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

AND in the Matter of Ahmet Murat Kadioglu

DECISION

DATE AND PLACE OF HEARING: August 21-22, 2014
Office of the Real Estate Council
Vancouver, BC

DISCIPLINE HEARING COMMITTEE: T. O'Grady
D. Peerless, (Chair)

ALSO PRESENT:
Jessica S. Gossen – Counsel for the Real
Estate Council
Steffan Ileman, Non-lawyer Advocate for
Respondent
Janice L. Moore – Real Estate Council staff
Sharon Leburn – Official reporter

WITNESSES:
Ahmet Murat Kadioglu, Respondent
Alfred Tong
Tom Garvey
Ranjit Sharma
Gerald Gramek

INTRODUCTION.

The hearing was conducted pursuant to section 42 of the Real Estate Services Act ("RESA"), to consider whether Ahmet Murat Kadioglu ("Mr. Kadioglu") committed professional misconduct within the meaning of section 35(1)(a) of RESA.

On August 22, 2011, the Real Estate Council of BC ("Council") received a complaint from Mr. Alfred Tong ("Mr. Tong"), managing broker for Homeland Realty ("Homeland"). Mr. Tong stated that on August 18, 2011, Homeland had received a conveyancing report from Century 21 in Town Realty ("Century 21") that indicated Homeland was holding a deposit in relation to a contract of purchase and sale prepared by Mr. Kadioglu. Homeland had not received a report of the deal, a copy of the contract of purchase and sale, nor any deposit money from Mr. Kadioglu.

ISSUES
The allegations of professional misconduct in the Amended Notice of Hearing were the following issues:

1. contrary to section 3-4 of the Council Rules and/or section 35(1)(c) of the RESA, fail to apply reasonable care and skill and/or act honestly, in that he prepared an offer on July 24, 2011 on his former brokerage’s form indicating that the brokerage was providing agency to the buyer, and subsequently, after acceptance, made changes to the contract of purchase and sale, including changing the contract to indicate the contract had been prepared by his subsequent brokerage on July 27, 2011 and that the deposit was now payable to the new brokerage in trust;

2. contrary to section 3-4 of the Council Rules fail to act honestly when he made the above noted changes without the authorization or consent of his former brokerage to make those changes; and

3. contrary to section 3-4 of the Council Rules and/or section 35(1)(c) of the RESA, fail to act honestly when he turned in to his brokerage the amended contract which indicated that he had written the contract after he had become licensed with the brokerage, which was not true.

The evidence of the hearing consisted of three Books of Documents and 18 miscellaneous documents, and the testimony of Alfred Tong, Tom Garvey, Gerald Gramek, Ranjan Sharma, and Mr. Kadioglu. The Council submitted a Book of Authorities.

Mr. Kadioglu requested that Mr. Ileman, who was not a lawyer, represent him in an advocacy role. The Committee permitted Mr. Ileman to act in this capacity, and question Mr. Kadioglu and the Council witnesses.

PROCEEDINGS

Alfred Tong

Mr. Tong testified that he had been licensed since 1994. Between 2000 and 2011, he was an associate broker at Homeland, and had been its managing broker since February 2011. Mr. Kadioglu had been a licensee at Homeland from December 2, 2010 until July 25, 2011.

Mr. Tong testified that on August 18, 2011, Homeland received a conveyancing report from Century 21 which indicated that Homeland was holding a $35,000 deposit in trust with respect to a transaction for which Mr. Kadioglu was the buyer’s agent. Mr. Tong was unable to locate a deal file, a copy of the contract or the deposit. On August 19, 2011, Mr. Tong by way of letter informed Mr. McDonald, who was the managing broker for Century 21 at the time, that Homeland had no knowledge of the transaction and did not hold the deposit. Mr. Tong requested a copy of the Contract of Purchase and Sale.
The contract indicated that Homeland would be holding the deposit in trust. Mr. Tong felt he had a duty to inform the Council about this matter.

Mr. Tong identified those documents that had accompanied his complaint to the Council and reviewed them for the Committee. The Contract of Purchase and Sale was dated July 24, 2011, and was prepared by Mr. Kadioglu on behalf of Homeland. The contract indicated that Homeland was to hold a deposit of $35,000, and appeared to be duly signed by the sellers and the buyer. The buyer had an agency relationship with Homeland and Mr. Kadioglu. Mr. Tong noted that Page 8 of the contract was a subject removal addendum with an 'Amex' logo at the top of the addendum. The subject removal was dated for July 29, 2011, and contained the sentence “The buyer and seller are agreed that the buyer's agent, M. Kadioglu, is working with Amex-Fraseridge Realty and commissions will be paid to this real estate company.”

Under cross-examination, Mr. Tong testified that he did not fire Mr. Kadioglu on July 21, 2011, nor did he tell Mr. Kadioglu that he would turn his licence into the Council.

Mr. Tong explained that Mr. Kadioglu had commenced legal action against a developer client without the brokerage’s consent. This action was contrary to the terms of Mr. Kadioglu’s employment contract with Homeland. Mr. Tong asked Mr. Kadioglu to transfer his licence to another brokerage so as not to jeopardize business. Mr. Tong stated that Mr. Kadioglu commenced a court action against Homeland for wrongful dismissal, and Homeland countersued Mr. Kadioglu for legal fees and damages. The claim and counterclaim were ultimately dismissed.

Mr. Tong testified that he did not change Mr. Kadioglu’s licence. Mr. Kadioglu had applied to Fraseridge Realty Ltd, dba Amex-Fraseridge Realty (“Amex-Fraseridge”) and Amex-Fraseridge had sent that application to the Council. Mr. Tong stated that Mr. Kadioglu did not tell him that he was transferring his licence to Amex-Fraseridge, and that he only was aware of this when he received correspondence from the Council requesting that he return Mr. Kadioglu’s licence to it. Mr. Tong stated that he was unable to call the Vancouver Real Estate Board (“Board”) and transfer a listing. It was up to the Board to change the listing feature sheet and the brokerage logos.

Mr. Tong testified that Mr. Kadioglu had never discussed with him about any ongoing transactions that he would be transferring to a new brokerage or about any contracts that he needed assistance with. Mr. Tong stated that he had not been aware of the existence of the contract he had received from Homeland, the deposit clause in the addendum, or the arrangement for Homeland to hold the deposit. Mr. Tong stated that he never knew where the deposit was being held, but thought perhaps the deposit might have been held at Amex-Fraseridge, as that is where Mr. Kadioglu had transferred his licence to.

Mr. Tong stated that the brokerage did not owe Mr. Kadioglu any commission. If Mr. Kadioglu had processed the contract through Homeland and the deal had closed, the
brokerage would have paid Mr. Kadioglu the commission owing as per the contract. Mr. Tong was unable to speculate on whether Mr. Kadioglu had any financial interest in processing the contract through Amex-Fraseridge, instead of through Homeland.

Mr. Tong testified that he never contacted Mr. Sharma or sent any documents to him, nor did Mr. Sharma ever contact him to advise that Mr. Kadioglu was now working at Amex-Fraseridge, or to discuss transferring the transaction to Amex-Fraseridge. Mr. Tong stated that he was never asked to consent to the transfer of the transaction, nor had he given his consent to anyone for the transaction to be processed through another brokerage

Ranjan Sharma

Mr. Sharma testified that he had been licensed since 1988, and had been the managing broker at Amex-Fraseridge since 1995. He was the managing broker during the time that Mr. Kadioglu was employed with the brokerage.

Mr. Sharma testified that he had never met with Mr. Kadioglu, or talked with him prior to meeting with him at the brokerage on Monday, July 25, 2011. He had not met with him at his brokerage on Saturday, July 23, 2011 as the brokerage was not open on the weekends. Mr. Sharma disclosed that he was a double amputee and if he were to attend the brokerage on the weekends he would need someone to drive him there. He was not aware of any activity that Mr. Kadioglu may have engaged in over that weekend.

Mr. Sharma stated that on the morning of July 25, 2011, Mr. Kadioglu attended at the brokerage and said he wanted to join Amex-Fraseridge. Mr. Kadioglu told him that he was licensed with Homeland, but wanted to leave because he was not getting the support that he needed. Mr. Kadioglu never mentioned during that meeting that he was working on a transaction, had written a contract the day before, nor did he give him a copy of a contract. Mr. Sharma sent Mr. Kadioglu’s application into the Council on Monday, July 25, 2011, and he became licensed with Amex-Fraseridge on that day.

Mr. Sharma stated that he never spoke with Mr. Tong on July 25, 2011 about processing the transaction through Amex-Fraseridge, and Mr. Tong never told him that it was okay to process the transaction through the brokerage.

Mr. Sharma testified that he had provided all the documents in the brokerage file to the Council (Exhibit 7, Tab 5), and reviewed those documents for the Committee. Mr. Sharma stated that a licensee newly employed at the brokerage was required to sign and date a brokerage policy and procedures agreement. Mr. Sharma pointed out that Mr. Kadioglu had signed and dated his agreement on July 25, 2011.

Mr. Sharma explained that when deposit money was delivered to the brokerage, it was directed to the conveyancing department. A file was created, dated and assigned a deal number and the money was deposited into trust. The conveyancing manager reviewed the file, and input information into a ‘Notes to File’ document about when the deposit and documents were received by the brokerage. The Contract of Purchase and Sale date on
the first page of the contract, as well as the acceptance and subject removal dates were entered into the file. If necessary, the file was forwarded to Mr. Sharma for review.

Mr. Sharma stated that the 'Notes to File' for the transaction was dated August 2, 2011, and the deal sheet submitted by Mr. Kadioglu to the brokerage was dated August 3, 2011. The subject removal date was noted as July 29, 2011 and the deposit was noted as received by the brokerage on August 2, 2011 (Exhibit 7, Tab 9, page 1).

Mr. Sharma testified that the Contract of Purchase and Sale provided to the brokerage by Mr. Kadioglu (Exhibit 7, Tab 5, page 3) had the Homeland logo at the top of page 1, was dated July 27, 2011, and the 'Prepared by' section had Homeland Realty typed into it, but that had been scratched out and Amex Realty was handwritten in above. The deposit money was to be paid to Homeland, but this was also scratched out and Amex Realty was handwritten in. Mr. Sharma stated that no one at the brokerage would have written anything on the contract, as they did not touch contracts. The contract was initialed by the buyer and in certain other places also initialed by one of the sellers. Page 6 of the contract indicated that the seller had an agency relationship with Century 21 and Mr. Gramek, and the buyer had a relationship with Homeland and Mr. Kadioglu. The offer was open for acceptance until July 27, 2011, and was accepted on July 24, 2011.

There were four addendums to the contract (pages 7-10). The first addendum detailed the subjects that would be removed, had the Homeland logo at the top, was dated July 24, 2011 and was "Further to the contract of purchase and sale dated 27-7-2011". The subject removal date of August 30, 2011 had been scratched out and changed to July 29, 2011. This change was initialed by the buyer and one seller. The remaining three addendums, one of which was a subject removal, had the Amex logo at the top, were dated July 29, 2011 and were "Further to the contract of purchase and sale dated 27-7-2011". In each case the date of 27-7-2011 was handwritten.

The second addendum was a subject removal and contained the sentence, "The buyer and seller agree that the buyer's agent Mr. Kadioglu is working for Amex Fraseridge Realty and commissions will be paid to this real estate company." It was signed by the buyer.

The third addendum contained the following handwritten sentence: "The seller agrees that the drainage pipes will be in proper working order, before the completion." It was signed by the buyer and one of the sellers, whose signatures were witnessed.

The fourth addendum was a subject removal, which stated that the Buyer hereby removes all the subjects. It contained the handwritten sentence, "The Buyers agent Mr. Kadioglu would be giving back $4000 at the time of completion towards |: The notary will be adjusting." It was signed by the buyer. Mr. Sharma stated that from a review of the 'Notes to File' document, it appeared that the brokerage never received the subject removal addendum signed by the sellers.

The contract was brought to Mr. Sharma's attention on August 3, 2011, by the conveyancing manager. Mr. Sharma stated that he was told by Mr. Kadioglu that the
contract was for information purposes only, and that the original contract had been written on August 2, 2011, with Amex’s name on it and the proper dates. The original contract was sitting with Century 21, and would be returned to him by the listing agent, fully signed when he returned from holidays.

Mr. Sharma testified that the brokerage did not treat this contract as the actual contract because the contract indicated that the agency relationship was with Homeland. They were not then representing the buyer because they did not have any evidence of the actual contract although they did hold the deposit. Mr. Sharma stated that it never crossed his mind to contact Mr. McDonald and inform him that Amex-Fraseridge held the deposit. Mr. Sharma confirmed that at some point he became aware that there was some controversy about the contract and he contacted by Mr. McDonald who asked him if he held the deposit.

Mr. Sharma stated that he did not know how the transaction completed on the basis of that contract. He acknowledged though that the brokerage proceeded as if it was acting for the buyer once the deposit was received, and that that contract was the one sent to [redacted], the buyer’s notary (“Mr. Sharma explained that the selling agent would also send documents to the notary, but for the most part, it was the buyer’s brokerage that did the bulk of the work for completion. Mr. Sharma stated that contract was the same contract he had referred to in his letter to the Council on October 3, 2013 setting out the various dates in the contract (Exhibit 7, Tab 6, page 4).

Mr. Sharma reviewed a copy of the contract that was in Century 21’s file (Exhibit 7, Tab 4, page 3), and stated that he had never seen that contract, and that Mr. Kadioglu had not brought that contract to the brokerage. There was no other version of the contract in his brokerage’s file. He noted for the Committee that the agency relationship indicated on the contract was with Homeland, it was initialed and signed by the buyer and the sellers, the acceptance date was July 24, 2011, and the subject removal date was July 29, 2011.

Mr. Sharma testified that the brokerage policy stated that a contract should be submitted to the brokerage after acceptance. If Century 21’s contract had been received by Mr. Sharma he would not have made any changes to the agency relationship or even accepted the contract. He would have contacted Homeland, and told them the deal belonged at that brokerage.

Mr. Sharma stated that Mr. Kadioglu never had any discussions with him about alterations to the ‘Notes to File’ document or any other document. Mr. Sharma saw no evidence of the use of white out on any documents in the brokerage file, and stated there would have been no reason to alter any document.

Mr. Sharma did not recall if Mr. Kadioglu had asked him for copies of the file documents. He stated that he did not tell Mr. Kadioglu that the file documents were lost or not available to him, and that he could not give them to him. Once a transaction was complete all documents in the file were scanned into the computer system, and kept on the hard drive in three different places for a period of seven years.
Under cross examination, Mr. Sharma stated that he did not see the broken line under the number 7 on the 'Notes to File'. Mr. Sharma stated that he did not recall the brokerage receiving the contract faxed by Century 21 to Amex-Fraseridge on August 26, 2011 (Exhibit 7, Tab 4, pages 1), which indicated that the contract had been prepared by Amex-Fraseridge on July 24, 2011 and was initialed by the parties.

**Tom Garvey**

Mr. Garvey testified that he had been licensed for 14 years, and had been the managing broker for Century 21 since April 1, 2013.

Mr. Garvey stated that he had familiarized himself with the brokerage file, and the correspondence and documents that Mr. McDonald had provided to the Council (Exhibit 7, Tab 4). To the best of his knowledge, all of the documents that he had provided to the Council were all the documents in the brokerage file and on the computer system, and were the same documents that Mr. McDonald had previously provided to the Council.

Mr. Garvey testified that he first met Mr. Kadioglu when he attended at the brokerage requesting documents from the brokerage file. At that point, copies of the brokerage file had been sent to the Council. Mr. Garvey explained to Mr. Kadioglu that for privacy reasons he was unable to release the brokerage file to him.

Mr. Garvey identified the Contract of Purchase and Sale (Tab 4, pages 2-10) as a copy of the one that Century 21 had received and had on file for the transaction. Mr. Garvey noted from the contract that the seller had an agency relationship with Century 21 and Gerry Gramek ("Mr. Gramek"), and that the buyer had an agency relationship with Homeland and Mr. Kadioglu. The contract indicated that the deposit would be delivered in trust to Homeland.

Mr. Garvey noted that the offer on the contract (ibid, page 6) indicated that it was open for acceptance until 23:30 hours p.m. on July 24, 2011, and that upon acceptance there would be a binding Contract of Purchase and Sale on the terms and conditions set herein. Mr. Garvey noted that [redacted] had signed the contract on behalf of the buyer and that the sellers, [redacted] had accepted the contract on July 24, 2011. All of the parties had initialed the contract in various places. Mr. Garvey stated that the contract looked like a firm contract as of July 24, 2011.

Mr. Garvey identified an addendum to that contract, dated July 24, 2011 (ibid, page 7). The addendum identified Homeland as the brokerage and indicated that the subject removal date would be July 29, 2011. The addendum was initialed and signed by all the parties. Mr. Garvey stated that there was no absence of any of the parties’ signatures which would render the addendum invalid.

Mr. Garvey identified a second addendum to the contract (ibid, page 8), dated July 29, 2011, which he identified as one for subject removal. Mr. Garvey noted that the 'Amex' logo appeared at the top of the addendum. Mr. Garvey stated that it appeared that
sometime between July 24, 2011 - when the offer was accepted - and the July 29, 2011 subject removal date, there had been a change in brokerages from Homeland to 'Amex'. Mr. Garvey noted that the buyer and not the sellers had signed the subject removal. Mr. Garvey explained that although the subject removal did not need to be signed by the seller, the sentence "The buyer and the seller agree that the buyer’s agent M. Kadioglu is working for Amex Fraseridge Realty and commissions will be paid to this real estate company" which was added to the subject removal changed the contract and required the sellers’ signature.

Mr. Garvey identified a third addendum to the contract, (ibid, page 9) that was dated July 29, 2011. He noted that the ‘Amex’ logo appeared at the top of the addendum. It was signed by the buyer and one of the sellers, and their signatures were witnessed. The addendum contained the following handwritten sentence: “The seller agrees that the drainage pipes will be in proper working order, before the completion.”

Mr. Garvey identified a sales report form, dated August 2, 2011 (ibid, page 12), and stated that this document would have been sent to the Board once the subjects had been removed, and proof of deposit had been received by the brokerage. Mr. Garvey stated that once the Board received this form, the listing for the property on the Multiple Listing Service ® (“MLS”) would then be changed to indicate that the property had been sold. Mr. Garvey pointed out that the form indicated that the buyer’s agent was Mr. Kadioglu and that the brokerage was Homeland.

Mr. Garvey testified that other than the addendums with the ‘Amex’ logo, there was nothing else in the file that would indicate that the transaction was to be processed through ‘Amex’ and not Homeland.

Mr. Garvey identified a letter dated August 30, 2011, sent from [Redacted] to Century 21 and Amex-Fraseridge confirming the transfer of the property from the sellers to the buyer on August 31, 2011. (Tab 4, page 14).

Mr. Garvey identified various other documents in the brokerage file (Exhibit 8, Tabs 1-7), including Fintrac identification forms, Working with a Realtor® form, a property disclosure statement, a multiple listing contract, a data input sheet, and a feature sheet. Mr. Garvey also identified a transaction record sheet which he explained every licensee created, dated and filled out with the appropriate transaction information (Exhibit 8, Tab 8). Mr. Garvey noted that it was dated July 24, 2011, which would have been the date the contract was accepted. Mr. Garvey explained that Mr. Gramek as the selling agent would have completed the transaction record sheet, on the date the offer was accepted. The sheet would then have been delivered to Century 21 with the contract and other appropriate documents. These documents were required to be delivered to the brokerage on an expedient basis. Mr. Garvey also noted that the property was subject to an inspection by July 29, 2011. The adjustment, possession and completion dates were August 31, 2011. The report indicated that Mr. Gramek was the selling agent and that Mr. Kadioglu of Homeland was the co-operating agent. Mr. Garvey next referred to the trade record sheet (Tab 16). He explained that this document was generated in Real
Broker when the brokerage opened a deal for the brokerage. The sheet indicated that it had been opened and created on July 24, 2011 and that the selling brokerage was Homeland. The sheet was printed out "for use", time dated July 28, 2011, and put in the physical file. Once the subjects had been removed, the brokerage would use that sheet as a reference for all of the commissions that would be paid out, and the payment of excess funds to the cooperating brokerage.

Mr. Garvey explained that in the event that a licensee transferred to another brokerage in the middle of a transaction and an offer had been accepted, the normal procedure would be to process the transaction at the brokerage the licensee was at the time the offer was accepted, unless the brokerage consented to the transfer of the transaction to another brokerage.

Mr. Garvey identified correspondence that was sent to Mr. McDonald from Mr. Tong on August 19, 2011 (Exhibit 8, Tab 19). Mr. Tong wrote that, "Matt Kadioglu, while licensed in our Brokerage, has written a contract of purchase and sale dated on July 24, 2011 on behalf of the buyer [redacted] on the subject property ...."

"Please note that our brokerage has neither received a report of this deal nor a copy of the contract of purchase and sale from Matt Kadioglu and has also never received any deposit money. Please advise the seller accordingly."

Mr. Garvey testified that from his review of the file and the notes that Mr. McDonald made, it appeared that Mr. McDonald called Mr. Tong and was advised by him that Mr. Kadioglu was no longer with Homeland. Mr. Garvey noted that Mr. McDonald eventually spoke with Mr. Sharma as he was concerned about where the deposit was being held. Mr. Sharma told him that his brokerage had the deposit cheque and would send him a copy of it (Exhibit 9, Tab 4). Mr. Garvey next referred to a copy of a bank draft dated July 26, 2011 from the Toronto Dominion Bank for the sum of $35,000 payable to Amex Realty, and stated that the copy of the bank draft would have been in the Century 21’s file to show proof of deposit.

Under cross examination, Mr. Garvey stated that when a licensee was on vacation, the normal practice would be to assign that licensee’s files to another licensee to take care of until they returned. Mr. Garvey stated that he had no knowledge of the holiday that Mr. Gramek may have taken or any confusion which may have resulted from his absence from the brokerage during that time, what documents Amex Fraseridge would have sent to [redacted] or the seller’s whereabouts during the transaction. He stated that there was nothing in the file to indicate that there was an internal breakdown of communication within Century 21 during the transaction. Mr. Garvey reiterated that the contract in the brokerage’s file had an acceptance date of July 24, 2011 and a subject removal date of July 29, 2011. Mr. Garvey stated that it appeared that Mr. Gramek was asking Mr. Kadioglu in an email to him on July 28, 2011 for his new brokerage information. In reference to an email dated July 29, 2011 that Mr. Gramek wrote to Mr. Kadioglu indicating that he had "sent the addendum to Spain and I’m waiting its return", Mr.
Garvey stated that it appeared that they were adding an addendum and not a subject removal before the subject removal date of July 29, 2011.

Mr. Garvey stated that he had not seen the fax correspondence that was sent to Amex Fraseridge on August 26, 2011.

Upon questioning from the panel, Mr. Garvey stated that the sentence “The buyer and seller agree that the buyer’s agent, Mr. Kadioglu is working for Amex Realty”, in the subject removal did not appear in the original contract that was in the brokerage’s file. Mr. Garvey stated that this sentence would have been added by the buyer’s licensee. (Exhibit 7, Tab 4, page 8) Mr. Garvey reiterated that the adding of this sentence effected a change in the contract, and needed to be signed by all the parties. In reference to the email that Mr. Gramek had sent to Mr. Kadioglu on July 29, 2011, Mr. Garvey agreed that is was likely referencing the addendum dated July 29, 2011 and signed by the buyer and one seller, whereby the sellers agreed that the drainpipes would be in working order (Exhibit 7, Tab 4, page 9). Mr. Garvey stated that it was not uncommon for transactions to be conducted in various areas.

Gerald Gramek

Mr. Gramek testified that he had been licensed since 1993. Since 2009 he had been licensed with Century 21 and prior to that with Realty World before it changed its name to Century 21. Mr. Gramek stated that he was a Master Medallion Club member and was internationally acknowledged in the Century 21 world. Mr. Gramek stated that he had been the listing agent for the sellers of the property, and Mr. Kadioglu had been the buyer’s agent.

Mr. Gramek testified that he first met Mr. Kadioglu on July 24, 2011. Mr. Kadioglu apologized to him for not having business cards. He told Mr. Gramek that he was transitioning to another brokerage, but he did not say what brokerage it would be or when it would happen.

Mr. Gramek stated that negotiations went back and forth with Mr. Kadioglu that day, and a number of versions of the contract were exchanged between them. Mr. Gramek identified for the Committee one of those versions (Exhibit 8, Tab 14). Mr. Kadioglu initially sent Mr. Gramek a contract that was undated, had no date for acceptance, and did not contain enough information to make it binding. Mr. Gramek stated that he sent it back to Mr. Kadioglu, and expressed to him that it was important that he get the contract back to him because the sellers had three other offers. He told him that if he wanted to stay in the game, he had to make the contract legally binding. The contract came back to Mr. Gramek with a date of July 24, 2011, terms and the buyer’s signature.

Mr. Gramek stated that one of his sellers was in France at the time, but that did not pose an issue. He had previously made arrangements to contact her in the event there was an acceptable offer, and she had arranged to have fax and internet access. Acceptance of an offer would be verbal, followed up with her signature on the contract. Mr. Gramek
reviewed a copy of the contract that was attached to his email he sent to Mr. Kadioglu on July 24, 2011 and identified it as the final version of the contract (Exhibit 15). The email had a re: line of "Accepted offer on 3535 East Pender". Mr. Gramek stated that he was providing Mr. Kadioglu with his contact details and told him that he would send him the property disclosure statement, title, and tenancy agreement. Mr. Gramek was unable to recall what he meant when he stated, please call me when you send the other documents. When asked where he sent the accepted offer, Mr. Gramek was unable to recall but stated that Mr. Kadioglu apparently received it and there was not any controversy about the contract. Mr. Gramek stated that the first time that he was notified that there was a problem with the transaction was when he was contacted by the Council on November 8, 2011.

Mr. Gramek identified the Contract of Purchase and Sale (Exhibit 7, Tab 4, page 3) that was part of the brokerage file, and testified that it was the accepted offer from Mr. Kadioglu's client, written on a Homeland form. Mr. Gramek identified the initials of his clients throughout the contract, and his own handwriting of July 24, 2011 as the acceptance date. He had witnessed one of his client's signatures, and identified the other signature as that of the other seller, who signed the contract in France. Mr. Gramek testified that he had communicated the acceptance of his sellers to Mr. Kadioglu on the basis of one seller signature and the verbal acceptance of the other seller, which was followed up by her signature on the contract. Mr. Kadioglu was aware that he had a verbal acceptance, and all parties had proceeded on that basis. Mr. Gramek did not retain the cover sheets, her telephone number or the date and time that he spoke with her. He was unable to recall when on July 24, 2011 he received the signed contract from her. It was not an issue though, as everyone was operating under a verbal contract. Mr. Gramek testified that he would not have written in the acceptance date of July 24, 2011, if the contract had not been accepted and signed by both of his sellers on that date.

Mr. Gramek stated that there was no discussion with Mr. Kadioglu about delaying the acceptance of the contract until late August, or for several weeks from the date of the contract because one of the sellers was in France. The sellers had no reason to delay their acceptance of the offer. Mr. Gramek stated the sellers received four offers, three of which were identical. Mr. Kadioglu's client's offer was the highest, so there was an incentive for the sellers to accept the offer as soon as possible.

Mr. Gramek stated that the subject removal (ibid, page 7) had a date of July 24, 2011, and the handwriting of "July 29" in the middle was his. Mr. Kadioglu initially wanted a date in August for subject removal but it was changed to July 29, 2011. Mr. Gramek next referred to the subject removal (ibid, page 8) and stated that he did not notice at first that Amex was the brokerage or note the sentence which stated that the buyer's agent was working with Amex or that commissions would be paid to Amex. The sellers did not sign this subject removal. Mr. Gramek referred to page 9 of the contract and explained that the sellers had agreed to fix the drainage pipes which he recalled was done immediately. The addendum was signed by the buyer and one seller. Mr. Gramek stated that when he received the addendum he sent it immediately to his other seller for signature.
On July 28, 2011, he emailed Mr. Kadioglu and requested his new company information as he needed to know what brokerage to submit documents to after subject removal.

On July 29, 2011, Mr. Gramek informed Mr. Kadioglu that he had sent the addendum with respect to the drainage pipes to the seller in Spain and was waiting its return. The addendum stated that the seller agreed that the drain pipes would be in proper working order before completion. He informed Mr. Kadioglu that the seller was working on it. Mr. Gramek was unable to recall when the work was done but did remember it was completed quickly.

Mr. Gramek was directed to the Contract of Purchase and Sale that was in Amex Fraseridge’s file. (Exhibit 7, Tab 5) Mr. Gramek reviewed the contract (ibid, page 3) and noted that it was dated 27-7-2011, with handwritten notations on the first page changing the preparer ‘Homeland Realty’ to ‘Amex Realty’. Mr. Gramek noted that it was signed by the buyer and one seller and that the offer was open for acceptance until July 27, 2011.

Mr. Gramek testified that he has never seen this contract before. There was never any suggestion that the parties would be proceeding under this contract, and not the one accepted on July 24, 2011. Mr. Gramek stated that the sellers accepted the offer on July 24th which was indicated on page 6 of the contract. Mr. Gramek reviewed three addendums to that contract, one which had a date of July 24, 2011 and two with the date of July 29, 2011 and testified that the handwritten dates of 27-7-2011 were not his handwriting.

Mr. Gramek compared the drainage pipe addendum in Century 21’s file (Exhibit 7, Tab 4, page 9) with the one in Amex- Fraseridge’s file (Exhibit 7, Tab 5, page 9) and noted that the date of 27-7-2011 did not appear on Century 21’s addendum. Mr. Gramek stated that he did not make any changes to the dates, and this would not have been the contract his clients signed.

Mr. Gramek stated that he was not aware of the arrangement that Mr. Kadioglu had made with the buyer to rebate the buyer a portion of his commission. He had not seen the subject removal which stated that arrangement.

Mr. Gramek reviewed a fax dated August 24, 2011 (Exhibit 8, Tab 11 and 12) that he had sent to Mr. Kadioglu, attaching the first page of a contract dated July 24, 2011. Mr. Gramek noted that the preparer of the contract and that part of the page about where the deposit was being held - Homeland Realty - was scratched out and Amex-Fraseridge was handwritten over top of it. Mr. Gramek stated that that was not his handwriting, he had not seen that contract before and he did not recall having his clients initial the changes to the brokerage name. He recalled receiving the fax initially from Mr. Kadioglu, who then requested that he send it back to him, which he did.

He did not recall why he sent that fax back to Mr. Kadioglu other than Mr. Kadioglu had requested he do so. He believed the fax may have been confirming where the deposit was being held, and denied that it was because he was confirming an August acceptance
date, as the acceptance date had been July 24, 2011. He did not know why all the parties’ initials would have been on that page with the brokerage as Amex-Fraseridge, but he did not think it was to acknowledge a change in brokerages, as that had never been brought to his attention at that time.

Mr. Gramelk reviewed Mr. Kadioglu’s affidavit sworn on October 2, 2013 (Exhibit 7, Tab 10, paragraph 5). Mr. Gramelk stated he could not recall what amendments were needed on July 24, 2011, to the contract other than the change to the subject removal date. Mr. Gramelk denied that one of the amendments was that the offer was annotated to show Amex-Fraseridge Realty as the processing brokerage. Mr. Gramelk stated that it was a straight up contract.

Mr. Gramelk denied that he told Mr. Kadioglu that it would be several weeks before he returned with an acceptance of the offer since one of the property owners was out of town and he was going on an extended motorcycle trip to the United States. Mr. Gramelk denied that that acceptance of the offer was delayed until late August.

Mr. Gramelk stated that he and wife were going on a two week vacation after the dust was settled and the contract was put to rest. He never abandoned his clients and would have taken his vacation after subject removal. His vacation never delayed the acceptance of the contract and noted that he did have an email correspondence with Mr. Kadioglu on July 28, 2011.

Under cross examination, Mr. Gramelk testified that it was not possible that the acceptance of the offer signed by the sellers was done sometime in late July or August. Although he was unable to recall the exact dates he went on holidays or whether the deal completed when he was on holidays, he was positive that he would not have taken holidays before subject removals. Mr. Gramelk stated that if he had known Mr. Kadioglu was working at Amex-Fraseridge, as was written on the subject removal, he would have made the requisite changes on the transaction sheet, and notified his managing broker. He believed that he became aware that Mr. Kadioglu changed brokerages sometime after subject removal, but not before.

Mr. Gramelk stated that he was unable to describe what the procedure was in the office for photocopying cheques that were received by the brokerage. Mr. Gramelk stated that he did not question where the deposit was being held. He was more concerned with the receipt of funds, than confirming what brokerage the deposit was coming from. Mr. Gramelk stated that he provided a copy of the bank draft to his conveyancing department. Mr. Gramelk stated that it was normal practice for the selling agent to send a copy of the signed contract to the seller’s lawyer or notary. Century 21 had provided a copy of the July 24, 2011 contract that he turned into the brokerage to and apparently Amex-Fraseridge had sent a copy of another contract to her dated July 27, 2011 which they closed on. Mr. Gramelk stated that there should not have been two different contracts.

Mr. Kadioglu’s Evidence
Ahmet Murat Kadioglu

Mr. Kadioglu reviewed his licensing history, and agreed that he was first licensed in 2004, and had since then been employed at various brokerages. Mr. Kadioglu identified two license certificates that had been issued to him by the Council. The first certificate indicated that he was licensed at Homeland. On the reverse side was a notation that on July 25, 2011 his licence was surrendered to Council and transferred to another brokerage (Exhibit 15). The second certificate indicated that Mr. Kadioglu was licensed at Amex-Fraseridge with an effective date of July 25, 2011 (Exhibit 16). He was currently licensed with Re/Max City Realty.

Mr. Kadioglu stated that he acted for both buyers and sellers, and was previously a Medallion member. He could not recall how many transactions he did last year. He was familiar with all of the Realtor® forms, and the new requirements for Fintrac identification.

Mr. Kadioglu testified that Mr. Tong terminated his employment on July 21, 2011, and told him that unless Mr. Kadioglu found another brokerage Mr. Tong would surrender his licence to the Council. Mr. Kadioglu referred to an affidavit that he had sworn on October 2, 2013 (Exhibit 7, Tab 10), and stated that he had had some legal issues with the Mr. Tong and that was why Mr. Tong fired him. Mr. Kadioglu stated that he had no motivation to leave Homeland other than for that reason, because the desk fees were considerably lower at Homeland than those at Amex-Fraseridge. Mr. Kadioglu testified that the deal fee at Homeland was less than that at Amex-Fraseridge. He would have made more money, plus his commission, if he had processed the contract through Homeland. However, he did not process the transaction through Homeland because he had been terminated, and Mr. Sharma had told him to process the contract through his brokerage.

Mr. Kadioglu recalled that he had a phone call with Mr. Sharma on July 21, 2011, and then on July 23, 2011, talked with him on the phone and then met with him at his Fraser Street office, where Mr. Sharma hired him. Mr. Kadioglu stated that he had informed Mr. Sharma that he was working on a sale that might materialize at any time, and asked Mr. Sharma which brokerage the sale should be processed through. Mr. Sharma told him that since he was no longer working with Homeland, if something came up on the weekend, it would be in the best interest of the client to process it through Amex-Fraseridge. Mr. Kadioglu stated that he did not want to suggest that Mr. Sharma was lying, but perhaps Mr. Sharma did not remember their meeting that day.

Mr. Kadioglu stated that the Council was not open on the weekends, so he was unable to transfer his licence then. However, it was more of a technicality that he was not licensed with Amex-Fraseridge on July 24, 2011. Mr. Kadioglu believed that for all intents and purposes he was an employee of Amex-Fraseridge on July 24, 2011, because that brokerage name had been written on the contract and Mr. Gramek had testified that those changes were made to the contract on July 24, 2011 (Exhibit 8, Tab 14).
Mr. Kadioglu testified that he knew the buyer from his church, and this was the first time he acted for him. The buyer spoke little English; however the buyer’s wife and family friend assisted him throughout the transaction. Mr. Kadioglu spoke Chinese and Japanese so he was able to explain to his client about what was happening during the offer process. Mr. Kadioglu stated that he and the buyer had viewed the property before July 24, 2011. The buyer had not yet determined that he wanted to purchase the property until Mr. Gramek called him on the morning of July 24, 2011, and said the sellers would be accepting offers at 7:00p.m. that night. Mr. Kadioglu drew up a contract and sent the undated one to Mr. Gramek (Exhibit 8, Tab 14). Mr. Kadioglu stated that he did not have a personal computer, fax or scanner at his residence. He usually went to the brokerage office or to an internet café to link up to Webforms®. He prepared the contract in the house of the buyer using the buyer’s computer and printer. Mr. Kadioglu agreed that when preparing the contract he was populating the contract information into Homeland forms.

Mr. Gramek had proposed changes to the brokerage name and agency relationship, which were indicated on the contract dated July 24, 2011 and prepared by Amex-Fraseridge (Exhibit 8, Tab 12). Mr. Kadioglu stated that the buyer consented to the transaction being processed through Amex - Fraseridge, so he made small changes on the contract to reflect the change in brokerage from Homeland to Amex-Fraseridge. This was written on the contract he sent back to Mr. Gramek on July 24, 2011, which was the final contract from his buyer (Exhibit 7, Tab 4, page 2). Mr. Kadioglu stated that he had changed the brokerage name to Amex-Fraseridge on the undated contract (Exhibit 7, Tab 4 page 2), but he did not write in the date of July 24, 2011. He believed that Mr. Gramek wrote in that date.

Mr. Kadioglu referred to the undated contract (Exhibit 8, Tab 14) and stated that it contained an acceptance date that was a mistake, and Mr. Gramek had just written it like that on the contract.

Mr. Kadioglu testified that Mr. Gramek sent the contract back to him at 8:58 p.m. that night and told him not to write in the offer opening date. Mr. Kadioglu testified that the acceptance did not take place on July 24, 2011, because he did not have the signature of one of the sellers, who was in Spain. Mr. Gramek told him that since one of the property owners was out of town, and Mr. Gramek was going on a trip to the United States, there would not be acceptance of his offer until Mr. Gramek returned from his trip and obtained the signature of the other seller. Mr. Gramek told him that it was difficult to communicate with his seller, he didn’t have a power of attorney for the seller, and he could not arrange a courier. Mr. Gramek told him that he would fax the full contract back to his office at a later date, which he did in August.

Mr. Kadioglu stated that on Monday, July 25, 2011, he met with Mr. Sharma at his office and signed the office and procedures manual. He told Mr. Sharma that he had written an offer the day before and gave him the undated contract (Exhibit 8, Tab 14). He told Mr. Sharma that Mr. Gramek would fax the accepted offer to his office.
Mr. Kadioglu never told Mr. Tong that he had written an offer on Homeland forms because Mr. Sharma had told him that he had contacted Mr. Tong who had agreed to transfer the contract to Amex-Fraseridge. Mr. Kadioglu stated that if there had been a mistake on the acceptance date, Mr. Sharma would have refused the contract.

Mr. Kadioglu acknowledged that Mr. Sharma told him around July 27, 2011, that his brokerage account had been set up, and that he was now able to write offers and accept listings.

Mr. Kadioglu stated that on July 28, 2011, the buyer delivered a $35,000 bank draft for the deposit payable to Amex-Fraseridge to the brokerage.

Mr. Kadioglu testified that Mr. Gramek left for his trip to the United States, and there was no replacement for him at Century 21. Mr. Gramek knew he had changed brokerages, but did not tell anyone at Century 21. Mr. Kadioglu believed that there was a communication breakdown between Amex-Fraseridge and Century 21, and that is why he got the acceptance of his buyer’s offer from Mr. Gramek in August, 2011.

Mr. Kadioglu stated that he did not know who witnessed the seller’s signature in Spain, or how the contract got signed with an eight or nine hour time difference. He personally believed that the offer was not accepted, and the contract that was in Century 21’s file and sent to the Council, was not the accepted offer, was not the contract he had given Mr. Sharma, and not the one that was sent to [redacted] for completion (Exhibit 7 Tab 5). The handwriting throughout that contract changing the brokerage and inserting the dates was not his.

Mr. Kadioglu stated that all of the dates that Mr. Sharma remembered in his testimony, and stated in the letter he sent to Council, were not correct. Rather, Mr. Tong’s correspondence to Mr. McDonald on August 19, 2011 and Century 21’s acceptance sent to Amex-Fraseridge on August 26, 2011 substantiated the fact that the offer was made on July 24, 2011 by Amex-Fraseridge, and not by Homeland.

Under cross-examination, Mr. Kadioglu testified that the contract was accepted when the whole contract with all the signatures, was sent to him by Mr. Gramek after he returned from his trip in August 2011. When questioned if he was suggesting that he allowed his buyer to deliver a deposit cheque to the brokerage on a contract that was not accepted, Mr. Kadioglu stated that he had relied on directions from Mr. Sharma to talk to Mr. McDonald.

When asked what he was going to talk about with Mr. McDonald if the offer had not yet been accepted, Mr. Kadioglu stated that the offer had been accepted verbally like Mr. Gramek had testified to, and that the whole contract with all the signatures was going to be sent back to him on August 24, 2011, after Mr. Gramek’s trip.

When questioned about why he allowed his client to act on an unenforceable contract or deliver a deposit cheque, and remove subjects on a contract that wasn’t fully signed by
the sellers, Mr. Kadioglu stated that he was waiting for Mr. Gramek to fax the contract to his office. Mr. Kadioglu stated that on reflection, Mr. Gramek may have faxed it to his office sometime before August 24, 2011.

Mr. Kadioglu stated that he viewed acceptance as having occurred when Mr. Gramek sent the contract back to him in August, and all the documents were in his file. Once that acceptance was received, his buyer removed the subjects and paid the deposit to him. When questioned about allowing his buyer to act when there was no formal acceptance until sometime in August, Mr. Kadioglu stated that he had acted in the best interest of his client and relied on Mr. Gramek who told him that he would send all the documents to him in August after his trip.

When asked about the statement he made that acceptance happened in August, in contrast to his statement in his affidavit, wherein he deposed that acceptance was not made until July 27, 2011, Mr. Kadioglu stated that he believed that acceptance was somewhere around July 27, 2011 and that was when the contract had been changed. In reference to the statement in his affidavit, 'at which time the form had been duly amended', Mr. Kadioglu could not explain and stated that the document he was waiting for was the contract that Mr. Gramek was going to send him.

When cross-examined as to when he received a completed contract that he allowed his clients to act on, Mr. Kadioglu stated that he received by fax a completed contract that had all the signatures on it prior to him allowing his clients to remove subjects and deliver a deposit to the brokerage.

Mr. Kadioglu did not agree that the fax sent from Mr. Gramek to him in August 2011, was the first time that anyone at Century 21 had seen that first page of the contract with a different brokerage name. Everyone was acting on the contract dated July 24, 2011 with Amex-Fraseridge as the brokerage (Exhibit 8, Tab 12) until August 18, 2011, when Century 21 contacted Homeland about the deposit. Mr. Kadioglu stated that Amex-Fraseridge should have notified Century 21 that they were acting for the buyer.

Mr. Kadioglu reviewed the contract in the Century 21 file and acknowledged that it was written on Homeland forms, was dated July 24, 2011, and the buyer and both sellers had signed with Mr. Gramek witnessing one seller’s signature. He noted that there was an addendum dated July 24, 2011, changing the subject removal date to July 29, 2011.

Mr. Kadioglu acknowledged that Mr. Gramek sent him an email on July 29, 2011, the date of subject removal, which stated that the sellers were working on the drain pipes and that the parties had agreed that it would be done before completion. Mr. Kadioglu stated that he had arranged with the buyer that he would give them $4000 from his commission upon completion for their use in the church. $4000 was for charity and nothing to do with the fixing of the drain pipes.

Mr. Kadioglu stated that the first page on the contract dated July 24, 2011, that changed the name of the brokerage and where the deposit was held to Amex-Fraseridge, was
created in July 24, 2011, and sent back to him from Mr. Gramek in August, 2011. He asked Mr. Gramek for the whole contract because he wanted to make sure that he had everything in his brokerage file. He did not send it first to Mr. Gramek and then ask him to return it to him. Mr. Kadioglu just wanted a copy for his own file. He asked him for it in August because Mr. Gramek had been away on holidays. He saw nothing wrong with asking Mr. Gramek for it, even though he acknowledged that it was in his own file. Mr. Kadioglu stated that representatives do not have access to the brokerage files and they cannot ask for copies of their files. He stated that Mr. Sharma told him that they had lost the file, and the transaction completed without the contract.

Mr. Kadioglu denied that the contract in Amex-Fraseridge’s file dated July 27, 2011, (Exhibit 7, Tab 5) was the one he handed into the brokerage, and that he ever saw it. He did not make any of the changes on that contract, and did not write in the date. The handwriting for Amex Realty was not his handwriting. That was not his style of writing the number 7 or 27. He had no idea whose writing it was.

When questioned about his handwriting in general and in particular about his writing of the number 7, Mr. Kadioglu stated that the 2nd page of the ‘Notes to File’ was more indicative of how he wrote the number 7 (Exhibit 18).

Mr. Kadioglu testified that the fax that he sent to the Council with a number 7 written on it was not his handwriting (Exhibit 17). The acknowledgement by the buyer about commission was not his handwriting, and neither was the writing in the listing agreement (Exhibit 19). He was not sure whether or not it was his handwriting on his letter to Mr. McDonald (Exhibit 20).

Mr. Kadioglu testified that the acceptance date of ‘27-07-2011’, on the Fintrac information sheet was not his writing. He acknowledged that he that filled out the typewritten portions of the form, but not that date. He had given the Fintrac form to the office, but with no dates, because he had no accepted offer. When asked about his statement in his affidavit where he deposed that the acceptance date was July 27, 2011, Mr. Kadioglu stated that he remembered dating the Fintrac form, but the form he dated was not in the brokerage file. He did not know who would have written the different style of 7 on the contracts and the Fintrac form.

Mr. Kadioglu was unsure who at the brokerage created the ‘Notes to File’ or transaction sheet. Mr. Kadioglu when questioned about his allegation that someone in the brokerage used white out on the documents, including on the ‘Notes to File’, to change the contract date and in particular the number 27, and 7, (Exhibit 8, Tab 9), he was unable to elaborate on who or why anyone would do that.

When questioned about the procedure when renewing or transferring his licence, Mr. Kadioglu recalled that he usually received an email from the brokerage office. He would attend at the office and the application form was usually filled out and he would just sign it. His credit card number was normally given for the office to fill out because desk fees were withdrawn from it.
Mr. Kadioglu reviewed various licence renewal and transfer applications (Exhibit 21). He stated that because it occurred over so many years, he could not remember writing his name, phone number, case number, postal code, the date, the number 7, or other information on the applications. He did not believe that he ever filled out the applications forms or credit card information himself. The signatures were his, but he could not say conclusively that the handwriting throughout the applications, particularly for the number 7, was his.

Mr. Kadioglu believed that the vast majority of applications were filled out by someone else but he could not recall who. Mr. Kadioglu stated that at times his wife, a friend, or office staff assisted him in filling out the various forms.

Under cross examination, Mr. Kadioglu testified that the contract he gave Mr. Sharma on July 25, 2011, did not have a contract or acceptance date. He was unable to say how the differences in the contracts happened or what happened within the office or why or how the July 27, 2011 contract was sent to [redacted]. He did not agree with the assertion that everyone else but him thought the contract was with Homeland, and that Homeland was the buyer's agent. He did not agree that the July 27, 2011 contract was created to fix a problem in terms of where the deposit was held, or who the buyer's agent was. All of the parties were aware of what was happening, and he had followed Mr. Sharma’s advice to the best of his knowledge.

SUBMISSIONS

COUNCIL’S SUBMISSIONS

The Council submitted that on July 24, 2011, Mr. Kadioglu was licensed with Homeland. On July 25, 2011, he became licensed with Amex-Fraseridge. The Council recounted Mr. Sharma’s testimony wherein he stated that he met with Mr. Kadioglu on July 25, 2011 and at that time had Mr. Kadioglu signed the Independent Contractor’s Agreement between Mr. Kadioglu and Amex-Fraseridge. He then informed the Council and arranged for the transfer of Mr. Kadioglu’s licence from Homeland to Amex-Fraseridge through the Council. Mr. Sharma testified that he did not meet with Mr. Kadioglu on Saturday, July 23, 2011, as the brokerage was closed and he did not work on the weekends.

The Council submitted that the documentary evidence and the oral testimony of Mr. Kadioglu and Mr. Gramek were consistent, in that a Contract of Purchase and Sale prepared on Homeland’s forms was entered into by the parties on July 24, 2011. The contract was signed by the buyer and at least by one of the sellers on that date. While there may have been some issue obtaining the signature of one of the sellers who was in France at the time, and if not signed by the second seller on that date, the offer was at least verbally agreed to by that seller. It was clear that the buyer, the sellers, Mr. Gramek and Century 21 thought they had a completed contract on that date and that acceptance of the offer by the sellers took place on that day. Mr. Gramek received a fully signed
contract back from his client, and would have provided that copy to Mr. Kadioglu. Mr. Gramek turned a completed contract containing all the signatures into his brokerage which was supported by the testimony of Mr. Gramek and the documents that were in Century 21's brokerage file.

The Council submitted that Mr. Kadioglu did not turn the July 24, 2011 contract he had written into Homeland, or into Amex-Fraseridge, and never gave any evidence that he had. Instead, on July 27, 2011, once notified by Mr. Sharma that he could take listings and write offers, Mr. Kadioglu took an incomplete version of the July 24, 2011 contract, changed the date to July 27, 2011 and who prepared the contract to Amex Realty, and changed paragraphs 2 and 23 to have the deposit held by Amex Realty and the offer open to July 27, 2011. He then had his own client initial the changes to the first page of the contract. He did not change the agency in paragraph 20 or the date of acceptance. This contract was not sent to Century 21 for the signature of the sellers, and therefore was not a completed contract.

The Council submitted that Mr. Kadioglu, without the consent of Homeland, handed in a contract to Amex-Fraseridge which had been changed to reflect that the contract had been written for, and that the deposit would be held by, Amex-Fraseridge. The Council submitted that Mr. Kadioglu made these changes so that he could have the contract processed by Amex-Fraseridge and not by Homeland as he knew that he could not submit to Amex-Fraseridge, a contract written while he was still licensed with Homeland.

The Council submitted that Mr. Kadioglu would not have known how Mr. Sharma would have reacted if he had provided Amex-Fraseridge with a contract written on Homeland forms and dated before he was licensed with the brokerage. It is likely that Mr. Sharma would have not have accepted the documents. Even if Mr. Tong would have honoured Mr. Kadioglu's commission, or had Mr. Sharma negotiated an agreement with Mr. Tong to transfer the contract to Amex-Fraseridge, Mr. Kadioglu could not have known what would happen at the time of transaction. His motivation was to leave Homeland as soon as possible.

The Council submitted that the July 27, 2011 contract had a number of inconsistencies. The changes made to that contract indicated that they were made in the presence of the buyer, or at least made and then endorsed by the buyer. This would support the evidence of the Council that the changes were made by Mr. Kadioglu, as there was no evidence of anyone else having direct contact with the buyer, anyone else at the brokerage who would have arranged to meet the buyer to obtain his initials, or for those initials to be that of anyone else. Other inconsistencies would suggest that the version of the July 24, 2011 contract not yet signed by the other seller was amended to reflect Mr. Kadioglu's new brokerage. Mr. Kadioglu proposed different versions of the acceptance date. However, there was no evidence submitted by Mr. Kadioglu, other than his statement, that acceptance took place on July 27, 2011.

The Council submitted that Mr. Kadioglu made changes to the contract dishonestly in order to mislead his brokerage as to when the contract was written. Mr. Kadioglu
suggested that that he was entitled to make changes to the contract because of the uncertainty about the actual date of acceptance. However, Mr. Kadioglu did not have the authority to make unilateral changes to an accepted contract regardless of his view of the enforceability of that contract. There was no evidence that Mr. Kadioglu contacted Mr. Gramek to discuss the acceptance date or the enforceability of the contract.

The Council submitted that Mr. Kadioglu’s testimony that someone else may have made those changes to the contract was likely not true. There was no one else but Mr. Kadioglu, who had either the opportunity or the motive to make changes to the contract.

Although Mr. Kadioglu submitted that he had no motive to change the date of the contract because Mr. Tong said that he would honour any commissions owed to Mr. Kadioglu and that he had been assured by Mr. Sharma that he had spoken with Mr. Tong and he could process the contract through Amex-Fraseridge, Mr. Sharma testified that he never spoken with Mr. Tong. He stated further that had never seen the July 24, 2011 contract, and had first reviewed the July 27, 2011 contract in early August when the contract was brought to him by the manager after the bank draft for the deposit had been deposited into trust. When he brought the problems with the contract to Mr. Kadioglu’s attention, he was told that the contract was a draft and that the selling agent would be sending a fully signed copy to him when he was back from holidays. Mr. Sharma stated that he would not have accepted the July 24, 2011 contract.

Further, Mr. Tong testified that he had not spoken with Mr. Sharma, and had no knowledge of the July 24, 2011 contract until August 18, 2011, when he was contacted by Century 21 about the deposit. Mr. Tong stated that he had a falling out with Mr. Kadioglu and had informed Mr. Kadioglu that unless he found a new brokerage to work at he would be sending his licence into the Council. Mr. Tong stated that he would not have agreed to transfer the July 24, 2011 contract to Amex-Fraseridge.

The Council submitted that, although Mr. Kadioglu had stated that it was not his handwriting on that contract or other documents, the licensing applications that Mr. Kadioglu had submitted to the Council showed the same handwriting and the same use of the European 7 that was on the contract. The handwriting that was used to amend the contract dated 27-7-2011 was similar to that on the MLS sheet wherein the buyer acknowledged the commission payable.

The Council submitted that because of the contradictory nature of the evidence, the Committee would have to weigh the evidence and make determinations of credibility. Mr. Kadioglu’s evidence on key issues was not only not credible, but was incredible.

The Council submitted that one of the most difficult tasks of any decision making body is the task of weighing conflicting evidence and making a decision based on that evidence after making findings of credibility. While there is no hard and fast rule as to how to approach this task, there were a number of decisions where courts have discussed this particular task and how to approach it. In that regard, the Council submitted a Book of Authorities for the Committee’s consideration.
MR. KADIOGLU’S SUBMISSIONS

Mr. Kadioglu submitted that the Council was prejudiced against him, and had a double standard when prosecuting licensees. Most of the Council’s submissions were attempts at character assassination to vindicate its action against him, and consisted of irrelevant or immaterial speculation as to how the paperwork was handled throughout the transaction.

Mr. Kadioglu submitted that the Council had decided from the outset that Mr. Sharma and Amex-Fraseridge were without blame for the handling of the transaction. Mr. Kadioglu stated that if they were without blame or even suspicion of wrongdoing, then the Council had no grounds for proceeding against him. The Council had made no effort to subpoena the actual contract processed by the seller’s lawyer, and had only relied on those documents that were voluntarily disclosed to the Council by Amex-Fraseridge and Century 21.

The Council’s witnesses gave testimony that was inconsistent, and in conflict with each other. Mr. Kadioglu stated that it was not possible for Mr. Gramek to have obtained a legally enforceable acceptance of the offer or even a verbal acceptance by both sellers on July 24, 2011; but rather Mr. Gramek obtained the acceptance from both of the sellers sometime after July 24, 2011 when Mr. Kadioglu was officially employed at Amex-Fraseridge. It was immaterial in any event whether that date was July 27, July 29, August 2 or 3.

Mr. Kadioglu submitted that it was ludicrous to believe Mr. Sharma’s testimony that the first time that Mr. Sharma met with him was on the morning of July 25, 2011 during which meeting he hired him, Mr. Kadioglu submitted that that evidence was contradicted by Mr. Gramek because Mr. Gramek testified that Mr. Kadioglu told him that he was in the middle of switching brokers, therefore, he could not have told Mr. Gramek with certainty on July 24, 2011, that the transaction would be processed through his new brokerage, if he had not already secured his employment with the new brokerage and discussed the transaction with the managing broker.

Mr. Kadioglu submitted that it was Mr. Sharma’s job and responsibility to point him in the right direction and that Mr. Sharma hired him because he knew that he had pending offers, and would be bringing business into the brokerage. Mr. Kadioglu submitted that it was unbelievable that Mr. Sharma had no knowledge of the transaction until August or that Mr. Kadioglu could have processed the transaction without the willing participation of Mr. Sharma. Mr. Sharma could have told him to take the contract back to Homeland. He had left that decision to Mr. Sharma.

Mr. Kadioglu submitted that there was a breakdown in communication at Century 21 due to Mr. Gramek’s long absence from Vancouver in the middle of the transaction. Mr. Garvey testified that the procedure at Century 21 was to take a copy of every cheque before depositing it in the brokerage account; however, he could not recall material
details under cross-examination, nor explain why the brokerage thought it was dealing with Homeland when it received and deposited a cheque from Amex-Fraseridge.

Mr. Kadioglu submitted that the Council had submitted previous licensing applications as evidence of his handwriting. Mr. Kadioglu disclosed that he had suffered from Attention Deficit Disorder, and had on occasion experienced problems with his handwriting. He often asked his wife, colleagues and friends to write for him. Mr. Kadioglu submitted that in light of these submissions, the Council's evidence with respect to the way in which the number 7 was written on those documents was irrelevant.

Mr. Kadioglu submitted that the Council's submissions that he had a motive were unfounded and uncorroborated speculation. They did not prove that he had any particular financial interest in processing the transaction through one brokerage or another. He would not have known how Mr. Tong would have reacted if he had gone back to him after the animosity that Mr. Tong displayed towards him. Mr. Tong's testimony indicated that he would not have known where he stood either. What the Council's submissions did show was that the Council was negligent in laying down rules for licensees and their managing brokers for such an unusual contingency of a licensee in transition between two brokerages on a weekend. Mr. Kadioglu stated that it appeared to him that this matter was a commission issue between Homeland and Amex-Fraseridge, and uncharted waters for the Council.

Mr. Kadioglu submitted that it would have been inappropriate or even illegal for him to work on the transaction under the aegis of Homeland while employed with Amex-Fraseridge. The Council justified its actions against him with the hypothetical possibility that his client's best interest might have been jeopardized. Mr. Kadioglu submitted that his client's best interest might have been injured if he had not acted in the way that he did. If there was anything that placed his client at risk, it was the sloppy handling of the paperwork by Amex-Fraseridge and Century 21. The Council had overlooked how the brokerages mishandled the transaction, and that there was no enforceable contract until its completion.

Mr. Kadioglu submitted in conclusion, that he had been fired from Homeland and had been officially working for a new brokerage. He had proceeded under the guidance of a professional managing broker during an unusual circumstance. He had made an honest judgment call, and had acted professionally, honestly and in his client's best interest. The Council has not proven any of its allegations and in the interest of justice, the action against him should be dismissed.

**REASONS FOR DECISION ON FINDINGS**

After the conclusion of the hearing, the Committee deliberated.

The Committee took note of the responsibilities of the Council to protect the public interest, and to ensure licensees were competent and acted with reasonable care and skill, honesty, and integrity.
The Committee also noted its obligation to ensure that the decisions it renders are fair and reasonable, and any findings of professional misconduct are arrived at on a balance of probabilities, with clear and cogent evidence.

Based on the evidence adduced and the submissions of the Council and Mr. Kadioglu, the Committee found that Mr. Kadioglu committed professional misconduct within the meaning of section 35(1)(a) of RESA, and failed to act with reasonable care and skill and honesty when without the consent of Homeland, or the knowledge of Century 21, Mr. Kadioglu knowingly turned in a contract to Amex-Fraseridge which he had altered to reflect that the contract had been written for, and that the deposit would be held by, Amex-Fraseridge. Mr. Kadioglu made these changes so that he could have the contract processed by Amex-Fraseridge and not by Homeland, as he knew that he could not submit to Amex-Fraseridge, a contract written while he was still licensed with Homeland.

The Committee was not satisfied that deceptive dealing was proven within the meaning of section 35(1)(c) of the RESA, and dismissed that allegation.

The Committee determined that Mr. Kadioglu had the means and the opportunity to proceed as he did, and his motivation was two-fold. He was unsure how Mr. Tong would have reacted had he turned the contract into Homeland, and he wanted to ensure that he received the commission, and that the contract stayed with him regardless of whether he was licensed with Homeland or not.

The Committee agreed with the Council's submission that one of the most difficult tasks of any decision making body was the task of weighing conflicting evidence, and making a decision based on that evidence after making findings of credibility. In that regard, it was guided by the Book of Authorities provided, and in particular, took note of the following passages:

"Conflicting and irreconcilable testimony between witnesses on essential matters requires an assessment of credibility generally, and also specifically in light of undisputed or undisputable facts and such other facts as are very likely, and probably, to be true, and also in light of the burden of proof of adducing evidence." (Landry v. Pratt & Whitney Canada, Alberta Court of Queen's Bench, July 17, 1996 (Book of Authorities- Tab 10)

"The credibility of interested witness, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried the conviction of truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-

The Committee determined that the testimony of the Council's witnesses presented a version of the events that was believable, was supported by the documentary evidence, and was corroborated by one another. Mr. Kadioglu's testimony, on the other hand, was contradictory, inconsistent with the testimony given by the Council's witnesses, and provided for a version of the events that was just not plausible.

The Committee noted that Mr. Kadioglu has been licensed since 2004, and had over the years transferred his licence to many different brokerages. The Committee concluded that Mr. Kadioglu should have then been quite familiar with the Council's licensing procedure, and realized the process of transferring a licence was neither a technicality nor a mere formality.

Mr. Kadioglu stated that he believed that he was licensed with Amex-Fraseridge on July 24, 2011. Yet, he testified that the reason his transfer application, which he said he filled out with Mr. Sharma on Saturday, July 23, 2011, could not be processed that day, was because the Council office was closed on the weekends. He would have known then that no transfer would be processed until Monday, July 25, 2011, at the earliest, when the Council office reopened.

Mr. Kadioglu would have also known then that, irrespective of any conversations he may have had with Mr. Tong or Mr. Sharma between July 21 and July 23, 2011, he was still licensed with Homeland, and not licensed with Amex-Fraseridge on July 24, 2011.

The Committee found that Mr. Kadioglu was licensed with Amex-Fraseridge on July 25, 2011, and until that date he was, and remained, licensed with Homeland. This was supported by the testimony of Mr. Sharma that he first met with Mr. Kadioglu on Monday, July 25, 2011 and hired him, the evidence produced of the licensing application Mr. Sharma submitted to the Council dated that day, the licensing certificate issued by the Council to Mr. Kadioglu on July 25, 2011, and the licensing certificate turned into the Council by Mr. Tong after July 25, 2011. Mr. Kadioglu did not provide any evidence to the contrary that would suggest he was licensed with Amex-Fraseridge and not licensed with Homeland on July 24, 2011, other than his testimony that he believed that that was the case.

If Mr. Kadioglu did not think he was licensed with Homeland, he should not have then been writing a contract using Homeland forms. The fact that he only had access to Homeland forms and not Amex-Fraseridge's, coupled with the fact that he did use Homeland forms, which he acknowledged in his testimony that he did do, indicated to the Committee that he knew he was licensed with Homeland when he wrote the offer on July 24, 2011.

The Committee determined that Mr. Kadioglu should not have been writing any contract under Amex-Fraseridge on July 24, 2011, as he was not licensed with that brokerage.
Any contract he would have written on July 24, 2011, would have been a Homeland contract.

The Committee determined that Mr. Kadioglu wrote up an offer for the buyer on July 24, 2011, using Homeland forms, and that was the contract that went back and forth between him and Mr. Gramek that day. He had an undated contract from the negotiations which he retained. The offer eventually agreed to by the parties on that date, written on Homeland forms, and dated July 24, 2011, was the contract accepted by the buyer and the sellers on July 24, 2011. Mr. Kadioglu had the accepted contract because Mr. Gramek sent it to him the evening of July 24, 2011.

The Committee accepted that Mr. Gramek turned that contract into Century 21, and for all intents and purposes was the contract that the buyer and the sellers believed they were operating under. The contract in the Century 21 file contained addendums and other brokerage related files which all referred to the July 24, 2011 contract. That contract was the only one the sellers signed and the only contract that Mr. Gramek turned into Century 21, where it remained in the brokerage file until it was sent to [redacted] for completion. Mr. Gramek had no knowledge of any other contract, and there was never any suggestion made to Mr. Gramek that the parties would be acting under a different contract.

The Committee did not accept that Mr. Gramek told Mr. Kadioglu that he would send him the completely signed contract in August, once both of his sellers had signed the contract and after he returned from his trip to the United States. The Committee accepted that Mr. Gramek had no discussions with Mr. Kadioglu about delaying the acceptance of the contract until August. Mr. Gramek did not go on holidays before the offer was accepted, and did not go on vacation until after the subjects were removed on July 29, 2011.

Mr. Kadioglu did not turn the July 24, 2011 contract he had written into Homeland, or into Amex-Fraseridge. No evidence was provided to suggest that he did, and Mr. Garvey and Mr. Tong confirmed that their respective brokerages did not receive it.

The Committee accepted that Mr. Sharma did not meet with Mr. Kadioglu until Monday, July 25, 2011. They may or may not have talked on the phone prior to July 25, 2011, but they did not meet. Mr. Sharma had no reason to deny that he had met with Mr. Kadioglu on that Saturday, and no evidence was produced by Mr. Kadioglu to suggest otherwise. Mr. Kadioglu never mentioned to Mr. Sharma during that meeting that he was working on a transaction, nor did he tell him that he had written a contract the day before. Mr. Sharma had never seen the July 24, 2011 contract nor had he been given that contract by Mr. Kadioglu. The Committee did not accept Mr. Kadioglu’s testimony that Mr. Sharma told him that since he was no longer working with Homeland, it would be in the best interest of the client to process that contract through Amex-Fraseridge.

The Committee determined that on July 27, 2011, once Mr. Kadioglu had been notified by Mr. Sharma that he could take listings and write offers, he took an incomplete version of the July 24, 2011 contract, changed the date to July 27, 2011, the brokerage name to
Amex Realty, and changed paragraphs 2 and 23 to indicate that the deposit was held by Amex Realty, and the offer was open until July 27, 2011. He then had his buyer initial the changes to the first page of the contract. He did not change the agency in paragraph 20 or the date of acceptance. He inserted pages from the July 24, 2011 and created a ‘new’ contract under Amex-Fraseridge, which Mr. Kadioglu assumed would by its very nature confirm and/or provide evidence that the contract was prepared when he was licenced with Amex-Fraseridge.

This contract was not sent to Century 21 for the signature or initials of the sellers. Century 21 did not have a contract dated July 27, 2011 prepared by Amex-Fraseridge in its brokerage file.

The buyer removed subjects by July 29, 2011, and the subject removal addendum dated July 29, 2011 was sent to Century 21 as confirmation of subject removal. No one at Century 21 noticed the Amex logo appearing at the top of the page or the notation about the change in brokerage. Normally the subject removal was not signed by the sellers, so there would have been no reason for anyone at Century 21 to review the document, other than to confirm that the subjects had been removed.

The Committee accepted Mr. Sharma’s testimony that the only contract he was aware of was the one in the brokerage file dated July 27, 2011. If the contract that was in Century 21’s file had been received by Mr. Sharma he would not have made any changes to the agency relationship, or even accepted the contract. He would have contacted Homeland, and told them the deal belonged at that brokerage.

The Committee accepted that Mr. Sharma and Mr. Tong never spoke with each other about transferring the contract to Amex-Fraseridge. There was no reason, or other evidence provided by Mr. Kadioglu, other than his testimony, to suggest that Mr. Sharma or Mr. Tong were anything but truthful in their testimony.

The Committee believed that the first time Mr. Tong was aware of any contract was when Homeland received an enquiry on August 18, 2011 from Century 21, 2011, about the deposit. Mr. Tong never gave his authorization to transfer the contract to Amex-Fraseridge.

The Committee determined that on August 2, 2011, Mr. Kadioglu knowingly submitted the buyer’s deposit and the altered contract as the accepted offer to Amex-Fraseridge, when he knew that that contract was not the accepted one. Mr. Kadioglu himself acknowledged that the contract ‘had been duly amended’.

The Committee accepted Mr. Sharma’s testimony that the first time he heard about or saw the July 27, 2011 contract was on August 2, 2011, when it was drawn to his attention by his conveyancing manager. Amex-Fraseridge nevertheless, having accepted the deposit on August 2, 2014, proceeded as if it was acting for the buyer, and that contract was the one that was eventually sent to for closing.
On August 18, 2011, Century 21 contacted Homeland enquiring about the deposit it was purportedly holding in trust for the transaction. Based on the contract it had in its file, it believed, and rightly so, that Homeland would be holding the deposit, and that the deposit confirmation would come from Homeland. No one at Century 21, including Mr. Gramek, knew that Amex-Fraseridge held the deposit until after Mr. McDonald spoke with Mr. Tong. Century 21 received confirmation from Amex-Fraseridge that it was holding the deposit. The only way that could have happened was if the brokerage name had been changed from what was on the original contract held in Century 21’s file, and now appeared on the altered contract in Amex-Fraseridge’s file.

On August 24, 2011, Mr. Kadioglu sent Mr. Gramek a fax of the first page of the July 24, 2011 contract in which the brokerage name had been changed, and requested that Mr. Gramek send it back to him, which he did on August 26, 2011. The Committee finds that this was done purposely by Mr. Kadioglu in an effort to establish a document trail that showed that he had received the accepted contract from Mr. Gramek on that date and under cover of Amex-Fraseridge, and not done for the reason that Mr. Gramek thought that that fax was his acknowledgement of where the deposit was held.

Amex-Fraseridge sent a copy of the contract that it had in its file to [redacted] for closing. Century 21 provided its contract to [redacted]. It did not provide [redacted] with the July 27, 2011 contract that Amex-Fraseridge had. The contract from each of the brokerages should have been identical, but were not. In fact, [redacted] received different versions of the contract, which was evident from the documents produced by her to the Council. The transaction closed on August 31, 2011, on the contract provided by Amex-Fraseridge, no doubt because it had the later date. Mr. Kadioglu may not have realized that Century 21 would have also sent its contract to [redacted].

The Committee accepted Mr. Sharma’s testimony that no one in the brokerage touched a contract, or would have any reason to alter any document, in a brokerage file.

The Committee determined that no one at the brokerage other than Mr. Kadioglu had the motive, means, or opportunity to make the changes to July 27, 2011 contract, knew what changes needed to be made, arranged a meeting with the buyer to obtain his initials on that contract, or could have submitted that contract to Amex-Fraseridge.

The handwriting on the July 27, 2011 was identical to Mr. Kadioglu’s handwriting on other documents, and was identical to handwriting that Mr. Kadioglu acknowledged was his own. The Committee found it difficult to reconcile that Mr. Kadioglu was unable to recognise his own handwriting, or that he never once had filled out any application forms, credit card authorizations, or other documents on his own.

While the Committee may have had some concerns about how Century 21 and Amex-Fraseridge handled the contract at various points in time, this in no way excused Mr. Kadioglu’s behaviour, or minimized the responsibility he had for his own conduct throughout the transaction.
It is germane to this matter that the July 24, 2011 contract written under Homeland, and in Century 21’s file, was a firm contract that rightfully belonged with Homeland, and was the only contract the parties were acting on. A good portion of Mr. Kadioglu’s testimony was devoted to when the offer was accepted. However, when the offer was accepted was not as important, or indeed as relevant, as where the contract was written. The Committee finds that despite his testimony, Mr. Kadioglu fully grasped that significance. The Committee also found Mr. Kadioglu’s inconsistent testimony about acceptance dates and enforceable contracts troubling, specifically his comments – “It was immaterial whether that date was July 27, July 29, August 2 or 3.” “There was no enforceable contract until its completion.” – and questioned his overall knowledge in this area.

Mr. Kadioglu wanted a smooth transition to Amex-Fraseridge, with a contract under wrap, and the added benefit of preserving his reputation and commission. And he found a way.

Mr. Kadioglu stated that, “He had made an honest judgment call, and had acted professionally, honestly and in his client’s best interest.” This somehow was meant to absolve his actions and entitle him to make changes to a firm contract. The only saving grace in this matter was that no harm resulted to either the buyer or the sellers. Mr. Kadioglu’s actions were misguided and dishonest. He showed neither care nor skill. Despite his belief to the contrary, Mr. Kadioglu was, alone, the author of his own misfortune.

DEcision ON FINDINGS

1. The Committee determined that Mr. Kadioglu committed professional misconduct within the meaning of section 35(1)(a) of RESA as follows:

a. contrary to section 3-4 of the Council Rules, he failed to apply reasonable care and skill and act honestly, in that he prepared an offer on July 24, 2011 on his former brokerage’s form indicating that the brokerage was providing agency to the buyer, and subsequently, after acceptance, made changes to the contract of purchase and sale, including changing the contract to indicate the contract had been prepared by his subsequent brokerage on July 27, 2011 and that the deposit was now payable to the new brokerage in trust;

b. contrary to section 3-4 of the Council Rules, he failed to act honestly when he made the above noted changes without the authorization or consent of his former brokerage to make those changes; and

c. contrary to section 3-4 of the Council Rules, he failed to act honestly when he turned into his brokerage the amended contract which indicated that he had written the contract after he had become licensed with the brokerage, which was not true.
2. The Committee will now invite written submissions as to the appropriate discipline penalty that should be imposed in this matter on the following schedule:

   a. The Council will provide submissions to the Committee no later than August 21, 2015;

   b. Mr. Kadioglu will provide response submissions to the Committee no later than two weeks from the date that the Council submits its submissions to the Committee;

   c. The Council may provide reply submissions to the Committee no later than two weeks from the date that Mr. Kadioglu submits his response submissions to the Committee.

3. All submissions will be directed to the Committee care of Ms. Moore at the Council office.

DATED at VANCOUVER, BRITISH COLUMBIA this 20th day of July, 2015.

FOR THE DISCIPLINE HEARING COMMITTEE

[Signature]

D. Peerless
Disciplining Hearing Committee Chair

DP/jlm/klk
File 11-077
LIST OF EXHIBITS

| Exhibit 1:                               | Email dated September 23, 2013 to Mr. Ileman from Ms. Gossen |
| Exhibit 2:                               | Affidavit of Service                                          |
| Exhibit 3:                               | Notice of Application with Attachments dated July 14, 2014    |
| Exhibit 4:                               | Letter from Alfred Tong to Maureen Coleman with attachments  |
| Exhibit 5:                               | Murat Kadioglu v. Alfred Tong and Local Venture Corporation, Reasons for Judgement |
| Exhibit 6:                               | Notice of Application with Attachments dated August 19, 2014  |
| Exhibit 7:                               | Book of Documents, Vol. 1                                     |
| Exhibit 8:                               | Book of Documents Vol. 2                                      |
| Exhibit 9:                               | Book of Documents Vol. 3                                      |
| Exhibit 10:                              | 2011 calendar                                                |
| Exhibit 11:                              | Copy of Contract of Purchase and Sale                        |
| Exhibit 12:                              | Email from Mr. Gramek dated July 29, 2011                     |
| Exhibit 13:                              | Emails dated July 29, 2011 from Mr. Gramek to BIC Consulting |
| Exhibit 14:                              | Emails dated July 24, 2011 from Mr. Gramek to BIC Consulting |
| Exhibit 15:                              | Licence Certificate dated December 21, 2010                   |
| Exhibit 16:                              | Licence Certificate dated July 25, 2011                        |
| Exhibit 17:                              | Fax to Ms. Gossen from Mr. Kadioglu                          |
| Exhibit 18:                              | Affidavit Number 2, addressed to Hearing Committee 11-077    |
| Exhibit 19:                              | Listing agreement for 3535 East Pender Street dated July 27, 2011 |
| Exhibit 20:                              | Letter dated October 4, 2013 to Mr. McDonald from Mr. Kadioglu |
| Exhibit 21:                              | Mr. Kadioglu's licensing information history from 2004 to Present |