Citation: 1020729 BC Ltd. (Re), 2023 BCSRE 49
Date: 2023-12-07
File No.: 20.344.64828

BC FINANCIAL SERVICES AUTHORITY

IN THE MATTER OF THE *REAL ESTATE DEVELOPMENT MARKETING ACT*
SBC 2004, c 41 as amended

IN THE MATTER OF

1020729 B.C. LTD.

AND

NARESH KUMAR SACHDEV

DECISION ON LIABILITY AND SANCTIONS

[This Decision has been redacted before publication.]

Date of Hearing:	Written Submissions
Counsel for BCFSA:	Mandeep Kalan
Counsel for the Respondents:	Brad Kielman
Hearing Officer:	Andrew Pendray

INTRODUCTION

1. On July 31, 2023, the Superintendent of Real Estate (the "superintendent") issued an Amended Notice of Hearing to 1020729 B.C. Ltd. (the "Developer") and Naresh Kumar Sachdev (the "Director")[1] pursuant to section 27 of the *Real Estate Development Marketing Act* ("REDMA").

2. The Amended Notice of Hearing alleged that the Developer had failed to file information respecting assignments for its development, [Development 1], in the Condo and Strata Assignment Integrity Register ("CSAIR"), for nine quarterly periods between January 1, 2019 and March 31, 2021, contrary to section 20.4 of REDMA.

3. The Amended Notice of Hearing further alleged that the Developer and the Director had failed to comply with the terms of an undertaking accepted by the former Office of the Superintendent of Real Estate on April 2, 2020, during the period from May 1, 2020 to July 6, 2021, contrary to section 36 of REDMA.

4. On August 4, 2023, the Developer and the Director signed an Agreed Statement of Facts and Admissions of Liability, admitting to the allegations set out in the Amended Notice of Hearing.

[1] This decision will refer to the Developer and the Director collectively as the "Respondents".

5. This decision relates to the appropriate orders to be issued against the Developer and the Director in respect of those admissions.

6. The hearing of this matter proceeded by way of written submissions.

7. In its submissions, BCFSA seeks orders that the Developer and the Director shall be jointly and severally liable to pay an administrative penalty of $44,000, as well as enforcement expenses of $6,655.01.

8. The Respondents submit that an order for a global sanction of $15,000 would be appropriate, with $5,000 of that global sanction attributed to the failure to file the required assignment reports, and $10,000 attributed to the breach of undertaking.

Issues

9. The issue is the appropriate orders to be made in pursuant to section 30 of REDMA.

10. Additionally, there is the question of whether the Director and the Developer should be required to pay enforcement expenses pursuant to section 31 of REDMA.

Jurisdiction

11. Section 27 of REDMA provides that following an investigation, the superintendent may deliver to a person against whom an order under section 30 of REDMA may be made, notice that the superintendent intends to hold a hearing under section 29 of REDMA to determine if a developer is, or has been, non-compliant as contemplated by section 24 of REDMA.

12. Section 44 of REDMA provides that the superintendent may, in writing, delegate any of the superintendent's powers or duties under REDMA. The Chief Hearing Officer and Hearing Officers of the Hearings Department of BCFSA have been delegated the statutory powers and duties of the superintendent with respect to section 29 of REDMA (respecting the Holding of Hearings), section 30 (respecting the issuing of orders following a hearing), and section 31 (respecting the issuing of orders recovering enforcement expenses), pursuant to a May 16, 2023 delegation document.

Background

13. The evidence and information before me consists of the admissions and agreed facts set out in the August 4, 2023 Agreed Statement of Facts (the "ASF"), the affidavit of [Individual 1], dated October 27, 2023, and the affidavit of [Individual 2], dated November 6, 2023. I have reviewed all of the evidence and information contained therein; the following is intended to provide context for my reasons.

14. The following background is largely summarized from the Agreed Statement of Facts entered into by BCFSA and the Respondents.

CSAIR

15. BCFSA is responsible for enforcing the developer filing requirements set out in REDMA and the *Real Estate Development Marketing Regulation* (the "Regulations") in the CSAIR.

16. CSAIR is a database for assignments of purchase agreements entered into by developers for the sale or lease of residential strata lots in B.C., including both pre-sale lots and completed lots. Since January 1, 2019, developers have been responsible for collecting and reporting this

information. Section 20.3 of REDMA requires that developers of residential strata lots collect certain prescribed information and records respecting assignments of purchase agreements that developers consent to, and section 20.4 sets out that the developer must file that information in the CSAIR in the form and manner prescribed by the Regulations.

17. Specifically, developers are required to create an account with the Land Title and Survey Authority of BC (the "LTSA"), register their development in CSAIR, and file assignment information in accordance with the prescribed schedule and reporting periods listed in the Part 3.1 of the Regulations.

18. Section 10.6 of the Regulations sets out that CSAIR reporting requirements commence with the first day of the quarter in which the first purchase agreement date falls, with quarterly reporting periods being January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

19. Section 10.6(1)(a) of the Regulations requires that reporting information must be filed in CSAIR within 30 days after the end of each quarter. Pursuant to section 20.4(1)(b) of REDMA, if there are no assignments consented to by a developer during a quarterly reporting period, the developer must still provide a statement in CSAIR certifying that there were no assignments, within 30 days of the end of the reporting period.

The Developer, The Director, and OSRE/BCFSA

20. The Developer was incorporated on December 2, 2014, and has a registered records office at Suite 15000, 13450 – 102 Avenue in Surrey, BC. The Director is the sole director of the Developer.

21. On November 17, 2017, the Developer filed a disclosure statement for a property it was developing named [Development 1] (the "Development"). In that November 17, 2017 disclosure statement the Developer indicated that:

    - The Development would be located at [Property 1], Surrey, BC, and would be comprised of 18 strata lots;
    - The assignment of the purchase contract was allowed with the consent of the vendor.

22. On January 30, 2019, the Developer filed a second disclosure statement amendment indicating that assignment would be permitted with the prior consent of the vendor and outlining the information that would be collected by the vendor for each assignment.

23. The first purchase agreement of a unit at the Development was entered into on April 9, 2018. The Development was ultimately completed with no assignments of purchase contracts.

24. As the CSAIR reporting requirements came into effect on January 1, 2019, the first CSAIR filing for the Development should have been submitted in April 2019, following the January 1 to March 31, 2019 first quarterly reporting period.

25. The Developer did not make any CSAIR filings in April 2019.

26. On February 11, 2020, staff at the former Office of the Superintendent of Real Estate ("OSRE") reviewed a CSAIR delinquency report for the 2019 Q4 period and noted that the Development was not on that report. This indicated that the Developer had not filed in CSAIR any information respecting assignments of purchase agreements for the Development, nor had the Developer filed any confirmation that no assignments had been made.

27. On March 4, 2020 OSRE staff wrote to the Developer's legal counsel to advise of a possible breach of the filing requirements set out in REDMA and the Regulations. That March 4, 2020 correspondence from OSRE provided resources and instructions on how to register and file the required information in CSAIR, and requested that the Developer provide a written undertaking to make the required filings.

28. On April 2, 2020 OSRE staff accepted, pursuant to section 36 of REDMA, a written undertaking from the Developer in which the Developer undertook to immediately register the Development in CSAIR, and to file an assignment activity report as required and as set out in the Regulations during the next available filing window (the "Undertaking").

29. The Director, as the sole Director of the Developer, confirmed and signed the Undertaking, acknowledging that it was binding upon him and that failing to comply with the terms of the Undertaking constituted non-compliance under REDMA.

30. It was not until July 7, 2021 that the Developer filed an assignment report in CSAIR. This was despite the fact that OSRE staff had taken steps in 2020 and 2021 to remind the Developer of its obligations to file.

31. Specifically, OSRE staff had emailed the Developer on July 28, 2020, through its legal counsel, and noted that OSRE was writing to remind the Developer of its reporting obligations under REDMA, as well as the obligations it had committed to in the Undertaking. That July 28, 2020 email noted that under part 2.1 of REDMA that even if a developer had not consented to any assignments, it was required to file a statement that no information or records regarding assignments were collected. The July 28, 2020 email noted that if the Developer had not yet done so, it needed to file an assignment activity report within the current filing window.

32. In a follow-up letter dated March 26, 2021, OSRE staff wrote to the Director. That letter noted the Developer's CSAIR filing requirements, and that records indicated that the Developer had not filed any information respecting assignments of purchase agreements or statements certifying that there were no such assignments for the Development for each of the reporting periods from January 1, 2019 through December 31, 2020. The March 26, 2021 letter indicated that the superintendent was conducting an investigation pursuant to section 25 of REDMA, as to whether the Developer and the Director had contravened section 24 of REDMA by failing to comply with the CSAIR requirements under section 20.4 of REDMA, and the Undertaking.

33. On May 21, 2021, OSRE staff had a telephone call with [Individual 3] from the Developer. The OSRE investigator's notes of that telephone conversation indicated that [Individual 3] had indicated that the Development had no assignments, and that the investigator had reminded [Individual 3] that the CSAIR report needed to be filed in any event. The investigator noted that [Individual 3] had indicated that he would respond over the weekend, and that he had "issues entering information" into the LTSA.

34. [Individual 3] emailed OSRE on May 27, 2021 and confirmed that the Developer had not complied with the terms of the Undertaking. [Individual 3] indicated in that email that the Developer would comply with the CSAIR filing requirements going forward.

35. On July 7, 2021, the Developer filed an assignment report for 2021, Q2, during the applicable 30-day filing window, reporting no assignments.

36. On January 5, 2023, BCFSA staff wrote to the Developer by email, noting that it had not received a response to the investigation from the Director of the Developer. The Developer replied to BCFSA on January 6, 2023, indicating that [Individual 3] had left the Developer around December 2021 and was no longer employed there.

37. On January 18, 2023, BCFSA staff had a telephone call with a representative for the Developer, [Individual 4]. In that telephone call BCFSA staff requested a response to its investigation by January 27, 2023.

38. On February 16, 2023, [Individual 4] provided a response to BCFSA on behalf of the Director.

Admissions

39. In the August 4, 2023 Agreed Statement of Facts, the Developer and the Director admitted the following:

    1. The Developer failed to file information respecting assignments in the *Condo and Strata Assignment Integrity Register* ("CSAIR") for the Development for nine quarterly periods between January 1, 2019 and March 31, 2021, contrary to section 20.4 of REDMA.

    2. The Developer and Director failed to comply with the terms of the undertaking accepted by the Office of the Superintendent of Real Estate on April 2, 2020, from May 1, 2020 to July 5, 2021, contrary to section 36 of REDMA.

Liability

Applicable Law

40. Section 20.4(1) of REDMA sets out that a developer must file with the administrator, in the form and manner required by the administrator and as required by the Regulations, the following:

    a) for each assignment to which the developer consents, the information and records collected under section 20.3(2) *[requirements respecting assignments]*;

    b) if paragraph (a) does not apply, a statement that no information or records were collected under section 20.3(2)

41. Section 20.4(2) further sets out that the administrator may require a developer to file additional information or records for the purpose of verifying the information and records filed under section 20.4(1).

42. Section 20.4(3) sets out that a developer must comply with a requirement made under section 20.4(2) within the period set by the administrator.

43. The Regulations, at sections 10.5 through 10.8, set out details on assignment reporting, including prescribed reporting periods and filing dates (section 10.6), and details on the specific information required to be in assignment filings to ensure that developers are in compliance with section 20.4 of REDMA.

44. Section 24 of REDMA sets out that "non-compliant", in respect of a developer, means:

    (a) contravening a provision of this Act or the regulations,

    (b) failing to comply with the terms or conditions of
    …

    (iv) an undertaking given under section 36

45. Section 36 of REDMA, Undertakings, provides that if the superintendent has reason to believe that a developer is or has been non-compliant, the superintendent may give notice to the developer of the superintendent's reason for believing that the developer is or has been non-compliant and, under section 36(b), accept a written undertaking from the developer to do one or more of the following:

    (i) cease or refrain from marketing one or more development units;

    (ii) comply with terms or conditions set by the superintendent, which may include a condition that the developer pay the expenses, or part of the expenses, incurred by the Authority in relation to the undertaking;

    (iii) do anything that the developer is required to do under this Act;

    (iv) crease or refrain from doing anything that the developer is prohibited from doing under this Act.

46. Pursuant to section 36(3) of REDMA, an undertaking given by a developer under section 36 is binding on the developer and every director of the developer.

Discussion

47. Although the first sale in the Development occurred in 2018, prior to the CSAIR reporting requirements coming into effect on January 1, 2019, I accept, as do the parties, that subsequent to January 1, 2019, the Developer was required, under section 20.4 of REDMA and the Regulations, to file quarterly reports in CSAIR, within 30 days of the end of each quarter.

48. Despite that requirement, the Agreed Statement of Facts makes clear that the Developer did not file any information respecting assignments in the CSAIR until July 2021. While it is true that the Development ultimately completed with no assignments of purchase contracts, that fact does not mean that the Developer was not required to make filings in CSAIR regarding the Development. Section 20.4(1)(b) specifically provides that developers are required to file statements indicating that no information or records regarding assignments were collected.

49. Given that the Developer was, as of January 1, 2019, required by section 20.4 to file reports in CSAIR regarding assignments, within 30 days from the end of each quarterly period, and given that the Developer did not make any such filings until July 2021, for the April 1 to June 30, 2021 quarter, I find the evidence to support a conclusion that the Developer was non-compliant in that the failure to file as required by section 20.4 constituted a contravention of REDMA. I therefore find that:

- The Developer was in non-compliance with section 20.4 of REDMA when it failed to file information respecting assignments in the *Condo and Strata Assignment Integrity Register* ("CSAIR") for the Development for nine quarterly periods between January 1, 2019 and March 31, 2021.

50. Turning to the Undertaking, I note that the Agreed Statement of Facts makes clear that the Developer was advised of the superintendent's belief that the Developer had been non-compliant in respect of its CSAIR filings for the Development in March 2020.

51. The Agreed Statement of Facts further makes clear that the superintendent accepted, on April 2, 2020, the Developer's undertaking that it would immediately register the Development with CSAIR and that it would file assignment activity reports as required and set out in the Regulations during the next available filing window.

52. The next available filing window, subsequent to April 2, 2020, was in the month of July 2020. As set out above, the Developer did not provide any filings in CSAIR until July 2021.

53. Given that fact, I consider it to be clear that although the Developer undertook to do something it was required to do under REDMA, as contemplated by section 36(1)(b)(iii), the Developer was non-compliant as defined by section 24 of REDMA. The Developer specifically failed to comply with the terms of that Undertaking, as it did not file assignment activity reports in the next available filing window in 2020, and in fact did not file assignment activity reports until one year subsequent to the "next available filing window."

54. As undertakings given by a developer under section 36 of REDMA are binding not only on the developer giving the undertaking but also on every director of the developer, I find that both the Developer and the Director were non-compliant. I therefore find that:

- The Developer and the Director failed to comply with the terms of the Undertaking accepted by the Office of the Superintendent of Real Estate on April 2, 2020, from May 1, 2020 to July 6, 2021, contrary to section 36 of REDMA.

Sanctions

Applicable Law

55. Section 30 of REDMA provides that after a hearing, if the superintendent determines that a developer is or has been non-compliant, the superintendent may do one or more of the following:

> (a) order the developer to cease or refrain from marketing one or more development units;
>
> (b) order the developer to carry out a specified activity related to marketing;
>
> (b.1) order the developer to comply, or to carry out a specified activity for the purpose of complying, with a prohibition or requirement of
>
> (i) Part 2.1 *[Assignment Reporting Requirements]*, or
> (ii) a regulation made for the purpose of Part 2.1;
>
> (c) order the developer to pay amount in accordance with section 31 *[recovery of enforcement expenses]*;
>
> (d) order the developer to pay an administrative penalty in an amount of
> (i) Not more than $500,000, in the case of a corporation, or
> (ii) Not more than $250,000, in the case of an individual.

56. Section 30(2) sets out that an order made under the above noted subsections may be made against:

- the developer;
- a person who was an officer, director, controlling shareholder or partner of the developer at the time of non-compliance if that person authorized, permitted or acquiesced to the non-compliance; or
- both the developer and a person described above.

Sanctions Principles

57. REDMA governs the marketing and sales of development units in B.C. REDMA has been described as consumer protection legislation: *Pinto v. Revelstoke Mountain Resort Limited Partnership*, 2011 BCCA 210, at para 17.

58. In the regulatory context, where the intention of the regulatory scheme is consumer or public protection, sanctions serve multiple purposes, including:

- denouncing non-compliance or misconduct, and the harms caused by those;
- preventing future non-compliance or misconduct by rehabilitating specific respondents through corrective measures;
- preventing and discouraging future non-compliance or misconduct by specific respondents through punitive measures (specific deterrence);
- preventing and discouraging future non-compliance or misconduct by other respondents (general deterrence);
- educating industry participants and the public about rules and standards; and
- maintaining public confidence in the industry.

59. Administrative tribunals generally consider a variety of mitigating and aggravating factors in determining sanctions in the regulator context, largely based on factors which have been set out in cases such as *Law Society of British Columbia v. Ogilvie*, 1999 LSBC 17, and *Law Society of British Columbia v. Dent*, 2016 LSBC 5. In *Dent*, the panel summarized what it considered to be the four general factors, to be considered in determining appropriate disciplinary action:

- the nature, gravity, and consequences of the conduct;
- the character and professional conduct record of the respondent;
- any acknowledgement of the misconduct and remedial action taken; and
- public confidence in the profession/industry, including public confidence in the disciplinary process. This would include consideration of whether the public will have confidence that the proposed disciplinary action is sufficient to provide protection to the public and consumers, and whether the proposed disciplinary action is similar compared to similar cases.

60. In general terms, the nature and severity of sanctions should be proportional to the seriousness of the non-compliance/misconduct, the resulting harms, the degree of responsibility and the totality of the non-compliance.

61. I acknowledge that, in its submissions, the Respondents refer to the “Sanctions Guidelines” of the former Real Estate Council of British Columbia. While I have reviewed the Sanctions Guidelines, I do not consider those Guidelines are in any way binding on me, nor were they in fact binding on decision makers of the former Real Estate Council of British Columbia. I note that the principles set out in the Sanctions Guidelines largely reflect the principles I have set out above.

Discussion

Nature of the Non-Compliance

62. BCFSA submits that the non-compliance in this case was not an isolated incident.

63. Rather, BCFSA characterizes the Developer as having not only initially failed to file in CSAIR as required under REDMA and the Regulations, but of having continued to remain non-compliant after being advised on at least three occasions of the need to come into compliance. BCFSA

notes, in making this submission, that the Developer was provided with specific instructions on how to come into compliance, and yet did not do so until July 2021.

64. BCFSA submits that this period of non-compliance, along with the fact that the Developer and the Director were in breach of the Undertaking for approximately 13 months suggests that the non-compliance in this case was serious in its nature. Specifically, BCFSA submits that the failure to comply with an undertaking is a serious breach of REDMA and may signal ungovernability, along with creating harm to the reputation of the regulator to effectively enforce the regulatory regime.

65. BCFSA acknowledges, however, that the non-compliance in this case did not appear to have resulted in any harm to the public or consumers, and that no apparent benefit was realized by the Developer from the non-compliance.

66. The Respondents characterize the nature of the non-compliance as being a technical issue that needed to be fixed. The Respondents indicate that that they understood the importance of abiding by the terms of an undertaking, there were mitigating factors surrounding that non-compliance which ought not to be ignored. They submit that:

> …they were thrust into a chaotic situation owing to COVID and failed to properly organize themselves to address the undertaking. That mistake was omission not commission. There were no *mala fides* at all. It was careless, but the omission did not amount to indifference or recklessness.

67. In support of its submissions in that regard, the Respondents rely on the affidavit of [Individual 1], a Director and Employee of [Company 1]. [Individual 1] indicates that [Company 1] and the Developer are part of the [Company 2] Group of Companies, and that he had started working for [Company 2] part-time as a bookkeeper in 2013.

68. [Individual 1] indicated that he became a controller for [Company 2] in 2018, and that in that role he is responsible for all of the sales, marketing and regulatory filings for all of the companies that are part of [Company 2]. [Individual 1] indicated that he had knowledge of the Developer's operations and finances due to the fact that he was responsible for the sales, marketing and filings on the Development.

69. [Individual 1] explained that [Individual 3] had been hired by [Company 2], in 2019, to oversee applicable regulatory filings. [Individual 1] acknowledged that in March 2020 he became aware that the Developer had not filed any information in CSAIR regarding assignments of purchase agreements. [Individual 1] noted that there had been no assignment in relation to the Development at that point in time, and that there were not thereafter.

70. [Individual 1] indicated that neither he, nor [Individual 3], had fully understood that the Developer was required to file in CSAIR regardless of whether no assignments had occurred.

71. [Individual 1] noted that within days of entering into the Undertaking, the Developer and [Company 2] had been confronted with the restrictions imposed by COVID-19. [Individual 1] noted that they had been operating on reduced hours, that they had laid off several employees, and that there had been a greater degree of pressure placed on the remaining employees to carry an increased workload.

72. While [Individual 1] acknowledged that the Developer would have received the July 28, 2020 email from OSRE, he noted that [Individual 3] was handling the regulatory filings for the Developer at that time, and that it appeared as though [Individual 3] had "unintentionally failed to respond to that email". [Individual 1] related that failure to the chaos created by COVID-19. [Individual 1] noted that the next communication regarding the Developer's failure to file did not come until March 26, 2021.

73. While I appreciate the submissions of the Respondent as to the nature of the non-compliance in this case, I do not think it is appropriate to characterize the non-compliance of the Developer and the Director as nothing more than a technical issue that needed to be fixed.

74. In my view, for that submission to be a compelling one, the Respondents would have needed to take the required action of filing with CSAIR around the time that they entered into the Undertaking.

75. The Respondents did not do so.

76. Rather, the Respondents took no steps to comply with the filing requirements, despite being aware of them and having entered into an undertaking to do so, for more than a year subsequent to the initial correspondence from OSRE in March 2020.

77. In my view, that ongoing failure to comply with the filing requirements, along with the failure to comply with the terms of the Undertaking, moves the failure to file from being, in the terms used by the Respondent, one that was merely "technical", or an "omission", to one that was in fact a failure of "commission".

78. While I appreciate that mitigating factors existed in this case, including the advent of the COVID-19 pandemic in and around the time that the Respondents were contacted by OSRE in March of 2020, I do not consider those mitigating factors to be significant, or to obviate the fact that the Developer had specifically been informed of the need to file, and had entered into an undertaking to do so.

79. The evidence from [Individual 1] is that [Individual 3] had been hired specifically to complete the required regulator filings for the Developer. [Individual 3] continued in that position until at least May 2021. As such, while I acknowledge that the COVID-19 pandemic likely had some impact on the business, the individual who the Respondents says was tasked with making the required filings continued to be employed with the Developer throughout the period in question. I do not place significant weight on the impact of the COVID-19 pandemic as being a mitigating factor in this case.

80. Although the Respondents submit that there was "confusion" about filing assignment reports because there were no assignments, I again do not consider this to be a mitigating factor of significance. I note, in reaching this conclusion, that the March 4, 2020 letter from BCFSA to the Developer makes clear that filings are required, even where the Developer has not consented to any assignments:

> Part 2.1 of the Act states that a developer must file the prescribed information and records collected with regard to assignments of purchase agreements for the sale or lease of a strata lot in a development property, **or, if the developer has not consented to any assignments, must file a statement that no information or records were collected**.
>
> [emphasis added]

81. In my view, given the above excerpted portion of the March 4, 2020 letter, for the Respondents to now say that there was "confusion" about the requirement to file even in a situation in which there were no assignments made, is a submission that rings hollow.

82. Further, I do not consider that the Respondents' explanation that they had simply overlooked the July 28, 2020 email to be a mitigating factor of significance. Again, while I acknowledge that the COVID-19 pandemic was an ongoing issue at that time, the evidence and information before me

is that [Individual 3] had been hired to ensure that regulator filings for the Developer were completed, and that [Individual 3] continued to be employed in that role in July 2020. There is no evidence or information before me indicating that [Individual 3] was working reduced hours, or that there was some other issue which prevented him or anyone else on behalf of the Developer from completing the filing requirements and ensuring that the Undertaking was complied with.

83. In sum, while I would be prepared to accept that the Developers initial failure to file the required assignment reports in CSAIR, prior to March 2020, could be described non-compliance of a merely technical nature, I do not consider the same can be said in respect of the ongoing non-compliance from March 2020 through July 2021.

84. In my view, the failure to file the required assignment reports from March 2020 through July 2021, when the Developer had specifically been provided instruction as to what was required in March of 2020 (including the need to file even where no assignments had been agreed to), as well as having been provided with further instruction on how to file CSAIR assignment reports in July 2020, leads to a conclusion that the non-compliance was more than technical, or simply an omission. The Developer was aware of the need to file and was provided with explicit direction on how to do so. I consider the failure to comply with the requirement to file in those circumstances amounts to an act of ignoring the filing requirements.

85. Similarly, I find that the failure to comply with the requirements of the Undertaking, despite having been given explicit direction on what was required and on how to file, amounts to an act to ignore the requirement that the Developer and the Director comply with the Undertaking.

86. As a result, although I do not consider the nature of the non-compliance in this case to be the most egregious in nature, in that there were no direct negative effects on the public or the industry at large, and there was no specific gain obtained by the Respondents as a result of the non-compliance, given the length of the non-compliance, and the failure to take action to come into compliance, I do find the Respondents' non-compliance to be more significant than a mere technical breach.

87. In my view, specific deterrence is required in this case in order to ensure not only that the Respondents are aware that they are required to comply with the filing requirements of REDMA and the Regulations, as well as to comply with Undertakings entered into with the superintendent, but that they are aware that their responsibilities in that respect cannot be ignored.

88. I further consider that general deterrence is required in this case in order to maintain public confidence that developers will not be able to ignore the requirements of REDMA without facing proportionate consequences.

Previous Cases

89. As set out above, in determining the appropriate sanction, consideration should be given to disciplinary action that has been issued in similar cases. While prior decisions and consent orders are not binding on me, they can be of assistance in determining a penalty in which the public will have confidence in.

90. The parties have referred to a number of previous consent orders in their submissions, and I have reviewed them all. I note, in reviewing the consent orders, that I agree with the submission of the Respondents that even with the facts set out in consent orders, there are limitations to the persuasiveness of consent orders as precedents. There could be a myriad of reasons or circumstances that may have caused a party to enter into a consent order that cannot be gleaned from simply reviewing the facts set out in that consent order.

91. While I consider that the consent orders do have some value in indicating the type of sanction that has been issued in similar cases, I do not consider the range of sanctions set out in those previous consent orders to be binding on me any way. The sanction issued in each case must be evaluated on its own facts and circumstances.

92. I turn to a review of the consent orders cited by the parties. The first four cases relate specifically to the failure to comply with the CSAIR assignment reports requirements, and the failure to comply with an undertaking relating to the filing of those reports:

- In *1952182 BC Ltd. (Re)*, 2023 BCSRE 17, the respondents consented to an administrative penalty of $50,000 and enforcement expenses of $4,300. In that case, the respondents admitted to having failed to file CSAIR assignment reports for 10 quarterly periods on one development, and 13 quarterly periods on a second development. The respondents also admitted to failing to comply with the terms of an undertaking for a period from February 2020 to July 2021. Finally, the respondents admitted to having failed to file the strata plan deposit for both developments within the deposit reporting period.

- In *Sandhill Homes Ltd. (Re)*, 2023 BCSRE 2, the respondent consented to an administrative penalty of $44,000 and enforcement expenses of $3,900. The respondent admitted that it had failed to file CSAIR assignment reports for 13 quarterly periods from January 2019 through March 2022. The respondent also admitted to having failed to comply with the terms of an undertaking for a period from February 2020 to July 2022. In that case, 11 subsequent notifications were sent by OSRE/BCFSA staff prompting the respondent to fulfill its filing obligations. The respondent did file some assignment reports during the period in question, however, those reports were found to have failed to include some required information.

- In *InHaus West 8th Limited Partnership (Re)*, 2022 BCSRE 28, the respondent consented to an administrative penalty of $44,000, as well as enforcement expenses of $3,110. In that case the respondent admitted to having failed to file CSAIR assignment reports for eight quarterly periods between January 2020 and December 2021, and to having failed to comply with the terms of an undertaking accepted by the superintendent for a period from November 2019 to February 2022. The respondents in *InHaus* received six notifications from OSRE/BCFSA regarding their obligations between November 2019 and February 2022, prior to registering and filing an assignment report.

- In *Glentana Development Corp. (Re)*, 2023 BCSRE 25, the respondents consented to an administrative penalty of $44,000, as well as enforcement expenses of $3,050. In *Glentana* the respondents admitted to having failed to file CSAIR assignment reports for eight quarterly periods between April 2019 and March 2021, and for having failed to comply with the terms of an undertaking from November 2019 until July 2021. OSRE/BCFSA staff provided the respondents with three notifications regarding their obligations between November 2019 and March 2021, prior to the respondents coming into compliance on July 6, 2021.

93. The following cases address situations in which undertakings were not complied with:

- *In the matter of the Real Estate Development Marketing Act v. Timberstone Lodge Properties Ltd. et. al (Re),* January 17, 2008, was a consent order in which the respondents consented to pay an administrative penalty of $40,000, and enforcement expenses of $2,000. The respondents in *Timberstone* had been permitted by the superintendent to market phases 3 and 4 of a development prior to obtaining building permits, with the caveat that Timberstone was required to file a revised disclosure statement by October 18, 2007 indicating receipt of the requirement building permits. Despite not filing a revised disclosure statement by the required date, Timberstone continued to market phases 3 and 4, thus failing to comply with a policy statement issued pursuant to section 10(4)(b) of REDMA. Timberstone subsequently entered into an undertaking to cease and refrain from marketing

phases 3 and 4, but Timberstone subsequently advised the superintendent that one of its employees had continued to market those phases after the undertaking had been entered into. Timberstone also admitted that the employee had marketed further phases of the development without a disclosure statement having been filed with respect to those phases, in non-compliance with section 14(4) of REDMA, and to having accepted deposits in relation to those phases and not promptly placing those deposits in a trust account as required by section 18(1) of REDMA.

- *In the matter of the Real Estate Development Marketing Act v. 0692273 B.C. Ltd. et al.* (June 9, 2008) was a consent order in which the respondents consented to pay an administrative penalty in the amount of $20,000 and enforcement expenses of $1,500. The respondents admitted to having failed to update a disclosure statement and to having continued to market the development without filing a new disclosure statement or amending the original disclosure statement. The respondents further admitted to having agreed to cease marketing the development until a new disclosure statement was filed, but to having in fact continued to market the development after entering into that agreement.

- *In the matter of the Real Estate Development Marketing Act v. Revelstoke Mountain Resort Limited Partnership et al.* (June 21, 2010) was a consent order in which the respondents consented to pay an administrative penalty of $45,000 and enforcement expenses of $3,000. The respondents admitted to having entered into two undertakings which would require them to cease marketing until amended disclosure statements were filed, and to having breached both undertakings by continuing to market the development after the signing of the undertaking and prior to filing the required disclosure statements.

Decision on Appropriate Sanction

94. As set out above, BCFSA takes the position that an administrative penalty of $44,000 is appropriate in the circumstances of this case. In seeking that sanction, BCFSA submits that the previous consent orders issued for similar non-compliance to that in the present case have attracted significant administrative penalties of a similar value. BCFSA acknowledges that the conduct of the Respondents did not appear to have resulted in any harm to the public or consumers, and submits that a corrective sanction is not appropriate due to the fact that the non-compliance continued for a lengthy period of time before the Respondents came into compliance.

95. The Respondents on the other hand, take the position that, when taking into account the sanctioning principles set out above, and specifically the mitigating factors and what they say is a lack of aggravating factors, the appropriate sanction in this case would be at the “lower end of discipline”. The Respondents take the position that the appropriate global sanction in this case should be $15,000, apportioning $5,000 for the breach of the requirement that it file assignment reports, and $10,000 for the failure to comply with the Undertaking. The Respondents further submit that rehabilitative and educational components should be included in any sanction order in order to address corrective measures. The Respondents submit that such a sanction would better encourage developers to be well-informed, committed, and mindful of their regulatory obligations and the consequences for failing to abide by them.

96. I find the submissions of BCFSA to be more compelling than those of the Respondents. Having considered the nature of the misconduct in this case, the mitigating circumstances alleged by the Respondents, the previous cases, the submissions of the parties, and the overall sanctions principles, I find that the appropriate sanction is an administrative penalty in the amount of $44,000.

97. As I have indicated above, while I acknowledge that the nature of the non-compliance in this case was not egregious, in that there does not appear to have been any harm caused to the

public, nor do the Respondents appear to have realized any particular benefit from its non-compliance, I do not accept that the breaches of REDMA admitted were merely technical or accidental omissions. In my view, the mitigating factors in this case are minimal, while the aggravating factors are more pronounced.

98. Specifically, I consider that while the Respondents now submit that any sanction issued in this case should include rehabilitative and corrective measures that would better encourage developers in general to be "well-informed, committed and mindful of its regulatory obligations and the consequences for failing to abide by them", the facts of this case are that the Respondents were informed, by at least March 4, 2020, of their regulatory obligations. Despite that fact, and the fact that the Respondents entered the Undertaking in April 2020 specifically undertaking to comply, the Respondents took no steps to bring themselves into compliance until after it received a telephone call from BCFSA on May 21, 2021.

99. This failure to comply is notable not only for the length of its duration, but also for the fact that in addition to having been informed of its filing obligations by March 4, 2020, the Respondents took no steps to come into compliance with those obligations or its Undertaking even after being sent the March 26, 2021 letter from BCFSA. That letter set out the potential consequences to the Respondents, including administrative penalties up to $250,000 for an individual and $500,000 for a corporation. That March 26, 2021 letter further indicated that the Respondents were required to provide further information to BCFSA by April 23, 2021, including information as to what steps the Respondents would be taking if they had not yet come into compliance with the requirements to file assignment reports with CSAIR. Despite the March 26, 2021 letter specifically indicating that the Respondents were required to reply by April 23, 2021, the evidence and information before me indicates that it was not until a subsequent telephone call from a BCFSA investigator to the Respondents that they began to take action to come into compliance.

100. In my view, given the above facts, corrective measures have little bearing on this case. This is not a situation where I consider that a corrective measure would better serve the public than an administrative penalty. I consider that the Respondents were provided the opportunity to come into compliance, and simply did not do so for an extended period of time.

101. I note, in reaching this conclusion, that I agree with the submission of the Respondents that it may well be that no further sanctions would have been sought by BCFSA had the Respondents come into compliance at the time the Undertaking was signed.

102. However, as discussed above, the Respondents did not come into compliance at that time, despite having been provided with the details of what the steps they needed to take to come into compliance were, and despite having being provided multiple opportunities to do so. Again, I consider the fact that the Respondents did not come into compliance despite being given the opportunity to do so through the Undertaking leads to a conclusion that specific deterrence in the form of an administrative penalty is required.

103. Similarly, I consider that it would not provide a sufficient degree of general deterrence to issue a global penalty in the amount of $15,000, for circumstances in which a respondent has, in essence, ignored their reporting obligations and ignored their obligations entered into in an undertaking with the superintendent for a period of more than a year, and in a situation in which the respondents were provided with multiple opportunities to come into compliance. In my view, general deterrence requires an administrative penalty of greater significance in order to signify to other developers the importance of complying with the Act.

104. Finally, while I have acknowledged above the fact that consent orders may have limited value in determining the penalty amount, I consider that the facts admitted to in the cases of *1952182 BC Ltd.*, *Sandhill*, *InHaus* and *Glentana* are so similar as to provide helpful comparators as to the appropriate level of administrative penalty in this case.

105. I consider that the facts admitted to in *Glentana*, including the number of notifications received from the regulator, are particularly similar to those in the instant case.

106. In reaching that conclusion, I acknowledge that the period of time between initial notification from OSRE until to compliance was approximately three months longer in *Glentana* than in the current case. However, it is also is apparent from a review of *Glentana* that the March 26, 2021 letter sent in that case was likely similar to the March 26, 2021 letter sent in this case, and that it was that letter which spurred the respondents in Glentana to begin to take action to respond to BCFSA, including by responding to the March 26, 2021 letter by the April 20, 2021 deadline. As noted above, the Respondents in this case did not respond to the March 26, 2021 letter by the April 20, 2021 deadline, or in fact, at all.

107. In my view, the public would not expect disciplinary action in the present case to be particularly different from that set out in *Glentana.*

108. Given the need for both specific and general deterrence, as well as the need to ensure public confidence in the regulator, I am satisfied that an administrative penalty in the amount of $44,000 is appropriate in the circumstances. The Respondents did not object to BCFSA's submission that any administrative penalty ought to be paid within 30 days, and I consider that to be a reasonable time frame for payment in the circumstances.

Enforcement Expenses

109. Section 31(1) of REDMA provides that the superintendent may, by an order under section 30(1)(c), require a developer or director, or both, to pay the expenses, or part of the expenses, of either or both of an investigation under section 25 or the hearing under section 29.

110. Section 31(2) sets out that the expenses assessed under section 31(1) must be for the matters and must not exceed the amounts set out in the Regulations, and may include remuneration expenses for employees, officers, or agents of BCFSA engaged in the investigation or hearing.

111. BCFSA provided a certificate of costs which set out the hours of investigative work (28 hours, at a cost of $100.00 per hour), as well as certificate of costs related to legal counsel work for the hearing (25 hours, billed at $150.00 per hour), plus an additional $105.01 in disbursements for process serving, for total claimed enforcement expenses of $6.655.01.

112. The Respondents made no submissions on the enforcement expenses claimed by BCFSA, other than to point out that BCFSA was seeking an order related to those expenses.

113. I have no reason to believe that the enforcement expenses sought by BCFSA were not reasonably incurred in the investigation and hearing process, and note that the hourly rates sought by BCFSA are as set out at section 12 of the Regulations.

114. As a result, I exercise my discretion under section 31 of REDMA to order that the Respondents reimburse the claimed expenses of the investigation and the hearing, in the amount of $6,655.01.

Orders

115. After making the findings of non-compliance set out at paragraphs 49 and 54 above, I make the following orders in respect of sanctions:

- Pursuant to section 30(1)(d) and section 30(2) of REDMA, I order that 1020729 B.C. Ltd. and Naresh Kumar Sachdev shall be jointly and severally liable to pay an administrative penalty in the amount of $44,000, within 30 days of the date of this order.

- Pursuant to section 30(1)(c) of REDMA, I order that 1020729 B.C. Ltd. and Naresh Kumar Sachdev shall be jointly and severally liable to pay enforcement expenses in the amount of $6,655.01, within 30 days of the date of this order.

116. Pursuant to section 37(e) of REDMA, the Respondents may appeal the above orders to the Financial Services Tribunal within 30 days from the date of this decision: *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at Kelowna, British Columbia, this 7th day of December, 2023.

"Original signed by Andrew Pendray"

_____
Andrew Pendray
Chief Hearing Officer