 86) that Ms. Bonwick does not have a mortgage associate licence. The financing terms and conditions went beyond the scope

of a real estate associate's authority and they were within the scope of a mortgage associate's authority.

311. HR testified (paragraph 187) that Ms. Bonwick reviewed the financing schedule and all the numbers with him. The financing terms were already filled in the purchase contract when he signed it. He did not negotiate any of the financing terms, because Ms. Bonwick told him it was non-negotiable. HR assumed Ms. Bonwick was representing his best interests to give him the best terms.
312. CE testified (paragraph 88) that Ms. Bonwick determined the financing terms. He had no input in determining those terms and no negotiation with the buyer. AE testified (paragraph 89) that Ms. Bonwick decided on the interest rate for the [Address 1] transaction, and she doesn't know who came up with the rest of the terms. She doesn't know who drafted the financing schedule but the terms were already filled in the purchase contract when she saw it. AE and CE did not negotiate any of the financing terms with the buyer.
313. David Lem testified (paragraph 90) that if your ads state you are a seller financing expert, it would not fall under real estate licencing sectors. It might fall more towards to the mortgage side.
314. Ms. Bonwick's Licence History (Binder 1, Tab 2, pages 44 – 45) indicates that between February 2014 and February 2016 Ms. Bonwick was licenced as an associate and not as a mortgage broker.
315. The Addendum/Amendment Form to the purchase contract between the E.s' and HR (Binder 3, Tab 9, page 922) confirms that Ms. Bonwick's commission would be paid through three instalments, including the second and third balloon payments. Ms. Bonwick's evidence confirmed that she drafted the documents for this transaction.
316. The Hearing Panel considered the evidence before it in connection with this issue and finds that Ms. Bonwick:
 - a) did not hold the appropriate authorization to deal as a mortgage broker, contrary to section 17(b) of the *Real Estate Act*;
 - b) negotiated the terms of a mortgage on the property at [Address 1] on behalf of the sellers, the E.'s, and the buyer, HR, by calculating the interest rate, monthly payments, down payment, amortization period, and financing term;
 - c) received compensation in the form of commission for the negotiation of the mortgage terms of the seller financing arrangement for [Address 1].

F. Did Ms. Bonwick fail to fulfil her fiduciary obligations to her client, contrary to section 41(d) of the *Real Estate Act Rules*?

317. Rule 41(d) of the *Real Estate Act Rules* provides that:

41. *Industry members must*

(d) *fulfill their fiduciary obligations to their clients.*

318. The Hearing Panel has considered the evidence before it in relation to the allegation that Ms. Bonwick failed to fulfil her fiduciary obligations to her client, and it makes the following findings:

- a) Ms. Bonwick established an agency relationship with SF. SF signed a Consumer Relationships Guide (Binder 1, Tab 12, pages 316 - 317). This document states that an agent's responsibilities to their client includes a duty to protect their client's interests, and "the real estate professional has the highest level of legal responsibility to" the client. Among the agent's responsibilities are undivided loyalty, where "the agent must only act in the client's best interests and put them above their own and those of other people." Also, the agent's responsibility of full disclosure means, among other things, that the agent must "tell you everything they know that might affect your relationship or influence your decision in a transaction, even if they don't think it's important." SF and Ms. Bonwick also signed an Exclusive Buyer Representation Agreement (Binder 1, Tab 12, pages 318 - 321). The Residential Purchase Contract between MB and SF lists SF as buyer and Ms. Bonwick as the buyer's representative (Binder 1, Tab 12, pages 328 - 333).
- b) Ms. Bonwick had a fiduciary duty to represent the true value of the property at [Address 2] to her client, SF. The Hearing Panel accepts Kristine Semrau's evidence (paragraph 124) that a real estate associate must provide a property's MLS history to buyer clients, and the brokerage file should contain a comparative market analysis to show how the associate arrived at the numbers, such as a property's estimated value. The Hearing Panel also accepts SF's testimony (paragraph 125) that Ms. Bonwick did not provide her with a comparative market analysis or comparable listings for [Address 2]. She believed that as her real estate agent, Ms. Bonwick was looking out for SF's best interests, but SF wasn't allowed to negotiate on the purchase price. Ms. Bonwick did not inform her that the listing price for [Address 2] decreased twice since she was provided with the MLS feature sheet. Ms. Bonwick didn't make her aware that [Address 2] sold for \$492,000 in February 2016. However, Ms. Bonwick stated that the market value was higher than \$492,000 because of the seller financing.

- c) Ms. Bonwick did not provide her buyer client, SF, with a comparative market analysis for the property at [Address 2]. The Hearing Panel accepts SF's evidence (paragraph 126) that Ms. Bonwick did not provide her with a comparative market analysis or comparable listings for [Address 2].
- d) Ms. Bonwick provided her buyer client, SF with an outdated feature sheet from a 2015 MLS listing that showed a higher value for the property at [Address 2], without bringing to SF's attention that it was outdated. The Hearing Panel accepts SF's evidence (paragraph 127) that Ms. Bonwick gave her an MLS feature sheet when she signed the documents for the purchase of [Address 2], but she doesn't know why it was given to her, and Ms. Bonwick didn't explain to her that the MLS feature sheet was from 2015. The Hearing Panel also accepts Kristine Semrau's evidence that the MLS sheet provided to SF is different than the copies in the brokerage file, the listing price in the MLS sheet that SF received was \$524,888, and she doesn't know why SF received an MLS sheet from 2015.
- e) Ms. Bonwick advised her client, SF that the purchase price for [Address 2] was a reasonable price and did not attempt to negotiate a lower purchase price on her behalf. The Hearing Panel accepts SF's testimony (paragraph 129) that Ms. Bonwick determined the purchase price, she told SF that was the price, there were no negotiations on the purchase price, and Ms. Bonwick told her that the market value was higher because of the seller financing.
- f) Ms. Bonwick did not pull a certificate of title for the property at [Address 2] until after her client, SF had signed the purchase contract. The evidence adduced at this hearing shows that SF signed the Residential Purchase Contract on August 1, 2017 with Ms. Bonwick as her witness (Binder 2, Tab 9, page 602), and the brokerage file contained a land title certificate dated August 3, 2017 (Binder 2, Tab 9, pages 585 - 587).
- g) Ms. Bonwick did not show the certificate of title for [Address 2] to her client, SF. The Hearing Panel accepts SF's testimony (paragraph 132) that she did not receive a copy of the land title certificate before she signed the Residential Purchase Contract on August 1, 2017. She expected that Ms. Bonwick would provide it to her, and she believed that MB owned [Address 2]. The N.'s were the registered owners of [Address 2] when SF signed the Residential Purchase Contract, as shown on the land title certificate dated August 3, 2017 (Binder 2, Tab 9, pages 585 - 587).
- h) Ms. Bonwick inserted a term in the purchase contract that her commission would be releasable upon removal of the conditions, not upon closing of the transaction, which put SF's money at risk if the transaction did not close. The Residential Purchase Contract contained an added term in section 9.2 which

states that "commission for the sale of this transaction will be \$2,000 and will be fully payable upon removal of Conditions (August 7th, 2017)." (Binder 2, Tab 9, page 600). The Hearing Panel also accepts Kristine Semrau's evidence (paragraph 149) that realtor commissions are generally paid after a transaction closes. The Hearing Panel further accepts SF's testimony (paragraph 136) that Ms. Bonwick did not explain why the commission would be paid when the conditions were removed, and that SF didn't know when a commission generally gets paid in a real estate transaction.

- i) Ms. Bonwick did not fully explain the risks associated with the term added by the buyer to the purchase contract that directed SF's \$5,000 initial deposit to be released upon removal of conditions, putting SF's money at risk if the transaction did not close. Kristine Semrau testified (paragraph 137) that releasing the commission before the possession date would not protect the buyer, and if the transaction didn't close, the buyer would have to involve a lawyer to recover the buyer's deposit. SF testified that she doesn't know why the additional term for the \$5,000 deposit was added to the Residential Purchase Contract. She received no other explanation, other than a text from Ms. Bonwick asking her to initial the changes, and to "...just text or email me something like you acknowledge and agree to both" (Binder 1, Tab 13, pages 352 – 356). There were no further discussions about those changes other than Ms. Bonwick's text. SF doesn't recall Ms. Bonwick explaining the risks associated with releasing the commission or the \$5,000 deposit upon removal of conditions. SF didn't know of the risks because she had never done this before. The Hearing Panel accepts the testimony of Ms. Semrau and SF as proof of this allegation.
- j) When Ms. Bonwick's client, SF discovered that MB did not own the property and that he was subject to litigation by the N.'s, Ms. Bonwick did not take steps to rectify the situation for her client even though she asked Ms. Bonwick to return her deposits and to nullify the sale. SF testified that she tried to contact Ms. Bonwick and MB, but Ms. Bonwick told her that no one could do anything but everything was fine. Ms. Bonwick told her that MB had her money, however, MB told SF that Ms. Bonwick had her money. Ms. Bonwick was not responding to SF and eventually stopped talking to her. The Hearing Panel accepts SF's testimony as proof of this allegation. Several texts between SF and Ms. Bonwick (Binder 1, Tab 15, pages 374 – 386) confirm that SF discovered that MB did not own [Address 2] and she demanded the return of the \$20,000 she had paid towards purchasing [Address 2]. She received several replies from Ms. Bonwick which clearly show she took no steps to rectify the situation for SF.

319. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute the ED's allegation that Ms. Bonwick failed to fulfill her fiduciary obligations to SF. The Hearing Panel considered the

evidence before it in connection with this issue and finds that Ms. Bonwick failed to fulfil her fiduciary obligations to her client, SF.

G. Did Ms. Bonwick fail to disclose to her client, SF at the earliest practical opportunity any conflict of interest she may have in the course of providing services to, or in her dealings with a client, contrary to section 41(f) of the *Real Estate Act Rules*?

320. Rule 41(f) of the *Real Estate Act Rules* provides that:

41. *Industry members must:*

(f) *disclose to their clients, at the earliest practical opportunity, any conflict of interest they may have in the course of providing services to, or in their dealings with, a client.*

321. The Hearing Panel has considered the evidence before it in relation to the allegation that Ms. Bonwick failed to fulfil her fiduciary obligations to her client, and it makes the following findings:

a) Ms. Bonwick did not disclose to her client, SF, that she had a client relationship with the seller, MB. In her response to RECA dated February 22, 2018, Ms. Bonwick confirmed that she has sold properties for MB in the past (Binder 2, Tab 15, page 689). However, the Hearing Panel accepts SF's testimony over Ms. Bonwick's evidence, and accordingly it finds that Ms. Bonwick did not discuss any conflicts of interest with SF; she told SF that MB was her friend and she was doing him a favour; and she did not tell SF she was representing MB as a client.

b) Ms. Bonwick did not disclose to her client, SF that she had previously represented MB in the purchase of the property at [Address 2] nor did she disclose all of the details regarding that transaction. The Hearing Panel accepts Kristine Semrau's testimony (paragraph 143) that an associate must disclose in writing to their client if they previously assisted a seller, she has now learned that a conflict of interest arose in the [Address 2] transaction, and the brokerage file does not contain any written notice of the conflict of interest. The Hearing Panel also accepts SF's testimony (paragraph 144) that Ms. Bonwick did not tell her anything about MB.

322. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute the ED's allegation that Ms. Bonwick failed to disclose any conflict of interest to SF. The Hearing Panel considered the evidence before it in connection with this issue and finds that Ms. Bonwick failed to disclose to her client, SF at the earliest practical opportunity any

conflict of interest she may have in the course of providing services to, or in her dealings with a client.

H. **Did Ms. Bonwick fail to disclose in a timely manner to the buyer all relevant facts known to Ms. Bonwick affecting a property or transaction, contrary to section 58(j) of the *Real Estate Act Rules*?**

323. Rule 58(j) of the *Real Estate Act Rules* provide that:

58. *The basic obligations of an industry member who is in a sole agency relationship with a buyer are to:*

(j) *disclose, in a timely manner, to the buyer all relevant facts known to the industry member affecting a property or transaction.*

324. The Hearing Panel has considered the evidence before it in relation to the allegation that Ms. Bonwick failed to disclose in a timely manner to the buyer all relevant facts known to Ms. Bonwick affecting a property or transaction, and it makes the following findings:

- a) Ms. Bonwick did not disclose to her client, SF, that the seller, MB, had entered into a seller financing arrangement and an AFS on the property at [Address 2]. The Hearing Panel has already found that Ms. Bonwick established an agency relationship with her buyer client, SF. Also, the Hearing Panel accepts SF's testimony (paragraph 146) that she only learned the N.'s, and not MB, owned [Address 2] when the N.'s came to the house. She never saw the Agreement for Sale between the N.'s and MB (Binder 1, Tab 10, pages 140 – 151) in January 2018, and Ms. Bonwick did not tell her anything about it, or that MB bought [Address 2] from the N.'s with an agreement that was identical to the agreement SF and MB signed.
- b) Ms. Bonwick did not disclose to her client, SF that the seller, MB had not made his monthly payments, as per his AFS with the original owners, for the property at [Address 2]. In her complaint to RECA (Binder 1, Tab 12, page 273), SF stated that neither Ms. Bonwick nor MB informed her that MB had defaulted on his purchase agreement with the N.'s. The Hearing Panel accepts this evidence as proof of this allegation.
- c) Ms. Bonwick did not disclose to her client, SF that the owners of the property at [Address 2] had initiated litigation against MB in an effort to recoup their missed payments and, further, to prevent the future sale of the property to her client, SF. In support of this allegation, the Hearing Panel accepts the evidence of Anthony Merah, Kristine Semrau and SF, as follows: Mr. Merah faxed a letter to Ms. Bonwick informing her of the N.'s lawsuit against MB.

Ms. Bonwick received that letter on September 6, 2017 and it states that the N.'s "instruction is to oppose the purported sale of their property by [MB], who appears to be trying to dispose of an interest he does not have over the subject property." (Binder 2, Tab 28, pages 804 - 805). Kristine Semrau testified that that Ms. Bonwick had a fiduciary duty to SF as her client to notify her of the litigation, because they were still under the terms of the Exclusive Buyer Representation Agreement. SF stated that Ms. Bonwick did not tell her about Mr. Merah's letter.

- d) Ms. Bonwick did not disclose to her client, SF that the tenants living at the property located at [Address 2] had not been provided proper notice or vacated the property prior to the date of SF's possession. The Hearing Panel accepts SF's testimony that when she arrived at [Address 2] on September 1, 2017 to take possession, the tenants had not moved out. She wasn't sure how Ms. Bonwick knew how many tenants lived there. Ms. Bonwick seemed to know the tenants personally, and they moved their possessions to Ms. Bonwick's residence. Ms. Bonwick told SF that she was the property manager for [Address 2]. The Hearing Panel infers from SF's testimony that Ms. Bonwick did not disclose to SF that the tenants had not been provided proper notice or vacated the property prior to the date of SF's possession. As SF's agent, Ms. Bonwick knew or ought to have known that tenants were living at [Address 2].

325. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute the ED's allegation. The Hearing Panel considered the evidence before it in connection with this issue and finds that Ms. Bonwick failed to disclose in a timely manner to the buyer, SF all relevant facts known to Ms. Bonwick affecting a property or transaction.

I. Did Ms. Bonwick deal as a mortgage broker between February 2017 and October 2017 without holding the appropriate authorization for that purpose issued by RECA, contrary to section 17(b) of the *Real Estate Act*?

326. As previously stated, Rule 17(b) of the *Real Estate Act* provides that:

17. *No person shall*

(b) *deal as a mortgage broker,*

unless that person holds the appropriate authorization for that purpose issued by the Council.

327. Holly Childs testified (paragraph 86) that Ms. Bonwick does not have a mortgage associate licence. The financing terms and conditions went beyond the scope

of a real estate associate's authority and they were within the scope of a mortgage associate's authority.

328. Kristine Semrau testified that real estate associates don't get education about calculating and creating financing terms. A mortgage associate would get the appropriate education and they would also require a mortgage associate licence. Ms. Semrau's records show that Ms. Bonwick received a \$2,000 commission from the [Address 2] transaction (Binder 2, Tab 25, page 799). \$2,000 was deducted from the \$15,000 deposit SF paid and was released to MB. She assumes it was Ms. Bonwick's commission. The commission was paid even though the transaction did not complete.
329. Ms. Bonwick's Licence History (Binder 1, Tab 2, pages 44 – 45) indicates that between February 2017 and October 2017 Ms. Bonwick was licenced as an associate and not as a mortgage broker.
330. SF testified that Ms. Bonwick proposed the financing terms for the [Address 2] transaction. She doesn't know if MB had any input in the financing terms for this transaction. SF didn't negotiate any of the financing terms because they were already inserted in the Residential Purchase Contract when she signed it. Ms. Bonwick did not really discuss the financing terms with her. She told SF to speak with a mortgage broker but not to solidify the purchase contract, and SF would have to get financing the Agreement for Sale term ended. Ms. Bonwick showed SF how she did mortgage calculations with her mortgage calculator.
331. David Lem testified that if your advertisements state you are a seller financing expert, it would not fall under real estate licencing sectors, and it might fall more into the mortgage sector. SF was not referred to a financing professional or expert.
332. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute this allegation. The Hearing Panel accepts the evidence of Ms. Childs, Ms. Semrau, SF and Mr. Lem. Ms. Bonwick's Licence History also proves she did not hold the appropriate authorization to deal as a mortgage broker between February 2017 and October 2017.
333. The Hearing Panel considered the evidence before it in connection with this issue and finds that Ms. Bonwick:
 - a) did not hold the appropriate authorization to deal as a mortgage broker, contrary to section 17(b) of the *Real Estate Act*;
 - b) negotiated the terms of a mortgage on the property at [Address 2] on behalf of her seller client, MB, and her buyer client, SF by calculating the interest

rate, monthly payments, down payment, amortization period, and financing term;

- c) received compensation in the form of commission for the negotiation of the mortgage terms of the seller financing arrangement for [Address 2].

J. Did Ms. Bonwick fail to cooperate with the RECA investigator, contrary to section 38(4.1) of the *Real Estate Act Rules*?

334. In connection with RECA File 007825, part f) of the Notice of Hearing alleges at page 13 that Ms. Bonwick "did not cooperate with the investigator, contrary to section 38(4.1) of the *Real Estate Act Rules*". The Hearing Panel did not find section 38(4.1) in the *Real Estate Act Rules*. However, the Hearing Panel notes that the *Real Estate Act* contains section 38(4.1), which provides that:

A person shall not withhold, destroy, conceal or refuse to produce any books, documents, records or other things required for the purpose of an investigation under this section.

335. After reviewing part f) at page 13 of the Notice of Hearing, the Hearing Panel finds that the ED erroneously referred to section 38(4.1) of the *Real Estate Act Rules* and should have referred to section 38(4.1) of the *Real Estate Act*.
336. Before deciding whether it should consider and make a decision on the allegation that Ms. Bonwick did not cooperate with the RECA investigator, the Hearing Panel first considered whether the ED's erroneous reference to the *Real Estate Act Rules* prevented Ms. Bonwick from making a full answer to that particular aspect of RECA's case against her, and whether the ED's error resulted in any prejudice to Ms. Bonwick.
337. The Notice of Hearing is the primary way that an industry member becomes aware of the case against them. They know they have been investigated, however, until they receive a Notice of Hearing they don't know what allegations the ED will pursue. An industry member is also provided with disclosure of the ED's documents that the ED will be relying upon. At the outset of a conduct hearing the industry member then becomes aware of the various allegations and the case against them by way of the Case Presenter's opening statement. Witnesses are then called and the evidence relied upon is put before the Hearing Panel through those witnesses.
338. The Hearing Panel finds that the ED's erroneous reference to section 38(4.1) of the *Real Estate Rules* did not prevent Ms. Bonwick from making a full answer to the allegation that she failed to cooperate with the investigator contrary to section 38(4.1) of the *Real Estate Act*. The Hearing Panel further finds that the

ED's erroneous reference did not result in any prejudice to Ms. Bonwick. In making these findings, the Hearing Panel notes that Ms. Bonwick did not object at any time and she never stated that she understood that the allegation related to something different. She did not state that she was prepared to answer to something different, and she did not express any confusion about the allegation. Throughout the hearing, Ms. Bonwick appeared to fully understand the allegations against her, she thoroughly defended herself and she extensively cross-examined almost every witness the ED called. Throughout the hearing, Ms. Bonwick made it very clear to the Hearing Panel if she was confused about anything, and she also clearly raised her objections to the ED's questions or witnesses' evidence. She never expressed any confusion and never objected to the ED's erroneous reference to section 38(4.1) of the *Real Estate Act Rules*. Based on these findings and supporting reasons, the Hearing Panel will consider whether Ms. Bonwick failed to cooperate with the investigator contrary to section 38(4.1) of the *Real Estate Act*.

339. In considering this allegation, the Hearing Panel accepts Holly Childs' evidence that:
- a) she sent Ms. Bonwick a Professional Conduct Review: Request for Information dated October 4, 2018 and asked Ms. Bonwick to provide a copy of the market analysis and city tax assessment she prepared and provided to SF. Ms. Bonwick did not respond to RECA's request.
 - b) she requested Ms. Bonwick's phone records for the period of May 2017 to November 2017 (Binder 2, Tab 21, page 782). She did not receive those records from Ms. Bonwick or her lawyer.
 - c) she requested a copy of the lease agreement between Ms. Bonwick and MB for Ms. Bonwick's residence (Binder 2, Tab 21, page 782). [Address 3] is listed as Ms. Bonwick's address on her licence history and the CRM system. Ms. Childs obtained a land title search on [Address 3] and discovered that MB owns it. She sent Ms. Bonwick and Jonathan Denis an email to remind them that Ms. Childs required the lease agreement. She did not receive it.
340. The Hearing Panel also accepts David Lem's evidence that he confirmed with Ms. Childs that his office received the Professional Conduct Review: Request for Information and emailed it to Ms. Bonwick (Binder 2, Tab 17, page 764).
341. Ms. Bonwick did not provide any compelling evidence or call any witnesses at the hearing to contradict or refute the ED's allegation. Based on the evidence of Ms. Childs and Mr. Lem, the Hearing Panel finds that Ms. Bonwick did not cooperate with the RECA investigator, contrary to section 38(4.1) of the *Real Estate Act*.

K. Did Ms. Bonwick make representations or carry on conduct that was reckless or intentional and that misled or deceived any person or was likely to do so, contrary to section 42(a) of the *Real Estate Act Rules*?

342. Rule 42(a) of the *Real Estate Act Rules* provides that:

42. *Industry members must not:*

(a) *make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so.*

343. RECA's Advertising Guidelines (Binder 4, Tab 7, pages 1208 - 1239) state "Industry professionals often advertise that they have special qualifications, experience or expertise in specific industry sectors or in certain geographic areas. Consumers often rely on these claims. When industry professionals make claims in their advertisements that they have special qualifications, experience or expertise in specific industry sectors or in certain geographic areas, "industry professionals must ensure they are in a position to demonstrate they are in a position to demonstrate the qualification or experience they are claiming. If an industry professional advertises special qualifications or expertise, the Courts and RECA typically hold them to a higher standard."

344. Several of Ms. Bonwick's advertisements claim "if you're looking for a Seller Financed Property I can help. As a licensed real estate agent I can offer you the security of knowing your investment is in the hands of a qualified professional." (Binder 4, Tab 1, page 1191; Binder 4, Tab 2, page 1195; Binder 4, Tab 4, page 1200; Binder 4, Tab 5, page 1203; Binder 4, Tab 17, page 1339). Kristine Semrau testified that she had heard about Ms. Bonwick in the industry prior to working with her, and she knew Ms. Bonwick specialized in seller financing. She saw some of Ms. Bonwick's advertisements prior to working with her and based her opinion of Ms. Bonwick specializing in seller financing somewhat from those ads. David Lem testified that if an industry professional's advertisements state someone is a seller financing expert, it would not fall under real estate licencing sectors but might fall more towards the mortgage side.

345. Ms. Bonwick's August 24, 2018 response letter to RECA's Notification of a Professional Conduct Review (Binder 4, Tab 16, pages 1332 - 1335) states that

"I have been a realtor specializing in Seller Financing for many, many years and most realtors already know and respect what I do."

"If you would like to find out more about Seller Financing, I suggest you hire a lawyer and get one of them to explain it to you. Most of the people

participating in Seller Financed Agreement for Sales do not have the benefit of working with a licensed realtor.

"Also, please do not contact or harass any of the buyers, sellers or lawyers involved with any of the addresses I provided to you. That would be entirely inappropriate and unacceptable. I can assure you, there is nothing wrong, morally or legally with Seller Financed Agreement for Sales and I am very proud of the work I do."

346. Holly Childs testified that RECA made several requests to Ms. Bonwick for information about her advertising because she wasn't complying or responding to those requests. RECA would not have asked Ms. Bonwick about the word "monitored" in her advertisements if RECA didn't want her to change the wording of her ads. This was brought up when RECA investigated Ms. Bonwick in 2016 and again in 2018. Several of Ms. Bonwick's advertisements contain the following wording: "Every real estate transaction facilitated by a Real Estate Associate is monitored to insure that it conforms to legal and ethical standards set out by the Real Estate Council." (Binder 4, Tab 1, page 1191; Binder 4, Tab 2, page 1196; Binder 4, Tab 3, page 1198; Binder 4, Tab 4, page 1200; Binder 4, Tab 5, pages 1202 and 1203).
347. Broker David Lem thought there was some confusion with the wording of Ms. Bonwick's ads, and maybe she didn't intend to show that every transaction was being monitored, but he can see in a literal sense that consumers could interpret the ads that way. Ms. Bonwick told him she would remove that wording to ensure it does not confuse consumers. He discussed with her about possibly changing the wording to state that RECA monitors industry members' behaviour so it would not be confusing. He doesn't recall if he called her to ask if she had changed her advertisements.
348. Ms. Bonwick's August 24, 2018 response letter to RECA's Notification of a Professional Conduct Review states that "it is ridiculous to suggest by underlining the word "monitored" that it somehow implies the real estate industry is going to check in every month to see whether an individual's monthly payments are made every month. The statement clearly is meant to provide the public with assurances that the practice of real estate in Alberta is regulated and that realtors are held to a high standard." (Binder 4, Tab 16, page 1331).
349. The Hearing Panel infers from the evidence of Ms. Childs and Mr. Lem that Ms. Bonwick's advertisements contained confusing wording about whether RECA monitors every transaction. It also finds that RECA wanted Ms. Bonwick to change the wording of her ads, and Ms. Bonwick did not comply with or respond to RECA's requests to do that. Based on the evidence before it, the Hearing Panel finds that:

- a) Ms. Bonwick represented herself as an expert in seller financing in her online advertisements;
- b) her online advertisements stated that real estate transactions are monitored by the Real Estate Council of Alberta; and
- c) Ms. Bonwick made representations or carried on conduct that was reckless or intentional and that misled or deceived any person or was likely to do so.

L. Did Ms. Bonwick trade in real estate in the name of the brokerage with which she was not registered, contrary to section 53(a) of the *Real Estate Act Rules*?

350. Rule 53(a) of the *Real Estate Act Rules* provides that:

53. A real estate associate broker and associate must:

- (a) trade in real estate only in the name that appears on that individual's licence and in the name of the brokerage with which that individual is registered.*

351. Some of Ms. Bonwick's Kijiji advertisements name her as an "Associate", or an "Associate, Commercial/Residential/Property Management", or an "Affiliate", with The Alberta Collection / Christie's International while she was registered with Engel & Volkers (Binder 4, Tab 1, page 1189; Binder 4, Tab 3, page 1197; Binder 4, Tab 4, page 1199). Ms. Bonwick's May 18, 2018 Kijiji advertisement names Ms. Bonwick as an "Advisor" with The Alberta Collection / Engel & Volkers Calgary while she was registered with Engel & Volkers (Binder 4, Tab 2, page 1194).

352. Ms. Bonwick stated in her response to RECA that she would change her advertising, and she said she had to change brokerages over a three year period. However, the Hearing Panel accepts Holly Childs' evidence that RECA industry members must comply with regulations and legislations and advertising guidelines; RECA made several requests for information to Ms. Bonwick about her advertising because she wasn't complying or responding; and an industry member is obligated to update their advertising, regardless of how many times they change brokerages. It also accepts David Lem's evidence that Ms. Bonwick used the brokerage team name The Alberta Collection while she was registered with Engel & Volkers.

353. The Hearing Panel considered the evidence before it and finds that Ms. Bonwick traded in real estate in the name of a brokerage she was not registered with, contrary to Rule 53(a) of the *Real Estate Act Rules*.

M. Did Ms. Bonwick fail to hold the appropriate authorization from October 1, 2018 to present to trade in real estate as a real estate broker or to advertise herself, or in any way hold herself out as, a real estate broker, contrary to section 17(a) and (d) of the *Real Estate Act*?

354. Section 17(a) and (d) of the *Real Estate Act* provides that:

17. No person shall:

(a) trade in real estate as a real estate broker,

(d) advertise himself or herself as, or in any way hold himself or herself out as, a mortgage broker, real estate broker or real estate appraiser

unless that person holds the appropriate authorization for that purpose issued by the Council.

355. The Hearing Panel considered the evidence produced in connection with this issue and makes the following findings:

- a) Ms. Bonwick failed to renew her registration with RECA as a real estate associate by the annual deadline on September 30, 2018. Ms. Bonwick's Licence History dated February 4, 2020 (Binder 1, Tab 3, pages 44 – 45) indicated that Ms. Bonwick has not been licenced with RECA after September 30, 2018.
- b) Ms. Bonwick advertised property listings on Kijiji, while unauthorized, with her name and phone number as a contact. The Hearing Panel accepts the ED's produced documents and Holly Childs' evidence that Ms. Bonwick's cell phone number had not changed, and that she continued to advertise, while unauthorized: Google search of Ms. Bonwick's cell phone number (Binder 4, Tab 34, pages 1413 - 1414); Ms. Bonwick's Kijiji ads posted while she was unauthorized (Binder 4, Tab 35, pages 1415 – 1418; Binder 4, Tab 36, page 1419; Binder 4, Tab 37, pages 1420 – 1422; Binder 4, Tab 38, pages 1423 – 1424).
- c) Ms. Bonwick promoted seller financing in advertisements while unauthorized. The Hearing Panel accepts the ED's evidence on this allegation, which included Ms. Bonwick's Kijiji advertisements that were posted while she was unauthorized as a real estate associate (Binder 4, Tab

37, page 1421; Binder 4, Tab 38, pages 1423 - 1424). These ads promoted seller financing.

- d) Ms. Bonwick promoted the benefits of not using an authorized real estate associate in real estate transactions in her advertisements. The Hearing Panel accepts the ED's evidence, including Ms. Bonwick's Kijiji advertisements that were posted while she was unauthorized as a real estate associate (Binder 4, Tab 37, page 1421; Binder 4, Tab 38, pages 1423 - 1424). These ads contained the following wording: "Save literally thousands of dollars by representing yourself in real estate! What a deal! Imagine the flexibility of not requiring a real estate agent! Find out the process and receive access to all the best private deals, listed and unlisted. Get everything you need for buying or selling on your own, saving you thousands of dollars! Get forms, prepare documents, and receive *[sic]* marketing services. Do it your self real estate documents and marketing services!"
- e) When RECA notified Ms. Bonwick that she cannot trade in real estate while unauthorized, she altered the Kijiji advertisements to hide her identity. Holly Childs testified that screenshots of some Kijiji advertisements from around October 2018 show the same ads with "Kelli" as the user. The only difference between these ads and Ms. Bonwick's ads is the posting date and user name. When Ms. Childs interviewed her, Ms. Bonwick stated that Kelli was her cousin. Ms. Childs confirmed some Kijiji advertisements posted by "Kelli" (Binder 4, Tab 41, pages 1434 - 1435; Binder 4, Tab 43, pages 1439) were the same as some Kijiji advertisements posted by "Kijiji User", which Ms. Childs stated is Ms. Bonwick (Binder 4, Tab 35, pages 1415 - 1418; Binder 4, Tab 36, pages 1420 - 1422). The only difference between those advertisements is the posting date and user name. RECA requested Kelli's contact information, but Ms. Bonwick did not provide it.

Ms. Bonwick stated that Kelli is her cousin, and they had worked together in the past. At first Ms. Bonwick thought Kelli was posting the advertisements. She didn't want to provide Kelli's contact information to RECA because she didn't want to drag her into the investigation. Since that time, Ms. Bonwick thinks that RB was trying to set her up. She believes it was RB because she heard an audio recording where RB said she saw several Kijiji ads online belonging to Ms. Bonwick. She doesn't know RB would change the name to "Kelli" if she was trying to set her up. Ms. Bonwick wouldn't benefit from the ads if RB posted them with Ms. Bonwick's phone number because it could be illegitimate calls or people set up by RB to call her. The Hearing Panel finds Holly Childs to be a credible and truthful witness and accepts her testimony over Ms. Bonwick's evidence.

- f) From October 1, 2018 to present, Ms. Bonwick did not hold the appropriate authorization to trade in real estate as a real estate broker or to advertise

herself, or in any way hold herself out as, a real estate broker, contrary to section 17(a) and (d) of the Real Estate Act.

N. Did Ms. Bonwick fail to cooperate with the RECA investigator, contrary to section 38(4)(a) of the *Real Estate Act Rules*?

356. In connection with RECA File 008856, part b) of the Notice of Hearing alleges at page 15 that Ms. Bonwick "did not cooperate with the investigator, contrary to section 38(4)(a) of the *Real Estate Act Rules*". The Hearing Panel did not find section 38(4)(a) in the *Real Estate Act Rules*. However, the Hearing Panel notes that section 38(4)(a) of the *Real Estate Act* provides that:

38(4). A person who is required under subsection (2) to answer the questions of a person conducting an investigation

(a) shall co-operate with the investigator and promptly respond to the questions..."

357. After reviewing part b) at page 15 of the Notice of Hearing, the Hearing Panel finds that the ED erroneously referred to section 38(4)(a) of the *Real Estate Act Rules* and should have referred to section 38(4)(a) of the *Real Estate Act*.

358. Before deciding whether it should consider and make a decision on the allegation that Ms. Bonwick failed to cooperate with the RECA investigator, the Hearing Panel first considered whether the ED's erroneous reference to the *Real Estate Act Rules* prevented Ms. Bonwick from making a full answer to that particular aspect of RECA's case against her, and whether the ED's error resulted in any prejudice to Ms. Bonwick.

359. As previously stated in paragraph 335, the Notice of Hearing is the primary way that an industry member becomes aware of the case against them. Although they know they have been investigated, they don't know what allegations the ED will pursue until they receive the Notice of Hearing. They are also provided with disclosure of the ED's documents that the ED will be relying upon. At the outset of a conduct hearing the industry member then becomes aware of the various allegations and the case against them through the Case Presenter's opening statement. Witnesses are then called and the evidence relied upon is put before the Hearing Panel through those witnesses.

360. The Hearing Panel finds that the ED's erroneous reference to section 38(4)(a) of the *Real Estate Rules* did not prevent Ms. Bonwick from making a full answer to the allegation that she did not cooperate with the investigator contrary to section 38(4)(a) of the *Real Estate Act*. The Hearing Panel further finds that the ED's erroneous reference did not result in any prejudice to Ms. Bonwick. In

making these findings, the Hearing Panel again notes that Ms. Bonwick did not object at any time and she never stated that she understood that the allegation related to something different. She did not state that she was prepared to answer to something different, and she did not express any confusion about the allegation. Throughout the hearing, Ms. Bonwick appeared to fully understand the allegations against her, she thoroughly defended herself and she extensively cross-examined almost every witness the ED called. Throughout the hearing, Ms. Bonwick made it very clear to the Hearing Panel if she was confused about anything, and she also clearly raised her objections to the ED's questions or witnesses' evidence. She never expressed any confusion and never objected to the ED's erroneous reference to section 38(4)(a) of the *Real Estate Act Rules*. Based on these findings and supporting reasons, the Hearing Panel will consider whether Ms. Bonwick failed to cooperate with the investigator contrary to section 38(4)(a) of the *Real Estate Act*.

361. The Hearing Panel considered the evidence produced in connection with this issue and finds that Ms. Bonwick did not cooperate with the investigator, contrary to section 38(4)(a) of the *Real Estate Act*, for the following reasons:
- a) Ms. Bonwick did not respond to the questions posed by the investigator in a Notification of a Real Estate Investigation dated October 19, 2018. The Hearing Panel accepts Holly Childs' testimony that a Notification of and Investigation Under the Real Estate Act was sent to both of Ms. Bonwick's addresses listed in CRM (Binder 4, Tab 39, pages 1425 – 1429) and by email (Binder 4, Tab 40, pages 1430 – 1433). A Canada Post notification shows the Notification was signed for and successfully delivered to Ms. Bonwick. Ms. Bonwick did not respond to that RECA Notification.
 - b) Ms. Bonwick did not provide the contact information for the individual that assumed her Kijiji ads, as requested by the investigator. The Hearing Panel accepts Holly Childs' testimony that on December 6, 2018 she emailed Ms. Bonwick and requested her to provide Kelli's contact information as part of RECA's investigation (Binder 4, Tab 47, page 1446). Ms. Bonwick did not provide Kelli's contact information.
- O. **Did Ms. Bonwick engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute, contrary to section 42(g) of the *Real Estate Act Rules*?**

362. Rule 42(g) of the *Real Estate Act Rules* provides that:

42. *Industry members must not:*

- (g) *engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute.*

363. The ED alleges Ms. Bonwick breached Rule 42(g) of the *Real Estate Act Rules* for the following reasons:

- a) Throughout the investigation process, Ms. Bonwick exhibited clear contempt for the governance of her regulator. Based on its review of the evidence presented by the parties in this hearing, the Hearing Panel finds that Ms. Bonwick has shown clear contempt for the governance of RECA. The evidence presented in this hearing shows she exhibited contempt towards RECA's investigators during their investigations of the complaints made against her by HR, RB and SF, and during this hearing. Some examples include:
- She did not provide RECA with information it requested, including responses to RECA's questions, contact information for the individual that assumed her Kijiji ads, a copy of the lease agreement between her and MB, and her phone records.
 - Ms. Bonwick stated numerous times during the hearing, and in her evidence, that RECA has alleged she was advertising on pornographic websites or sent her pornographic material. She responded to James Porter's August 13, 2018 email by sending him an article about how to check your computer for pornography, as "it may help you to avoid any future embarrassment for you or other the RECA investigators." (Binder 4, Tab 12, pages 1259 – 1261). She suggested that RECA staff were watching pornography and she doesn't think it's professional for RECA to send her pornography. The Hearing Panel reviewed all evidence produced in this hearing and finds that Ms. Bonwick failed to prove on a balance of probabilities that RECA sent Ms. Bonwick pornography.
 - "If you would like to find out more about Seller Financing, I suggest you hire a lawyer and get one of them to explain it to you."
 - "please do not contact or harass any of the buyers, sellers or lawyers involved with any of the addresses I provided to you. That would be entirely inappropriate and unacceptable."
 - She stated to RECA more than once that she would not attend a meeting unless RECA first sent her the questions they were going to ask her.
 - RECA abused other people involved in the investigations of her.

- She used strong language throughout her written responses to RECA.
- b) Ms. Bonwick has persistently shown that she is not governable as a real estate professional. Based on its review of the evidence presented during this hearing, the Hearing Panel finds that Ms. Bonwick has shown she is not governable as a real estate professional.
364. The Hearing Panel considered the evidence produced in connection with this issue and finds that Ms. Bonwick engaged in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute, contrary to section 42(g) of the *Real Estate Act Rules*. Based on all evidence that was put before it, the Hearing Panel finds that a) Ms. Bonwick's behaviour was fraudulent and unlawful; b) the parties were led to believe they were involved in legitimate real estate purchase and sale transactions; c) the buyers believed they would become the legal owners of [Address 1] and [Address 2] respectively; d) the parties believed Ms. Bonwick was disclosing relevant information to them throughout the process; and e) they believed she was looking out for their best interests. Her conduct in relation to the investigations that led to this hearing undermines public confidence in the real estate industry, harms the integrity of the industry, and brings the industry into disrepute.

CONCLUSION

365. In conclusion, for the reasons stated in this Decision, the Hearing Panel finds that Ms. Bonwick's conduct is deserving of sanction as follows:
- A. Ms. Bonwick participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings contrary to Rule 42(b) of the *Real Estate Act Rules*.
 - B. Ms. Bonwick failed to disclose to her client, at the earliest practical opportunity, any conflict of interest she may have in the course of providing services to or in her dealings with a client, contrary to Rule 41(f) of the *Real Estate Act Rules*.
 - C. Ms. Bonwick failed to provide competent service, contrary to Rule 41(b) of the *Real Estate Act Rules*.
 - D. Ms. Bonwick accepted a commission or other remuneration, directly or indirectly, outside the brokerage with which she was registered, contrary to Rule 54(1) of the *Real Estate Act Rules*.

- E. Ms. Bonwick did not hold the appropriate authorization to deal as a mortgage broker, contrary to section 17(b) of the *Real Estate Act*.
- F. Ms. Bonwick failed to disclose to her client, SF at the earliest practical opportunity any conflict of interest she may have in the course of providing services to, or in her dealings with a client, contrary to section 41(d) of the *Real Estate Act Rules*.
- G. Ms. Bonwick failed to disclose to her client, SF at the earliest practical opportunity any conflict of interest she may have in the course of providing services to, or in her dealings with a client, contrary to section 41(f) of the *Real Estate Act Rules*.
- H. Ms. Bonwick failed to disclose in a timely manner to the buyer, SF all relevant facts known to Ms. Bonwick affecting a property or transaction, contrary to section 58(j) of the *Real Estate Act Rules*.
- I. Ms. Bonwick dealt as a mortgage broker between February 2017 and October 2017 without holding the appropriate authorization for that purpose issued by RECA, contrary to section 17(b) of the *Real Estate Act*.
- J. Ms. Bonwick failed to cooperate with the RECA investigator, contrary to section 38(4.1) of the *Real Estate Act*.
- K. Ms. Bonwick made representations or carried on conduct that was reckless or intentional and that misled or deceived any person or was likely to do so, contrary to section 42(a) of the *Real Estate Act Rules*.
- L. Ms. Bonwick traded in real estate in the name of the brokerage with which she was not registered, contrary to section 53(a) of the *Real Estate Act Rules*.
- M. Ms. Bonwick failed to hold the appropriate authorization from October 1, 2018 to present to trade in real estate as a real estate broker or to advertise herself, or in any way hold herself out as, a real estate broker, contrary to section 17(a) and (d) of the *Real Estate Act*.
- N. Ms. Bonwick did not cooperate with the investigator, contrary to section 38(4)(a) of the *Real Estate Act*.
- O. Ms. Bonwick engaged in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute, contrary to section 42(g) of the *Real Estate Act Rules*.

366. As the hearing of this matter has concluded and the Hearing Panel has issued its decision, this concludes Phase 1 of the contested hearing.

PHASE 2: DEADLINES TO PROVIDE WRITTEN SUBMISSIONS ON SANCTION

367. As Phase 1 of these proceedings has concluded, the Hearing Panel will deal with Phase 2 of the contested hearing. The purpose of the Phase 2 proceedings is to hold a hearing to decide the appropriate sanction and costs. In this regard, we direct as follows:

- a) Due to the Government of Alberta's new mandatory public health measures effective November 24, 2020 and subsequent additional restrictions, and in particular the mandatory restriction on indoor gatherings because of the COVID-19 pandemic, the parties shall provide written submissions on sanction.
- b) The ED shall provide his written submission to Ms. Bonwick and the Hearings Administrator on or before Monday, December 28, 2020 before 4:30 pm.
- c) Ms. Bonwick shall provide her written submission in response to the ED and the Hearings Administrator on or before Monday, January 11, 2021 before 4:30 pm.
- d) The ED shall provide his rebuttal submission to Ms. Bonwick and the Hearings Administrator on or before Monday, January 18, 2021 before 4:30 pm.
- e) If either party feels they cannot comply with the above deadlines, they must so indicate via email to the Hearings Administrator on or before Friday, December 18, 2020 before 4:30 pm with reasons why they cannot meet the deadline, and they must propose a new deadline. The Hearing Panel will then make a final decision on whether or not new deadlines to provide submissions will be granted.

This decision is certified and dated at the City of Calgary in the Province of Alberta, this 14th day of December 2020.

"Signature"

[K.K], Hearing Panel Chair

An Erratum has been issued for this decision as follows:

ERRATUM OF THE DECISION

1. After issuing our decision on December 14, 2020 (the "Phase 1 Decision"), the Hearing Panel became aware of an error in the Phase 1 Decision relating to one of the breaches of the *Real Estate Act Rules* where Ms. Bonwick's conduct was found to be deserving of sanction.
2. Paragraph 365.F. is hereby amended from:
 365. F. "Ms. Bonwick failed to disclose to her client, SF at the earliest practical opportunity any conflict of interest she may have in the course of providing services to, or in her dealings with a client, contrary to section 41(d) of the *Real Estate Act Rules*."
To
 365. F. "Ms. Bonwick failed to fulfil her fiduciary obligations to her client, contrary to section 41(d) of the *Real Estate Act Rules*."

This decision is certified and dated at the City of Calgary in the Province of Alberta, this 23rd day of February, 2022.

"Signature"

[K.K], Hearing Panel Chair

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF a Hearing under Part 3 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5
(the "*Real Estate Act*")

AND IN THE MATTER OF a Hearing regarding the conduct of SHELLEY BONWICK, Real Estate Associate, currently not registered, previously registered with 1853147 Alberta Ltd. o/a Engel Inc.; Grand Realty & Management Ltd. o/a Grand Realty; and Discover Real Estate Ltd.

Hearing Panel Members: [K.K], Chair (Public Member)
[S.P] (Industry Member)
[B.R] (Industry Member)

Appearances: Tracy Leonardo, Case Presenter on behalf of the
Executive Director of the Real Estate Council of
Alberta

Shelley Bonwick, on her own behalf

Hearing Dates: March 2nd - March 13th, 2020, at the offices of the
Real Estate Council of Alberta in Calgary, Alberta

DECISION ON SANCTION AND COSTS

FOLLOWING the decision of the Hearing Panel with respect to conduct deserving of sanction (the "Phase 1 Decision") and UPON Considering the written submissions of the Registrar of the Real Estate Council of Alberta (the "Registrar") with regards to the appropriate sanction in this matter,

THE HEARING PANEL HEREBY FINDS AS FOLLOWS:

INTRODUCTION

1. A contested Phase 1 hearing was held from March 2 – 13, 2020 to determine whether certain conduct of Shelley Bonwick was deserving of sanction.

2. In the Phase 1 Decision, this Hearing Panel (the "Panel") found the following conduct of Ms. Bonwick was deserving of sanction:
- A. Ms. Bonwick participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings contrary to Rule 42(b) of the *Real Estate Act Rules*. Specifically,
- Ms. Bonwick created a scheme that she represented as seller financing, in which buyers believed they were buying a home, but they were only tenants, did not acquire equity in the property, and the property remained at risk of foreclosure if the owner defaulted on the original mortgage
 - She advertised her services and specialization in seller financing to her buyer clients, HR and his wife, RB and to her seller clients, AE and CE ("the E.'s"). Her buyer client SF also contacted her in connection with another real estate transaction for the property located at ["Address 2"], Calgary, AB because of these advertisements.
 - In or around February 2015, she agreed to assist HR and RB with finding a "seller financing" arrangement for them on a property with a \$10,000 down payment.
 - She then approached her existing clients the E.'s with the option to participate in seller financing for the sale of their property at ["Address 1"].
 - Ms. Bonwick did not advise the E.'s to contact their mortgage lender to ensure that they could enter into a seller financing arrangement with a high ratio mortgage on the property.
 - She failed to advise the E.'s about the confidential information she knew about the buyers, and she lied to the E.'s about the buyer's financial information, the status of the sale of their current residence, and whether the buyers smoked, which would affect the seller's home insurance.
 - Shelley Bonwick ("Bonwick") advised the E.'s that they should inflate the purchase price of the property at Address 1 because of the seller financing option available to potential buyers. Bonwick also told HR and RB that they had to pay an inflated purchase price for the property because they were entering into a seller financing arrangement.
 - Bonwick led the E.'s, HR and RB to believe that they were entering into a real estate purchase and not a tenancy. Bonwick also told HR and RB that they would own the property if they entered into a seller financing arrangement and an Agreement for Sale ("AFS"). Bonwick drafted a purchase contract for Address 1 with an addendum that included terms to be replicated in an AFS to be drafted by the parties' lawyer at a later date. Also, Bonwick included a term in the purchase contract for Address 1 that "title will not transfer but will be held in Trust" for the buyer, even though such a scenario is not possible.

- Bonwick directed both parties to use the same lawyer that she had previously worked with and whom she knew would accept the arrangement and the AFS terms she drafted and inserted into the purchase contract.
- Bonwick provided legal advice to the E.'s about enforcing the terms of the AFS against the buyer, without directing them to their legal counsel.
- Bonwick used her position as representative for the seller to prejudice the buyer's interest in Address 1, without the buyer's knowledge, by attending at the real estate lawyer's office to witness a withdrawal of caveat after the real estate transaction closed and when the seller financing arrangement between the buyers and sellers had broken down. Bonwick engaged in this conduct despite the following: i) she had inserted a term into the purchase contract that a withdrawal of caveat was to be signed at the same time as the AFS, which was to be held in trust in case of default of payment by the buyer; ii) she did not discuss with HR whether he was still represented by the lawyer, if he agreed to the withdrawal and discharge of the caveat, or if he was aware of the withdrawal being signed or subsequently filed with Land Titles on his behalf; and iii) she knew that the lawyer had been suspended by the Law Society of Alberta.
- In or around July 2017, Bonwick proposed a seller financing arrangement to her buyer client, SF for Address 2.
- The owners of Address 2 were JN and NN ("the N.'s"), who entered into a seller financing arrangement and signed an AFS with Bonwick's previous client, MB. Bonwick intentionally did not advise her client SF that she represented MB in the purchase of Address 2 from the N.'s.
- Bonwick led SF to believe that she would own Address 2 if she entered into a seller financing arrangement and an AFS. Bonwick also led SF to believe that she was entering into a legitimate real estate purchase, rather than a tenancy.
- Bonwick drafted a purchase contract for Address 2 with an addendum that included terms to be replicated in an AFS to be drafted by the parties' lawyer at a later date. Bonwick crossed out the term in the purchase contract that ensures that title to the property is free of encumbrances, liens, and interests, in an effort to avoid her obligation to show the land title to SF and to conceal the true owner of the property. Bonwick also included a term in the purchase contract for Address 2 that "title will not transfer but will be held in Trust", even though such a scenario is not possible.
- Bonwick directed SF to contact lawyers that she had previously worked with in seller financing agreements and who she knew would accept the terms she inserted into the purchase contract.
- Bonwick inserted a term in the exclusive buyer representation agreement that SF must hire a lawyer with previous experience with her seller financing contracts. She also inserted a term in that agreement that if SF did not hire such a lawyer, SF must arrange for a telephone consultation

between Bonwick and the lawyer. After SF was unable to hire one of Bonwick's recommended lawyers, Bonwick drafted an amendment to the purchase contract to redirect SF's \$15,000 deposit from her lawyer to Bonwick's brokerage.

- Bonwick proceeded with the sale transaction, despite the fact that SF did not hire a lawyer and an AFS was not drafted or signed between the parties, as per the terms of the purchase contract.
 - Bonwick proceeded with the sale transaction despite knowing that the owners of Address 2 had commenced litigation against her seller client, MB.
 - Bonwick was aware that SF's deposit of \$15,000 was released to the seller, MB, prior to the closing of the transaction for Address 2, without an amendment to the purchase contract.
 - Bonwick failed to meet several fiduciary duties owed to her client, SF, throughout the transaction to further the fraudulent scheme.
- B. Bonwick failed to disclose to her client, at the earliest practical opportunity, any conflict of interest she may have in the course of providing services to or in her dealings with a client, contrary to Rule 41(f) of the *Real Estate Act* Rules. Specifically, she did not disclose to her buyer clients, RB and HR, and her seller clients, the E.'s, that she had established a client relationship with both the sellers and buyers.
- C. Bonwick failed to provide competent service, contrary to Rule 41(b) of the *Real Estate Act* Rules. Specifically, Bonwick drafted a purchase contract for Address 1 and did not explain the terms of that contract to her buyer client, HR. Bonwick also entered the wrong date that HR signed the purchase contract.
- D. Bonwick accepted a commission or other remuneration, directly or indirectly, outside the brokerage with which she was registered, contrary to Rule 54(1) of the *Real Estate Act* Rules. Specifically, she directed her buyer client, HR to pay one of the balloon payments directly to the sellers instead of through the lawyer, as per the terms of the purchase contract. She further directed HR to offset Bonwick's remuneration from the balloon payment in exchange for money Bonwick owed to HR's wife, RB, and this remuneration was accepted outside Bonwick's brokerage.
- E. Bonwick did not hold the appropriate authorization to deal as a mortgage broker between February 2014 and February 2016, contrary to section 17(b) of the *Real Estate Act*. Specifically,
- She negotiated the terms of a mortgage on the property at Address 1 on behalf of the sellers, the E.'s and the buyer, HR by calculating the interest

rate, monthly payments, down payment, amortization period, and financing term.

- She received compensation in the form of commission for the negotiation of the mortgage terms of the seller financing arrangement for Address 1.

F. Bonwick failed to fulfil her fiduciary obligations to her client, contrary to section 41(d) of the *Real Estate Act* Rules. Specifically,

- She established an agency relationship with SF, to whom she had a fiduciary duty to represent the true value of Address 2. She did not provide SF with a comparative market analysis for Address 2. Instead, she provided SF with an outdated feature sheet from a 2015 MLS listing that showed a higher value for Address 2 without informing SF that it was outdated. Also, she advised SF that the purchase price for Address 2 was a reasonable price and she did not attempt to negotiate a lower purchase price on SF's behalf.
- She did not pull a certificate of title for Address 2 until after SF had signed the purchase contract, and she did not show this certificate of title to SF.
- She inserted a term in the purchase contract that her commission would be releasable upon removal of the conditions, not upon closing of the transaction, which put SF's money at risk if the transaction did not close.
- She did not fully explain the risks associated with the term added to the purchase contract that directed SF's \$5,000 initial deposit to be released upon removal of conditions, putting SF's money at risk if the transaction did not close.
- When SF discovered that MB did not own the property and that he was subject to litigation by the N.'s, Bonwick did not take steps to rectify the situation for SF even though SF asked her to return her deposits and to nullify the sale.

G. Bonwick failed to disclose to her client, SF at the earliest practical opportunity any conflict of interest she may have in the course of providing services to, or in her dealings with a client, contrary to section 41(f) of the *Real Estate Act* Rules. Specifically, she did not disclose to SF that she had a client relationship with the seller, MB, that she previously represented MB in the purchase of Address 2, and she did not disclose all of the details regarding that transaction.

H. Bonwick failed to disclose in a timely manner to the buyer, SF all relevant facts known to Bonwick affecting a property or transaction, contrary to section 58(j) of the *Real Estate Act* Rules. Specifically,

- She did not disclose to SF that the seller, MB had entered into a seller financing arrangement and an AFS on Address 2, or that MB had not

made his monthly payments as per his AFS with the original owners of Address 2.

- She did not disclose to SF that the owners of Address 2 had initiated litigation against MB in an effort to recover the missed payments and to prevent the future sale of Address 2 to SF.
- I. Bonwick dealt as a mortgage broker between February 2017 and October 2017 without holding the appropriate authorization for that purpose issued by RECA, contrary to section 17(b) of the *Real Estate Act*. Specifically,
- She negotiated the terms of a mortgage on Address 2 on behalf of her seller client, MB and her buyer client, SF by calculating the interest rate, monthly payments, down payment, amortization period and financing term.
 - She received compensation in the form of commission for the negotiation of the mortgage terms of the seller financing arrangement for Address 2.
- J. Bonwick failed to cooperate with the RECA investigator, contrary to section 38(4.1) of the *Real Estate Act Rules*. Despite requests by the investigator,
- She did not provide a copy of a comparative market analysis for Address 2;
 - She did not provide her phone records for the period of May 2017 to November 2017; and
 - She did not provide a copy of the lease agreement between her and MB for Bonwick's residence located at ["Address 3"] Calgary, AB.
- K. Bonwick made representations or carried on conduct that was reckless or intentional and that misled or deceived any person or was likely to do so, contrary to section 42(a) of the *Real Estate Act Rules*. Specifically,
- She represented herself as an "expert" in seller financing in her online advertisements.
 - Her online advertisements stated that real estate transactions were monitored by the Real Estate Council of Alberta ("RECA").
- L. Bonwick traded in real estate in the name of the brokerage with which she was not registered, contrary to section 53(a) of the *Real Estate Act Rules*. Specifically, she advertised properties online using either her previous brokerage's name or no brokerage name.
- M. Bonwick failed to hold the appropriate authorization from October 1, 2018 to the present to trade in real estate as a real estate broker or to advertise

herself, or in any way hold herself out as, a real estate broker, contrary to section 17(a) and (d) of the *Real Estate Act*. Specifically,

- She failed to renew her registration with RECA as a real estate associate by the annual deadline on September 30, 2018.
- She advertised property listings on Kijiji, while unauthorized, with her name and phone number as a contact.
- She promoted "seller financing" in advertisements while unauthorized.
- She promoted the benefits of not using an authorized real estate associate in real estate transactions in her advertisements.
- When RECA notified her that she cannot trade in real estate while unauthorized, she altered the Kijiji advertisements to hide her identity.

- N. Bonwick did not cooperate with the investigator, contrary to section 38(4)(a) of the *Real Estate Act*. Specifically, she did not respond to the investigator's questions in a Notification of a Real Estate Investigation dated October 19, 2018, and she did not provide the contact information for the individual that assumed her Kijiji ads, as requested by the investigator.
- O. Bonwick engaged in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute, contrary to section 42(g) of the *Real Estate Act* Rules. Throughout the investigation process, she exhibited clear contempt for RECA's governance, and she has persistently shown that she is not governable as a real estate professional.

PARTIES' SUBMISSIONS ON SANCTION AND COSTS

3. Section 43 of the *Real Estate Act* provides a Hearing Panel with the authority to order a sanction where a licensee's conduct has been found to be deserving of sanction:

43(1) If a Hearing Panel finds that the conduct of an industry member was conduct deserving of sanction, the Hearing Panel may make any one or more of the following orders:

a

4. The parties were served with deadlines to provide their submissions on sanction and costs. Bonwick did not provide any submissions.
5. The Registrar provided submissions dated April 23, 2021, wherein it seeks the following sanctions against Bonwick for her conduct that the Panel found to be deserving of sanction:

- a. Cancellation of Bonwick's license with no eligibility to apply for a new license for nine years;
 - b. A lifetime licensing prohibition in addition to any sanctions the Panel deems appropriate for Bonwick's ungovernability; and
 - c. Costs in the amount of \$42,585 payable by Bonwick.
6. The Registrar relies on the factors in the leading case of *Jaswal v. Newfoundland (Medical Board)* ("Jaswal") for determining an appropriate sanction:
- a. the nature and gravity of the proven allegations;
 - b. the age and experience of the licensee;
 - c. the previous character of the licensee and in particular the presence or absence of any prior complaints or convictions;
 - d. the age and mental condition of the offended client;
 - e. the number of times the offence was proven to have occurred;
 - f. the role of the licensee in acknowledging what had occurred;
 - g. whether the licensee had already suffered other serious financial or other penalties as a result of the allegations having been made;
 - h. the impact of the incident on the victim;
 - i. the presence or absence of any mitigating circumstances;
 - j. the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper conduct of the profession;
 - k. the need to maintain the public's confidence in the integrity of the profession;
 - l. the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct;
 - m. the range of sentence in other similar cases.¹
7. The relevant factors will vary depending on the circumstances of each case. The Panel considered each of the relevant factors in this case.

The nature and gravity of the proven allegations

Bonwick's conduct was found to be deserving of sanction on several counts, including intentional mortgage fraud, conflict of interest, failure to provide competent service, and ungovernability. The Registrar describes this as extremely aggravating. We agree with the Registrar that this is an aggravating factor.

The age and experience of the licensee

At the time of the Phase 1 hearing, Bonwick was 52 years old. She had significant experience as a real estate licensee, as she was a licensed real estate

¹ *Jaswal v. Newfoundland (Medical Board)*, 1996 CanLII 11630 at para 35.

associate from July 2004 until September 2018. We agree with the Registrar that this is also an aggravating factor.

The previous character of the licensee and in particular the presence or absence of any prior complaints or convictions

Bonwick has no previous disciplinary history, and no evidence of any previous complaints or convictions was put before the Panel. The Registrar states that “[T]he fact that Bonwick has no prior disciplinary record and claims to have health issues does not provide sufficient mitigation to justify a lesser sanction” than the sanctions being proposed by the Registrar.²

The number of times the offence was proven to have occurred

In the Phase 1 Decision, the Panel found Bonwick breached numerous sections of the *Real Estate Act* and *Rules*. She committed numerous breaches involving a wide range of offences beginning in 2014, and she continued to do so after her license was suspended in 2018. Her commissions of mortgage fraud impacted several victims. Her conduct was twice found to be deserving of sanction for conflict of interest and unauthorized dealing as a mortgage broker. She failed to provide competent service to her clients. She did not cooperate with RECA investigators, and she has not accepted responsibility for her actions. The Registrar submits that this is very aggravating. We agree with the Registrar that this is an aggravating factor.

The role of the licensee in acknowledging what had occurred

The Panel found in the Phase 1 Decision that Bonwick did not cooperate with RECA investigators, and she has not accepted responsibility for her actions. The Registrar submits that this is also very aggravating. We agree with the Registrar that this is an aggravating factor.

The impact of the incident on the victim

Bonwick’s conduct had a significant impact on the victims, in particular HR and SF. The Registrar submits that Bonwick’s intentional misconduct caused HR and SF to lose the house they believed they were buying. The Registrar submits that this is also very aggravating. We agree with the Registrar that this is an aggravating factor.

The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper conduct of the profession

The Registrar submits that Bonwick did not cooperate during the investigations, she has not accepted responsibility for her misconduct, and “specific deterrence in this case is literally impossible.” The Registrar further submits that the need

² Registrar’s Phase 2 Submission on Sanction and Costs at page 5.

for general deterrence is very significant in this case to send a clear message to licensees and the public that fraud, especially intentional fraud, will not be tolerated and will result in significant sanctions. The Registrar submits that this is extremely aggravating. The Panel agrees with the Registrar that this is another aggravating factor, and that breaches as serious as those committed by Bonwick warrants imposing sanctions that may serve as a deterrent to all licensees.

The need to maintain the public's confidence in the integrity of the profession

The Registrar submits that Bonwick's conduct and her ungovernability prevents RECA from being able to investigate, detect or suppress fraud and to protect consumers from fraud. In support of this position, it cited *Law Society of Upper Canada v Lambert*, 2014 ONLSTH 158, which stated that

"When determining the appropriate penalty for this misconduct, the panel is guided by the reasons or purposes for a penalty order in discipline matters set out in *Law Society of Upper Canada v. Strug* and in *Bolton, supra*, in which Sir Thomas Bingham M.R. stated at p. 519, "A profession's most valuable asset is its collective reputation and the confidence which that inspires".

The Registrar further submits that RECA must be able to show the public that it investigates, detects and suppresses fraud, and that RECA's primary concern is carrying out its legislated mandate of protecting the public. To maintain public confidence, it is necessary that intentional fraud will receive an effective and appropriate sanction. The Registrar submits that this is also extremely aggravating. We agree with the Registrar that this is another aggravating factor. The Panel recognizes the importance of maintaining public confidence in the real estate industry's integrity.

License Cancellation

8. The Registrar submits that real estate industry case law establishes the principles the Panel should consider when determining if a license cancellation is an appropriate and just sanction:
 - a. License cancellation is appropriate in cases of serious or severe misconduct. The Registrar referred to the cases of *Behroyan (Re)*, 2018 CanLII 50247 (BC REC) at para. 27; *Inglis (Re)*, 2019 CanLII 53386 (BC REC) at para. 42; *Aulakh (Re)*, 2019 ABRECA 121 (CanLII) at para. 6.5.
 - b. License cancellation is not reserved for only the most serious misconduct, but rather the misconduct's degree of seriousness can be reflected in the length of cancellation, and individuals can reapply for a license after the cancellation period ends.³
 - c. Lifetime license cancellation is reserved for the most serious misconduct, similar to disbarment for a lawyer and removal of a physician from the register, "but it need not need be at or near the extreme right of the severity scale, given the ability to moderate the cancellation by permission to apply for relicensing again at a defined time in future."⁴
 - d. A Hearing Panel has the discretion to impose a lesser or greater cancellation period than the standard cancellation period of three years under RECA legislation.⁵
 - e. A lack of previous disciplinary history does not preclude a Hearing Panel from imposing a sanction of license cancellation.⁶
 - f. License cancellation is an appropriate sanction for certain classes of misconduct, including mortgage fraud⁷; intentional fraud (including where the actual amount of loss was low)⁸; acts of dishonesty and serious lack of judgment, compounded by making false statements⁹; and misappropriation of funds.¹⁰

Ungovernability

9. The Registrar was unable to provide case law where RECA or any other real estate industry in Canada had found a licensee to be ungovernable, and submits that other regulated industries typically impose a permanent lifetime cancellation of a member for a finding of ungovernability:

³ *Behroyan (Re)*, 2018 CanLII 50247 (BC REC) at para. 27; *Inglis (Re)*, 2019 CanLII 53386 (BC REC) at para. 42.

⁴ *Ibid*, citing *Re Parsons*, BC Financial Services Tribunal Decision No. 2015-RSA-002 (d) at para 91.

⁵ *Aulakh (Re)*, 2019 ABRECA 121 (CanLII) at para. 6.4.

⁶ *Merchant, Mehboob Ali* 005064 (HP) at pg. 53.

⁷ *Aulakh (Re)*, 2019 ABRECA 121 (CanLII) at para. 6.5.

⁸ *Merchant, Mehboob Ali* 005064 (HP) at pp. 55 and 59.

⁹ *Inglis (Re)*, 2019 CanLII 53386 (BC REC) at para. 43.

¹⁰ *Behroyan (Re)*, 2018 CanLII 50247 (BC REC) at para. 27.

- a. Permanent prohibition from conducting any securities related business for mutual fund dealers;¹¹
 - b. Disbarment for lawyers found to be ungovernable;¹²
 - c. Revocation of a physician's license for a physician who is not governable by their professional body;¹³
 - d. Permanent bar from approval to register with the Investment Industry Regulatory Organization of Canada in any capacity;¹⁴ and
 - e. Revocation of a nurse's certificate of registration when found to be ungovernable.¹⁵
10. The Registrar submits that Bonwick's ungovernability qualifies as the most serious of misconduct and should receive the maximum penalty possible for the following reasons:
- a. Her ungovernability is extreme and her behavior towards RECA, which the Registrar described as "persistent, abusive, contemptuous and obstructive", brings the industry into disrepute. Further, allowing her to receive a license again in the future would bring the industry into disrepute and makes specific deterrence impossible.
 - b. Her ungovernable conduct is repetitive and has continued for several years, from 2014 to the present.
 - c. Bonwick appears to have no insight into her ungovernability and continues to blame RECA for her misconduct.
 - d. RECA cannot regulate Bonwick, due to her ungovernability. As a result, RECA must be able to show the public and industry members that her misconduct is unacceptable.
 - e. An ungovernable licensee greatly affects the public's confidence in the real estate industry and prevents RECA from fulfilling its mandate to protect against, investigate, detect, or suppress fraud, and protect consumers and administer the *Real Estate Act* (the "Act").
 - f. The fact that Bonwick has no prior disciplinary record, and her claims to have health issues, does not provide sufficient mitigation to justify a lesser sanction.¹⁶
11. The Registrar has referred the Panel to the Ontario decision of *Hadi*, where the appellant applied unsuccessfully for registration as a salesperson under the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c. 30 Sch. C, and to be re-registered as a salesperson under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, C. 30, Sch. B. The Ontario License Appeal Tribunal found he was

¹¹ *Toussaint (Re)*, 2011 CanLII 72467 (CA MFDAC) at para. 19.

¹² *Law Society of Alberta v Thomas*, 2017 ABLS 21 at para. 32.

¹³ *Ontario (College of Physicians and Surgeons of Ontario) v. Botros*, 2018 ONCPSD 51 at pg. 7.

¹⁴ *Noronha (Re)*, 2017 IIROC 16 at para. 35.

¹⁵ *College of Nurses of Ontario v Freyer*, 2018 CanLII 90852 (ON CNO)

¹⁶ Registrar's Phase 2 Submission on Sanction and Costs at page 5.

ungovernable and therefore not entitled to registration as a real estate professional. In that decision the License Appeal Tribunal stated that “[T]he real estate industry involves major transactions and large sums of money, often the life savings of consumers. Therefore, a high degree of trustworthiness is required in order to be registered.” The Tribunal also found that the appellant’s “mischaracterization of his past raises real concerns that no oversight would be effective in protecting the public.”¹⁷

12. The Registrar submits that a parallel can be drawn between the License Appeal Tribunal’s finding that no oversight would be effective in protecting the public from the appellant in *Hadi* and the Panel’s finding that Bonwick is ungovernable. The Registrar further submits that the appellant being denied registration is in effect the same as imposing a lifetime licensing prohibition on Bonwick. Therefore, the Registrar submits, the only appropriate sanction for Bonwick’s ungovernability is cancellation of her license under section 43(1)(a) of the Act and a lifetime licensing prohibition under section 43(1)(c).

Breaches of sections 17 and 38 of the Act, and Rules 42(b), 41(f), 41(b), 54(1), 41(d), 58(j), 42(a), 53(a) and 42(g)

13. The Registrar submits that Bonwick’s breaches of the above sections of the Act and the Rules are separate from the findings of ungovernability, and therefore the Panel should impose separate sanctions for these breaches. The Registrar provides the following *Jaswal* factors for the Panel to consider in relation to the above breaches.

Mitigating Jaswal Factors

The previous character of the licensee:

Bonwick has no previous disciplinary history.

Whether the licensee had already suffered other serious financial or other penalties as a result of the allegations having been made:

The Registrar submits that Bonwick did not sufficiently establish at the Phase 1 hearing that she suffered any significant financial loss as a result of the allegations made against her, and that she arguably suffered some financial loss arising from her license suspension. This, the Registrar submits, is at best slightly mitigating. However, the Panel’s findings relating to ungovernability and mortgage fraud make it clear that RECA’s suspension of Bonwick’s license was appropriate.

¹⁷ *Hadi Mahmoodi v. Registrar, Real Estate and Business Brokers Act*, 2002, 2017 CanLII 50049 (ON LAT) at pg. 12.

Neutral Jaswal Factors

The Registrar submits that Bonwick provided some evidence that she is suffering from medical issues, but this evidence is not sufficient to establish that her medical condition explains or excuses her misconduct, and that this is neither mitigating nor aggravating.

Aggravating Jaswal Factors

The nature and gravity of the proven allegations

The Registrar submits that the nature and gravity of the proven allegations falls well outside the range of permitted conduct. Bonwick was found to have intentionally committed mortgage fraud. This breach of section 42(b) is one of the most serious offences a licensee can commit, and its severity is increased due to Bonwick's deliberate commission of this offence. The Registrar describes Bonwick as the mastermind of the fraud. The gravity of her offences is compounded by her other breaches, the many simultaneous ways she victimized her clients, her multiple examples of failing to cooperate with RECA investigators, and her knowingly engaging in real estate without a license. The Panel agrees with the Registrar that this qualifies as an aggravating factor, and that Bonwick's misconduct, particularly mortgage fraud, was deliberate and seriously impacted her clients.

The age and experience of the Licensee

As stated previously, Bonwick was 52 years old at the time of the Phase 1 hearing. She had significant experience as a real estate licensee, as she was a licensed real estate associate from July 2004 until September 2018. We agree with the Registrar that this is an aggravating factor.

The number of times the offence was proven to have occurred

The Registrar submits that Bonwick engaged in repetitive misconduct that included a broad range of offences over a long period of time, from 2014 to the present. Her commission of mortgage fraud affected several victims. She was found to have breached Rule 41(f) twice for conflict of interest, which impacted three victims. She was found to have breached Rule 41(b) twice for failing to provide competent service to her clients in multiple ways. She breached Rule 38 by obstructing RECA investigators by withholding documents and refusing to answer questions posed to her by the investigators. She was found to have breached section 17 twice over a period of two years and eight months. We agree with the Registrar that these breaches, especially in light of their repetitive nature, qualify as aggravating factors.

The role of the licensee in acknowledging what had occurred

The Panel agrees with the Registrar that Bonwick did not cooperate with RECA investigators and she has not accepted responsibility for any of her misconduct. We agree that this is an aggravating factor.

The impact of the incident on the victim

The Registrar submits that Bonwick's intentional mortgage fraud significantly impacted the victims, particularly HR and SF, as Bonwick's intentional misconduct caused HR and SF to lose the house they believed they were buying. We agree with the Registrar that this is an aggravating factor.

Specific and General Deterrence

The Registrar submits that Bonwick's failure to accept responsibility for her actions and her lack of interest in being governed by RECA makes specific deterrence impossible, which highlights the importance of general deterrence in this case. The Panel agrees with the Registrar that specific deterrence will be very difficult due to Bonwick's ungovernability, and that it is important to send a clear message to the public and licensees that fraud, especially intentional fraud, will not be tolerated and will carry a significant sanction. We agree with the Registrar that this is also an aggravating factor.

The need to maintain the public's confidence in the integrity of the profession

The Registrar cites *Law Society of Upper Canada v. Lambert*, which stated that

"When determining the appropriate penalty for this misconduct, the panel is guided by the reasons or purposes for a penalty order in discipline matters set out in *Law Society of Upper Canada v. Strug* and in *Bolton, supra*, in which Sir Thomas Bingham M.R. stated at p. 519, "A profession's most valuable asset is its collective reputation and the confidence which that inspires".¹⁸

The Registrar submits that RECA must be able to carry out its legislated mandate of investigating, detecting and suppressing fraud in order to protect the public and maintain public confidence that RECA will respond to intentional acts of fraud with an effective and appropriately severe sanction. We agree with the Registrar that maintaining public confidence in the real estate industry is of significant importance.

¹⁸ *Law Society of Upper Canada v. Lambert*, 2014 ONLSTH 158 (CanLII) at para. 17.

Previous Decisions on Sanction and Costs

14. The Registrar provided prior decisions on sanction and costs for the Panel to consider. While these decisions are not binding on the Panel, we agree that they are useful indicators of sanctions imposed for previous misconduct and they can assist the Panel with maintaining consistency in the sanction process. We also acknowledge the importance of determining a just and appropriate decision on sanction and costs based on our consideration of the particular facts of the case before us.
15. The Registrar submits that precedents involving intentional mortgage fraud are somewhat rare, as licensees charged with that offence typically apply to the Industry Council for a lifetime withdrawal of their license under section 54 of the *Act*. Despite the relative infrequency of intentional mortgage fraud in the real estate industry, the Registrar has referred the Panel to six decisions dealing with mortgage fraud.
16. In *Merchant*, a real estate licensee committed intentional fraud by impersonating his brokerage, secretly trying to lease his client's property, then sublet it and collect the difference. He previously sublet the property without his client's permission and he engaged in property management without a license. He stole \$20,000 from his brokerage that he likely would have received as his commission. His misconduct led to no real losses for any party, and he had no previous discipline history. After signing an Agreed Statement of Facts, which negated the need for a hearing, he received a one-year license cancellation, \$21,000 in fines and costs of \$1,500.¹⁹
17. *Aulakh* involved a mortgage broker who helped purchasers obtain three mortgages from private lenders for the purchase of a new home. She loaned the purchasers the down payment and created false documents about the source of the down payment, and intentionally provided false information on the mortgage applications. She was involved in several conflicts of interest and provided incompetent service. She received brokerage fees for all three mortgages and registered the third mortgage on title to the property without the purchasers' knowledge. The purchasers could not afford the mortgage payments and lost the house through foreclosure. The mortgage broker had no previous discipline history, accepted responsibility for her misconduct, was cooperative throughout the investigation, and signed an Agreed Statement of Facts and a joint submission on sanction. Her license was cancelled for two years, and no fines or costs were imposed.²⁰
18. In *Taschuk*, a real estate associate knowingly committed mortgage fraud involving five properties. His corporation owned the properties and was

¹⁹ *Merchant, Mehboob Ali* 005064 (HP).

²⁰ *Aulakh (Re)*, 2019 ABRECA 121 (CanLII).

applying for mortgage financing based on the false information provided to lenders. He obstructed RECA's investigation into his misconduct. He expressed remorse for his actions and had no previous discipline history. No parties suffered any losses in the fraudulent transactions. His authorization to trade in real estate was suspended for five years, and he agreed to pay fines totaling \$84,500 and costs of \$3,500.²¹

19. In *Birch*, an associate mortgage broker committed conflicts of interest and participated in mortgage fraud for two properties. She and an accomplice purchased the first property from her client, and she failed to advise the client about the conflict of interest or act in her client's interest. She facilitated a mortgage for the property in the name of her accomplice, and intentionally provided false information. She purchased the second property through her numbered company. While she advised her clients she was buying the property, she failed to advise them of her intention to resell the property, which she did immediately thereafter for a much higher price than she paid to buy it. She fully cooperated during the investigation and acknowledged the severity of her misconduct. She entered into a consent agreement with RECA and took time away from the industry to address her mental health. Her mortgage broker license was cancelled for four years and her real estate associate license was suspended for four months, followed by two years of weekly broker supervision. Fines of \$44,645 and \$2,000 costs were imposed.²²
20. In *Wolf*, a real estate associate committed several breaches in regard to the purchase and sale of eleven residential properties. In many cases he was both the buyer's agent and the seller. He concealed much lower historic sale prices from the buyer and provided false and misleading information. He fraudulently created false and misleading documents, forged signatures, and inserted false purchase prices in documents. He traded outside of the scope of his brokerage and made false statements to RECA investigators. He called no evidence at his hearing and had no previous discipline history. The Hearing Panel found Wolf's conduct to be deserving of sanction, including breach of fiduciary duty, and his license was cancelled and he was not eligible to reapply for a license for seven years. He was also imposed fines of \$25,000 and costs of \$49,816.²³
21. *Adel* involved a real estate associate who knowingly persuaded his client to act as a straw buyer in a mortgage fraud scheme, causing the client to suffer financial hardship. Adel's breaches included conflict of interest, breach of fiduciary duty, and failing to inform his client that Adel's wife was the seller of the property. Adel was uncooperative with RECA investigators by refusing to answer questions or provide documentation. The Hearing Panel found Adel's conduct was deserving of sanction and was of a serious nature. Adel's license

²¹ *Terry Michael Taschuk*, Registrar Disclosure at Tab 14.

²² *Cherie Ann Birch*, Registrar Disclosure at Tab 15.

²³ *Marc Wolf*, Registrar Disclosure at Tab 16.

was cancelled and he was ineligible to reapply for a license for 10 years. He was ordered to pay fines of \$63,500 and costs of \$152,584.²⁴

22. The Registrar submits that the above cases provide a range of sanctions for misconduct such as intentional fraud and other breaches which includes license cancellation with no eligibility to reapply for a license for one to 10 years. Licensees who did not cooperate with investigators and failed to accept responsibility for their actions received license suspensions at the higher end of the range. Suspensions at the top end of this range appear to be for licensees that also have a related discipline history. We note that with the exception of *Aulakh*, all of the above cases-imposed fines and costs in addition to a cancellation of the offender's license.

DECISION ON SANCTION

Fines

23. As mentioned earlier, section 43(1) of the Act allows a Hearing Panel to order sanctions in various forms, including fines, license cancellation and costs. The Panel reviewed and considered the Registrar's submissions and cases on sanction, and the relevant *Jaswal* factors. The Registrar did not suggest an amount of fines but rather will leave it to the Panel to decide the amount, if any, of any fines to impose.²⁵ After considering the number of breaches committed by Bonwick, the overall severity of her misconduct, including her ungovernability, the Panel finds that fines are appropriate in this case. The nature and gravity of Bonwick's misconduct justifies the imposition of fines. It not only caused her clients to suffer financial loss, but also includes the cases of HR and SF, where they suffered loss of the property/homes they believed they were purchasing for ownership.
24. Earlier in this Decision the Panel summarized its reasons why Bonwick's conduct was deserving of sanction. We have chosen to assess fines for each proven act of misconduct. In doing so, we have considered the relevant *Jaswal* factors and the evidence and submissions presented by the Registrar. As mentioned earlier, Bonwick did not provide any submissions on sanction and costs for the Panel to consider.
25. We also note that in some cases a Hearing Panel has the discretion to impose a sanction of education. However, in the Phase 1 hearing the Panel found that Bonwick willfully chose to commit numerous acts of misconduct and to not cooperate with the RECA investigators. In this case the Panel is of the view that monetary fines are more appropriate than sanctions of education. For these

²⁴ *Alman Adel*, Registrar Disclosure at Tab 17.

²⁵ Registrar's Phase 2 Submission on Sanction and Costs at pg. 11, para. 51.

reasons, the Panel finds that the following fines are appropriate for each breach of the *Real Estate Act* and *Real Estate Act* Rules committed by Bonwick:

Breaches of *Real Estate Act* Rules 17(a), 17(b), 17(d), 42(g) and 53(a): fraudulent or unlawful conduct

<u>Rule</u>	<u>Fine</u>
42(a):	\$5,000
42(b):	\$5,000
42(g):	\$5,000
53(a):	\$5,000
54(1):	<u>\$5,000</u>
Total:	\$25,000

Breaches of *Real Estate Act* Rules 42(a), 42(b), 42(g), 53(a) and 54(1): fraudulent or unlawful conduct

<u>Rule</u>	<u>Fine</u>
17(a):	\$3,000
17(b):	\$3,000
17(d):	\$3,000
42(g):	\$5,000
53(a):	<u>\$5,000</u>
Total:	\$19,000

Breaches of *Real Estate Act* Rules 41(b), 41(d), 41(f) and 58(j): failure to provide competent service

<u>Rule</u>	<u>Fine</u>
41(b):	\$1,000
41(d):	\$1,000
41(f):	\$1,000
58(j):	<u>\$1,000</u>
Total:	\$4,000

26. Based on our review of the facts and after considering the case law, the Act and Rules and relevant *Jaswal* factors, we find that an appropriate fine for all breaches should be \$48,000. This total fine amount recognizes the severity of Bonwick's breaches and the need for specific and general deterrence.

License cancellation and ungovernability

27. The Registrar submits that for the breaches committed by Bonwick and considering the extreme aggravating factors and lack of significant mitigating factors, Bonwick's license should be cancelled. Bonwick committed a substantial number of breaches, and intentional mortgage fraud qualifies as serious or severe misconduct. She did not take any responsibility for her actions, she failed to cooperate with the investigators, and she failed to abide by the suspension imposed by RECA in 2018.
28. The Registrar submits that these aggravating factors, combined with Bonwick's lack of a disciplinary record, warrants a license suspension at the upper end of the range, although not at the very top end. Also, ungovernability is the most serious of misconduct and "the only appropriate sanction is a lifetime cancellation of Bonwick's license"²⁶ and Bonwick should be ineligible to reapply for a license for nine years.²⁷
29. Section 42(1) of the Act provides that a Hearing Panel may cancel or suspend any license issued by RECA to a licensee, and it may impose any conditions or restrictions on the licensee and on that licensee's carrying on of the business of a licensee that the Hearing Panel, in its discretion, determines appropriate. In the Phase 1 hearing this Panel found that Bonwick was ungovernable. She was uncooperative with RECA investigators and did not accept any responsibility for her actions. The Panel reviewed the Phase 2 submissions and all cases provided by the Registrar in determining if Bonwick's license should be cancelled. The Panel considered the relevant *Jaswal* factors applicable in this case, and we agree with the Registrar that specific deterrence will be very difficult due to Bonwick's ungovernability, and that it is important to send a clear message to the public and licensees that fraud, especially intentional fraud, will not be tolerated and will carry a significant sanction.
30. In considering the entirety of Bonwick's breaches of the Act and its Rules, and her ungovernability, while noting the lack of a previous disciplinary record, we find that a license cancellation with no eligibility to reapply for a license for seven years is an appropriate sanction. We are satisfied that this sanction sends a clear message to the public and licensees.

²⁶ Registrar's Phase 2 Submission on Sanction and Costs at pg. 6, para. 21.

²⁷ Registrar's Phase 2 Submission on Sanction and Costs at pg. 11, para. 50.

Costs

31. Section 43(2) of the Act provides as follows:

The Hearing Panel may, in addition to or instead of dealing with the conduct of a licensee under subsection (1), order the licensee to pay all or part of the costs associated with the investigation and hearing determined in accordance with the bylaws.

32. The Registrar refers to section 28 in of the Bylaws in its submissions. We note that the Bylaws were updated after the Registrar provided its submissions on sanction and costs. The applicable subsections of the current RECA Bylaws are subsections 10.1 and 10.4. Subsection 10.4 is identical to the former subsection 28(4), and subsection 10.1 is similar to the former section 28(1), except that "RECA" replaces "Council" in the updated Bylaws. Section 10.1 provides:

10.1 Where...a licensee is ordered to pay costs under section 43(2) of the Act..., the costs payable shall be determined in accordance with the following:

(a) Investigation costs

- (i) investigators' costs at a minimum of \$40 per hour to maximum of \$80 per hour;*
- (ii) general investigation costs including but not limited to disbursements, expert reports and travel costs in accordance with RECA policy guidelines;*
- (iii) transcript production including but not limited to interview transcripts;*
- (iv) legal costs not to exceed \$250 per hour; and (v) other miscellaneous costs.*

(b) Hearing and appeal costs

- (i) investigators' costs at a minimum of \$40 per hour to a maximum of \$80 per hour;*
- (ii) general hearing and appeal costs including but not limited to disbursements, process service charges, conduct money, expert reports, travel expenses including but not limited to witnesses and RECA representatives in accordance with RECA policy guidelines, expert witness fees to a maximum of \$1,000 per diem;*
- (iii) transcript production;*
- (iv) hearing or appeal administration costs including but not limited to location rental, hearing secretary salary to a maximum of \$15 per hour, honoraria of hearing panel members;*
- (v) legal costs not to exceed \$250 per hour;*
- (vi) adjournment costs; and (vii) other miscellaneous costs.*

The Registrar points out that for “Costs of the Hearing”, legal costs include costs of the Registrar’s legal counsel (the “Case Presenter”).

33. Section 10.4 of the Bylaws states:

10.4 The following factors may be considered by a panel in determining any cost order:

- (a) the degree of cooperation by the licensee;*
- (b) the result of the matter and degree of success;*
- (c) the importance of the issues;*
- (d) the complexity of the issues;*
- (e) the necessity of incurring the expenses;*
- (f) the reasonable anticipation of the case outcome;*
- (g) the reasonable anticipation for the need to incur the expenses;*
- (h) the financial circumstances of the licensee and any financial impacts experienced to date by the licensee; and*
- (i) any other matter related to an order reasonable and proper costs as determined appropriate by the panel.*

34. The Registrar cites *Pethick* to illustrate how the RECA Appeal Panel applied the above factors and the Registrar focused on five issues.

- a. Degree of cooperation: the Appeal Panel considered this provision as the degree of cooperation of both parties. They considered “whether any party unnecessarily or unduly complicated or delayed the process, or otherwise unreasonably made the process more expensive or time consuming.”²⁸
- b. Degree of success: when assessing a right to cost the Appeal Panel considered “time wasted on completely futile issues, and we will certainly consider completely meritless accusations of misconduct that malign character.”²⁹
- c. Importance of the issues: the Appeal Panel determined that the issues in that case “go to the integrity of RECA’s self-regulatory mandate and its disciplinary process and are therefore of significant importance to the parties and to the industry generally.”³⁰
- d. Reasonable anticipation of outcome: the Appeal Panel found that this factor does not require them to fully second guess the parties’ pre-appeal opinions about the merits of success. Rather, this factor would be relevant “where it was plain and obvious to one of the parties that they

²⁸ *Pethick (Re)*, 2019 ABRECA 118 at pages 4-5.

²⁹ *Pethick (Re)*, 2019 ABRECA 118 at pages 5-7.

³⁰ *Ibid.*

were destined to lose but they persisted anyway, thereby necessitating wasted time, energy and expense for all parties.”³¹

- e. Financial circumstances of and financial impacts to the licensee: the Appeal Panel found that this factor did not weigh heavily in favour for or against Mr. Pethick due to a lack of actual evidence to support his allegation of financial impact.³²

35. The Registrar submits that its actual costs incurred for the investigation, hearing preparation, and the numerous unsuccessful applications made by Bonwick in the Phase 1 hearing would exceed \$150,000. Rather than pursue this amount, the Registrar seeks the actual Phase 1 hearing costs and the costs of preparing the sanction argument, calculated as follows:³³

Phase 1 Hearing	Hours	Amount per hour	Low end	High end
Legal costs for 10 full days of hearing time, plus 30.5 hours for Phase 2 argument research and preparation:	110.5	\$100 - \$250/hr.	\$11,050	\$27,625
Hearing secretary salary	10 days	\$15/hr.	\$960	\$960
Hearing Panel honoraria, not including decision writing costs	10 days	Chair and two Panel members	\$14,000	\$14,000
Total costs:			\$26,010	\$42,585

36. The Registrar submits that the following Bylaws factors apply in this case:

- a. Throughout these proceedings, Bonwick was uncooperative and obstructive, made several unsuccessful applications, submitted volumes of unnecessary submissions and evidence and did not attempt to enter an agreed statement of facts, which “drastically” complicated the process;
- b. She was “wholly unsuccessful” in this case and with all arguments she made;
- c. The issues of ungovernability and mortgage fraud are vital and required for RECA to fulfil its legislated mandate;
- d. The Phase 1 hearing and issues were very complex;
- e. It was necessary for RECA to incur the expense of a hearing;

³¹ *Pethick* at pages 7-8.

³² *Pethick* at pages 8-9.

³³ Registrar’s Phase 2 Submission on Sanction and Costs at pages 13-14.

- f. There is insufficient evidence of the precise financial burden on Bonwick.³⁴

These factors, the Registrar continues, justify Bonwick being required to pay costs of \$42,585.³⁵

37. After considering the Registrar's Phase 2 submissions, the Bylaws and applicable factors, the Panel finds that an order of costs is appropriate in this case. The Registrar successfully proved that Bonwick committed 16 breaches of the Act and Rules, including the very serious charges of mortgage fraud and ungovernability. By comparison, Bonwick did not cooperate during the investigation, failed to answer the case against her, raised issues that were not relevant to the case against her, and made at least seven applications during the Phase 1 hearing, all of which were unsuccessful and required the Registrar to prepare responses. We are satisfied that the actual costs of this case could have been substantially higher than the amount being sought by the Registrar. The Panel finds that costs of \$42,585 are appropriate.

CONCLUSION

38. The Panel orders the following:
 - a. Bonwick is ordered to pay fines in the amount of \$48,000, on a schedule to be determined by the Registrar;
 - b. Bonwick's license to trade in real estate is cancelled, effective from the date of this decision;
 - c. Bonwick is ineligible to reapply to RECA for a license to trade in real estate for a period of seven years from the date of this decision; and
 - d. Bonwick is ordered to pay costs to RECA in the amount of \$42,585.

This decision is certified and dated at the City of Calgary in the Province of Alberta this 24th day of February, 2022.

"Signature"

[K.K], Hearing Panel Chair

³⁴ Registrar's Phase 2 Submission on Sanction and Costs at page 13, para. 58.

³⁵ Registrar's Submissions at pages. 13-14, paras. 58-59.