

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

IN THE MATTER OF

ADELINA YIN KO
(007601)

AND

CATHAY PACIFIC REALTY LTD.
(X000498)

Corrected Decision: Typographical errors were corrected in paragraphs 15 and 22
on April 3, 2024.

DECISION ON LIABILITY AND SANCTION

[This Decision has been redacted before publication.]

Date of Hearing: July 31, 2023
Counsel for BCFSA: Laura Forseille
Counsel for Licensees: Michael Hewitt
Hearing Officer: Andrew Pendray

Introduction

1. On June 23, 2023, the BC Financial Services Authority (BCFSA) issued an amended notice of discipline hearing in relation to, Freyja Prit, Adelina Yin Ko, and Cathay Pacific Realty Ltd¹. That notice of discipline hearing alleged that each of Ms. Prit, Ms. Ko and Cathay Pacific Realty Ltd. (“Cathay Pacific” or the “Brokerage”) (collectively the “respondents”) had committed professional misconduct within the meaning of sections 35(1)(a) and (d) of the

¹ The June 23, 2023 amended notice of discipline hearing related also to another licensee, Freyja Prit. This decision relates only to the allegations regarding Ms. Ko and Cathay Pacific.

Real Estate Services Act (RESA), as a result of breaches of the *Real Estate Services Act Rules* (the “Rules”).

2. The allegations in this matter relate to activities that occurred in 2018. In general terms, in the case of Ms. Ko, what BCFSA alleged in the notice of hearing was that Ms. Ko had committed professional misconduct in failing to provide adequate supervision to Ms. Prit; in allowing payment of commission fees to Ms. Prit in relation to transactions that occurred when Ms. Prit was not licensed to conduct real estate in BC; and in failing to ensure that a suspicious transaction report was made to the Financial Transaction and Reports Analysis Centre of Canada (“FINTRAC”).
3. BCFSA alleged that Cathay Pacific failed to provide and retain disclosures related to certain transactions which occurred in May 2018, provided real estate services through an individual who was not licensed in the period from July to September 2018, and paid commissions fees to an individual in relation to transactions that occurred when that individual was not licensed to conduct real estate in B.C.
4. On July 27, 2023, BCFSA and the respondents entered into a joint submission (the “Joint Submission”). The Joint Submission contained the parties’ agreement on the background facts, agreement as to findings of professional misconduct against each of the respondents, and agreement on proposed orders pursuant to section 43 of RESA.
5. The parties were unable to agree only on the quantum of the appropriate disciplinary penalty to be issued pursuant to section 43(2)(i) of RESA. As a result, the hearing proceeded on submissions, provided both orally and in writing, on that issue.
6. For the reasons that follow, I have accepted the respondents’ admissions of professional misconduct, and agree that the proposed orders pursuant to section 43 as set out in the Joint Submission are appropriate. I further find that a section 43(2)(i) disciplinary penalty in the amount of \$20,000 is appropriate.

Issues

7. The issues are:
 - Does the conduct admitted to by the Respondents amount to professional misconduct?
 - If so:
 - is the disciplinary action proposed in the Joint Submission appropriate?
 - What is the appropriate quantum of a section 43(2)(i) disciplinary penalty?

Jurisdiction and Procedure

8. 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.

9. BCFSa must prove its case on the balance of probabilities, that is, it must prove that it is more likely than not that the facts as alleged occurred. In order to make a finding against the respondents, I must find that the evidence is “sufficiently clear, convincing and cogent” to satisfy that test: *FH v McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41.
10. Evidence is generally considered as a matter of procedure². As an administrative tribunal the Superintendent is not bound by court rules of evidence, and in the absence of any statutory provision to the contrary, may consider any evidence it considers relevant, including hearsay evidence: *Adams v. British Columbia (Superintendent of Motor Vehicles)*, 2019 BCCA 225 (CanLII).
11. Further, the fact that the legislation may provide for a formal structure for enforcement proceedings does not preclude hearsay evidence from being admitted at a hearing³. There is no provision in RESA which imports civil or criminal rules of evidence into the administrative proceedings held by the Superintendent. The Superintendent may, however, draw upon principles underlying court rules of evidence to exclude or assess evidence.
12. The Superintendent must also afford procedural fairness to a respondent where a decision may affect his or her rights, privileges or interests. This right includes a right to be heard. The Superintendent affords every respondent an opportunity to respond to the case against him or her by providing advance notice of the issues and the evidence, and an opportunity to present evidence and argument. The Superintendent must determine facts, and decide issues set out in the Notice of Discipline Hearing, based on evidence. The Superintendent may, however, apply its individual expertise and judgment to how it evaluates or assesses evidence.

Background and Facts

13. In addition to the Joint Submissions, the evidence before me also included a Book of Documents⁴, and an Affidavit from Ms. Ko, dated July 21, 2023.
14. The following factual narrative is a summary outline of the Background and Facts set out in the Joint Submission. I have reviewed all of the information in the Book of Documents, and consider that information to support the factual narrative set out in the Joint Submission.

The Respondents

15. Cathay Pacific is a real estate brokerage located in Vancouver, B.C., and is licensed for trading and rental property management. Cathay Pacific was established in 1977, with eight

² *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119, para. 38.

³ *Cambie Hotel*, paragraph 38.

⁴ The Book of Documents included information regarding the licensing history of Ms. Ko, Ms. Prit, and the Brokerage. It further included a Discipline Investigation completed by the former Real Estate Council of BC in September 2020 regarding the transactions Ms. Prit was involved in while unlicensed in 2018, as well as transcripts of interviews with Ms. Prit and Ms. Ko, financial statements of Cathay Pacific, and a copy of a settlement agreement between FINTRAC and Cathay Pacific.

partners, each of whom was a licensed realtor with five to 10 years of relevant experience. Cathay Pacific initially had 45 realtors in 1977, but decreased in size overtime, to 25 realtors in 1988, and to approximately six remaining realtors in 2014.

16. Ms. Ko has been licensed as a managing broker for trading and rental property management services since 1981. She was, at all relevant times, licensed as a realtor and managing broker with Cathay Pacific. In 2018, Ms. Ko was solely responsible for Cathay Pacific's administration and compliance. Ms. Ko's educational and compliance requirements were up to date at that time.
17. Neither respondent has a prior discipline history.

Freyja Prit

18. Ms. Prit was first licensed as a trading representative in June 2010. She was licensed as a trading representative with the Brokerage from June 2016 to May 2017. Effective from May 30, 2017 to July 4, 2018, and again from September 21, 2018 to September 20, 2020, Ms. Prit was licensed as an associate broker at Cathay Pacific.
19. Ms. Prit was unlicensed from July 5, 2018 to September 20, 2018 inclusive.

July 2018

20. Cathay Pacific had no established policy or procedure in place to address the issue of a broker becoming unlicensed. It had no policy or procedure with respect to the notification of clients, the transfer of listings, the removal of advertising, or the restriction of access to forms. It also did not have a policy or procedure in place which would serve to put the former licensee on notice to not use the brokerage's information or email signatures in order to ensure that no person provided real estate services through or on behalf of the brokerage while unlicensed.
21. Prior to July 2018, Cathay Pacific had not previously encountered the circumstance of a broker becoming unlicensed.
22. On July 5, 2018, Ms. Ko sent Ms. Prit a text message informing her that the Real Estate Council of BC (RECBC) had advised Ms. Ko that Ms. Prit's license had expired. In that text message Ms. Ko wrote to Ms. Prit: "Be extra careful with [your] work! Take all credit courses ASAP!".
23. In July and August 2018, Ms. Ko understood that Ms. Prit was travelling around the interior of B.C. with a previous real estate client, [Individual 1], in order to make inquiries about bylaws applicable to certain business practices in B.C. Ms. Prit had, since 2013, provided [Individual 1] with consulting services in the marijuana industry as well as real estate services. In or around May 2018, Ms. Prit began assisting [Individual 1] in finding new

commercial premises for the operation of marijuana dispensary businesses in various locations throughout B.C.

24. Mr. Ko and Ms. Prit had several communications about manual labour that Ms. Prit was performing for Ms. Ko, and about Ms. Prit's employment with [Employer 1] over the course of the summer of 2018.
25. On or about August 3, 2018, Ms. Ko sent a text message to Ms. Prit advising her: "Make sure not to work as agent at present!".
26. Ms. Prit's services to [Individual 1] in 2018 resulted in contracts of lease or purchase and sale as follows (the "Transactions"), with [Individual 1] named as the purchaser in all of the transactions, and Ms. Prit identified as the buyer or lessee's designated agent⁵ on all of the contracts:
 - Property 1 – Purchase and sale of property at [Property 1], Grand Forks, B.C. The offer date was June 27, 2018, with a closing date of September 21, 2018. Ms. Prit's commission was \$6,978.82, with the Brokerage having a commission of \$775.43;
 - Property 2 – Lease of property located at [Property 2], Terrace, B.C. The offer date was July 17, 2018, with a closing date of September 1, 2018. Ms. Prit's commission was \$2,799.01, with a brokerage commission of \$311.01;
 - Property 3 – Purchase and sale of property located at [Property 3], Creston, B.C. The offer date was July 27, 2018, with the closing date on September 28, 2018. Ms. Prit's commission was \$4,918.73, with the Brokerage earning a commission of \$546.52;
 - Property 4 – Purchase and sale of property located at [Property 4], Salmon Arm, B.C. The offer date was July 27, 2018, with a closing date of October 15, 2018. Ms. Prit's commission was \$7,300.13, with the Brokerage earning a commission of \$811.13;
 - Property 5 – Purchase and sale of property located at [Property 5], Grand Forks, B.C. The offer date was August 13, 2018, with a closing date of September 28, 2018. Ms. Prit's commission was \$7,855.31, with the Brokerage earning a commission of \$872.81;
 - Property 6 – Purchase and sale of property located at [Property 6], Keremeos, B.C. The offer date was August 15, 2018, with the closing date of October 31, 2018. Ms. Prit's commission was \$8,351.91, while the Brokerage earned a commission of \$927.99.
27. The real estate services for Property 2, Property 3, Property 4, Property 5, and Property 6 were provided while Ms. Prit was unlicensed. Any real estate services provided by Ms. Prit in relation to Property 1 after July 5, 2018 were provided when Ms. Prit was unlicensed.
28. The deposits for the contracts of purchase and sale on the above noted purchases were paid to the Brokerage by [Company 1] ("[Company 1]") as follows:

⁵ Ms. Prit was identified as a limited dual agent in respect of these transactions.

- August 17, 2018 - \$32,000 for Property 1
- September 4, 2018 - \$30,000 for Property 3
- September 4, 2018 - \$30,000 for Property 5
- September 4, 2018 - \$30,000 for Property 6

29. In her July 21, 2023 affidavit⁶, Ms. Ko explained that in early September 2018 Ms. Prit had dropped off four cheques at the Brokerage by putting them through the office mail slot over the long weekend.

30. On September 4, 2018 Ms. Ko wrote to Ms. Prit via WhatsApp:

I have to have a good chat with you. I so not want you to do any business in real estate till you get your licences back! What is the deposit cheque for? Pls call me now!

[reproduced as written]

31. From September 4 to September 6, 2018, Ms. Ko and Brokerage staff attempted to contact Ms. Prit to enquire about the deposit cheques that had been delivered to the Brokerage. Ms. Prit did not respond.

32. Ms. Ko described, in her affidavit, having “chased down” Ms. Prit regarding the cheques, and that it was at that point that Ms. Prit had presented Ms. Ko with a number of purchase and sale agreements for pending real estate transactions.

33. Ms. Ko described having been shocked that Ms. Prit was involved in these transactions, given that she was not licensed and Ms. Ko had warned her not to engage in real estate work while unlicensed.

34. Ms. Ko stated that she had been unsure of what to do, as she had not previously been involved in a similar situation.

35. On or around September 6, 2018 Ms. Ko received a phone call from [Complainant 1], the managing broker for [Brokerage 1] in Vernon, B.C. In that phone call, Ms. Ko and [Complainant 1] discussed that Ms. Prit appeared to be providing real estate services without a licence. [Complainant 1] indicated that he would be making a complaint to RECBC.

36. Ms. Ko and Ms. Prit attended the RECBC offices in person on September 7, 2018 to discuss the situation with RECBC. They were informed, at that time, to provide a written report.

37. Ms. Ko understood from Ms. Prit that Ms. Prit had submitted a written report to RECBC on or about September 12, 2018.

38. RECBC (now BCFSA) has no record of receiving such a report.

⁶ Ms. Ko provided affidavit evidence at the hearing of this matter. BCFSA did not seek to cross-examine Ms. Ko.

39. The Transactions closed after Ms. Prit was re-licensed, with commission payments made to Ms. Prit by way of transfer from trust account to general account. In her affidavit evidence Ms. Ko indicated that she had believed that the Brokerage had an obligation to pay Ms. Prit her commissions, due to the fact that she was once again licensed.
40. Ms. Ko and the Brokerage did not take steps to determine, or record the steps taken to determine, if [Individual 1] or [Company 1] was acting on behalf of a third party in the Transactions as required by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“PCMLTFA”), and the regulations under that Act. Ms. Ko and the Brokerage did not verify [Company 1]’s existence as required by the PCMLTFA.
41. Ms. Ko and the Brokerage did not submit a suspicious transaction report as required by the PCMLTFA despite knowing that:
- [Individual 1] had a well-publicized criminal record;
 - [Company 1] paid the deposits in the Transactions;
 - [Company 1] has a corporate name that references marijuana;
 - The Transactions all closed in close succession; and
 - The Transactions all closed in favour of a numbered company who was not listed as the purchaser in the contract.
42. At the time of the Transactions, Ms. Ko knew that she was required to know the steps to take according to RESA and the Rules on how to deal with a representative and their listings if their license had lapsed.

Evidence of Ms. Ko

43. Ms. Ko provided affidavit evidence at the hearing of this matter. BCFSA did not seek to cross-examine Ms. Ko on her affidavit.
44. At the time of the hearing, Ms. Ko was 79 years old. She indicated that she had commenced the Brokerage in 1977, and was, at the time of the hearing, operating the company while winding down its business. Ms. Ko described the Brokerage’s current business as being down to a single salesperson, in addition to herself. She further described the Brokerage as being an “unsophisticated ‘old school’ operation”. While Ms. Ko indicated that the Brokerage maintained a proper set of books, she noted that it continued to use paper files.
45. Ms. Ko stated that all Brokerage salespeople were trained to follow the real estate industry’s rules and regulations, and that meetings on those issues were carried out at least every two to three weeks, with the latest regulatory news provided.
46. Ms. Ko indicated that in recent years, the maximum monthly revenue of the Brokerage was \$4,000 to \$5,000, generated largely from rental property commissions. She indicated that in 2018, the Brokerage was not profiting from its managing broker operations, with the salespersons on a 90/10 sales split, with no extra desk fee.

47. In her affidavit, Ms. Ko acknowledged that although she acknowledged failing to prevent Ms. Prit's unlicensed real estate activities, she had genuinely believed she was acting appropriately at the time by reminding Ms. Prit when they communicated that Ms. Prit must not do any real estate work while unlicensed.
48. Ms. Ko stated that the amount of the FINTRAC penalty the Brokerage had been issued, \$95,000, had been devastating financially. She stated that the penalty amount was greater than the Brokerage's net worth, and greater than the Brokerage's annual earnings over a series of fiscal years. Ms. Ko described having taken no income from the Brokerage for several years in order to keep the office running.
49. Finally, Ms. Ko noted that she had expected, based on her understanding that Ms. Prit had disclosed the situation to RECBC, that RECBC would have contacted her and told her what to do. Ms. Ko acknowledged that she ought to have been more pro-active in determining whether the brokerage could pay Ms. Prit the commissions on the Transactions.

Discussion

Does the conduct admitted to by the Respondents amount to professional misconduct?

Ms. Ko

50. Ms. Ko admitted, in the Joint Submission, to the following:

Adelina Yin Ko committed professional misconduct within the meaning of section 35(1)(a) and (d) of the RESA in that, while licensed as a managing broker in relation to Cathay Pacific Realty Ltd. in the training and rental property management categories, she:

- a. Failed to provide adequate supervision to Freyja Prit from approximately July 2018 to September 2018, to ensure that Freyja Prit did not provide real estate services while unlicensed or otherwise exempted under the RESA; and
- b. Failed to ensure Cathay Pacific Realty Ltd. made a suspicious transaction report to the Financial Transactions and Report Analysis Centre of Canada before November 30, 2018 regarding the Transactions where she had, within her knowledge at the time, grounds for reasonable suspicion that the Transactions were related to the commission or the attempted commission of money laundering;

contrary to the Rules, sections 3-1(1)(a)⁷ [*Duty to be actively engaged in management*], 3-1(1)(b) [*Duty to ensure the business of the brokerage is carried out in accordance with the RESA and the Rules*], 3-1(1)(c) [*Duty*

⁷ The *Real Estate Services Rules* were renumbered, effective August 1, 2021. Rule 3-1(1)(a) is now section 28(1)(A) of the Rules, Rule 3-1(1)(b) is now section 28(1)(b) of the Rules, Rule 3-1(1)(c) is now section 28(1)(c) of the Rules, and Rule 3-1(2) is now Rule 28(2). The renumbering of the rules in question do not contain any substantive changes. I will continue, in this decision, to refer to the Rules as they were in 2018.

to supervise associate brokers and representatives] and 3-1(2)
[Knowledge of improper conduct].

51. Based on the facts agreed to by the parties, and Ms. Ko's admission, I am satisfied that the conduct admitted to by Ms. Ko constitutes professional misconduct. My reasons for having reached this conclusion follow.
52. Section 35(1)(a) of RESA sets out that a licensee commits professional misconduct if the licensee contravenes RESA, the Regulations, or the Rules.
53. The allegations against Ms. Ko relate to her duties as a managing broker, which are set out in the Rules. Rule 3-1(1) sets out the following requirements:
 - (1) *Supervision* – A managing broker must
 - (a) be actively engaged in the management of their related brokerage,
 - (b) ensure that the business of the brokerage is carried out competently and in accordance with the Act, regulations, rules and bylaws, and
 - (c) ensure that there is an adequate level of supervision for related associate brokers and representatives and for employees and others who perform duties on behalf of the brokerage.
54. Along with Ms. Ko's admission, I consider the evidence and information before me to support a conclusion that Ms. Ko breached Rule 3-1(1)(b) and (c) by failing to ensure that the business of the brokerage, in this case the Transactions, was carried out in accordance with the Act, regulations, rules and bylaws. The fact that Ms. Prit was able to conduct Brokerage business, in the form of the Transactions, while unlicensed, is clear evidence of this fact.
55. Similarly, although I accept that Ms. Ko may have felt that she had communicated to Ms. Prit that she ought not to be conducting real estate services business while unlicensed, I consider the evidence to demonstrate that Ms. Ko did not provide a sufficient level of supervision in order to ensure that Ms. Prit was in fact not engaging in unlicensed activities.
56. While Ms. Ko, upon learning that Ms. Prit's licence had expired, did advise Ms. Prit to "be extra careful" on July 5, 2018, I consider that it was incumbent upon Ms. Ko, as the managing broker, to ensure that Ms. Prit was acutely aware of her duty to not engage in unlicensed real estate activities through the Brokerage. In my view, the text message to "be extra careful" fell short of such supervision.
57. I find that the breaches of Rule 3-1(1)(b) and 3-1(1)(c) constitute professional misconduct as contemplated by section 35(1)(a) of the Act, and therefore accept the proposed finding of misconduct as set out at allegation 1(a) of the Joint Submission.
58. With respect to proposed finding 1(b) of the Joint Submission, I note that Ms. Ko has admitted having knowledge regarding the Transactions which provided grounds for

reasonable suspicion that the Transactions were related to the commission or the attempted commission of money laundering.

59. Section 35(1)(d) of RESA provides that a licensee commits professional misconduct if the licensee demonstrates incompetence in performing any activity for which a licence is required.
60. Ms. Ko was licensed as a managing broker. As a result of that licence, she had a duty to ensure that the business of the Brokerage was carried out competently and in accordance with RESA, the Rules and Regulations.
61. I am satisfied that the admission that Ms. Ko failed to ensure that the Brokerage made a suspicious transaction report to FINTRAC before November 30, 2018 regarding the Transactions, when she had within her knowledge grounds for reasonable suspicion that the Transactions were related to the commission or the attempted commission of money laundering, constitutes professional misconduct as contemplated by section 35(1)(a) and 35(1)(d).

The Brokerage

62. The Brokerage admitted, in the Joint Submission, to the following:

Cathay Pacific Realty Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that, while licensed as a brokerage in the trading and rental property management categories, it:

- a. In or about May 2018, failed to provide adequate supervision to Freyja Prit to ensure that she disclose in writing and in the form approved by RECBC at the time to [Individual 1], [Individual 2], [Company 1], or [Company 2], whether she would represent them as clients in relation to the real estate services rules, contrary to the Rules, sections 5-8, 5-10 *[Disclosure of representation in trading services]*, and 8-4(1)(a) *[General Records]* and failed to retain these disclosures, contrary to the Rules section 3-1(3)(b) *[Accounts and records]*
- b. On or about the following dates, paid remuneration to Freyja Prit totaling \$38,203.91, comprising the following amounts in relation to transactions regarding the following properties, some or all of which being remuneration for real estate services provided by Freyja Prit and for which she was required to be licensed but was not licensed or otherwise exempted under the RESA contrary to the Rules, section 6-1 *[Payment to unlicensed persons prohibited]*:
 - i. September 24, 2018, \$6,978.82 in relation to [Property 1], Grand Forks, British Columbia
 - ii. October 1, 2018, \$7,855.32 in relation to [Property 5], Grand Forks, British Columbia

- iii. October 1, 2018, \$4,918.73 in relation to [Property 3], Creston, British Columbia
- iv. October 18, 2018, \$7,300.13 in relation to [Property 4], Salmon Arm, British Columbia
- v. November 1, 2018, \$8,351.91 in relation to [Property 6], Keremeos, British Columbia
- vi. November 29, 2018, \$2,799.01 in relation to [Property 2], Terrace, British Columbia

63. Rule 6-1 set out that a licensee must not pay remuneration to a person in relation to real estate services if the person is required to be licensed in relation to those services but is not licensed.

64. Here, the evidence before me is clear that the Brokerage paid Ms. Prit remuneration for the Transactions, which related to Mr. Prit's provision of real estate services when she was not licensed to provide those services from July 5 to September 20, 2018. I therefore find the Brokerage's activity in this regard was professional misconduct as contemplated by section 35(1)(a) of RESA, as set out at item 2(b) of the Joint Submission.

65. I turn to the findings of misconduct proposed at item 2(a).

66. Rule 5 addressed "Relationships with Principals and Parties", and Division 2 of Rule 5 addressed disclosures required under the Rules. Rule 5-8 required that disclosures be provided in writing, while Rule 5-10 required that:

- (1) Before providing trading services to or on behalf of a party to a trade in real estate, a licensee must disclose to the party whether or not the licensee will represent the party as a client.
- (2) A disclosure made under subsection (1) must be in a form approved by the council and include the following information:
 - a. the duties and responsibilities of licensees to clients and unrepresented parties;
 - b. how to file a complaint about a licensee's conduct....

67. Rule 8-4 required that a brokerage retain disclosures provided under Division 2 of Rule 5.

68. In her interview with RECBC investigators on June 16, 2020 Ms. Prit acknowledged that she had not, in 2018, had [Individual 1], or any of the others identified at item 2(a) of the proposed findings of misconduct set out in the Joint Submission, sign the disclosure form that was required by RECBC as of June 15, 2018.

69. It is clear, on the evidence and information before me, that the Brokerage failed to sufficiently supervise Ms. Prit by way of ensuring that she had [Individual 1], or any of the

parties associated with [Individual 1] that Ms. Prit was assisting, sign the appropriate disclosure forms prior to providing trading services on behalf of those parties in the months of July and August 2018. I accept that this breach of the Rules constitutes professional misconduct as contemplated by section 35(1)(a) of RESA, and therefore accept the proposed finding of misconduct set out at item 2(a) of the Joint Submission.

Sanction

70. Section 43(2) of RESA provides that if, after a discipline hearing, the Superintendent determines that the licensee has committed professional misconduct, the Superintendent must, by order, do one or more of the following:

- (a) reprimand the licensee;
- (b) suspend the licensee's licence for the period of time the superintendent considers appropriate or until specified conditions are fulfilled;
- (c) cancel the licensee's licence;
- (d) impose restrictions or conditions on the licensee's licence or vary any restrictions or conditions applicable to the licence;
- (e) require the licensee to cease or to carry out any specified activity related to the licensee's real estate business;
- (f) require the licensee to enrol in and complete a course of studies or training specified in the order;
- (g) prohibit the licensee from applying for a licence for a specified period of time or until specified conditions are fulfilled;
- (h) require the licensee to pay amounts in accordance with section 44(1) and (2) [*recovery of enforcement expenses*];
- (i) require the licensee to pay a discipline penalty in an amount of
 - (i) not more than \$500,000, in the case of a brokerage or former brokerage, or
 - (ii) not more than \$250,000, in any other case;
- (j) require the licensee to pay an additional penalty up to the amount of the remuneration accepted by the licensee for the real estate services in respect of which the contravention occurred.

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

72. 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 punitive measures (i.e. specific deterrence);
- preventing and discouraging future misconduct by other respondents (i.e. general deterrence);
- educating licensees and the public about rules and standards; and
- maintaining public confidence in the real estate industry.

73. 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:

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?

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?

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?

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?

74. 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.

Discipline Penalty

Position of BCFSA

75. BCFSA submits that a discipline penalty, in the amount of \$25,000, should be ordered against Ms. Ko and the Brokerage.

76. In BCFSA's submission, Ms. Ko's considerable industry experience, combined with the seriousness of non-compliance with anti-money laundering regulations and Cathay Pacific's financial gain from the unlicensed real estate activity were all aggravating factors.

77. BCFSA submitted that a penalty in the amount of \$25,000 would serve the public interest as it would be a deterrent not only to Ms. Ko and the Brokerage, but would also achieve the goal of general deterrence in order to signal to the public that the conduct of Ms. Ko and the Brokerage would not be tolerated, and would serve to prevent others from engaging in similar conduct.

Position of Ms. Ko and the Brokerage

78. The respondents submit that a \$25,000 penalty would be unduly punitive, as it would fail to account for the totality of the circumstances.

79. The respondents noted that neither of them had a previous history of disciplinary action or wrongdoing, and that in fact the evidence was that prior to Ms. Prit losing her licence, the respondents did take steps to educate its realtors regarding evolving regulations, including regarding proceeds of crime and real estate industry regulation.

80. Ms. Ko submits that although she has admitted to not sufficiently supervising Ms. Prit, she did take steps to remind Ms. Prit of her obligations to take courses in order to become relicensed. She further noted that she had provided Ms. Prit labour jobs to occupy her until she was able to take the required courses.

81. On Ms. Ko's submission, the failure of her supervision was due to Ms. Prit going "behind her back" and carrying on working as a realtor without Ms. Ko's knowledge. Ms. Ko submitted that it was not until September 2018 that Ms. Ko discovered that Ms. Prit had brokered a number of real estate transactions without the Brokerage's knowledge or consent.

82. Ms. Ko noted further that upon becoming aware of the Transactions, she had brought Ms. Prit to the RECBC offices in order to disclose the issue and obtain direction. While Ms. Ko acknowledged her shortcomings in following up with RECBC regarding what steps she ought to take, she reiterated that the issues in this case were due to the deception carried out by Ms. Prit.

83. Finally, Ms. Ko submitted that consideration ought to be given to the fact that the Brokerage had already paid a significant penalty of \$95,000 to FINTRAC in relation to the Transactions,

and specifically in relation to the failure to file a suspicious transactions report and to have in place compliance policies and procedures.

84. The respondents noted that Ms. Ko was largely in the process of winding down the business of the Brokerage, and that not only was the Brokerage not in fact profiting from its managing broker operations in 2018, at the time of the Transactions, its financial records established that the Brokerage had limited financial resources.
85. The respondents proposed a joint penalty in the amount of \$5,000.

Discussion

86. Both parties rely on a number of previous decisions and consent orders which they say are supportive of their position on penalty.
87. BCFSA relied on two prior consent orders.
88. In *Eco-World Property Management Corp. (Re)*, 2019 (BC REC), the managing broker and the brokerage each agreed to pay a discipline penalty in the amount of \$7,500 as a result of permitting an unlicensed person to provide rental property management services on behalf of the brokerage between May 2015 and July 2017. The unlicensed person received approximately \$134,000 in remuneration between July 2016 and July 2017, referred approximately 58 new clients to the brokerage, and signed a number of forms in respect of tenancies.
89. In *Little Oak Realty Ltd. (Re)*, 2019 (BC REC), the managing broker and the brokerage each agreed to pay a discipline penalty of \$7,500, as a result of providing real estate services by a person and entity that was not licensed to the brokerage, and paying remuneration to a person or entity for providing such services, as well as professional misconduct relating to breach of record keeping and disclosure of trust accounts. The misconduct at issue occurred in the period of May 2014 and December 2015.
90. As BCFSA noted in its submissions, the penalties consented to in the above-noted decisions were limited by section 43(2)(i) of RESA, as it read prior to amendments issued in September 2016. Prior to the 2016 amendments, discipline penalties were limited to not more than \$20,000 for a brokerage, and not more than \$10,000 in any other case.
91. Based on the significant increase in discipline penalty amounts since the legislative amendments in 2016, BCFSA submits that its suggested penalty amount of \$25,000, although more than those prior cases, would be consistent with the intention of the legislature as demonstrated by the 2016 amendments to allow for an increase in penalties.
92. The respondents, point to more recent consent orders, including *Pan Pacific Platinum Real Estate Service Inc. (LeHomes Realty) (Re)*, 2021 BCSRE 2, *Dymont (Re)*, 2021 BCSRE 4, where the combined discipline penalties for the brokerage and the managing broker was \$28,500, as well as *Aisa Realty Corporation (Aisa Real Estate Services)(Re)*, 2023 BCSRE 6, where the discipline penalty agreed to by the brokerage was \$18,500.

93. In *Aisa*, one of the co-owners of the brokerage admitted to providing rental property management services when not licensed to do so for a period of approximately four years, as well as other misconduct including failing to have a written services agreement to provide real estate trading services, failing to display its licence, failing to inform the superintendent of a change of business address, and failing to obtain written instructions regarding withdrawal of management fees.
94. In *Pan Pacific* and *Dymont*, the brokerage admitted to misconduct in allowing an unlicensed company to provide rental property management services on behalf of the brokerage's rental property management clients, and making payments to that entity in or around April and May 2020. Further misconduct related to trust account shortages. Of note, Dymont did have one prior discipline matter, for which he had received a \$3,000 penalty.
95. The respondents' position is that while the amount of discipline penalties consented to in *Pan Pacific* and *Aisa* cases were in line with the discipline penalty sought by BCFSA in this case, the misconduct admitted to in those cases was more significant than in the Respondents' case.
96. The respondents also referenced *Zivkovic (Re)*, 2019 CanLII 110043 (BC REC), which involved a penalty in the amount of \$5,000 total, with \$3,500 assigned to the managing broker and \$1,500 to the brokerage.
97. While I acknowledge the respondents' submission that the facts of *Zivkovic* were "in line" with those in the present case, I consider it to be necessary to note that the discipline penalty imposed in that case would have been largely limited by section 43 as it read prior to the amendments to the penalty amounts in September 2016, as the misconduct for which the discipline penalty was imposed occurred largely prior to September 2016. Further, there is no indication in the *Zivkovic* consent order that there were any issues respecting breaches of the managing broker or brokerage's duties to report suspicious transactions to FINTRAC.
98. I note further that while the payments which led to the discipline penalty in *Zivkovic* were made to an unlicensed professional real estate corporation (PREC) which had been set up for tax planning purposes, the principal of the PREC was licensed at the relevant times.
99. The same comment applies, largely, to the cases of *Anthony (Re)*, 2020 CanLII 36929 (BC REC), and *Freeman (Re)*, 2017 CanLII 10893 (BC REC), which were also cited by the respondents. Again, these consent orders related to misconduct which occurred prior to the amendments to the amount of discipline penalties provided for by section 43. Further, there was no misconduct involving duties to report suspicious transactions to FINTRAC.
100. Having considered all of the cases cited by the parties, as well as their submissions on the aggravating and mitigating factors, I am satisfied that a joint penalty in the amount of \$20,000 is appropriate in this case.
101. While I accept, as the respondents submit, that the professional misconduct committed by the respondents was largely the result of the actions of another party, the fact remains that the respondents had duties under RESA and the Rules which they failed to meet.

102. In my view, it cannot be reasonably said that the principles of specific and general deterrence will be met by a discipline penalty of \$5,000.
103. Based on the cases submitted by the respondents, such a penalty would be less than or equal to the penalties meted out for misconduct which occurred prior to the amendments to section 43 in 2016 for cases that, in the respondents submission, bear similarity to the instant case. In my view, to issue the same level of penalty in 2023, for misconduct that occurred subsequent to the amendments to section 43 providing for increased penalties, would be contrary to what I consider to be the clear legislative intent to allow for greater penalties for misconduct under RESA subsequent to September 2016.
104. More importantly, while I agree that the cases of *Zivkovic, Anthony, and Freeman* do have some similarity to the Respondents' situation in that those cases involved payment to an unlicensed entity, I do not consider those cases can fairly be said to involve the same level of misconduct as in the instant case. Again, in this case, the Respondents not only made payments which were not permitted by RESA and the Rules, they also failed to provide adequate supervision, and failed to ensure that a suspicious transaction report was made to FINTRAC.
105. While I acknowledge the respondent's evidence regarding the financial situation of the brokerage, and their submission and evidence regarding impact that the FINTRAC fine has had on that financial situation, I consider the mitigating aspect of that fine to be minimal. I note, in this regard, that the amount of the FINTRAC fine the result of a settlement agreed to by the Brokerage.
106. While it may be that the specific deterrence on the respondents is not the most important factor in this case, I consider that in a situation such as that before me, in which the respondents engaged in multiple breaches of the rules, and failed to ensure that their duties regarding reporting potential money laundering activities were met, general deterrence requires a discipline penalty more than the nominal amount of \$5,000 suggested by the respondents.
107. Simply put, I do not consider the aims of protecting the public, by ensuring that other brokers and brokerages do not engage in similar types of professional misconduct, can be met with the penalty proposed by the respondents.
108. I do, however, agree that in determining the appropriate amount of the penalty in this case, the respondents should be afforded some consideration regarding their cooperation with the investigation.
109. Having considered all the circumstances, I find that the sanctions principles can be met by a discipline penalty of \$20,000. While I acknowledge that such a penalty is closer in quantum to the cases which the respondents submit involved intentional misconduct, I am of the view that such a discipline penalty in this amount appropriately addresses the misconduct admitted to by the respondents, including the failure to ensure that reporting to FINTRAC was made.

Remaining Orders

110. In the Joint Submission, the parties proposed the following additional disciplinary orders, pursuant to section 43 of RESA:

- The Brokerage disgorge the amount of \$4,244.89 received for services provided by Ms. Prit while unlicensed within three months from the date of this Order;
- Ms. Ko, at her own expense, register for and successfully complete the Broker's Remedial Education Course as provided by the Sauder School of Business at the University of British Columbia in the time period directed by the BCFSA;
- Ms. Ko, at her own expense, register for and successfully complete the Anti-Money Laundering in Real Estate Course as provided by the Sauder School of Business at the University of British Columbia in the time period directed by the BCFSA; and
- Ms. Ko and the Brokerage be jointly and severally liable to pay enforcement expenses to BCFSA in the amount of \$3,000 within two months from the date of this order.

111. As I indicated at the hearing of this matter, I accepted the Joint Submission on the above proposed disciplinary orders, based on the principles set out in *Anthony-Cook*, 2016 SCC 43 (CanLII), [2016] 2 SCR 204. That is, I considered that the proposed penalty orders were not so unhinged from the circumstances of the case that they must be rejected.

112. In my view, the proposed sanction orders, combined with the disciplinary penalty I have determined above, fit within the general purpose of sanctions, in that they will address both specific and general deterrence, educate regarding the rules and standards applicable to licensees, and maintain public confidence by demonstrating that the regulator is focused on ensuring that the rules and standards are met.

Conclusion

113. As set out above, I find that Ms. Ko committed professional misconduct as contemplated by sections 35(1)(a) and 35(1)(d) of RESA. I further find that the Brokerage committed professional misconduct as contemplated by sections 35(1)(a) of RESA.

114. As a result of those findings, and pursuant to section 43 of RESA, I order that:

- a. Ms. Ko and the Brokerage be jointly and severally liable to pay a monetary penalty to BCFSA in the amount of \$20,000, within three months from the date of this Order;
- b. The Brokerage disgorge the amount of \$4,244.89 received for services provided by Ms. Prit while unlicensed within three months from the date of this Order;

- c. Ms. Ko, at her own expense, register for and successfully complete the Broker's Remedial Education Course as provided by the Sauder School of Business at the University of British Columbia in the time period directed by the BCFSa;
- d. Ms. Ko, at her own expense, register for and successfully complete the Anti-Money Laundering in Real Estate Course as provided by the Sauder School of Business at the University of British Columbia in the time period directed by the BCFSa; and
- e. Ms. Ko and the Brokerage be jointly and severally liable to pay enforcement expenses to BCFSa in the amount of \$3,000 within two months from the date of this order.

115. If Ms. Ko or the Brokerage fails to comply with any term of the above orders, the Superintendent may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of RESA.

116. Ms. Ko and the Brokerage have the right to appeal this decision to the Financial Services Tribunal under section 54(1)(e) of the RESA, within 30 days from the date of the 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 8 day of December 2023.

"Original signed by Andrew Pendray"

Andrew Pendray
Chief Hearing Officer