

BC FINANCIAL SERVICES AUTHORITY

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

AND

IN THE MATTER OF

**TRACY XIAOMEI LI (178286),
TRACY LI PERSONAL REAL ESTATE CORPORATION (178286PC),
DAVID CHIAN WEI YANG (043031),
DAVID C.W. YANG PERSONAL REAL ESTATE CORPORATION (043031PC),
LOK CHI ANNIE FONG (173995),
ANNIE FONG PERSONAL REAL ESTATE CORPORATION (173995PC),
LO-MING LEE (125608);**

AND

PACIFIC EVERGREEN REALTY LTD. (X030719)

REASONS FOR DECISION ON APPLICATION FOR PARTICULARS

[These Reasons have been redacted before publication.]

1. On August 9, 2023 a Third Amended Notice of Discipline Hearing was issued in this matter.
2. That Third Amended Notice of Hearing alleges professional misconduct and conduct unbecoming, as described in section 35 of the *Real Estate Service Act*, on the part of the respondents Ms. Li, Mr. Yang, Ms. Fong, and Mr. Lee¹, and professional misconduct on the part of the respondent Pacific Evergreen Realty Ltd. (Pacific); relating to alleged real estate activities which occurred in November 2019.
3. The Third Amended Notice of Hearing indicates that the hearing will proceed from November 20 through December 8, 2023.

¹ As well as their respective Personal Real Estate Corporations.

4. Ms. Li brings an application for further particulars from BCFSA. Ms. Li also takes the position that she is not able to meet the document disclosure due dates set out in Directions issued by the Hearings Division following a pre-hearing conference held on July 24, 2023.

Issue

5. The issues is whether BCFSA is required to provide further particulars as requested by Ms. Li.

Background

6. As set out above, the allegations against Ms. Li, and the other respondents, relate to a real estate transaction dating to 2019.
7. The original Notice of Hearing was issued by BCFSA on March 16, 2022, and was sent to Ms. Li, by way of email and registered mail, on March 17, 2022. That Notice of Hearing indicated that the hearing of this matter was scheduled to proceed on October 3 through October 7, 2023.
8. On July 26, 2022, BCFSA wrote to Ms. Li in order to provide disclosure of documents the BCFSA (or its predecessor regulator) had obtained during its investigation and had reviewed in the preparation of the Notice of Discipline Hearing. That July 26, 2022 letter also indicated that BCFSA required Ms. Li to provide confirmation of the date, time and location she attended for an examination for discovery in the relation to a Supreme Court of BC action, as well as to provide a copy of the transcript of her examination for discovery along with any list of documents produced in that Supreme Court action.
9. In an August 24, 2022 letter to BCFSA, counsel for Ms. Li posed the following questions to BCFSA:
 - What penalty will you be seeking against Ms. Li if you are successful in proving all of the allegations in your Notice of Discipline Hearing?
 - What is the purpose of your request for the examination for discovery transcript, in view of the fact that Ms. Li has already answered all the questions put to her by the [Real Estate Council] investigators?
 - What is the purpose of your request for production of documents from Ms. Li, in view of the fact that Ms. Li has already produced all the documents requested of her (presumably) by the REC investigators?
10. On August 24, 2022, BCFSA wrote to counsel for Ms. Li, and provided supplemental disclosure documents.
11. An Amended Notice of Discipline Hearing was issued on September 21, 2022. That Amended Notice of Discipline Hearing was provided to counsel for Ms. Li by letter² on September 29, 2022.

² Sent by email.

12. In that September 29, 2022 letter BCFSA also addressed the questions posed in Ms. Li's August 24, 2022 letter.
13. Specifically, BCFSA indicated that the penalties sought would be those contemplated under section 43 of RESA. BCFSA further noted that its request for Ms. Li's list of documents from the Supreme Court action was to enable BCFSA to cross reference those documents with the documents disclosed to date in order to determine if the documents listed needed to be produced.
14. The hearing did not proceed as scheduled in October 2022, and the parties arranged mutually agreeable dates for the hearing to proceed in November 2023.
15. On December 5, 2022, Ms. Li, through her counsel, reiterated her request to BCFSA that it provide its position on penalty. Counsel for Ms. Li indicated that Ms. Li was "entitled to know what jeopardy she is in before we go any further".
16. On December 20, 2022, BCFSA wrote to counsel for Ms. Li and indicated that BCFSA was not required to take a without prejudice position on sanction/penalty at that time. BCFSA noted that hearings generally proceeded with a liability hearing first, followed by a separate hearing on penalty and expenses, depending on the result in the first hearing.
17. On May 12, 2023, BCFSA wrote to counsel for Ms. Li, and provided a "second supplemental disclosure". BCFSA noted in its May 12, 2023 letter that Ms. Li had indicated that she wished to seek further particulars and suggested that Ms. Li provide a written request in that regard.
18. A Second Amended Notice of Discipline Hearing was issued on July 10, 2023. That Second Amended Notice of Discipline Hearing was provided to counsel for Ms. Li on that same date.
19. Also on July 10, 2023, BCFSA provided counsel for Ms. Li with a "third supplemental disclosure".
20. In a July 24, 2023 Pre-Hearing Conference brief, Ms. Li submitted that it was necessary for BCFSA to advise what penalty they were seeking if the allegations in the Second Amended Notice of Discipline Hearing were proven in order for the respondents to make "proportional decisions about how to conduct their defence", and in order that the Hearing Officer may determine how the hearing must be conducted in order to comply with the requirements of natural justice.
21. Ms. Li further submitted, in her pre-hearing conference brief, that it was not clear why the hearing ought to be virtual rather than in person. Ms. Li specified that she was particularly concerned with respect to the witness [Witness 1]. Ms. Li indicated that, in her view, [Witness 1] appeared to have been coached from off camera during a break of her examination for discovery during a civil proceeding, after which she returned and changed some of her evidence.

22. At the July 24, 2023 pre-hearing conference, Ms. Li indicated that she may wish to formalize some of the concerns expressed in her pre-hearing conference brief into applications.

23. The following Directions were made after the conclusion of the pre-hearing conference:

THE PARTIES ARE DIRECTED AS FOLLOWS:

1. The hearing of this matter will proceed on November 20 – December 8, 2023, on the issue of liability only;

Expert Reports

2. Service of any expert report any party intends to rely on at the hearing must be effected, no later than August 28, 2023;
3. Service of any responding expert report a party intends to rely on at the hearing must be effected, no later than October 10, 2023;
4. The parties will give notice of whether they intend to cross examine any expert, no later than October 23, 2023;

Preliminary Issues

5. The parties will provide any demands for particulars to BCFSA and the Hearings Division, no later than August 17, 2023;
6. Any applications regarding preliminary procedural matters will be provided to the Hearings Division, no later than September 7, 2023;
 - a. a response to preliminary procedural matter applications will be provided to the parties and the Hearings Division, no later than 7 days from the date the initiating application is provided; and
 - b. a final reply to preliminary procedural matter applications will be provided to the parties and the Hearings Division, no later than 5 days after receipt of the response;

Production of Documents / Books of Documents

7. BCFSA will provide a draft Agreed Statement of Facts to the parties, no later than September 29, 2023;
8. The parties will provide their respective positions to the Agreed Statement of Facts to BCFSA, no later than October 16, 2023;
9. BCFSA will provide its index to its Book of Documents to the parties, no later than September 29, 2023;
10. The parties will each provide to BCFSA any documents on which they intend to rely on at the hearing, no later than October 16, 2023;

Witness Lists / Summaries

11. BCFSa will provide to the parties a list of witnesses it intends to call at the hearing, with a general summary of what evidence they will provide, no later than September 29, 2023; and
 12. The parties will each provide to BCFSa a list of witnesses they intend to call, with a general summary of what evidence they will provide, by October 16, 2023.
24. On July 25, 2023, Ms. Li wrote to BCFSa to request further particulars. Counsel for Ms. Li indicated in that letter that he was seeking that BCFSa answer a number of questions in order to provide Ms. Li (and her PREC) “adequate notice of the allegations against them and the jeopardy they face” and with a view to narrowing the issues for the hearing. Counsel then set out a list of questions he requested that BCFSa answer in advance of the hearing:
1. Please confirm that there are no express Rules or statutory provisions setting out the obligation of licensees with respect to POAs (other than in relation to making sure the POA is in a form that will be accepted by LTO). If in fact there are such provisions that apply, please identify them.
 2. Please confirm that the following statements are correct:
 - a. none of the licensees involved had ever heard of a scam like the one alleged in your NODH;
 - b. there were no notices to the profession warning of scams like this;
 - c. the Real Estate course contained no training on this topic
 - d. there were no policies at the brokerage dealing with POAs; and
 - e. Ms. Li in particular was a junior licensee who was never trained in relation to the issue that arose.

To the extent that any of these statements are wrong please advise how, either factually or legally, and explain what the true facts are. Please also advise if you are aware of any other reasons why any of the licensees in question should have been looking out for scams like the one alleged here.

3. Please answer the following questions:
 - a. What specific duty of care did Ms. Li have, to whom?
 - b. What standard of care existed, to do what?
 - c. How was the standard breached by Ms. Li?
4. In this regard, what industry standards do you say apply to the circumstances of this case, and what evidence will you rely on to establish them?
5. Please also answer the following questions:

- a. What specific warning did Ms. Li have a duty to give, to whom, who could have done something to stop the transaction?
 - b. What should have Ms. Li done instead of what she actually did?
 - c. To whom do you say Ms. Li was providing services, and therefore had a duty to? What evidence do you rely on to demonstrate that Ms. Li was providing services to that person?
 - d. If you say that Ms. Li should have withdrawn her services, on what legal and factual basis was she entitled to do so?
6. Please advise what penalty you will seek to impose on my clients if the allegations in the NODH, as it presently stands, are proven.
7. Please advise what evidence you will rely on to establish that the person you will present as [Witness 1] is:
- a. is the legal title holder (other than the common name);
 - b. is not a nominee for the true (beneficial) owner;
 - c. had no dealings, directly or indirectly with
 - i. [Seller 1], and
 - ii. the "Drivers License YY", being the person who executed the POA before the notary, [Notary 1],
- and
- a. the true owner had no dealings with either of them.
8. Please advise if you will produce [Witness 1] for pre-hearing examination under oath.
9. Please confirm you will produce [Witness 1] in Vancouver, for cross-examination, at the hearing, or explain your factual and legal basis not to.
25. On August 9, 2023, BCFSA provided Ms. Li with a Third Amended Notice of Discipline Hearing, issued that same date. The Third Amended Notice of Discipline Hearing included amendments in relation to the allegations against Ms. Li.
26. Also on August 9, 2023, BCFSA responded to Ms. Li's July 25, 2023 [letter].
27. In its August 9, 2023 letter BCFSA indicated that its view was that it was not required to provide legal argument in order to particularize the allegations made against Ms. Li in the Third Amended Notice of Hearing. BCFSA further indicated that it did not consider that it was required to inform Ms. Li of the specific evidence it intended to rely upon at the hearing in order to prove particular points. BCFSA indicated that in its view, it had satisfied its evidentiary disclosure obligations by making disclosure of all relevant documents in its possession.

28. BCFSa further indicated in the August 9, 2023 letter that it was not obliged to make the admissions requested by Ms. Li at questions 1 and 2 of her July 25, 2023 letter, and that it declined to do so. BCFSa declined to respond to the requests at question 3, noting that the standard of care was particularized in the notice of discipline hearing. In response to question 4 from Ms. Li's July 25, 2023 letter, BCFSa indicated that it intended to tender an expert report as to the industry standards that applied.

29. BCFSa went on to respond what it considered to be further requests for particulars in the July 25, 2023 letter from Ms. Li as follows:

5. This request includes requests for evidence and legal argument which are objectionable. BCFSa declines to respond to those requests beyond the disclosure already provided in this proceeding. To the extent that these requests are for particulars, BCFSa responds as follows to the lettered subparagraphs:

a. As alleged at paragraph 1(f) of the Third Amended Notice of Disciplinary Hearing, BCFSa alleges that Ms. Li failed to take reasonable measures to alert other persons acting in relation to the sale of the Property of the suspicious circumstances surrounding the sale of the Property. BCFSa further particularizes that allegation by stating that Ms. Li had a duty to advise all or any of the following individuals between November 17, 2019 and November 29, 2019 of the suspicious circumstances as they arose:

i. as Ms. Li was engaged, implicitly or explicitly, to provide real estate services to or on behalf of [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1]:

1. Pacific Evergreen Realty Ltd.'s compliance officer;
2. Lok Chi Annie Fong;
3. Lo-Ming Lee; and
4. David Chian Wei Yang;
5. any other person set out in any expert report that is to be tendered by BCFSa in respect of this matter; and
6. [Witness 1].

ii. In the alternative, Ms. Li was not engaged to provide real estate services to or on behalf of any party in the purchase and sale of the Property, all of the persons listed above under paragraph 5(a)(1)-(5); and

iii. In the further alternative, Ms. Li was engaged to provide real estate services to or on behalf of [Buyer 1] all of the persons listed above under paragraph 5(a)(i)(1)-(5) and [Buyer 1];

b. This request is particularized in the Third Amended Notice of Disciplinary Hearing at paragraph 1(1)(e) and (f) and further particularized above.

Further, at paragraph 1(1)(f) of the Third Amended Notice of Disciplinary Hearing, BCFSa alleges that Ms. Li failed to take reasonable measures to confirm whether [Seller 1] was duly authorized to deal with the Property. BCFSa further particularizes that allegation by alleging that Ms. Li failed to do all or any of the following:

- i. view, review, and obtain a true copy of the power of attorney that [Seller 1] purported to rely on in transacting the sale of the Property prior to providing trading services to [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1];
- ii. view, review, and obtain a true copy of a fully executed power of attorney that [Seller 1] purported to rely on in transacting the sale of the Property prior to providing trading services to [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1];
- iii. view, review, and obtain a true copy of a fully executed power of attorney that [Seller 1] purported to rely on in transacting the sale of the Property prior to arranging execution by [Seller 1] of a subject free offer for purchase of the Property by [Buyer 1];
- iv. obtain a title search showing the individual [Seller 1] purported to represent through power of attorney was the person named on title to the Property prior to providing trading services to [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1];
- v. take sufficient steps to contact the individual [Seller 1] purported to represent through a power of attorney by telephone or video conference prior to providing trading services to [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1];
- vi. view, review, and obtain identification for [Seller 1] before providing trading services to [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1];
- vii. view, review, and obtain identification for the individual [Seller 1] purported to represent before providing trading services to [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1];
- viii. obtain advice from a managing broker at Pacific Evergreen Realty Ltd. regarding the sufficiency of the power of attorney that [Seller 1] purported to rely on in transacting the sale of the Property prior to providing trading services to [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1] and what steps to take in that regard;
- ix. take the steps and follow the advice given to by her managing broker;

- x. obtain legal advice regarding the sufficiency of the power of attorney that [Seller 1] purported to rely on in transacting the sale of the Property prior to providing trading services to [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1] and what steps to take in that regard and take the steps and follow the advice given by the lawyer;
 - xi. report the suspicious circumstances and the results of her efforts to confirm [Seller 1]'s authority as alleged at paragraph 5(a) above as soon as possible;
- c. This request is particularized in the Third Amended Notice of Disciplinary Hearing at paragraph 1(1)(e). BCFSa alleges that Ms. Li was providing trading services to [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1]. BCFSa further particularizes this allegation as follows:
 - i. From November 16 to November 27, 2019 Ms. Li was engaged, implicitly or explicitly, to provide real estate services to or on behalf of [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1] by virtue of her conduct in
 - 1. providing advice regarding the value of the Property to [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1];
 - 2. receiving information regarding the motivations of [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1] in selling the Property;
 - 3. receiving and communicating offers between [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1] and Yang as agent for [Buyer 1];
 - 4. taking instructions from [Seller 1], [Witness 1], or an individual falsely purporting to be [Witness 1] regarding the content of counter-offers to be made to [Buyer 1];
 - ii. In the alternative, Ms. Li was not engaged to provide real estate services to or on behalf of any party in the purchase and sale of the Property;
 - iii. In the further alternative, Ms. Li was engaged to provide real estate services to or on behalf of [Buyer 1] by virtue of being licensed in relation to Pacific Evergreen Realty Ltd which was an agent for [Buyer 1];
- d. This is not a request for particulars and is instead a request that BCFSa advise what evidence it will rely on at the hearing and is a request for a

legal position. As indicated above, this request is objectionable. BCFSA declines to respond to it.

6. BCFSA provided its position on this request on December 20, 2022. BCFSA declines to answer this request.
7. This is a request that BCFSA advise what evidence it will rely on at the hearing. As indicated above, this request is objectionable. BCFSA declines to respond to it.

30. BCFSA provided a fourth supplemental disclosure to all respondents on August 29, 2023.

Application

31. In her Application, Ms. Li requests orders requiring that:

- A. BCFSA answer Question 1 posed in the July 25, 2023 letter;
- B. BCFSA answer Question 2 posed in the July 25, 2023 letter;
- C. BCFSA clarify which portions of Question 5(a)-(c) posed in the July 25, 2023 letter they are answering and which they are not;
- D. BCFSA answer Question 5(d) posed in the July 25, 2023 letter;
- E. BCFSA answer Question 6, which is that BCFSA advise what penalty it will seek to impose on Ms. Li and the PREC if the allegations in the Third Amended Notice of Discipline Hearing are proven.

32. Ms. Li clarified in her application that she was not seeking orders in respect of the other questions posed in the July 25, 2023 letter.

Reasons and Decision

33. In taking the position that she is entitled to orders for further particulars as she has requested, Ms. Li notes, generally, that she is entitled to a fair process in the course of a discipline hearing under section 42 of RESA.

34. She further submits that the nature of the discipline she could be subject to under section 43 of RESA makes it necessary to ensure that she receives a “high standard of justice”³, with stringent procedural protections. Ms. Li submits that the minimum standard of fairness required is that she is given sufficient notice of the case against her, so that she may adequately prepare to meet it.

35. There is no question that administrative tribunals which make decisions affecting the rights, privileges, or interests of an individual, owe a duty of procedural fairness to the individual affected by those decisions.

³*Baker v. Canada*, [1999] 2 SCR 817 at para 25, quoting from *Kane v. Board of Governors of the University of British Columbia*, [1980 CanLII 10 \(SCC\)](#), [1980] 1 S.C.R. 1105

36. The nature of what constitutes procedural fairness may vary in different cases, and before different tribunals. As a general principle, the more important the decision to those affected and the greater the impact on that person or persons, the more stringent the procedural protections that will be required.

37. Both parties in this application have referred to *British Columbia (Securities Commission) v Pacific International Securities Inc.*, 2002 BCCA 421 (*Pacific*). In that decision, the Court of Appeal provided the following commentary on the requirement that administrative tribunals provide procedural fairness:

[6] It is now settled law that all administrative tribunals must provide procedural fairness: see *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, [1978 CanLII 24 \(SCC\)](#), [1979] 1 S.C.R. 311; *Martineau v. Matsqui Disciplinary Board*, [1979 CanLII 184 \(SCC\)](#), [1980] 1 S.C.R. 602 at 623-24; *Moreau-Bérubé v. New Brunswick (Judicial Council)* (2002), [2002 SCC 11 \(CanLII\)](#), 209 D.L.R. (4th) 1 at para. 75 (S.C.C.). However, administrative tribunals are the masters of their own procedures and, unlike courts, need not be shackled by all of the requirements of natural justice; rather, they are entitled to devise flexible procedures adapted to their needs in order to “achieve a certain balance between the need for fairness, efficiency and predictability of outcome”: *Knight v. Indian Head School Divison No. 19*, [1990 CanLII 138 \(SCC\)](#), [1990] 1 S.C.R. 653 at 685.

[7] Thus, the duty of fairness is flexible and variable and will depend upon an appreciation of the context of the statute involved and the rights affected: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999 CanLII 699 \(SCC\)](#), [1999] 2 S.C.R. 817 at paras. 21-22. At paras. 23-27 of that decision, L’Heureux-Dubé J. set out a non-exhaustive list of factors that are relevant to the determination of the level of procedural fairness required in particular cases. They include: (1) the nature of the decision and its underlying procedures, that is, the degree of similarity of the administrative process to the judicial process; (2) the role of the particular decision in relation to the nature of the statutory scheme; (3) the importance of the decision to the individuals affected by it; (4) the legitimate expectations of the person challenging the decision where expectations were created as to the procedure to be followed; and (5) the choice of procedure made by the tribunal, as well as its expertise and its institutional constraints.

38. I consider that Ms. Li’s August 25, 2023 application can be described as a submission that her “right to notice”, has not been met.

39. A party’s right to adequate notice in an administrative proceeding is directly linked to a party’s right to receive a fair hearing. I consider that adequate notice requires that the affected party is informed of the case against him or her, and that the notice is sufficient that the affected party will have the ability to respond to that case. The question, as put by the Supreme Court of Canada in *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 (CanLII), is whether the procedures in place provide an adequate opportunity for an

affected person to state their case and know the case they have to meet (*Charkaoui*, para. 53).

40. I note further, in this regard, the comments of Sarah Blake in *Administrative Law in Canada*, 6th ed., at para 2.121:

In professional discipline, factual particulars should be described in the notice of hearing or in a supplemental document. Both the client and the specific misconduct should be identified. However, a notice should not read like an Information in a criminal proceeding. How detailed it should be depends on the complexity and seriousness of the case. A failure to provide details in the notice of hearing can be cured by full disclosure of the evidence to be filed at the hearing. The tribunal is not restricted to considering only the facts alleged in the notice of hearing, but should make its decision in light of all of the facts adduced at the hearing. The notice is merely an outline of the alleged facts.

41. Having consideration to the principles set out above, I will consider the orders sought by Ms. Li in turn.

Questions 1 and 2 from the July 25, 2023 Letter

42. While Ms. Li attempts to describe Questions 1 and 2 as requests for further particulars, I agree with BCFSa that her requests are best described as requests for BCFSa to make admissions, and requests that BCFSa disclose its legal argument in advance of the hearing.
43. I note, in reaching this conclusion, that Ms. Li has not cited any authority for her apparent position that BCFSa is obliged to make certain admissions, or that it disclose its legal argument.
44. While there can be no doubt that fairness requires BCFSa to particularize its case against Ms. Li (including through the provision of documentary disclosure), I do not consider that BCFSa is obligated to provide its legal argument in advance of the hearing: *Giesbrecht v. British Columbia*, 2017 BCSC 1920, at para. 8. It would not be, in my view, procedurally unfair for Ms. Li to not have that argument in advance of the hearing.
45. With respect to the apparent admissions sought by Ms. Li, I note that the disciplinary hearing process under RESA is adversarial in nature, in that BCFSa has the burden of proving the allegations set out in a Notice of Hearing, and the respondent licensee is provided with the opportunity to deny those allegations, and to make themselves heard in response to those allegations.
46. While the efficiency of a disciplinary hearing may potentially be improved in circumstances where the parties are able to agree to certain admissions, neither BCFSa, nor the subject of a discipline hearing under RESA, is specifically entitled to receive any admissions from the other party, nor are they required to make any such admissions.
47. I note that, contrary to Ms. Li's submissions, I do not consider it to be in any way "abusive and wrong" for a party to choose to not make an admission in the context of a disciplinary

hearing under RESA. Again, the disciplinary hearing process is adversarial in nature. As I have stated above, there is no requirement on either party to make any admissions.

48. Ms. Li's application in respect of Question 1 and Question 2 is therefore denied.

Question 5(a) to 5(c), and Question 5(d)

49. The Notice of Hearing⁴ sets out the allegations against Ms. Li in detail, including identifying the sections of RESA and the *Real Estate Services Act Rules* she is alleged to have breached, and identifying the circumstances in which those breaches were alleged to have occurred.

50. Subsequently, BCFSa has provided further particularization regarding the allegations against Ms. Li in its August 9, 2023 letter, as excerpted above.

51. Those further particulars include details regarding the alleged duties Ms. Li had (in BCFSa's view) in November 2019; what reasonable measures Ms. Li was alleged to have failed to have taken; and to whom Ms. Li was alleged to have been providing trading services under RESA.

52. In addition, BCFSa has provided Ms. Li with documentary disclosure, and BCFSa has been directed to provide Ms. Li with disclosure of its book of documents. its witness list for the discipline hearing, and to provide disclosure of expert reports.

53. Given all of the above, I consider that Ms. Li has been provided with sufficient particulars to understand the nature of the case that is being brought against her, and to enable her to prepare her ability to respond to that case and to be heard at the disciplinary hearing of this matter.

54. While I have no doubt that, as Ms. Li submits, this discipline hearing is of significant importance to her, in that the potential discipline under section 43 of RESA could include licence cancellation and monetary discipline penalties, I do not consider that a regulatory proceeding such as this requires more than she be given sufficient notice to permit her to have an appreciation of the case to be met, and to enable her to respond to the allegations brought against her.

55. In reaching the conclusion that Ms. Li has been provided with sufficient notice and particulars of the case she has to meet, I consider there to be value in describing the legislative provisions that apply to the conduct of discipline hearings under RESA.

56. Section 40 provides that following an investigation conducted under section 37 of RESA, the superintendent of real estate may issue a notice to an affected licensee pursuant to section 40 of RESA, and conduct a discipline hearing pursuant to section 42.

57. With respect to the specific notice required by RESA in respect of a discipline hearing, Section 40(2) requires that:

⁴ Now the Third Amended Notice of Hearing.

(2) The notice must

- (a) describe the nature of the complaint or other matter that is to be the subject of the discipline hearing;
- (b) specify the time and place set for the commencement of the hearing, and
- (c) advise the licensee that the superintendent is entitled to proceed with the hearing in the absence of the licensee.

58. There can be no doubt that, in this case, the notice as required by section 40(2) has been issued.

59. Section 40 of RESA requires only a short notice period of 21 days between the delivery of a notice of discipline hearing and the holding of the hearing. This short time period, in my view, suggests that the legislature considered that there may be discipline hearings which required only a minimal degree of notice prior to the hearing proceeding. In the circumstances of the present case, however, Ms. Li has had notice of this hearing for a far more extended period of time, and began to receive documentary disclosure from BCFSa beginning more than one year ago.

60. It is also worth noting that discipline hearings under RESA may be conducted by way of written submissions or oral hearing, or a combination of both (section 42(3)). The decision on how to proceed is a discretionary one. Once a notice of discipline hearing is issued, the superintendent can make orders requiring attendance or the disclosure of documents of witnesses who are not at licensees. The superintendent can also make orders or directions necessary to keep order at the hearing and enforce those through peace officers or by application to the Supreme Court for contempt.

61. Finally, licensees may appeal orders made under section 43 to the Financial Services Tribunal (the "FST").

62. In my view, the above legislative provisions make clear that the process of a discipline hearing under RESA does contain some elements of a judicial process, and that a high degree of fairness is required.

63. I do not, however, consider that the existence of those elements must be taken to mean that the process and procedure applied in the discipline hearing process must be the same as those applied in the courts.

64. As noted above, Ms. Li has had notice of the allegations against her for a far more extended period of time than required by RESA. She has received ongoing and fulsome documentary disclosure from BCFSa, and her right to be heard will be by way of an oral hearing. At that hearing Ms. Li will have the opportunity to cross examine witnesses, provide evidence, call witnesses, and make submissions.

65. Finally, should Ms. Li, despite the disclosure provided to her in advance of the hearing, which will include BCFSA's book of documents and its list of witnesses along with a general summary of the evidence those witnesses are expected to provide, be taken by surprise by some aspect of the case brought against her, it would be open to her to apply for an adjournment in order to allow her further time to prepare. Such an application would be considered on its merits, at the time it was brought.
66. Having determined that Ms. Li has been provided with sufficient particulars that she has notice of the case being brought against her, and to enable her to respond to that case, her applications for further responses from BCFSA in respect of questions 5(a) through 5(d) are denied.

Question 6

67. I turn to Ms. Li's application that BCFSA be ordered to advise her what penalty will be sought by BCFSA if the allegations set out in the Notice of Hearing are proven.
68. Ms. Li describes BCFSA's refusal to provide her with this information as "inexplicable", noting that being aware of the jeopardy she faces is one of the most fundamental parts of knowing the case against her. Ms. Li submits further that knowing the jeopardy she faces will facilitate possible settlement and "allow all sides to approach the hearing in a manner that is proportional".
69. BCFSA submits that Ms. Li has already been afforded a high degree of procedural fairness, and that directing it to take a position on the matter of potential penalty will serve no purpose. BCFSA submits that Ms. Li has been provided with a compliant notice of discipline hearing, further particulars, itemized documentary disclosure, and disclosure of a book of documents and a witness list.
70. While I accept that it may be desirable, from Ms. Li's position, to know precisely what penalty BCFSA would be seeking should it prove the allegations set out in the notice of hearing, I note that she has referred to no legal authority suggesting she has a right to an order or direction in that regard.
71. The Financial Services Tribunal, in *Arvind Shankar v Registrar of Mortgage Brokers*, 2019 BCFST 1 (CanLII), specifically rejected the suggestion the provision of sufficient notice to a respondent goes beyond the giving of notice of the penalties permitted by the charging statute.
72. I agree with the conclusion of the FST in *Shankar*. In my view, while fairness requires that a respondent to a disciplinary proceeding under RESA should be given notice of the range of penalties to which they may be exposed, fairness does not require more than that. Again, I consider that fairness, in the form of adequate notice, requires that the respondent have sufficient notice to prepare their case adequately.

73. Section 43 of RESA makes Ms. Li aware of the potential penalties to which she may be exposed in this proceeding. Her application is therefore denied.

Conclusion

74. Ms. Li's August 25, 2023 application for further particulars and notice is denied.

Dated this 31st day of October, 2023, at the City of Kelowna, British Columbia

"Original signed by Andrew Pendray"

Andrew Pendray
Chief Hearing Officer