

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

AND IN THE MATTER OF
BLUEPRINT REALTY INC.
dba RE/MAX BLUEPRINT REALTY
(X031286)

REASONS FOR DECISION REGARDING
ADMINISTRATIVE PENALTY RECONSIDERATION REQUEST

[This Decision has been redacted before publication.]

DATE AND PLACE OF HEARING:
HEARING OFFICER:

Via Written Submissions
Andrew Pendray

INTRODUCTION

1. On June 28, 2022, pursuant to sections 57(1) and 57(3) of the *Real Estate Services Act* (“RESA”), the BC Financial Services Authority (“BCFSA”) issued a Notice of Administrative Penalty to Blueprint Realty Inc. (“Blueprint”). In that notice, BCFSA determined that Blueprint had contravened Rule 75 of the Real Estate Services Rules (the “Rules”), by failing to file its required Accountant’s Report within 120 days of the end of its fiscal year, and imposed an administrative penalty of \$1,000.00 on Blueprint (the “Penalty”).
2. Blueprint now seeks reconsideration of the Penalty, pursuant to section 57(4) of RESA, and asks that the Penalty be cancelled.
3. This application proceeded by way of written submissions. In support of its position that the Penalty ought to be cancelled, Blueprint submits that it remained in compliance as it had received from BCFSA a one month extension to file the Rule 75 Accountant’s Report.
4. Blueprint further takes the position that as BCFSA had informed it that its file was closed once it had ultimately submitted the Rule 75 Accountant’s Report, it had been left with the impression that it remained in compliance, and that therefore BCFSA had waived its right to impose an administrative penalty against Blueprint in relation to the Rule 75 Accountant’s Report.

Issue

5. The issue is whether the June 28, 2022 administrative penalty should be cancelled or confirmed.

Jurisdiction and Standard of Proof

6. This application for reconsideration is brought pursuant to section 57(4) of RESA, which requires the Superintendent of Real Estate (the “superintendent”) to provide a person who receives an administrative penalty with an opportunity to be heard.
7. Under section 57(4) of RESA the superintendent may cancel the administrative penalty, confirm the administrative penalty, or, in circumstances where the superintendent is satisfied that a discipline

hearing under section 40 of the Act would be more appropriate, cancel the administrative penalty and issue a notice of discipline hearing.

8. The superintendent has delegated the statutory powers and duties set out in section 57 to Hearing Officers.
9. The standard of proof is the balance of probabilities.

Background

10. On September 2, 2021, BCFSa wrote to the managing broker of Blueprint, [Managing Broker], by email. That email set out a reminder that Blueprint's annual Rule 75 Accountant's Report was due within 120 days of its fiscal year end, which according to BCFSa's records was August 2021.
11. On December 23, 2021, [Managing Broker] wrote to BCFSa by email. In that email [Managing Broker] indicated that Blueprint was requesting a one-month extension to submit its annual filing documents, including the Rule 75 Accountant's Report. [Managing Broker] explained that:

We have had a very difficult past couple of months related to staffing issues. We were already strained due to the on-going pandemic and staffing challenges. However due to the recent floods, our Senior Conveyancer, who lives in Chilliwack, had to take a leave of absence related to the floods. We have had considerable strain being short-staffed and with the Holiday Season upon us, our accounting firm has also advised they require more time to submit our annual filing.

12. BCFSa replied to [Managing Broker]'s request on December 23, 2021. In that email reply a BCFSa audit coordinator indicated that BCFSa had no authority to grant extensions in respect of the Rule 75 requirements. The audit coordinator did indicate, however, that:

...we are working with brokerages facing delays in submitting the Accountant's Report filings as best we can.

We will keep a copy of your email on file and review the matter once we receive the complete Accountant's Report filing.

Please note that there is a possibility of an administrative penalty for a late filing. We will keep in contact with the brokerage until such time as we receive the completed filing.

We look forward to receiving your Accountant's Report filing for year-end August 31, 2021.

13. On January 31, 2022 Blueprint filed its Rule 75 Accountant's Report with BCFSa.
14. In a February 2, 2022 email, a BCFSa audit specialist wrote to Blueprint regarding the January 31, 2022 filing. That email requested explanations in respect of what the audit specialist deemed to be delays in the monthly reconciliations of Blueprint's trust and general accounts. Specifically, the audit specialist noted that the Accountant's Report indicated that the September 2020 to August 2021 trust reconciliations were not prepared in a timely manner (within 5 weeks) of month-end, but rather that the trust reconciliations had all been prepared in January 2022.
15. Blueprint replied by way of a February 16, 2022 email. In that email [Managing Broker] indicated that in mid-April 2021 Blueprint's long-time comptroller had left the firm for personal reasons. [Managing

Broker] indicated that Blueprint had undertaken a search for a suitable candidate in April 2021, but that it had not been able to find one until December 2021.

16. In a February 17, 2022 email the BCFSA audit specialist replied to [Managing Broker]'s email of February 16, 2022 with the following:

Thank you for your email received on February 16, 2022 addressing the concerns raised in our email of February 2, 2022.

The response provided is appreciated.

We have closed your file in this reporting period.

17. On June 29, 2022 BCFSA issued the Notice of Administrative Penalty to Blueprint by email.
18. Blueprint then wrote to BCFSA to request a reconsideration of the administrative penalty. In its July 28, 2022 request for reconsideration Blueprint indicated that it had understood that BCFSA had granted Blueprint a one-month extension to file the required Rule 75 reports prior to the December 31, 2021 deadline. Blueprint further indicated that:

...the email received from you on February 17, 2022 indicated that we had addressed your concerns raised in the email of February 2, 2022 to your satisfaction, and that you had closed this file for the period in question. Four months later we were assessed the administrative penalty.

Given that we had requested a 30 day extension to file, submitted the required reports with that extension, and received confirmation that the file had been closed to your satisfaction, we were under the understanding that we had remained in compliance.

...

It is our position that we remained in compliance by requesting and receiving the extension to file by BCFSA. That extension was due in large part to our Director of Operations, [Individual 1], going on long term sick leave in early November 2021. [Individual 1] had been working with our outside auditor to have the annual reports filed. Given her unexpected departure in early November, and our difficulties in hiring a suitable Comptroller, as outlined in our response to your follow up questions in February 2022, we requested a formal extension to file, and were granted 30 days to January 31st 2022.

Submissions

19. In its August 18, 2022 written submissions Blueprint takes the position that it faced extenuating circumstances which posed significant barriers to its ability to comply with the Rule 75 reporting requirements for the reporting period ending August 31, 2021. It noted that those circumstances were previously outlined in its December 23, 2021 request for a filing extension, and its July 28, 2022 request for reconsideration.
20. Blueprint also submits that, as a result of its February 17, 2022 email from the BCFSA audit specialist indicating that "We have closed your file in this reporting period", BCFSA was estopped from issuing the June 29, 2022 administrative penalty.

21. Specifically, Blueprint submits that BCFSA appeared to have decided, in the February 17, 2022 email, to “close the relevant file without first issuing any administrative penalty”, and that as a result BCFSA should now be precluded from contradicting its February 17, 2022 decision by issuing the June 29, 2022 administrative penalty.
22. Alternatively, Blueprint submits that in issuing the February 17, 2022 email, BCFSA waived its right to impose an administrative penalty on Blueprint, as it had indicated that the “file had been closed.”

Reasons and Findings

Applicable Legislation

23. Rule 75(1) sets out that a brokerage must, within 120 days after the end of the fiscal year of the brokerage, file with the superintendent financial statements for that fiscal year, an Accountant’s Report respecting that fiscal year, and a Brokerage Activity Report respecting that fiscal year.
24. Section 56 of RESA provides that BCFSA may designate specific provisions of RESA, the Real Estate Regulation (the “Regulations”), or the Rules as being subject to administrative penalties, and may establish the amounts or range of amounts of administrative penalty that may be imposed in respect of each contravention of a specified provision. Pursuant to section 56(2), the maximum amount of an administrative penalty is \$100,000.
25. Rule 26(1) indicates that for the purposes of section 56 of RESA, contraventions of the rules listed in Rule 26(2) are designated contraventions to which Division 5 (Administrative Penalties) of Part 4 of RESA applies.
26. Rule 26(2)(a) identifies four categories, Category A, B, C, D, for designated contraventions of the Rules for the purpose of determining the amount of an administrative penalty. Rule 75 is placed in Category A. Rule 27(1) sets out that:

27(1) For each contravention of a rule listed in Category A in section 26(2)(a), the amount of the administrative penalty is as follows:

- (a) \$1,000 for a first contravention
- (b) \$2,000 for a subsequent contravention

27. Section 57(1) of RESA sets out that if the Superintendent of Real Estate is satisfied that a person has contravened a provision of RESA, the Regulations, or the Rules designated under section 56(1)(a) of RESA, the superintendent may issue a notice imposing an administrative penalty on the person. Section 57(2) requires that a notice of administrative penalty indicate the rule that has been contravened, indicate the administrative penalty that is imposed, and advise the person of the person’s right to be heard respecting the matter.

Analysis

28. The imposition of an administrative penalty under section 57 of RESA is a discretionary decision. Requests for reconsideration of the imposition of an administrative penalty require a Hearing Officer to engage in a consideration not only of whether a contravention of the Act, the Regulations, or the Rules has occurred, but also whether a licensee exercised due diligence, that is: took reasonable steps or precautions, to prevent the contravention of the Rules identified in the notice of administrative penalty. A Hearing Officer may also consider information on any extenuating circumstances that

prevented compliance, or any other information the licensee believes a hearing officer should consider.

29. I have no difficulty concluding that Blueprint contravened Rule 75 when it failed to file its Rule 75 Accountant's Report with BCFSA by December 31, 2021.
30. While it is true that Blueprint requested, on December 23, 2021 an extension to the December 31, 2021 filing deadline, I find that there is nothing in the evidence and information before me, and specifically nothing in the December 23, 2021 email from BCFSA, which would indicate that such an extension was granted.
31. Rather, BCFSA's December 23, 2021 email in response to Blueprint explicitly set out that BCFSA had "no authority to grant extensions".
32. Although the BCFSA audit coordinator who issued the December 23, 2021 email indicated that she empathized with Blueprint's staffing issues, and noted that BCFSA was "working with" brokerages facing delays in submitting accountant's reports, there is nothing in those comments which takes away from the clear statement of fact that BCFSA did not have the authority to grant Blueprint an extension.
33. I note further that the December 23, 2021 BCFSA email does not make any reference to a new filing date of January 31, 2022, does not indicate that an extension had been granted, and in fact points out that there was "a possibility of an administrative penalty for a late filing".
34. In summary, while I accept that Blueprint had hoped to receive an extension to its December 31, 2021 filing deadline, there is nothing in the December 23, 2021 email from BCFSA setting out the same. The fact that Blueprint may have convinced itself that the December 23, 2021 BCFSA email had granted it an extension does not mean that such an extension was granted. I find it was not.
35. As Blueprint did not file its Rule 75 Accountant's Report until January 31, 2022, when it was required to make such filing by December 31, 2021, I find that Blueprint was in contravention of Rule 75.

Due Diligence

36. I also do not consider that the evidence supports a conclusion that Blueprint exercised the required due diligence in ensuring that it met the requirements of Rule 75.
37. Although I accept that Blueprint may have had difficulty in respect of staffing issues, whether that be in relation to the difficulty hiring a comptroller from April 2021 to December 2021, or the departure of its senior conveyancer and its Director of Operations going on leave in November 2021, I consider it telling that in its February 16, 2022 email Blueprint has also identified further action it could have taken, but elected not to, in order to address some of its staffing issues:

...we did not deem it appropriate to hire a temporary service provider or any candidate who wanted to work remotely from home.
38. Although the above excerpted portion of the February 16, 2022 email from Blueprint was in relation to Blueprint's difficulties with reconciling trust accounts in a timely manner, I note that it makes plain that Blueprint had the option of hiring a temporary service provider to assist with its various accounting requirements, but that it elected not to do so.
39. While I do not doubt that the departure of long-time staff in the fall of 2021 could have had an impact on Blueprint's ability to complete the filing of the Accountant's Report, I would note that the

reminder of the need to complete that report was sent to Blueprint on September 2, 2021. To put it simply, I am of the view that, while Blueprint did experience some staffing issues, I do not consider those staffing to be the type of extenuating circumstances that made it impossible for Blueprint to comply with the Rule 75 filing deadlines. I consider that Blueprint had ample notice regarding the deadline date, and could have, but elected not to, hire an outside service provider to assist rather than waiting to hire a comptroller in December 2021. As a result, I find that the evidence does not support a conclusion that Blueprint exercised all reasonable due diligence necessary to prevent its contravention of Rule 75.

Issue Estoppel and Waiver

40. I turn then Blueprint's submissions on issue estoppel and waiver. I consider the content and context of the emails between BCFSAs and Blueprint from February 2, February 16, and February 17, 2022 to address Blueprint's submissions in this regard.
41. In my view, the evidence simply does not support a conclusion that the emails from BCFSAs of February 2 and February 17, 2022 had any relevance to the issue of Blueprint having missed its Rule 75 filing deadline.
42. I note, in particular, that the February 2, 2022 email does not make reference to the Rule 75 filing deadline at any point. Rather, the February 2, 2022 email from BCFSAs asks Blueprint to respond to an issue raised in the Accountant's Report in relation to Blueprint's failure to complete its monthly trust reconciliations in a timely manner:

Your accountant has reported that, *"The September 2020 to August 2021 trust reconciliations were not prepared in a timely manner (within 5 weeks) of month end. The trust reconciliations were prepared in January 2022."* Sections 80 and 81 of the Real Estate Services Rules state that reconciliations of trust and general accounts are to be reconciled in a timely fashion, and in any case, no later than 5 weeks after the monthly accounting cut-off date. Please provide an explanation for the delay in preparing these bank reconciliations.

[italics in original]

43. In my view, it is clear from the above excerpt that the focus of the February 2, 2022 email was in relation to a potential contravention of Rules 80 and 81.
44. In his February 16, 2022 response to the February 2, 2022 email, [Managing Broker] specifically addresses the concerns raised by the above excerpted question from BCFSAs regarding reconciliation of trust accounts.
45. Finally, BCFSAs's February 17, 2022 email again specifically addresses the concerns regarding sections 80 and 81, by writing "Thank you for your email received on February 16, 2022 addressing the concerns raised in our email of February 2, 2022."
46. I find that none of the February 2, February 16, or February 17, 2022 emails contain any reference to the missed Rule 75 filing deadline. There is no indication in any of those emails that the missed Rule 75 filing deadline was being discussed, or that a decision as to whether an administrative penalty in respect of that missed deadline was being made. Rather, as I have indicated above, I find that those emails were addressing the specific issue of Blueprint's failure to complete monthly trust reconciliations in a timely fashion. That is not the same issue as the missing of a Rule 75 deadline.
47. It is true, as Blueprint submits, that in its February 17, 2022 email BCFSAs wrote that it had closed Blueprint's file for the reporting period. I consider, however, that closure was again in reference to

the issues identified in the February 2, 2022 email, which again was limited to the issues identified in the Accountant's Report in respect of timely trust reconciliation as required by Rules 80 and 81.

48. As I have indicated above, I simply do not consider the evidence and information before me to support a conclusion that the BCFSAs emails of February 2 and February 17, 2022 decided, in any way, whether an administrative penalty was warranted in respect of Blueprint's failure to file as required by Rule 75. That there is no reference at all to Rule 75, or the filing deadline associated with Rule 75, in those emails. This demonstrates, in my view, that the February 17, 2022 email does not contain such a decision. As a result, I do not consider that the doctrine of issue estoppel has application in the circumstances of the June 29, 2022 notice of administrative penalty.
49. Similarly, I do not consider the evidence to support a conclusion that BCFSAs waived its right to impose an administrative penalty against Blueprint by virtue of the February 17, 2022 email. Again, the February 17, 2022 email is written in the context of issues falling under Rules 80 and 81, and makes no reference to Rule 75.
50. I note, in passing, that Blueprint's apparent belief that the February 17, 2022 email contains a decision as to whether to impose an administrative penalty in relation to its contravention of Rule 75, bares some similarity to Blueprint's apparent belief that BCFSAs December 23, 2022 email granted it a thirty day extension to file its Accountant's Report. In my view, in neither the December 23, 2021 email, nor the February 17, 2022 email did BCFSAs say the words that Blueprint has now attempted to attribute to it.
51. In sum, I find that a contravention of Rule 75 occurred, and that Blueprint has not demonstrated that it exercised due diligence in ensuring that such contravention did not occur. I further find that BCFSAs did not waive its right to impose an administrative penalty, and was not estopped from doing so. In all the circumstances, I find that the administrative penalty should be confirmed.

Conclusion

52. I find that Blueprint contravened Rule 75 of the Rules, by failing to file an Accountant's Report with BCFSAs by December 31, 2021, and confirm the \$1,000 administrative penalty issued on June 29, 2022.
53. The administrative penalty is now due and payable to BC Financial Services Authority.

DATED at KELOWNA, BRITISH COLUMBIA this 15 day of December, 2022.

"ANDREW PENDRAY"

Andrew Pendray
Hearing Officer