Citation: Campbell (Re), 2023 BCSRE 54
Date: 2023-12-27
File No. INC3121

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

AND IN THE MATTER OF

GLENN RICHARD CAMPBELL
(UNLICENSED)

DECISION ON SANCTION

[This Decision has been redacted before publication.]

Date of Hearing:	Written Submissions
Counsel for BCFSA:	Catherine Davies
Counsel for Respondent:	Self-Represented
Hearing Officer:	Andrew Pendray

Introduction

1. In a May 4, 2023 decision, *Campbell (Re)*, 2023 BCSRE 14, I determined that Mr. Campbell had, in respect of 17 properties, provided rental property management services in British Columbia without being licensed to do so under the provisions of the *Real Estate Services Act* (RESA), and without being otherwise exempt from licensing requirements under RESA, contrary to section 3(1) of RESA. I further determined that the respondent withheld or concealed information that was reasonably required for the purposes of the investigation, contrary to section 37(4) of RESA, when he did not respond to a May 29, 2020 request for information.

2. This decision relates to the sanctions and orders to be issued in respect of Mr. Campbell's conduct.

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

4. In its submissions, BCFSA seeks the following orders:

   - Pursuant to section 49(2)(a) of RESA, an order that the respondent cease offering or providing unlicensed rental property management services as defined by RESA until such time as he is licensed to do so;

   - Pursuant to section 49(2)(d) of RESA, an order that the respondent pay a penalty of $100,000; and

   - Pursuant to section 49(2)(c) of RESA, an order that the respondent pay investigation and hearing expenses incurred by BCFSA in the amount of $27,805.26.

5. Although Mr. Campbell appeared and provided evidence and submissions at the liability hearing of this matter, he did not provide any submissions on the issue of sanctions, despite being provided with the opportunity to do so.

Issues

6. The issue is the appropriate orders to be issued in respect of the respondent's conduct, as provided for by section 49 of RESA.

Jurisdiction

7. Pursuant to section 2.1(3) of RESA the Superintendent of Real Estate (the "Superintendent") may delegate any of its powers. The Chief Hearing Officer and Hearing Officers of the Hearings Department of BCFSA have been delegated the statutory powers and duties of the Superintendent of Real Estate with respect to sections 42 through 53 of RESA.

Background

8. The background to this matter is set out in *Campbell (Re)*. I will not reproduce the entirety of that background and evidence here. Rather, the following is intended to provide context for my reasons.

9. The Notice of Hearing issued against the respondent on June 22, 2022 alleged that:

    1. [The respondent] provided real estate services in British Columbia without being licensed to do so and without being otherwise exempt from licensing, contrary to section 3(1) of the RESA, when, in relation to each of the properties listed in Schedule A (the "Properties") [he]:

        a. Provided rental property management services, as that term is defined in the RESA, in respect of the Properties by:

            i. Providing trading services in relation to the Properties;
            ii. Collecting rents or security deposits for the use of the Properties; and/or
            iii. Managing the Properties on behalf of the owners by
                1. Making payments to third parties;
                2. Negotiating or entering into contracts;
                3. Supervising employees or contractors hired or engaged by the owners; and/or
                4. Managing landlord and tenant matters by representing the owners of the Properties in residential tenancy branch disputes and civil legal actions.

    2. [The respondent] withheld, concealed or refused to provide information required for the purpose of the investigation, contrary to sections 49(4)(a) and 37(4) of the RESA, in that [he] did not respond to request for information related to allegations against [him], and [he] did not respond to a request for an interview.

10. The genesis of the Notice of Hearing came from two complaints received about the respondent by BCFSA's predecessor, the Office of the Superintendent of Real Estate (OSRE), dating to 2017 and 2019.

11. The first complaint came from [Complainant 1], a City of Surrey bylaw officer, in October 2017. [Complainant 1] had, in his role as a bylaw officer, interacted with Mr. Campbell. [Complainant 1] explained in his written complaint to OSRE, as well as in his evidence at the liability hearing of this matter, that he had interacted with the respondent in respect of a property located in Surrey on October 15, 2017. [Complainant 1] indicated that during that interaction the respondent had admitted that he was not licensed as a property manager, but that he had been working as a property manager for five years running a variety of properties around the Lower Mainland.

12. [Complainant 1] described that as part of his investigation into the property bylaw infractions, he had come across other City of Surrey documents which referenced the respondent as acting as a property manager.

13. The second complaint received by OSRE came from [Complainant 2] in March 2019. In that complaint [Complainant 2] alleged that the respondent performed duties such as rent collection, engaging contractors to perform repairs, and discussing terms of rentals in respect of the home she had rented at [Property 1] in Surrey. [Complainant 2] indicated in her complaint that she understood that the respondent was not licensed.

14. On May 29, 2020, OSRE wrote to the respondent regarding the complaints it had received. That letter requested that the respondent provide OSRE with information to assist in its investigation of those complaints, including:

    1. A description of the business model for Greater Realty Care Property Management;
    2. A list of the properties managed by you;
    3. Copies of all agreements entered into with the owners of those properties regarding the provision of property management services;
    4. Copies of all agreements entered into with prospective or current tenants;
    5. Total amount of fees paid to you and Greater Realty Care Property Management; and
    6. Any other information/documents you would like me to consider as part of my investigation.

15. The respondent did not reply to that letter.

16. As a result of those complaints, OSRE, and subsequently BCFSA, conducted an investigation into the respondent. A March 14, 2022 investigation report concluded that:

- The respondent did not hold a licence to provide real estate services in British Columbia, and that he had never been licensed to do so in British Columbia;
- The respondent's company, Greater Realty Care Property Management, was not licensed as a brokerage and had never been licensed to provide real estate services in British Columbia;
- The respondent appeared to have provided rental property management services in relation to numerous properties for or in expectation of remuneration. Those services appeared to have included advertising the property for rent, finding tenants, entering into tenancy agreements, collecting rent, and representing property owners with Residential Tenancy Branch disputes;
- The respondent had received at least $7,263.79 in remuneration for his rental property management services, and likely significantly more; and

- The evidence did not appear to support a *conclusion* that the respondent would meet the requirements for any exemption from the requirement to be licensed under RESA.

17. In *Campbell (Re)*, I described the evidence demonstrating that the respondent had been generally engaged in unlicensed rental property management services for a significant number of years as having been "overwhelming".

18. That overwhelming evidence included:

- Evidence indicating that the respondent would provide invoices for his services such as finding tenants for properties, with invoices dating as far back as 2013;

- Evidence indicating that the respondent would appear for property owners at Residential Tenancy Branch hearings as a "landlord";

- Evidence indicating that the respondent would address bylaw matters with city officials and that in those circumstances the respondent described himself as the "property manager" of various properties;

- Evidence indicating that the respondent was paid on a monthly basis to manage a number of properties for an owner, [Owner 1], generally for $150 per month, subject to greater fees being paid for maintenance type projects; as well as evidence indicating that the respondent issued invoices for his services in respect of those properties;

- Evidence from a property owner, [Owner 2], that the respondent had been conducting property management services since 2003 without a licence, although [Owner 2] noted that he had met the respondent in approximately 2010/11. [Owner 2] described to BCFSA's investigator having paid the respondent a monthly fee to look after six properties, including issuing notices to tenants, conducting inspections and investigations, attending at Residential Tenancy Branch hearings and advertising properties for rent. [Owner 2] provided copies of invoices from the respondent to [Owner 2] dating from 2019, 2020, and 2021 relating to a monthly maintenance fee for a number of properties;

- Evidence from a property owner, [Owner 3], that he had owned a property from 2016 through 2021 and that the respondent had managed that property for him almost the entire time he had owned it. [Owner 3] indicated that the respondent would invoice him periodically for a "maintenance fee" through his company, Greater Realty Care. [Owner 3] noted that he was not aware that the respondent was not licensed as a property manager, and that the respondent's duties had included finding tenants, collecting rent from tenants, addressing maintenance and arranging contractors as necessary, dealing with bylaw officers, and acting as the liaison between tenants and [Owner 3];

- Evidence from the property owners of [Property 1] that the respondent had "found tenants" for their property for a number of years, as well as evidence from the property owner that they had paid the respondent for his services, and evidence from the respondent acknowledging that he had dealt with tenant disputes at the property.

19. I further concluded that the evidence did not support a conclusion that any of the exemptions from licensure applied to the properties in which BCFSA was seeking findings at the liability hearing.

20. As a result, I found that:

> 137. …the respondent provided rental property management services in British Columbia without being licensed to do so under the provisions of RESA, and

without being otherwise exempt from licensing requirements under RESA, contrary to section 3(1) of RESA, in respect of the following properties:

- [Property 2], Langley
- [Property 3], Surrey
- [Property 4], White Rock
- [Property 5], Surrey
- [Property 6], Langley
- [Property 7], Surrey
- [Property 8], Surrey
- [Property 9], Surrey
- [Property 10], Surrey
- [Property 11], Surrey
- [Property 12], Surrey
- [Property 13], Surrey
- [Property 14], Surrey
- [Property 15], Surrey
- [Property 16], Surrey
- [Property 17], Surrey
- [Property 1], Surrey.

21. I note that those properties can be separated, in respect of their ownership, as follows:

- [Owner 1] Properties:
    - [Property 2], Langley
    - [Property 3], Surrey
    - [Property 4], White Rock
    - [Property 5], Surrey
    - [Property 6], Langley
    - [Property 7], Surrey
    - [Property 8], Surrey
    - [Property 9], Surrey
    - [Property 10], Surrey
- [Owner 2] Properties
    - [Property 11], Surrey
    - [Property 12], Surrey
    - [Property 13], Surrey
    - [Property 14], Surrey
    - [Property 15], Surrey
    - [Property 16], Surrey
- [Owner 3] Property
    - [Property 17], Surrey
- [Property 1]

22. I further determined that the respondent withheld or concealed information that was reasonably required for the purposes of the investigation, contrary to section 37(4) of RESA when he did not respond to BCFSA's May 29, 2020 request for information. Specifically, I rejected the respondent's explanation for not providing the information requested by BCFSA:

> 133. While I acknowledge that the respondent took the position that he first thought that the May 2020 letter, and also the July 2020 telephone call from [Investigator 1] may have been a scam, I did not consider the respondent's testimony in that regard to be compelling.

134. I note in this regard that I do not consider the respondent's position that perhaps [Investigator 1] had the wrong person when she contacted him in respect of her investigation to be believable. The May 29, 2020 letter specifically referenced Greater Realty Care Property Management and requested information relating to its operation. In my view, given that reference, the respondent would have had no reason to question whether he was the appropriate target of the investigation described in the May 29, 2020 letter.

135. As the respondent did not ever provide the requested information, despite being provided with an extension of time to do so, I find that he withheld, concealed or refused to provide information required for the purpose of the investigation, contrary to sections 48(4)(a) and 37(4) of RESA.

136. I do not consider the evidence to show that the respondent's failure to "respond for a request for an interview" can equally be said to have constituted withholding, concealing, or refusing to provide information as contemplated by section 37(4). In my view, such a conclusion could only have been reached if an interview had been scheduled, and the respondent had not attended.

Applicable Law and Legal Principles

Applicable Law

23. Section 49 of RESA sets out that if, after a hearing under section 48(2) the Superintendent determines that the person subject to the hearing did not hold a license under RESA at a time when the person was engaged in any activity for which such a license was required, the Superintendent may, by order:

49(2)

(a) require the person to cease the activity referred to in subsection (1) (a);

(b) require the person to carry out specified actions that the superintendent considers necessary to remedy the situation;

(c) subject to subsection (2.01), require the person to pay the expenses, or part of the expenses, incurred by the Authority in relation to either or both of the investigation and the hearing to which the order relates;

(d) require the person to pay a penalty in an amount of

(i) not more than $500 000, in the case of a corporation or partnership or

(ii) not more than $250 000, in the case of an individual;

(e) require the person to pay an additional penalty up to the amount of the remuneration accepted by the person for the real estate services in respect of which the contravention occurred.

(2.01) Amounts required to be paid under subsection (2) (c)

(a) must not exceed the applicable prescribed limit in relation to the type of expenses to which they relate, and

(b) may include the remuneration expenses incurred in relation to employees, officers or agents of the Authority engaged in the investigation or hearing.

24. Section 49(2.1) provides that a penalty imposed under section 49(2)(d) may be imposed for each contravention.

General Principles Regarding Regulatory Sanctions

25. In general terms, the issuing of sanctions in relation to breaches of RESA is done with a view to the overarching goal of protecting the public.

26. I consider that sanctions may serve multiple purposes, including:

- denouncing misconduct, and the harms caused by misconduct;
- preventing future misconduct by rehabilitating specific respondents through corrective measures;
- preventing and discouraging future misconduct by specific respondents through penalizing measures (i.e. specific deterrence);
- preventing and discouraging future misconduct by others (i.e. general deterrence);
- educating registrants, other professionals, and the public about rules and standards; and
- maintaining public confidence in the industry.

27. Administrative tribunals generally consider a variety of mitigating and aggravating factors in determining sanctions, 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:

(a) **Nature, gravity and consequences of conduct**

[20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

(b) Character and professional conduct record of the respondent

[21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?

(c) Acknowledgement of the misconduct and remedial action

[22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

(d) Public confidence in the legal profession including public confidence in the disciplinary process

> [23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

28. While the factors set out above are not binding on me, I find them to be of use in considering the appropriate penalty to be issued.

Discussion

The Misconduct

29. BCFSA takes the position that the nature of the respondent's misconduct in this case showed a disregard for the regulatory regime.

30. I agree.

31. At the outset, it should be reiterated that neither the respondent, nor his proprietorship, Greater Realty Care Property Management, have ever been licensed under RESA. It is clear, from the respondent's interactions with City of Surrey bylaw officers in October 2017, that the respondent knew that a licence was required in order to provide rental property management services.

32. The evidence before me at the liability hearing of this matter indicated that the respondent provided unlicensed rental property management services including:

- representing property owners in respect of Residential Tenancy Branch disputes
- representing property owners in bylaw violation matters
- advertising properties for rent
- finding tenants for properties
- handling lease agreements
- providing various Notices to tenants
- handling tenant evictions
- handling property inspections
- handling repairs and maintenance
- communicating with tenants
- acting as a liaison between owner and tenant
- collecting rent
- dealing with deposits

33. I consider it to be telling that, on the evidence of [Complainant 1], the bylaw officer, when he asked the respondent whether he was licensed as a property manager, the respondent had simply indicated that he did not have a licence, but had been providing property management services for a number of properties for approximately five years.

34. In my view, the respondent's apparent willingness to admit that not only was he providing unlicensed rental property management services, but that he had been doing so for an extended period of time, provides some insight into the respondent's views as to the need to follow the regulatory regime. In short, I consider the respondent had determined, on his own, that it was not necessary for him to be licensed, despite having an awareness that licensing for rental property management services existed.

35. I note, in reaching this conclusion, that the respondent did not seriously assert at the liability hearing that he was exempted from the licensing requirements of RESA in respect of the rental

property management services he provided, and in any event, I concluded that not only was the respondent not exempted from the licensing requirements, but that it was more likely than not that the respondent was aware of that fact. More to the point with respect to my view of the insight that can be garnered from the interaction the respondent had with [Complainant 1], is that in [Complainant 1]'s accounting of their interaction, Mr. Campbell freely admitted to being a rental property manager, but an unlicensed one.

36. As I have indicated above, I consider the evidence to demonstrate that the respondent was engaged in providing unlicensed rental property management services for an extended period of time, dating back to at least 2013, perhaps longer.

37. I note, in reaching the above conclusion about the duration of the respondent's unlicensed activity, that in addition to the documentary evidence and information before me, which includes City of Surrey bylaw investigation narrative reports from 2017 in which the respondent was reported to have indicated that he had been providing property management services for approximately five years, residential tenancy branch orders dating to 2013 which name the respondent as "landlord", and invoices issued to [Owner 1] dating to 2013, there is the fact that [Owner 2] indicated in his December 4, 2020 interview with the BCFSA investigator that he understood the respondent to have been conducting property management services since 2003.

38. Given the above, while I do not consider the evidence before me to clearly support a conclusion that the respondent had been conducting unlicensed property management services since 2003 as indicated by [Owner 2], I consider it to be clear that the respondent did so from at least 2013, and that the respondent in fact carried on providing those unlicensed activities through to at least April 2022.

39. In reaching the conclusion that the respondent in fact continued to provide unlicensed property management services to at least April 2022, I rely on the interview of [Owner 2] conducted by BCFSA on April 21, 2022. In a telephone interview of that date [Owner 2] indicated that the respondent continued to work for him by providing assistance regarding six properties he owned. [Owner 2] explained that the respondent would undertake activities such as issuing notices to tenants, conducting inspections and dealing with tenant issues, and preparing general paperwork including lease agreements. [Owner 2] indicated that he was paying Mr. Campbell $400 per month via cheque for those services.

40. I acknowledge that the respondent indicated in his evidence at the liability hearing that he did things such as "fixing stuff up" at [Owner 2]'s properties, that [Owner 2] paid him to help with "day to day stuff" and that [Owner 2] found his own clients and collected his own rents. I acknowledge further that the respondent indicated that [Owner 2] did not have him manage specific properties, but that he simply would help out as needed.

41. As I indicated in *Campbell (Re)*, I did not find the respondent's explanation that the services he provided to [Owner 2] was simply "helping out as needed" to be in harmony with the preponderance of the probabilities which a practical and informed person would recognize as reasonable in the circumstances[1].

42. In my view, given the respondent's long history of providing unlicensed rental property management services for [Owner 2], or, as the respondent has termed it, "helping out as needed", I accept [Owner 2]'s evidence that the respondent continued to provide those services until April 2022.

43. Even if I had not concluded that the respondent had continued to engage in unlicensed rental property management services through April 2022, I would have concluded that the respondent

[1] *Faryna v Chorney* (1952), 2 DLR 354, [1951] BCJ No 152 (BCCA)

had continued to provide unlicensed property management services through at least January 31, 2021, which was the last invoice he provided, doing business as Greater Realty Care, to [Owner 3].

44. The fact that the respondent was continuing to issue invoices for his unlicensed property management services in January 2021, more than seven months after BCFSA/OSRE wrote to him regarding the complaint it had received about his unlicensed real estate activity, demonstrates, in my view, the disregard the respondent had for the regulatory regime.

45. I note that the May 29, 2020 letter from BCFSA/OSRE to the respondent set out the following:

> The Office of the Superintendent of Real Estate (OSRE) is in receipt of a complaint that alleges you are engaging in activity for which a licence is required under the Real Estate Services Act (the "Act"). A licence is generally required in order to provide real estate services in British Columbia.
>
> The Act requires that a person (this includes individuals, sole proprietorships, corporations and their directors) must not provide real estate services to or on behalf of another, for or in expectation of remuneration, unless the person is licensed under the Act to provide those real estate services or exempted from the requirement to be licensed under the Act. The Act further provides that if the Superintendent of Real Estate determines after a hearing that a person subject to the hearing did not hold a licence under the Act at a time when the person engaged in any activity for which such a licence was required, the Superintendent may take various regulatory actions including ordering the person to pay an administrative penalty, in an amount of up to $500,000 in the case of a corporation and $250,000 in the case of an individual, for each contravention.

46. Rather than taking steps to respond to the May 29, 2020 letter, or to cease his unlicensed property management activities, the respondent sought to obfuscate and avoid being subject to the regulatory regime.

47. I note in particular that when he spoke to the OSRE investigator in July 2020, although the respondent acknowledged that the investigator had sent the May 29, 2020 letter to the correct email address for Greater Realty Care, the respondent indicated that he did not know what letter the OSRE investigator was talking about. Even after speaking to the investigator, and receiving a further copy of the May 29, 2020 letter by email on July 9, 2020, the respondent took the position, in a July 20, 2020 email, that the investigator had the “wrong person”. This, despite the fact, that the May 29, 2020 letter specifically referenced Greater Realty Care Property Management, which, of course, the respondent would have recognized as being his proprietorship.

48. Subsequent to the July 20, 2020 email to OSRE, the respondent did not provide any further replies or information to OSRE/BCFSA.

49. In my view, the fact that the respondent not only attempted to claim that OSRE was writing to and investigating the “wrong person” in his July 20, 2020 email, when he knew that claim to be untrue, but that he also continued to provide unlicensed rental property management services for an extended period of time subsequent to that date, makes this a case in which it is clear that the respondent had a flagrant disregard for the regulatory regime. This calls for specific deterrence of the respondent.

50. I consider further that it is clear that the respondent obtained a financial benefit from his misconduct.

51. BCFSA submits that, in respect of the [Owner 1] properties, the respondent may have received upwards of $64,000 in total remuneration, given that he was managing nine properties over the course of approximately four years (from the period of 2013 through 2017), at a rate of $150 per property per month.

52. BCFSA further submits that a low estimate of the remuneration the respondent would have earned in respect of the [Owner 2] property would be $12,000, assuming that the respondent provided 10 months of services at $800 per month, followed by a further 10 months of services at $400 per month. In BCFSA's submission, given that the respondent met [Owner 2] in approximately 2010 or 2011, it is likely that the respondent's earnings were significantly higher than $12,000.

53. Lastly, BCFSA estimates that the respondent would have earned approximately $10,400 in remuneration in respect of [Owner 3]'s property, based on a $200 per month fee for the period from September 2016 through December 2020.

54. In setting out BCFSA's submissions above, I acknowledge that the respondent indicated in his evidence at the liability hearing of this matter that he had probably been making less than $2,400 per month doing property work.

55. In my view, the evidence supports a conclusion that the estimates of remuneration suggested by BCFSA are reasonable. In my view, that estimate is supported by the invoices submitted by the respondent to his various clients, [Owner 1], [Owner 2], and [Owner 3], and the time periods in which it is clear the respondent was providing unlicensed rental property management services to those individuals. In summary, I consider it to be likely that the respondent earned over $80,000 in remuneration for his unlicensed property management services. I consider this to be an aggravating factor in respect of a consideration of the nature of the misconduct in this case.

Other Relevant Factors

56. The respondent has no discipline history with BCFSA or its predecessor regulator, and has not been the subject of any prior cease or desist orders. Rather than being a mitigating factor, I consider this to constitute a lack of a further aggravating factor.

57. There is, in this case no evidence that any specific or significant harm resulted from the respondent's misconduct. However, the respondent was creating a risk of harm in providing the services that he did while being unlicensed and thereby operating outside of the regulatory regime. I consider that, rather than being mitigating, the lack of actual harm constitutes the absence of a further aggravating factor.

58. Finally, I acknowledge that the respondent indicated in his evidence that he was suffering from a substance use problem around the period of time in 2020 during which he spoke to the OSRE/BCFSA investigator. I note, however, that the respondent provided little detail as to the nature of that issue, and how it would have impacted his ability to respond to the May 29, 2020 letter. I do not consider this to be a mitigating factor of significance.

Previous Sanctions Decisions and Consent Orders

59. 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 disciplinary decisions and consent orders are not binding on me, they can be of assistance in determining a penalty that the public will have confidence in.

60. BCFSA has referred to a number of previous decisions and consent orders. I note, prior to reviewing the decisions and consent orders below, that prior to amendments made to RESA in

2016, the maximum penalty that could be issued in respect of an individual was $10,000. As set out above, the current statutory regime allows for penalties of up to $250,000 for an unlicensed individual.

61. I note further that a number of the cases cited by BCFSA relate to consent orders. In my view, caution must be taken when comparing an agreed upon penalty from a consent order to a penalty that is imposed subsequent to a discipline hearing, given that there are a myriad of reasons for a respondent to agree to a consent order which may not be apparent from a review of that consent order.

62. With those factors in mind, I turn to a review of the cases cited:

- *Bakker (Re)*, 2023 BCSRE 12: In this decision Ms. Bakker provided unlicensed rental property management services from November 2019 to August 2022 in respect of ten rental properties. In January 2021 she failed to respond to a section 37 notice to produce records, and a voluntary undertaking. In February 2022 Ms. Bakker failed to comply with an urgent order which required her to cease unlicensed real estate activities and to produce records and information; rather, she continued to provide rental property management services for various parties. Ms. Bakker in fact indicated to clients, even after the urgent order was issued and was the subject of media attention, that she intended to continue to provide rental property management services, and she again indicated as much after an order was issued freezing her bank accounts. Ms. Bakker was noted to have received in excess of $70,000 in remuneration for her unlicensed property management services. The hearing officer issued a penalty of $125,000, as well as enforcement expenses of $52,926.16.

- *Roberts (Re)*, 2022 BCSRE 14: In this consent order Mr. Roberts (and his associated corporate entities) agreed to pay a penalty of $100,000, and to be prohibited from re-applying for a license for a period of 10 years, as well as to pay investigative costs.

  Mr. Roberts, who had previously been licensed to provide real estate services in the form of trading and rental property management services, admitted to having incorporated two companies which were not licensed, to have provided ongoing unlicensed property management services through those corporations for 27 properties from 2019 through 2021, and to having earned remuneration of approximately $55,000 from that unlicensed property management activity. Mr. Roberts further admitted to having failed to comply with the terms of a cease order issued in urgent circumstances on January 14, 2021, to having continued to provide rental property management services to up to five properties until July 2021, and to having failed to provide information on all properties he had managed to BCFSA.

- *Ng (Re)*, 2021 BCSRE 7: In this consent order Mr. Ng agreed to pay a disciplinary penalty of $50,000, disgorgement of remuneration of $50,000, and investigative costs.

  Mr. Ng admitted that he had provided unlicensed property management services through a corporate entity for clients of his chartered accountant and/or notary public businesses between 2000 and 2017, and that the corporate entity had received approximately $50,000 for the sale of its portfolio of rental properties in 2017. Mr. Ng further admitted that he had refused to provide information as required by section 37(4) of RESA when he denied managing any rental properties when that denial was untrue.

  Much of the conduct in this case occurred under the former penalty regime.

- *Pao (Re)*, 2022 BCSRE 38: In this consent order Mr. Pao agreed to pay a disciplinary penalty of $75,000, as well as disgorgement of remuneration in the amount of $30,000, and investigation costs.

Mr. Pao admitted to having provided rental property management services without having been licensed to do so in relation to up to 35 properties, over a period of approximately 17 years. He also admitted to having continued to provide rental property management services after entering into a consent order to cease providing such services.

Of note, much of the conduct in this case occurred under the former penalty regime.

- *Huang (Re)*, 2022 BCSRE 30: In this consent order Ms. Huang agreed to pay a penalty of $20,000, as well as enforcement expenses.

  Ms. Huang admitted to having provided unlicensed property management services in respect of at least four properties between 2014 and 2019. Ms. Huang admitted that she had denied providing rental property management services to investigators when she knew that was not true.

  Of note, much of the conduct in this case occurred in the former penalty regime.

- *Bentrott (Re)*, Decision on Penalty and Costs, January 22, 2014 (OSRE): Ms. Bentrott was found to have provided unlicensed property management through two proprietorships. Ms. Bentrott was found to have given repeated assurances to OSRE staff that she would cease to provide unlicensed property management in 2008, 2009, and 2010. Finally, a cease and desist order was issued against Ms. Bentrott in 2012. The Superintendent of Real Estate issued an administrative penalty of $6,000, and ordered that Ms. Bentrott pay enforcement expenses.

  Of note, this case was entirely based in the former penalty regime.

- *Murphy (Re)*, Decision March 6, 2014 (OSRE): Mr. Murphy was found to have provided unlicensed property management services through an unlicensed corporate entity from June 2009 to June 2011 (during which time Mr. Murphy was in fact licensed to provide property management services but had not informed his brokerage or managing broker that he was providing those services through the unlicensed corporate entity), and June 2011 through February 2014, during which time Mr. Murphy was not licensed under RESA. Those unlicensed services were found to have been provided to at least eight property owners for approximately 11 to 13 rental units.

  Mr. Murphy cooperated with the investigation and entered into an agreed statement of facts. The Superintendent ordered that Mr. Murphy pay an administrative penalty of $5,000 and that the corporate entity pay an administrative penalty of $8,000, as well as pay investigative costs.

  Of note, this decision was made under the former penalty regime.

- *Boncent Properties Ltd. (Re)*, 2022 BCSRE 19: In this consent order Boncent Properties and its directors agreed to pay a penalty of $16,000, as well as investigative costs.

  Boncent Properties and its directors admitted to providing unlicensed property management services between 2012 and 2015 in respect of at least nine properties on behalf of one property owner. The company had received remuneration of at least $15,975 in respect of the unlicensed services it provided to those properties.

  Of note, this consent order was issued under the former penalty regime.

Decision on Sanction

63. I note that I consider that penalties must not be imposed purely for the purpose of being retributive or denunciatory. Rather, penalties may be imposed with the intention to encourage compliance with regulations in the future, with a view to specific or general deterrence, and with the intention of protecting the public: See *Thow v. BC (Securities Commission)*, 2009 BCCA 46, at para. 38.

64. As the court noted in *Thow*, however, the fact that a penalty imposes a burden, even a very heavy burden, on an offender, does not mean that penalty is necessarily punitive in nature, as long as the penalty is designed to encourage compliance with regulations in the future.

65. Under section 49(2)(d), the maximum penalty for an individual is $250,000. Here, counsel for BCFSA seeks a penalty of $100,000.

66. I have no doubt that the administrative penalty sought by BCFSA would impose a heavy burden on the respondent.

67. Having considered the prior discipline decisions and consent orders cited by BCFSA, I accept, however, that the imposition of that heavy burden, and the penalty being sought, is appropriate in the circumstances.

68. In my view, the circumstances of this case, while not as egregious as those in *Bakker*, in that the respondent did not engage in quite the same level of flagrant disregard for the regulatory regime, are of the same type, and as such require a similar level of sanction.

69. Here, the respondent provided unlicensed rental property management services for a significant number of properties, for a significant number of years. He received a significant amount of remuneration, likely more than $80,000, for the provision of those unlicensed services. The respondent advertised himself as providing rental property services on a LinkedIn page, he represented himself as a property manager to city officials, and he represented himself as a landlord at an administrative tribunal.

70. When confronted about his unlicensed activities by the regulator in May 2020, rather than taking steps to provide the information required by the regulator, or to cease providing unlicensed property management services, the respondent chose to ignore the regulator. He even went so far as to attempt to convince the regulator that he was not the individual the regulator was seeking to deal with, despite it being clear that he was in fact that person, running the sole proprietorship the regulator was referring to.

71. Finally, and perhaps most notably, despite the contact he received from the regulator in May and July of 2020, the respondent chose to simply ignore the warnings and requests from the regulator, and to continue to provide unlicensed rental property management services in respect of a number of properties, at least four, until April 2022.

72. In sum, I consider the respondent to have ignored the law set out in RESA requiring him to be licensed, and requiring him to comply with requests for information from the regulator. It is clear that a sanction of significance is required to provide specific deterrence in such circumstances.

73. I further consider that a significant sanction is required in order to provide general deterrence. As I indicated in *Bakker (Re)*:

> 124. In my view, in addition to the specific deterrence that a significant penalty will have on the Respondent… a penalty of significance will have an important general deterrent effect. It is important, for the protection of the public, that the public is made aware of the fact that activities which deliberately flaunt the law, and ignore the regulator, will be met with a penalty of significance.

74. Having reviewed the previous decisions and consent orders, I am of the view that a penalty of $100,000 will achieve specific and general deterrence, and ensure public confidence in the regulation of the profession. Such a penalty is in line with recent cases such as *Bakker* and the consent order in *Roberts*, and is appropriate in the circumstances of this case.

Enforcement Expenses

75. Section 49(2)(c) provides that the Superintendent may require an unlicensed person to pay the expenses, or part of the expenses, incurred by BCFSA in relation to either or both the investigation and the hearing to which the order relates. Pursuant to section 49(2.01), amounts ordered under section 49(2)(c) must not exceed the applicable prescribed limit in relation to the type of expenses to which they relate, and may include the remuneration expenses incurred in relation to employees, officers or agents of BCFSA engaged in the investigation or hearing.

76. Section 4.4 of the *Real Estate Services Regulation* (the "Regulation") sets out the maximum amounts the Superintendent may order an unlicensed person to pay under section 49(2)(c) in relation to various activities such as investigator costs, legal services costs, disbursements, administrative expenses for days of hearings, witness payments, and other expenses, reasonably incurred, arising out of a hearing or an investigation.

77. BCFSA has submitted an appendix of enforcement expenses, which identifies the hours incurred by the investigator assigned to the respondent's case, the hours incurred by legal counsel in association with the hearing of this matter, and disbursements and other costs arising out the investigation and hearing of this matter. That schedule sets out that the total amount of the enforcement expenses is $27,805.26.

78. In considering an order regarding enforcement expenses, the panel in *Siemens (Re),* 2020 CanLII 63581 noted that:

> 62. Enforcement expenses are a matter of discretion. A discipline committee will ordinarily order expenses against a licensee who has engaged in professional misconduct or conduct unbecoming a licensee. Orders for enforcement expenses serve to shift the expense of disciplinary proceedings from all licensees to wrongdoing licensees. They also serve to encourage consent agreements, deter frivolous defenses, and discourage steps that prolong investigations or hearings.
>
> 63. … The practice of discipline committees has also been to assess reasonableness of enforcement expenses by examining the total amounts in the context of the duration, nature, and complexity of the hearing and its issues. While a discipline committee may reduce any award of enforcement expenses to account for special circumstances, such as where the Council fails to prove one or more allegations corresponding to a significant and distinct part of a liability hearing, no such special circumstances arise in this case.

79. I agree that an order for enforcement expenses is a matter of discretion. In considering such an order, it is necessary to take into account the context of the duration, nature and complexity of the investigation process and the hearing process. I also consider it to be clear that section 49(2)(c) specifically contemplates that the expenses of an investigation and hearing may be borne not by the regulator, but by the person who engaged in unlicensed real estate activity.

80. The expenses sought by BCFSA are significant. I note, however, that a large portion of those expenses relate to the investigation in this matter. I accept that it is reasonable for BCFSA to claim the entirety of the amount of investigative costs given the respondent's failure to cooperate with the investigation.

81. The remaining expenses sought relate largely to the liability hearing. The respondent at no point fully took accountability or admitted to his misconduct. In that context, I do not consider the duration of the liability hearing, which was two days, to have been inordinately long.

82. BCFSA also claims reimbursement, pursuant to section 4.4(e) of the Regulations, in the amount of $2,000 for the sanction hearing, based on one day at a rate of $2,000.

83. I do not consider that the Regulation specifically contemplates the payment of administrative expenses for the purposes of a written submission process as was completed for the sanctions portion of this hearing.

84. Rather, section 4.4(e) of the Regulation specifically sets out that the Superintendent may order that an unlicensed person pay administrative expenses:

> …for **each full or partial day of hearing**, administrative expenses of $2 000
>
> [emphasis added]

85. In my view, section 4.4(e)'s reference to a "full or partial day of hearing" makes clear that that section is intended to allow the Superintendent to order payment for administrative expenses related to the holding of an oral hearing, whether that be virtually or in person. There is, of course, no "full or partial day" of a hearing that proceeds by way of written submission, and it is unclear to me what the administrative expenses of holding a hearing by way of written submissions would be.

86. I note, in reaching this conclusion, that BCFSA has claimed reimbursement for legal services related to the preparation for the sanction portion of this hearing, pursuant to section 4.4(c)(i) of the Regulation. I consider that claimed reimbursement to constitute the appropriate claim for expenses related to the sanctions hearing.

87. I therefore would exercise my discretion and reduce the total amount of enforcement expenses claimed by $2,000. In all of the circumstances I am satisfied that the remaining enforcement expenses should be ordered, for a total of $25,805.26.

Orders

88. Having found in *Campbell (Re)*, 2023 BCSRE 14, that the respondent had, in respect of 17 properties, provided rental property management services in British Columbia without being licensed to do under the provisions of RESA, and without being otherwise exempt from licensing requirements under RESA, contrary to section 3(1) of RESA; and that the respondent withheld or concealed information that was reasonably required for the purposes of the investigation, contrary to section 37(4) of RESA, when he did not respond to a May 29, 2020 request for information, I would now make the following orders:

- Pursuant to section 49(2)(d)(ii) of RESA, I order that Glenn Richard Campbell pay a penalty to BCFSA in the amount of $100,000, within 90 days of the date of this Order;

- Pursuant to section 49(2)(c) of RESA, I order that Glenn Richard Campbell pay enforcement expenses to BCFSA in the amount of $25,805.26, within 90 days of the date of this Order.

89. Pursuant to section 54(1)(e) of RESA, Glenn Richard Campbell has a right to 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 27th day of December, 2023.

“Original signed by Andrew Pendray”
_____
Andrew Pendray
Chief Hearing Officer