

Citation: Sanderson (Re), 2023 BCSRE 28

Date: 2023-08-29

File #22-4315

BC FINANCIAL SERVICES AUTHORITY

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

AND IN THE MATTER OF

JOHN SANDERSON

(060521)

**REASONS FOR DECISION REGARDING
ADMINISTRATIVE PENALTY RECONSIDERATION REQUEST**

[These Reasons have been redacted before publication.]

DATE AND PLACE OF HEARING: Via Written Submissions

HEARING OFFICER: Andrew Pendray

INTRODUCTION

1. On May 30, 2023, pursuant to sections 57(1) and 57(3) of the *Real Estate Services Act* (“RESA” or the “Act”), the BC Financial Services Authority (“BCFSA”) issued a Notice of Administrative Penalty to John Sanderson, managing broker of Laboutique Realty Ltd.
2. In that notice, BCFSA indicated that it had concluded that Sanderson had contravened Rule 21 of the *Real Estate Services Rules* (the “Rules”) by failing to promptly respond to inquiries made by the Superintendent of Real Estate (the “superintendent”). Specifically, the notice of administrative penalty described an initial inquiry on April 1, 2022, along with further inquiries in May and June 2022, and finally on April 6, 2023. The final inquiry on April 6, 2023 required Mr. Sanderson to reply by April 13, 2023.
3. Mr. Sanderson did not respond to BCFSA’s inquiry until April 21, 2023.
4. In the Notice of Administrative Penalty, BCFSA noted that fact, and, as a result, issued to Mr. Sanderson a base administrative penalty of \$1,000, as well as a daily administrative penalty \$1,750.
5. Pursuant to section 57(4) of RESA, Mr. Sanderson now seeks reconsideration of the penalties imposed.

6. This application proceeded by way of written submissions. Mr. Sanderson provided a letter, and four documents in support, setting out his position on reconsideration in his July 6, 2023 Administrative Penalty Reconsideration Request Form. Although provided the opportunity to do so, Mr. Sanderson did not provide any further submissions.

Issue

7. The issue is whether the May 30, 2023 administrative penalty should be cancelled or confirmed.

Jurisdiction and Standard of Proof

8. This application for reconsideration is brought pursuant to section 57(4) of RESA, which requires the superintendent to provide a person who receives an administrative penalty with an opportunity to be heard.
9. 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.
10. The superintendent has delegated the statutory powers and duties set out in section 57 to Hearing Officers.
11. The standard of proof is the balance of probabilities.

Background

12. The evidence and information before me on this application includes BCFSA's investigation report dated February 24, 2023, and the documents associated with that investigation file, as well as the notice of administrative penalty, and the submissions and attached documents provided by Mr. Sanderson in this application. I have reviewed and considered all the documentary evidence and information before me. The following is intended to provide context for my reasons.
13. On December 14, 2021, the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") wrote to BCFSA. In that letter FINTRAC indicated that it had issued a notice of violation against [Licencee 1], the owner and director of Laboutique Realty Ltd. An administrative monetary penalty was issued against Laboutique Realty Ltd. in association with that notice of violation. The notice of violation related to financial transactions that were said to have occurred in or around September 2019, as well as alleged failures to have proper compliance policies and procedures in place during 2018 and 2019.
14. On January 31, 2022, BCFSA contacted Mr. Sanderson by email. In that email a BCFSA investigator indicated that BCFSA had been notified by FINTRAC that a violation notice had been sent to Laboutique Realty Ltd.¹ with respect to a real estate

¹ Sanderson is the managing broker of Laboutique Realty Ltd.

transaction that had occurred in Kamloops, BC. BCFSA requested a complete copy of the brokerage's file by February 11, 2022.

15. BCFSA received that file by February 11, 2022.

16. BCFSA wrote to Mr. Sanderson again on April 1, 2022. In that letter BCFSA indicated that it was conducting an investigation pursuant to section 37(1) of RESA in order to determine whether Mr. Sanderson had committed professional misconduct pursuant to section 35(1) of RESA. The April 1, 2022 letter set out that Mr. Sanderson was requested to:

...respond by providing us with a detailed statement of your involvement in regard to this matter. Your response should detail your knowledge of the events that have given rise to the matter.

Additionally, we require that you provide us with the following:

- Copies of the Trust Release Deposit Return form.
- Copies of documentation showing the reason for the collapse of the subject transaction.
- Copies of all contracts, service agreements, trade record sheets, all agency and other disclosure forms, correspondence and any other relevant documents related to the subject matter.
- Any other information that you would like us to consider.

Your response is due to us on or before: **April 22, 2022.**

17. Mr. Sanderson did not reply to BCFSA's April 1, 2022 letter.

18. On May 26, 2022 BCFSA again emailed Mr. Sanderson. In that email BCFSA indicated that it was reminding Mr. Sanderson that he needed to provide a statement in relation to the matter outlined in the April 1, 2022 letter. BCFSA requested that Mr. Sanderson provide his statement by June 10, 2022.

19. Mr. Sanderson did not reply to BCFSA's May 26, 2022 email.

20. In a June 23, 2022 letter to Mr. Sanderson, BCFSA noted its prior correspondence of April 1 and May 26, and noted that BCFSA had not yet received any submission from Mr. Sanderson. BCFSA noted that Rule 21 required licensees to respond promptly to inquiries from the superintendent, and by no later than the date set by the superintendent. BCFSA indicated that:

Failure to comply with this request by the timeline as required by the Rules, section 21 constitutes a Category D contravention under the Rules, section 26. Under the Rules, section 27, that contravention is subject to a base penalty of \$1,000 plus \$250 for each day that the contravention persists should the superintendent decide to proceed with an administrative penalty.

...

Please note that the superintendent takes failures or refusal to comply with investigative requirements and failures or refusals to cooperate with investigations very seriously. Such failures or refusals can unduly consume the BCFSA's limited resources, delay investigations, and undermine confidence in the industry and BCFSA as a regulator. Therefore, should you fail or refuse to comply with the noted request, the superintendent may decide to proceed with disciplinary proceedings or administrative penalties as noted above.

It is asked that you provide your written response no later than **July 21, 2022**.

21. Mr. Sanderson did not respond to the June 23, 2022 letter.
22. On April 6, 2023 BCFSA issued a non-compliance warning letter to Mr. Sanderson. In that letter BCFSA indicated that the purpose of the letter was to bring Mr. Sanderson's contravention of Rule 21 to his attention in order that he may "take appropriate remedial action to come into compliance."
23. The April 6, 2023 letter went on to indicate that Mr. Sanderson was required to cease his contravention of Rule 21 and to comply with the April 1, 2022 inquiry by providing his outstanding responses and documents to BCFSA by April 13, 2023. BCFSA explained that it considered the period from the issuing of the non-compliance warning letter to April 13, 2023 to be the "compliance warning period", and that:
 - If Mr. Sanderson ceased the contravention and complied with the Rules within the compliance warning period BCFSA may impose an administrative penalty for the base amount associated with the contravention; and
 - If Mr. Sanderson ceased the contravention and complied with the Rules only after the compliance warning period, BCFSA may impose an administrative penalty, including a daily penalty for the contravention based on the number of days or partial days the contravention continues after the compliance warning period.
24. On April 13, 2023, Mr. Sanderson's legal counsel wrote to BCFSA, noting that it had been almost 10 months since Mr. Sanderson had heard from BCFSA regarding the matter, and indicating that Mr. Sanderson would require an extension to the April 13, 2023 deadline in order to review his files and finalize his response. The April 13, 2023 letter indicated that Mr. Sanderson intended to cooperate with BCFSA's investigation. Mr. Sanderson's legal counsel also left a voicemail with BCFSA on that same date indicating that Mr. Sanderson would provide a response no later than April 21, 2023.
25. On April 13, 2023 a BCFSA investigator wrote to legal counsel for Mr. Sanderson. The investigator noted that BCFSA had made numerous requests to Mr. Sanderson for response to the investigation letter sent on April 1, 2022, and indicated that BCFSA reserved the right to administer a daily penalty amount, in addition to the base penalty amount, for any days past the non-compliance warning period.
26. Mr. Sanderson ultimately provided his response to the April 1, 2022 inquiry by way of an email dated April 21, 2023.

27. Included in that April 21, 2023 email was an April 14, 2023 letter from Mr. Sanderson. In that April 14, 2023 letter Mr. Sanderson indicated that Laboutique Realty Ltd. was pursuing an appeal from the violation notice that had been issued against it by FINTRAC. Mr. Sanderson further indicated that he had been in contact with the agent in 2022 to “organize our replies to your investigation”. Mr. Sanderson noted that he had assumed that the agent had ultimately provided a substantive response to BCFSA, and that as a result BCFSA did not consider “receiving a separate response from [Mr. Sanderson] to be a matter of urgency.”
28. Mr. Sanderson went on, in that April 14, 2021 letter, to provide his response to BCFSA’s inquiry. In doing so, Mr. Sanderson included the Policy and Procedures and Office Policy Manual for “Lehomes Realty First” and the FINTRAC Manual for Lehomes Realty First.

Submissions

29. Mr. Sanderson submitted that he had mistakenly assumed that BCFSA did not consider receiving a response from him to be a matter of urgency, as he had not been the agent involved in the transaction that led to the FINTRAC penalty.
30. Mr. Sanderson questioned how his responses and documents could have been considered to be “outstanding” by BCFSA in April 2023, when he had provided the complete deal file on February 11, 2022.
31. Mr. Sanderson submitted that the “two business days” he was provided to respond to BCFSA’s April 6, 2023 non-compliance warning letter was an insufficient period of time to speak to a lawyer and reply to the at letter. Mr. Sanderson indicated further that his lawyer had been busy the week following his receipt of the letter, and that as a result his reply had not been provided to BCFSA until April 21, 2023.
32. Mr. Sanderson submitted he had in fact exercised due diligence by providing BCFSA with the deal files on February 11, 2022.

Reasons and Findings

Applicable Legislation

33. Rule 21(1) provides that a licensee must respond promptly to any inquiry addressed to the licensee by the superintendent. Rule 21(2) sets out that a licensee’s response must be in writing, and if applicable, be provided to the superintendent at a date no later than that set by the superintendent.
34. Section 56 of RESA provides that BCFSA may designate specific provisions of RESA, the Real Estate Services 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.

35. 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.

36. 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 21 is placed in Category D. Rule 27(4) sets out that:

27(4) For each contravention of a rule listed in Category D in section 26(2)(d), the amount of the administrative penalty is as follows:

(a) a base penalty amount as follows:

- (i) \$1,000 for a first contravention;
- (ii) \$2,000 for a subsequent contravention;

(b) an additional \$250 for each day or part of a day on which the contravention of the specified rule continues up to the maximum amount under section 56 [*designated contraventions and penalty amounts*] of the Act.

37. 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

38. 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, Regulations, or 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.

Contravention

39. I consider the evidence and information before me to make clear that despite being provided with a number of opportunities to do so, Mr. Sanderson failed to respond promptly to the inquiries made by the superintendent (through BCFSA), or by the dates set by the superintendent.

40. BCFSA made its initial inquiry of Mr. Sanderson on April 1, 2022. That inquiry set out that Mr. Sanderson's response was to be provided by April 22, 2022. BCFSA

repeated its inquiry on May 26, 2022, and again set out a date (June 10, 2022) by which Mr. Sanderson's response was to be provided.

41. On the evidence and information before me, Mr. Sanderson did not reply, in any way, to the April 1 inquiry, or the repeated inquiry on May 26, 2022.
42. BCFSA's third attempt at obtaining a response from Mr. Sanderson occurred on June 23, 2022. That attempt noted the requirements of Rule 21, the fact that failure to comply with those requirements constituted a contravention, and that such contraventions were subject to administrative penalties should the superintendent determine to impose the same. The June 23, 2022 letter provided a further date upon which Mr. Sanderson's written response was required by BCFSA.
43. Once again, the evidence and information before me is that Mr. Sanderson did not reply, at all, to the June 23, 2022 letter from BCFSA.
44. I acknowledge Mr. Sanderson's submission that he had assumed that BCFSA did not consider receiving a response from him to be a matter of urgency. In my view, the correspondence sent by BCFSA to Mr. Sanderson in the months of April, May, and June 2022, did not serve to provide Mr. Sanderson with a foundation for that assumption.
45. Each of the above noted correspondences from BCFSA set out a specific due date by which Mr. Sanderson was to provide a response. Further, each of the above noted correspondences reiterated the need for Mr. Sanderson to provide that response.
46. In short, I do not consider that there was anything in the correspondences from BCFSA of April 1, May 10, and June 23, which could have provided Mr. Sanderson with the impression that he did not need to respond to the inquiries promptly. I consider this to be particularly so in respect of the June 23, 2022 letter, which identifies the requirements of Rule 21 and the possibility of the imposition of administrative penalties should Mr. Sanderson not comply.
47. I further acknowledge that in its correspondence of May and June 2022, BCFSA did provide Mr. Sanderson with extensions to provide his response to BCFSA's inquiries. As Mr. Sanderson noted, the agent who had in fact been involved in the transaction that had led to the BCFSA investigation had also been provided with extensions.
48. In my view, the fact that the extensions were provided by BCFSA does not alter the fact that Mr. Sanderson did not respond promptly to the inquiries from BCFSA. I note that no further extension was provided to the July 21, 2022 deadline set out in the June 23, 2022 letter, and that once again Mr. Sanderson simply did not provide any reply to BCFSA in respect of that letter.
49. While it is true that BCFSA does not appear to have engaged in any further follow-up until issuing the April 6, 2023 letter, that fact does not alter the circumstances, which were that Mr. Sanderson had ignored the three previous correspondences from BCFSA requesting a reply to its inquiries.

50. In any event, Mr. Sanderson did not provide his response to BCFSA's inquiry by the April 13, 2023 deadline set out in the April 6, 2023 letter. Rule 21(2) requires that a licensee provide its response by "no later than the date set by the superintendent". As Mr. Sanderson did not reply to BCFSA by April 13, 2023, or any of the prior dates set by the superintendent, I find that he failed to comply with Rule 21.

Due Diligence

51. I do not consider the evidence to support a conclusion that Mr. Sanderson made all reasonable attempts to comply with Rule 21.

52. As set out above, Mr. Sanderson did not reply to BCFSA's correspondence from April, May, and June 2022. While Mr. Sanderson now says that he assumed it was not a matter of urgency, I note that he took no steps to contact BCFSA to confirm whether his assumption was correct. In my view, and particularly in light of the content of the June 23, 2022 letter, Mr. Sanderson ought to have at least contacted BCFSA in that regard.

53. I note, in setting out the above, that BCFSA did not apply an administrative penalty for Mr. Sanderson's failure to respond to the inquiries by the dates set out in the April, May, and June 2022 correspondence.

54. I turn then to the April 6, 2023 letter.

55. I acknowledge that the April 6, 2023 letter provided Mr. Sanderson with one week to respond. I further acknowledge that it does appear upon receipt of the April 6, 2023 letter, Mr. Sanderson did [begin] to take steps to provide a response to the April 1, 2022 inquiry.

56. I consider, however, that Mr. Sanderson's position that he did not have a sufficient amount of time to respond to BCFSA's inquiry prior to an administrative penalty being imposed, to be an argument that rings hollow.

57. As set out above, Mr. Sanderson does not appear to have taken any steps to respond to the April 1, 2022 inquiry until he received the April 6, 2023 letter. By that time, BCFSA had requested his response to its inquiry on three prior occasions. As a result of Mr. Sanderson's failure to take any steps to respond to BCFSA's correspondences in April, May, and June 2022, I do not consider Mr. Sanderson's argument that he was provided with only "two business days" to respond to be a compelling argument.

58. Rather, I consider it to be clear that BCFSA provided Mr. Sanderson with more than a year to provide a response to its April 1, 2022 inquiry.

59. In my view, Mr. Sanderson could have, if he had been duly diligent, easily provided a response to BCFSA's inquiries prior to the April 13, 2023 deadline set out in the April 6, 2023 letter. I note in reaching this conclusion that Mr. Sanderson was, once he took steps to do so, able to make a reply which satisfied BCFSA in a relatively short time period in April 2023. The fact that Mr. Sanderson chose to take no steps to

respond to BCFSA prior to April 2023 demonstrates, in my view, that Mr. Sanderson did not act with due diligence in responding promptly to BCFSA's inquiries.

60. I further do not find Mr. Sanderson's submission that he ought to be found to have acted with due diligence by providing the deal files to BCFSA on February 11, 2022, to be a compelling one.
61. BCFSA's April 1, 2022 inquiry was issued after Mr. Sanderson had provided the deal files. Once again, I note that the evidence and information before me is that Mr. Sanderson simply did not reply to BCFSA's correspondence from April, May, and June 2023. In my view, if Mr. Sanderson had been of the view that his response to the April 1, 2022 inquiry had already been provided when he provided the deal files on February 11, 2022, it was incumbent upon him to inform BCFSA of the same. I find that simply ignoring the correspondence from BCFSA does not demonstrate due diligence in providing a response.
62. I find that Mr. Sanderson did not exercise due diligence in responding to the inquiries issued by BCFSA.

Penalty Amount

63. The administrative penalty imposed in this case is consistent with the requirements of Rule 27(4), that is a base penalty of \$1,000 was applied, followed by an additional daily penalty, until Mr. Sanderson came into compliance by providing a response on April 21, 2023.
64. Given that fact, and my findings above, I find that the penalty should be confirmed.

Conclusion

65. I find that Mr. Sanderson contravened Rule 21 of the Rules, by failing to respond promptly to an inquiry addressed to the licensee by BCFSA, and by failing to respond by the date set by the superintendent in the inquiry. The May 30, 2023 administrative penalty, in the amount of \$2,750, is confirmed.
66. The administrative penalty is now due and payable to BC Financial Services Authority.

DATED at KELOWNA, BRITISH COLUMBIA this 29th day of August, 2023.

"ANDREW PENDRAY"

Andrew Pendray
Hearing Officer