

BC FINANCIAL SERVICES AUTHORITY

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

AND IN THE MATTER OF

[APPLICANT 3]  
(Former Licence Number [redacted])

Corrected Decision: Paragraphs 1 and 56 were corrected on December 4, 2023 to correct an incorrect naming reference.

**REASONS FOR DECISION REGARDING QUALIFICATION**

**[These Reasons have been redacted before publication.]**

I. INTRODUCTION

1. [Applicant 3] (“[Applicant 3]”) applied to be licensed as a representative in the trading services category with [Brokerage 1] (the “**Brokerage**”) on November 9, 2022. This is my decision pursuant to section 13 of the *Real Estate Services Act*, SBC 2004, c 42 (“**RESA**”) regarding whether she is suitable, of sufficient good reputation, and fit to be licensed under section 10 of RESA.
2. [Applicant 3] was previously licensed under the former *Real Estate Act* from November 22, 1993 to October 6, 1994.
3. [Applicant 3]’s application disclosed that she had been subject to bankruptcy proceedings that had commenced on July 30, 2019. As a result, the BC Financial Services Authority (“**BCFSA**”) made inquiries regarding the reason for that bankruptcy and its status. [Applicant 3] provided some responses to BCFSA’s inquiries.
4. On July 14, 2023, BCFSA wrote [Applicant 3] to give notice under RESA, s 13(3) that the Superintendent of Real Estate (the “**Superintendent**”) had concerns regarding whether she was suitable, of sufficient good reputation and fit, was considering refusing to issue [her] a license, and offered [her] an opportunity to be heard.
5. [Applicant 3] requested that opportunity to be heard and was provided a timeline to provide submissions, which she provided.
6. I have reviewed the materials supplied by [Applicant 3] during the application and review process. For the reasons indicated below, I have decided that she is not suitable and of sufficient good reputation to be licensed as a representative in the trading category at this time.

## II. ISSUES

7. There is one issue before me:
  - a. Has [Applicant 3] met the statutory burden to satisfy the Superintendent that she is “of good reputation and suitable to be licensed” as a representative the Brokerage in the trading services category, as required by RESA, s 10(a)?

## III. JURISDICTION

8. I am the Superintendent of Real Estate and therefore hold the statutory powers and duties with respect to sections 10 and 13 of RESA.

## IV. ONUS

9. The applicant has the onus to satisfy me that they are of sufficient good reputation and suitable to be licensed in the category and level for which they apply. They must also establish they are fit to be licensed: RESA, s 10(a) and (d).
10. To help licensees understand how I generally considers the good reputation, suitability, and fitness of an applicant, BCFSA has published an explanation of its administrative process on its website: [Good Reputation, Suitability, and Fitness for Individual Licensees | BCFSA](#). I am guided by that document, but it does not bind me. I must consider good reputation, suitability, and fitness in light of all the applicable circumstances.
11. I must also afford procedural fairness to an applicant where a decision may affect their rights, privileges, or interests. This right includes a right to have an opportunity to be heard. RESA, s 13(3) requires that applicants be provided an opportunity to be heard before the Superintendent refuses to issue a licence to them. After receiving a licence application, including certain required disclosures, BCFSA reviews the material and may make inquiries or conduct investigations under RESA, s 11. If, on the basis the information discovered in those initial inquiries and investigations, BCFSA has concerns that may result in a refusal to issue a licence to the applicant, then a delegate of the Superintendent provides notice of that intention with an explanation of the concerns that suggest the individual may not have discharged their onus under RESA, s 10. That notice offers the individual an opportunity to be heard, notes that the Superintendent may conduct further investigations under RESA, s 11 if that opportunity is requested, and notes that the applicant may be ordered to pay expenses of the opportunity to be heard if they are unsuccessful. If the applicant requests an opportunity to be heard, BCFSA may conduct such further investigation as necessary, and then will ask the individual for final written submissions on the issue of their suitability. Those final submission may include documents, evidence, statement, and argument.
12. I must determine facts and decide issues based on the material obtained during BCFSA’s inquiries and investigation and based on the applicant’s submissions. I must scrutinize the materials and submissions with care and ensure that the material relied on is sufficiently clear, convincing, and cogent to satisfy me that the applicant is suitable, of sufficient good reputation, and fit to be licensed on a balance of probabilities. I may, however, apply individual expertise and judgment to how I evaluate or assess the material.

## V. BACKGROUND AND PROCESS

13. The material before me consisted of [Applicant 3]'s application and the materials enclosed with it. It also included [Applicant 3]'s responses to BCFSA's inquiries, her submissions regarding her opportunity to be heard, and a summary of those materials provided by BCFSA staff.
14. While I have reviewed and considered all of the material and information before me, the following summary of the background and process is not intended to comprehensively recite that material and information. It is intended to provide context for my reasons.
15. [Applicant 3] was licensed under the *Real Estate Act*, the predecessor to RESA, from November 22, 1993 to October 5, 1994. BCFSA received her application to be re-licensed as a representative licensee in the trading services category with the Brokerage on November 9, 2022. Her application form disclosed that she had been subject to bankruptcy proceedings, and she disclosed that she had been assigned into bankruptcy on July 30, 2019. Her application discloses that she was then employed at Walmart.
16. She provided a Form 69 Notice of Bankruptcy and of Impending Automatic Discharge dated July 30, 2019 with her application. On November 20, 2022, she provided her Form 79 Statement of Affairs showing she had total assets of \$1,601 and total liabilities of \$2,657,445 including credit card debt of \$52,000 and debt to Canada Revenue Agency ("CRA") of \$2,600,000.
17. On May 4, 2023, BCFSA required [Applicant 3] to provide the following:
  - a. Any notice of opposition to discharge filed in her bankruptcy proceeding;
  - b. Any judgment, statement, notice of assessment, or demand regarding the \$2,600,000 debt owed to the Canada Revenue Agency disclosed on the Form 79 Statement of Affairs dated July 26, 2019;
  - c. A copy of any affidavit, motion, application, or other filing made in the bankruptcy;
  - d. A description of the circumstances in which the \$2,600,000 debt owed to the Canada Revenue Agency disclosed on the Form 79 Statement of Affairs dated July 26, 2019 arose including a detailed breakdown of the calculation of the \$2,600,000 amount;
  - e. A copy of the most recent Court Ordered Payment Schedule filed in the bankruptcy or a confirmation of details of any payment plan ordered or entered into in the bankruptcy;
  - f. The date and amount of the last payment made into the bankruptcy and the amount remaining outstanding on any payment plan or payment schedule.
18. On May 18, 2023, [Applicant 3] provided a conditional discharge order dated April 27, 2023 discharging her conditional on her payment of \$10,000, providing proof of filing for her post-bankruptcy tax returns and payment of any assessed amounts, and providing proof of payment of her credit card balances.
19. On May 25, 2023, BCFSA again asked [Applicant 3] for the documents requested on May 4, 2023 and specifically reminded her to provide a response to the point set out at point 4 above.
20. On May 26, 2023, [Applicant 3] provided a response to point 4 above. She stated that the debt was originally "3.4 Million but later they reduced to 2.6 million" [sic]. She said she always paid her personal tax on time. stating that the amount owing on her taxes arose from a real estate

- development company of which she was a shareholder and director. That company developed and sold 47 lots in Surrey, BC in 2004 and 2005 for a nominal profit of \$1,715,000. [Applicant 3] claimed that the company in fact lost money as a result of development costs and interest charges. She claimed she does not “know how CRA transferred this debt to [her] personally and since then this debt was growing with interest and penalties.” She stated she was not in Canada for three to four years and came back in 2013. She stated she tried to explain the business losses to CRA but that they said it was too late. She said she filed for bankruptcy on the advice of her accountant. She advised that she paid her other personal tax liabilities. Finally, she said she hoped to pay off the \$10,000 ordered by the court in three to four months.
21. On June 12, 2023, BCFSA followed up again regarding the outstanding items and further detail on the item at point 4, including the requested breakdown of the debt. BCFSA further requested the following under item 3:
    - a. The application materials filed by [Company 1] that led to the April 27, 2023 order;
    - b. Any response materials filed by [Applicant 3] to the application materials that led to the April 27, 2023 order;
    - c. The Report dated April 23, 2020 and Supplementary Reports dated October 19, 2021 and April 14, 2023 mentioned in the April 27, 2023 order; and
    - d. Any proof submitted pursuant to paragraph 1(b) and (c) of the April 27, 2023 order.
  22. From June 12 to 14, 2023, [Applicant 3] provided proof of payment of her credit card debts and tax returns; a Notice of Intended Opposition to Discharge of Bankrupt filed by her trustee dated April 23, 2020; a Report of Trustee on Bankrupt’s Application for Discharge dated April 23, 2020; a Supplementary Report of Trustee dated October 19, 2021; and a Second Supplementary Report of Trustee dated April 14, 2023. She did not provide the notices of assessment regarding the CRA debt and did not provide a detailed description of the circumstances in which that debt arose including a detailed breakdown of the debt.
  23. The documents she provided, in particular the Supplementary Report of Trustee dated October 19, 2021, indicate that the tax liabilities relate to the 2004, 2012, 2014, 2015, and 2016 tax years. Exhibit “C” to that report notes that the liabilities are apportioned between \$1,173,167.22 in principal and \$1,535,494.86 in interest and penalties.
  24. On July 14, 2023, BCFSA provided [Applicant 3] with notice under RESA, s 13(3) that it had concerns regarding whether she was suitable, of sufficient good reputation and fit and was considering refusing to issue [her] licence and offering [her] an opportunity to be heard. That letter, in brief, explained that the Superintendent had concerns as to whether [Applicant 3] possessed the necessary candour and honesty to be licensed under RESA, that she was willing and able to comply with the regulatory requirements imposed by RESA, and whether she had rehabilitated herself in light of her past regulatory non-compliance evidenced by her tax debts from the 2004, 2012, 2014, 2015, and 2016 tax years.
  25. I note that that letter incorrectly stated that [Applicant 3] had been previously licensed from November 22, 1993 to November 21, 1995. The correct dates are November 22, 1993 to October 5, 1994.

26. That letter offered [Applicant 3] an opportunity to be heard regarding her suitability with a deadline to respond by August 4, 2023 to request that opportunity.
27. On July 17, 2023, [Applicant 3] requested the opportunity to be heard.
28. On July 21, 2023, BCFSA wrote to [Applicant 3] to advise that the opportunity to be heard would proceed and providing her a deadline of August 11, 2023 to provide her final submissions, including any evidence. The letter instructed [Applicant 3] to treat the submissions as final and to include all relevant information with it. It noted that [Applicant 3] may want to consider whether conditions are appropriate and if so in what form.
29. On August 10, 2023, [Applicant 3] made her submissions in writing by way of email attaching copies of her 2012, 2014, 2015, and 2016 notices of assessment and a copy of the Attorney General of Canada's Notice of Opposition to Discharge filed in [Applicant 3]'s bankruptcy.
30. [Applicant 3]'s submitted notices of assessment show the following:
  - a. In 2012 she had a \$3,202,971.90 previous balance carried forward from the previous year with an additional balance of \$216.90 including small amounts of penalties of \$13.86 and interest of \$5.04;
  - b. In 2014 she had previous balance of \$2,248,766.95 carried forward from the previous year with an additional balance of \$3,150.73 including penalties of \$347.78 and interest of \$127.74;
  - c. In 2015 she had carried forward a previous balance of \$2,252,839.33 with an additional balance of \$5,416.74; and
  - d. In 2016 she had carried forward a previous balance of \$2,409,823.80 with an additional balance of \$1,102.32.
31. From the above it appears that the bulk of the debt was outstanding from the 2004 tax year and was either reduced or substantially paid off in 2013. [Applicant 3]'s income was \$5,500 in 2012; \$30,943 in 2014; \$47,447 in 2015; and \$10,335 in 2016. She has not explained the reduction between 2012 and 2014, except to say "they reduced it", which indicates it was not paid off.

## VI. REASONS FOR DECISION

32. [Applicant 3] has the onus of proving she is currently of sufficient good reputation and suitable to be licensed at the level and in the category applied for on a balance of probabilities.
33. Where the applicant makes legal arguments, I am not bound to accept the law as described by them: *International Woodworkers of America, Local 2-69 v Consolidated-Bathurst Packaging Ltd*, [1990 CanLII 132 \(SCC\)](#), [1990] 1 SCR 282 (SCC) at para [32](#). I note therefore that good reputation, suitability, and fitness under RESA are similar to "good character" and "fitness" requirements under other legislation in British Columbia and Canada. Where I consider relying on a case that is of particular import that goes beyond the general principles explained to the applicant in BCFSA's correspondence, the notices to the applicant, or the material published by BCFSA or a case that appears determinative of the issue against the applicant, BCFSA provides notice of that case and an opportunity for the applicant to provide submissions on it. That did not occur here.

34. A hearing committee of the Law Society of British Columbia summarized good character and fitness principles in *Applicant 3 (Re)*, [2010 LSBC 23](#). Fitness encompasses good character. In the context of the legal profession, the hearing committee quoted the principle that “a lawyer must not only show that he or she has all the attributes of good character – honesty being one of them – the lawyer must also show that he or she has other attributes from which a forecast of future integrity can be made”: at para 19. The standard is not one of perfection, but an applicant must establish good character at the time of the hearing and that the determining factor is the public interest: at paras 19 and 23.
35. The issue raised in the July 14, 2023 letter to [Applicant3] providing her notice under RESA, s 13(3) is broadly whether she is suitable. That letter provided links to RESA, ss 10 and 13 and provided [Applicant 3] with a link to BCFSA’s [Good Reputation, Suitability and Fitness](#) guidance to assist [Applicant 3] in addressing these issue. The July 14, 2023 notice to [Applicant 3] offering her an opportunity to be heard narrowed the broad issue to the following issues:
- a. Whether she possesses the necessary candour and honesty to be licensed under RESA
  - b. Whether she is willing and able to comply with the regulatory requirements imposed by RESA; and
  - c. That she has rehabilitated herself in light of her past regulatory non-compliance evidenced by her tax debts from the 2004, 2012, 2014, 2015, and 2016 tax years.
36. I will deal with the final of these issues and that discussion will flow into discussion of the other two issues.
37. Regarding bankruptcy matters, BCFSA’s Good Reputation, Suitability, and Fitness guidance says the following:

Real estate licensees work with their clients to help them make decisions often involving significant amounts of money and can be involved in the actual handling of significant amounts of money. Therefore, an applicant’s lack of financial responsibility may demonstrate a lack of good reputation or suitability.

If the applicant has been discharged from bankruptcy or fully performed a consumer or division I proposal (“proposal”), that will not, on its own, necessarily prevent them from being licensed so long as they can demonstrate that the bankruptcy or performed proposal does not render them unsuitable.

...

An applicant’s insolvency history might not preclude them from licensing but may result in the imposition of conditions if the Superintendent believes they are qualified, suitable, of good reputation, and fit to be licensed but is still concerned about the risk they may pose to the public. An example of such conditions may include being prohibited from handling trust funds.

Regardless of whether an applicant is discharged or has completed their proposal, BCFSA will inquire about the circumstances behind the bankruptcy or proposal. Those circumstances will be assessed against the other elements discussed in this document

including honesty, candour, compliance with regulatory and legal obligations, good reputation, and fitness.

If there is no evidence of other conduct that might render an applicant unsuitable, BCFSA may issue a licence at the representative or associate broker level despite a previous bankruptcy or a proposal. Such other conduct includes other bankruptcies or proposals and conduct inside or outside the insolvency process. However, in all instances BCFSA will inquire about the circumstances of a bankruptcy or proposal.

38. As noted in that passage, general considerations of good reputation and fitness apply to the circumstances underlying the bankruptcy. This includes a need to demonstrate rehabilitation. BCFSA indicated this in its letter to [Applicant 3] on July 14, 2023 by indicating that her suitability, good reputation, and fitness were at issue because of her past regulatory non-compliance evidenced by her tax debts from the 2004, 2012, 2014, 2015, and 2016 tax years. BCFSA's guidance does mention a list of non-exhaustive rehabilitative factors that the Superintendent may consider in the context of assessing an applicant's fitness considering regulatory or criminal convictions.
39. The listed, non-exhaustive, rehabilitation factors are whether the applicant has:
- a. paid restitution or damages to any person harmed by the conduct;
  - b. successfully completed or was discharged early from probation or parole [or satisfied other regulatory conditions or orders];
  - c. corrected the business or other practices that created a risk of harm to others;
  - d. obtained treatment for addiction or substance use conditions that contributed to the conduct, based on evidence from physicians or other persons competent to testify in that regard;
  - e. obtained treatment for mental health conditions that contributed to the conduct, based on evidence from physicians or other persons competent to testify in that regard;
  - f. completed or is enrolled in formal education or training courses for professional- or self-improvement;
  - g. volunteers or volunteered with programs designed to provide social benefits;
  - h. fulfills their personal responsibilities; and
  - i. demonstrates a change in attitude from when the conduct occurred, including whether they acknowledge and appreciate the conduct, the conduct's seriousness, the circumstances that led to the conduct, and the impact of the conduct on victims and the public, as evidenced by any or all of the following:
    - i. the applicant's own testimony;
    - ii. the testimony of persons who know of the conduct and are familiar with the applicant's subsequent and current attitudes and behaviour; and
    - iii. testimony or statements from probation officers, parole officers or law enforcement officials competent to testify as to the applicant's social adjustments.

40. Although that section does not specifically reference bankruptcy proceedings, the passage quoted at paragraph 37 above notes the relevance of the guidance concerning fitness when considering past bankruptcies. Further, BCFSA's notice to [Applicant 3] specifically noted that her rehabilitation was at issue, which should have caused [Applicant 3] to provide any evidence available to her regarding her rehabilitation.
41. The above list of rehabilitation factors does not include consideration of the passage of time on its own. As noted, I must consider all the circumstances and am not bound by that list. In this case, [Applicant 3] has a fairly recent and fairly significant bankruptcy resulting from a significant debt to the CRA, among other debts. Large tax debts, unlike other debts, indicate a degree of failure to comply with regulatory requirements. They indicate that an individual may be unwilling or unable to comply with regulatory requirements that apply to them.
42. She entered bankruptcy on July 30, 2019 and received a conditional discharge on April 27, 2023. There is no evidence that [Applicant 3] misconducted herself during the bankruptcy proceedings. She was not automatically discharged, but that appears to be related to the amount of her debts and not her conduct as a bankrupt.
43. I have no evidence that indicates that [Applicant 3] made any significant payments toward the substantial debt she owed to the CRA. Some steps were presumably taken in 2013 to address the debt, which resulted in a reduction.
44. It is not clear if [Applicant 3] has corrected the business practices that lead to her bankruptcy but she has not incurred such significant debts and therefore it appears she is at least avoiding the circumstances that gave rise to her CRA debt.
45. It does not appear that [Applicant 3] requires any mental health or addictions treatment.
46. She completed the required courses to become licensed, but otherwise has not provided evidence of other coursework.
47. She has provided no evidence of volunteerism and I have no evidence of her fulfilment of personal responsibilities, aside from the bankruptcy which tends to indicate she does not fulfil her responsibilities. She has provided no reference letters, though she is not required to do so.
48. Regarding change in attitude, [Applicant 3] has not demonstrated that she really understood how the CRA matter arose or how it was dealt with. She has not been able to articulate how the CRA transferred the debt to her and thus she has not demonstrated that she appreciates the circumstances that lead to her debt, the resulting bankruptcy, and her discharge.
49. I would have expected, after all of these years and the significant debt [Applicant 3] faced, that she would have gleaned a deeper understanding of how she became liable for that debt. This is demonstrated in part because BCFSA had to repeatedly ask direct questions to receive responses from [Applicant 3]. After having reviewed those responses, I now have the basics of what happened, but it has taken far too long. I have a high-level view, but applicants are expected to be prepared to satisfy the Superintendent of Real Estate that they are suitable and to provide responsive answers. I would have expected, given BCFSA's explicit and repeated requests for it, a detailed answer regarding how the debt arose and a breakdown of the amounts owing. [Applicant 3] has provided her notices of assessment for certain years and various documents from her bankruptcy proceedings, but never provided more than a cursory explanation of how the debt



- arose. Therefore, I find that [Applicant 3] has not demonstrated a change in attitude regarding her tax obligations, instead she has demonstrated a lack of appreciation for the nature and cause of those obligations which indicates that her attitude has not changed. [Applicant 3]'s lack of appreciation of the causes of her debt and the substantial amount of time it remained outstanding, means that [Applicant 3] has not truly started down the road to her rehabilitation because she has not taken the time to understand and appreciate her role in those debts.
50. On the basis of the above and considering the factors regarding rehabilitation as noted, I find that [Applicant 3] has not satisfied me that she is rehabilitated from her significant failure to comply with tax legislation evidenced by the debts that gave rise to her bankruptcy.
51. The discussion above regarding [Applicant 3]'s lack of appreciation of the causes of her tax liabilities also applies to her willingness to comply with the regulatory regime under RESA. I have serious concerns about [Applicant 3]'s ability to discharge her duties under RESA given she has demonstrated she does not appreciate how her previous tax issues arose. I therefore find that [Applicant 3] has not satisfied me that she is willing and able to comply with her regulatory obligations under RESA.
52. Further, I do not find that [Applicant 3] lacks the honesty and candour necessary to be licensed under RESA. I find that she has not provided the degree of specificity I would have expected at this time, but that is not a result of her failure to provide information that she knows. Instead, it is a result of her failure to understand the causes of her bankruptcy and the causes of her significant debts, therefore I do not find she is unsuitable based on a lack of candour or honesty. She did prolong the disclosure process unnecessarily, but I find she provided what was available to her.
53. I also find that [Applicant 3] will require a period of ineligibility before she can reapply. I find that she will require a period of two (2) years to come to an understanding of why the CRA did what it did and to adjust her approach regarding the disclosure of materials.

## VII. DECISION

54. For the reasons set out above, I refuse to issue [Applicant 3] a licence pursuant to RESA, s 13.
55. [Applicant 3] is prohibited from applying to be licensed under RESA for a period of two (2) years from the date of this decision.
56. [Applicant 3] has a right to appeal this decision to the Financial Services Tribunal under section 54(1)(a) of RESA. [Applicant 3] will have 30 days from the date of this decision to make that appeal: *Financial Institutions Act*, RSBC 1996, c 141, s 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, c 45, s 24(1).

DATED at Vancouver, British Columbia, this 30<sup>th</sup> day of November, 2023.

"Original signed by Blair Morrison"

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Blair Morrison, Superintendent of Real Estate  
Province of British Columbia