CITATION: Upton (Re), 2024 BCSRE 15
Date: 2024-02-26
File # INC-4988

BC FINANCIAL SERVICES AUTHORITY

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

AND

IN THE MATTER OF

JASON DAVID UPTON
(139498)

AND

AEDIS REALTY LIMITED
(X029290)

CONSENT ORDER

[This Order has been redacted before publication.]

RESPONDENTS:	Jason David Upton, Managing Broker, Aedis Realty Limited. Aedis Realty Limited
DATE OF CONSENT ORDER:	February 26, 2024
COUNSEL:	Elizabeth Janzen, Legal Counsel for the BC Financial Services Authority

PROCEEDINGS:

On February 26, 2024, the Superintendent of Real Estate (the “Superintendent”), or the Superintendent’s authorized delegate, of the BC Financial Services Authority (“BCFSA”) accepted the Consent Order Proposal (the “Proposal”) submitted by Jason David Upton (“Mr. Upton”) and Aedis Realty Limited (the “Brokerage”).

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Mr. Upton and the Brokerage.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Mr. Upton and the Brokerage committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("RESA"), pursuant to section 43 of the RESA the Superintendent orders that:

1. Mr. Upton and the Brokerage be jointly and severally liable to pay discipline penalty to BCFSA in the amount of $20,000, payable within 90 days of the date of this Order;

2. Mr. Upton and the Brokerage be jointly and severally liable to pay enforcement expenses to BCFSA in the amount of $3,000, payable immediately; and

3. If either Mr. Upton or the Brokerage fails to comply with any of the terms of the Order set out above, the Superintendent may suspend or cancel their licence without further notice to them.

If Mr. Upton and/or the Brokerage fails to comply with any term of this Order, the Superintendent may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 26th day of February, 2024 at the City of Victoria, British Columbia.

Superintendent of the BC Financial Services Authority

"Original signed by Jonathan Vandall"
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Jonathan Vandall
Delegate of the Superintendent of Real Estate
Province of British Columbia

Attch. Consent Order Proposal

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JASON DAVID UPTON
(139498)

AND

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(X029290)

CONSENT ORDER PROPOSAL BY JASON DAVID UPTON AND AEDIS REALTY LIMITED

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Jason David Upton ("J Upton") and Aedis Realty Ltd. (the "Brokerage") to the Superintendent of Real Estate (the "Superintendent") of the BC Financial Services Authority ("BCFSA") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, J Upton, the Brokerage and the Superintendent have agreed upon the following facts:

1. J Upton (139498) has been licensed as a representative in trading services since June 1, 2004. He has been licensed as a managing broker since September 8, 2010, with the exception of a brief unlicensed period from June 1-6, 2022.
2. J Upton was at all relevant times licensed as a managing broker with the Brokerage.
3. The Brokerage (X029290) has been licensed since September 8, 2010 and provides trading, rental property management, and strata management services.
4. Under section 75 of the *Real Estate Services Rules* (the "Rules"), the Brokerage must file its required review engagement financial statement, accountant's report and brokerage activity report (the "Accountant's Report") within 120 days after the end of each fiscal year.
5. The Brokerage's fiscal year end for 2022 was December 31, 2022. Under section 75 of the Rules, the Brokerage was required to file its Accountant's Report by April 30, 2023. The Brokerage did not file its Accountant's Report by that date.
6. BCFSA reminded the Brokerage on May 10, 2023 via letter to file its Accountant's Report.
7. BCFSA advised the Brokerage on October 23, 2023 via email that the matter would be forwarded to BCFSA's legal department in the coming week if the outstanding Accountant's Report was not submitted.

8. BCFSA advised the Brokerage on November 14, 2023 that the matter had been forwarded to BCFSA's legal department.

9. The Brokerage submitted its Accountant's Report on December 4, 2023, 218 days after the due date of April 30, 2023.

10. A Notice of Discipline Hearing was issued on December 12, 2023 and served on J Upton and the Brokerage.

11. J Upton and the Brokerage have a relevant regulatory history as follows:

    (a) September 22, 2014 - Consent Order issued against J Upton and the Brokerage for professional misconduct relating to the late filing of the Brokerage's 2013 Accountant's Report. J Upton and the Brokerage received a reprimand and were jointly and severally liable for payment of enforcement expenses of $1,250.

    (b) March 24, 2022 – Notice of Administrative Penalty issued against the Brokerage in the amount of $1,000 for late filing of its 2020 Accountant's Report. This penalty was paid on June 6, 2022.

    (c) July 19, 2023 – Notice of Administrative Penalty issued against the Brokerage in the amount of $2,000 for late filing of its 2021 Accountant's Report. This penalty remains unpaid.

12. The Brokerage's Accountant's Report filing history for the five years leading up to the 2022 fiscal year is as follows:

Fiscal Year	**History**
2021	173 days late. $2,000 administrative penalty remains outstanding.
2020	315 days late. $1,000 administrative penalty paid.
2019	88 days late. Due to the COVID-19 pandemic, an email warning was issued.
2018	2 days late. Administrative penalty issued, appealed, and cancelled.
2017	7 days late. Considered within a 7-day grace period and no action taken.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, J Upton and the Brokerage propose the following findings of misconduct be made by the Superintendent:

1. Aedis Realty Limited (the "Brokerage") committed professional misconduct within the meaning of section 35(1)(a) of the RESA by breaching section 75 of the Rules when it failed to file its required review engagement financial statement, accountant's report and brokerage activity report for the year ended December 31, 2022, by April 30, 2023; and

2. J Upton, while the managing broker of the Brokerage, committed professional misconduct within the meaning of section 35(1)(a) of the RESA by breaching the section 6(2)(b) of the RESA and sections 28(1)(a) and (b) of the Rules when he failed to ensure the Brokerage complied with the Rules in contravening the section 75 of the Rules, as set out at paragraph 1.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, J Upton and the Brokerage propose that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the Superintendent, pursuant to section 43 of the RESA:

1. J Upton and Aedis Realty Limited be jointly and severally liable to pay a discipline penalty to BCFSA in the amount of $20,000, payable within 90 days of the date of this Order.
2. J Upton and Aedis Realty Limited be jointly and severally liable to pay enforcement expenses to BCFSA in the amount of $3,000, payable immediately.
3. If either J Upton or Aedis Realty Limited fails to comply with any of the terms of the Order set out above, the Superintendent may suspend or cancel their licence without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. J Upton and the Brokerage acknowledge and understand that the Superintendent may accept or reject the Proposal. If the Proposal is rejected by the Superintendent, the matter may be referred to a disciplinary hearing.
2. J Upton and the Brokerage acknowledge that they have been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of the Proposal to the Superintendent; and, that they have obtained independent legal advice or has chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. J Upton and the Brokerage acknowledge and are aware that BCFSA will publish the Proposal and the Consent Order or summaries thereof on BCFSA's website, on CanLII, a website for legal research and in such other places and by such other means as BCFSA in its sole discretion deems appropriate.
4. J Upton and the Brokerage hereby waive their right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, J Upton and the Brokerage will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict J Upton and the Brokerage from making full answer and defence to any civil or criminal proceeding(s).
6. The Proposal and its contents are made by J Upton and the Brokerage for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of J Upton and the Brokerage in any civil proceeding with respect to the matter.

"Original signed by Jason Upton"

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JASON DAVID UPTON, Managing Broker for AEDIS REALTY LIMITED

Dated this 25th day of February, 2024

"Original signed by Jason Upton"

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JASON DAVID UPTON, Authorized Signatory for AEDIS REALTY LIMITED

Dated this 25th day of February, 2024