

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

AND

IN THE MATTER OF

ANDRE ZUBKO
(150076)

NOTICE OF DISCIPLINE HEARING

[This Notice has been redacted before publication.]

To: Andre Zubko
[redacted]

TAKE NOTICE that the Superintendent of Real Estate (the “Superintendent”) of the BC Financial Services Authority (“BCFSA”) will hold a discipline hearing under Part 4 of the *Real Estate Services Act* (the “RESA”) on **January 15 – 26, 2024 commencing at 9:30 a.m.** each day in the virtual Hearing Room at the BCFSA’s offices located at **600 – 750 West Pender Street, Vancouver, BC**, to determine whether, while licensed as a representative of One Percent Realty (the “Brokerage”), your conduct contravened the RESA, the Real Estate Services Regulation (the “Regulation”), or the Real Estate Services Rules (the “Rules”) as set out in the attached **Schedule 1**.

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

1. You committed professional misconduct within the meaning of section 35(1)(a) [*misconduct by licensee: contravention of the RESA, the Regulation or the Rules*] and/or 35(1)(c) [*misconduct by licensee: wrongful taking or deceptive dealing*] of the RESA with respect to one or more of the following trades in real estate in British Columbia:
 - a. [Property 1], Squamish (the “[Property 1] Property”) on or about January 12, 2016;
 - b. [Property 2], Squamish on or about February 8, 2016;
 - c. [Property 3], Squamish on or about April 13, 2016;
 - d. [Property 4], Coquitlam on or about September 12, 2016; and/or
 - e. [Property 5], Squamish (the “[Property 5] Property”) on or about July 26, 2017,(each a “Transaction” and collectively the “Transactions”), as follows:
 - i. you entered into an arrangement with [Licencee 1] (“[Licencee 1]”), a licensee who purported to be the buyer’s agent in the Transaction, to circumvent the

commission provisions of the listing agreement and/or to obtain remuneration to which you were not entitled;

- ii. you identified [Licencee 1] as the buyer's agent in the Transaction documents when in fact he did not provide agency representation to the buyers and/or acted upon direction from you thereby making a false representation;
 - iii. you failed to take reasonable steps to avoid conflicts of interest by providing agency representation to the buyer and the seller and you failed to promptly and fully disclose those conflicts of interest and the nature of your representation to the buyer and seller;
 - iv. you caused the seller to enter a written commission agreement with your brokerage or enter a written commission agreement with [Licencee 1]'s brokerage, in order to pay a higher rate of commission than that provided in their listing agreement, relying on the false representation that [Licencee 1] was the buyer's agent; and/or
 - v. you received or expected to receive a portion of [Licencee 1]'s commission earned on the Transaction, and you failed to disclose to your client the remuneration you received or expected to receive from [Licencee 1].
2. You committed professional misconduct within the meaning of section 35(1)(a) [*misconduct by licensee: contravention of the RESA, the Regulation or the Rules*] and/or 35(1)(c) [*misconduct by licensee: wrongful taking or deceptive dealing*] of the RESA with respect to the [Property 1] Property Transaction, as follows:
- a. in or about early January 2016, while acting as the agent for the seller of the [Property 1] Property, you entered into an arrangement with [Licencee 1], who was purporting to act as the agent for the named buyer, which arrangement includes one or more of the further particulars set out in subparagraphs (b) – (f) below, for the purpose of inducing the seller to enter into a contract of purchase and sale for the [Property 1] Property with the intention that the named buyer would promptly assign the contract of purchase and sale to another individual at a higher price and thereby deprive the seller of the opportunity to obtain fair market value for the property;
 - b. on or about January 9, 2016, you caused or arranged for [Licencee 1] to prepare a contract of purchase and sale for the [Property 1] Property on behalf of the named buyer, when you knew or ought to have known that the named buyer was not intending to complete the purchase;

- c. on or about January 21, 2016, you caused or arranged for [Licencee 1] to send you an email which indicated that [Licencee 1] had made inquiries about the development potential of the [Property 1] Property on behalf of the named buyer and discovered problems regarding its feasibility for development when:
 - i. you knew or ought to have known that some or all of the representations regarding the feasibility of the [Property 1] Property for development were untrue or were reckless as to the truth of those representations; and/or
 - ii. some or all of the representations were intended to induce the seller to reduce the sale price and/or to deprive the seller of the fair market value of the [Property 1] Property;
 - d. on or about February 11, 2016, relying on the misrepresentations in the January 21, 2016 email, you induced or advised the seller to amend the contract of purchase and sale with the named buyer to reduce the selling price from \$350,000 to \$175,000 when you knew or ought to have known that the reduced price was less than the fair market value of the [Property 1] Property;
 - e. on or about February 17, 2016, you prepared, or arranged for [Licencee 1] to prepare, an assignment of the contract of purchase and sale from the named buyer to another individual for a purchase price of \$335,000, and you did not advise the seller that you were aware of and/or had participated in the assignment, or that the property was being sold for \$335,000 and not \$175,000; and/or
 - f. you made a false representation when you identified [Licencee 1] as the named buyer's agent on the assignment documents when in fact he did not provide agency representation to the named buyer and/or acted upon direction from you.
3. You committed professional misconduct within the meaning of section 35(1)(a) [*misconduct by licensee: contravention of the RESA, the Regulation or the Rules*] and/or 35(1)(c) [*misconduct by licensee: wrongful taking or deceptive dealing*] of the RESA with respect to the [Property 5] Property, as follows:
- a. in or about July 2017, while acting as the agent for the seller of the [Property 5] Property, you entered into an arrangement with [Licencee 1], who was purporting to act as the agent for the named buyer, which arrangement includes one or more of the further particulars set out in subparagraphs (b) – (g) below, for the purpose of inducing the seller to enter into a contract of purchase and sale for the [Property 5] Property with the intention that the named buyer would promptly assign the contract of purchase and

sale to another individual at a higher price and thereby deprive the seller of the opportunity to obtain fair market value for the [Property 5] Property;

- b. on or about July 26, 2017, you directed or arranged for [Licencee 1] to prepare a contract of purchase and sale for the [Property 5] Property on behalf of the named buyer, when you knew or ought to have known that the named buyer was not intending to complete the purchase;
- c. you represented to the seller of the [Property 5] Property that the named buyer had carried out a home inspection on the property and that the property required new windows when:
 - i. the named buyer had not carried out a home inspection;
 - ii. you knew or ought to have known the representations regarding the results of the home inspection were untrue or were reckless as to the truth of those representations; and/or
 - iii. the representations were intended to induce the seller to reduce the sale price and/or to deprive the seller of the fair market value of the [Property 5] Property;
- d. on or about August 14, 2017, relying on the misrepresentations regarding the home inspection, you induced or advised the seller to amend the contract of purchase and sale with the named buyer to reduce the selling price from \$807,000 to \$797,000, when you knew or ought to have known that the reduced price was less than the fair market value of the [Property 5] Property;
- e. prior to advising the seller to reduce the purchase price, you prepared or arranged for [Licencee 1] to prepare an assignment of the contract of purchase and sale, dated August 10, 2017, from the named buyer to another individual for a purchase price of \$845,000, and you did not advise the seller that you were aware of and/or had participated in the assignment of the contract of purchase and sale or that the property had been assigned for \$845,000;
- f. on or about August 16, 2017, you instructed or arranged for [Individual 1], your spouse, to provide a cheque for the deposit of the purchase price of the [Property 5] Property on behalf of the named buyer for the purpose of ensuring the named buyer fulfilled the terms of the contract of purchase and sale so that the [Property 5] Property could then be assigned at a profit, when you were acting as the seller's agent; and/or
- g. you made a false representation when you identified [Licencee 1] as the named buyer's agent on the assignment documents when in fact he did not provide agency representation to the named buyer and/or acted upon direction from you.

4. You committed professional misconduct within the meaning of section 35(1)(a) [*misconduct by licensee: contravention of the RESA, the Regulation or the Rules*] and/or 35(1)(c) [*misconduct by licensee: wrongful taking or deceptive dealing*] of the RESA with respect to one or more of the following trades in real estate in British Columbia:

- a. [Property 6], Squamish, BC on or about March 27, 2017;
- b. [Property 7], Squamish, BC on or about April 21, 2017; and/or
- c. [Property 8], Squamish, BC on or about October 10, 2017,

(each a “Transaction” and collectively the “Transactions”), as follows:

- i. you entered into an arrangement with [Licencee 2] (“[Licencee 2]”), a licensee who purported to be the buyer’s agent in the Transaction, to circumvent the commission provisions of the listing agreement and/or to obtain remuneration to which you were not entitled;
- ii. you identified [Licencee 2] as the buyer’s agent in the Transaction documents when in fact he did not provide agency representation to the buyer and/or acted upon direction from you thereby making a false representation;
- iii. you failed to take reasonable steps to avoid conflicts of interest by providing agency representation to the buyer and the seller and you failed to promptly and fully disclose those conflicts of interest and the nature of your representation to the buyer and seller;
- iv. you caused the seller to enter into a written agreement with your brokerage or enter into a written agreement with [Licencee 2]’s brokerage, in order to pay a higher rate of commission than that provided in the listing agreement, relying on the false representation that [Licencee 2] was the buyer’s agent; and/or
- v. you received or expected to receive a portion of [Licencee 2]’s commission earned on the Transaction, and you failed to disclose to your client the remuneration you received or expected to receive from [Licencee 2].

5. You committed professional misconduct within the meaning of sections 35(1) [*misconduct by licensee: contravention of the RESA, the Regulation or the Rules*] including section 37(4) [*withhold, destroy, conceal or refuse to provide information or things required for an investigation*], 35(1)(e) [*misconduct by licensee: fails or refuses to cooperate with an investigation*] and/or 35(1)(g) [*misconduct by licensee: makes or allows to be made a false or misleading statement*] of the RESA as follows:

- a. You proposed and/or made an agreement with [Licencee 1] and/or other persons that one or more of you would provide false or misleading statements to the Real Estate Council of British Columbia (the "Council") during its investigation of the matters identified in one or more of paragraphs 1–3 above, including asking [Licencee 1] to conceal the fact that he had not actually provided agency representation to one or more of the parties involved in the transactions described in paragraphs 1-3 above;
 - b. You made false or misleading statements to the Council or the BCFSa during its investigation of the matters identified in one or more of paragraphs 1–4 above, including one or more of the following:
 - i. You concealed the fact that you had effectively acted for both the seller and the buyer in one or more of the transactions described in paragraphs 1-4 above;
 - ii. You denied receiving payment from [Licencee 1] with respect to one or more of the transactions described in paragraph 1 above, or you understated the amount of the payment received from [Licencee 1];
 - iii. You denied receiving payment from [Licencee 2] with respect to one or more of the transactions described in paragraph 4 above, or you understated the amount of the payment received from [Licencee 2]; and/or
 - iv. You denied any participation in the assignment of the [Property 1] Property when you collaborated with [Licencee 1] to induce the sellers to lower the purchase price so that the [Property 1] Property could be assigned at a profit, as set out in paragraphs 2(a) - 2(f) above.
 - c. You deleted, destroyed, or withheld records related to one or more of the Transactions so that those records would not be available to Council or the BCFSa in its investigation of the matters identified in one or more of paragraphs 1–4 above.
6. Further, or in the alternative, you committed conduct unbecoming a licensee within the meaning of sections 35(2)(a) [*misconduct by licensee: conduct contrary to the best interests of the public*], 35(2)(b) [*misconduct by licensee: undermines public confidence in the real estate industry*], and/or 35(2)(c) [*misconduct by licensee: brings the real estate industry into disrepute*] of the RESA, when you engaged in the conduct set out in one or more of paragraphs 1–5 above.

AND FURTHER TAKE NOTICE that if you are found by the Superintendent to have committed professional misconduct, the Superintendent will make discipline orders against you and may also order you to pay enforcement expenses incurred by the Council under sections 43 and 44 of the RESA.

AND FURTHER TAKE NOTICE that if you do not attend the hearing, the Superintendent may proceed with the hearing in your absence upon proof of service of this Notice of Discipline Hearing. The Superintendent may hear evidence and make findings regarding your conduct and may make orders under sections 43 and 44 of the RESA, without further notice to you.

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

Dated at the City of Vancouver, BC this 1st day of June 2023

BC Financial Services Authority

“JONATHAN VANDALL”

Per: Jonathan Vandall
Delegate of the Superintendent of Real Estate
Province of British Columbia

Wil

Schedule 1

<u>Paragraph in Notice of Discipline Hearing</u>	<u>Applicable Rule from the <i>Real Estate Services Rules</i></u>	<u>Current section</u>	<u>Former section</u>
1(i)	<i>Duties to clients – best interests</i>	30(a)	3-3(a)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
1(ii)	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
1(iii)	<i>Duties to clients – avoidance of conflicts</i>	30(i)	3-3(i)
	<i>Duties to clients – disclosure of conflicts</i>	30(j)	3-3(j)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
	<i>Disclosure of representation in trading services</i>	54	5-10
1(iv)	<i>Duties to clients – best interests</i>	30(a)	3-3(a)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
1(v)	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
	<i>Disclosure of remuneration</i>	56	5-11(1)
2(a)	<i>Duties to clients – best interests</i>	30(a)	3-3(a)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
2(b)	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
2(c)	<i>Duties to clients – best interests</i>	30(a)	3-3(a)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
2(d)	<i>Duties to clients – best interests</i>	30(a)	3-3(a)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
2(e)	<i>Duties to clients – best interests</i>	30(a)	3-3(a)
	<i>Duties to clients – avoidance of conflicts</i>	30(i)	3-3(i)
	<i>Duties to clients – disclosure of conflicts</i>	30(j)	3-3(j)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
2(f)	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
3(a)	<i>Duties to clients – best interests</i>	30(a)	3-3(a)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
3(b)	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5

3(c)	<i>Duties to clients – best interests</i>	30(a)	3-3(a)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
3(d)	<i>Duties to clients – best interests</i>	30(a)	3-3(a)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
3(e)	<i>Duties to clients – best interests</i>	30(a)	3-3(a)
	<i>Duties to clients – avoidance of conflicts</i>	30(i)	3-3(i)
	<i>Duties to clients – disclosure of conflicts</i>	30(j)	3-3(j)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
3(f)	<i>Duties to clients – avoidance of conflicts</i>	30(i)	3-3(i)
	<i>Duties to clients – disclosure of conflicts</i>	30(j)	3-3(j)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
3(g)	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
4(i)	<i>Duties to clients – best interests</i>	30(a)	3-3(a)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
4(ii)	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
4(iii)	<i>Duties to clients – avoidance of conflicts</i>	30(i)	3-3(i)
	<i>Duties to clients – disclosure of conflicts</i>	30(j)	3-3(j)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
	<i>Disclosure of representation in trading services</i>	54	5-10
4(iv)	<i>Duties to clients – best interests</i>	30(a)	3-3(a)
	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
4(v)	<i>Duty to act honestly</i>	33	3-4
	<i>Duty to act with reasonable care and skill</i>	34	3-5
	<i>Disclosure of remuneration</i>	56	5-11(1)