

BC FINANCIAL SERVICES AUTHORITY

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

AND IN THE MATTER OF

**Ling (Nancy) Wan
(164310)**

**REASONS FOR DECISION REGARDING
ADMINISTRATIVE PENALTY RECONSIDERATION REQUEST**

[This Decision has been redacted before publication.]

DATE AND PLACE OF HEARING: Via Written Submissions
HEARING OFFICER: Andrew Pendray

INTRODUCTION

1. On January 11, 2024, pursuant to sections 57(1) and 57(3) of the *Real Estate Services Act* (“RESA” or the “Act”), the BC Financial Services Authority (“BCFSA”) issued a Notice of Administrative Penalty to Ling (Nancy) Wan.
2. In that Notice of Administrative Penalty, BCFSA determined that Ms. Wan had contravened Rule 34 of the *Real Estate Services Rules* (the “Rules”), by failing to act with reasonable care and skill in respect of the cancellation of a listing contract. Specifically, BCFSA determined that Ms. Wan had made certain representations to the Real Estate Board of Greater Vancouver, and to the seller clients of a property, regarding the cancellation of a listing for sale of that property, which representations Ms. Wan knew or ought to have known to be incorrect; and that Ms. Wan had failed to conduct due diligence in making those representations.
3. As a result of its determination, BCFSA imposed an administrative penalty of \$5,000 (the “Penalty”) on Ms. Wan.
4. Ms. Wan now seeks reconsideration of the Penalty, pursuant to section 57(4) of RESA, and requests that the Penalty be cancelled.
5. This reconsideration application proceeded by way of written submissions.

Issue

6. The issue is whether the January 11, 2024 administrative penalty should be cancelled or confirmed.

Jurisdiction and Standard of Proof

7. This application for reconsideration is brought pursuant to section 57(4) of RESA, which requires the Superintendent of Real Estate (the “superintendent”) to provide a person who receives an administrative penalty with an opportunity to be heard.

8. Under section 57(4) of RESA the superintendent may cancel the administrative penalty, confirm the administrative penalty, or, in circumstances where the superintendent is satisfied that a discipline hearing under section 40 of RESA would be more appropriate, cancel the administrative penalty and issue a notice of discipline hearing.
9. The superintendent has delegated the statutory powers and duties set out in section 57 to Hearing Officers.
10. The standard of proof is the balance of probabilities.

Background

11. The evidence and information before me consists of an investigation report completed by BCFSA, email correspondence between various parties to the listing agreement, and the information provided by Ms. Wan in her application for reconsideration. The following is intended to provide some background to the circumstances and to provide context for my reasons. It is not intended to be a recitation of all of the information before me.

General Background

12. Ms. Wan has been licensed under RESA since 2012. She has been licensed as a managing broker since July 9, 2021.
13. The issues that led to the imposition of the administrative penalty in this case relate to a listing agreement to sell a property located at [Property 1], in Vancouver (the “property”).
14. The sellers of the property were [Seller 1] and [Seller 2] (collectively the “sellers”). The listing agreement for the property was to be in effect from October 28, 2021 to April 27, 2022. The licensee for the listing agreement was [Licencee 1], a licensee at the brokerage at which Ms. Wan was managing broker.
15. In the January 11, 2024 Notice of Administrative Penalty issued to Ms. Wan, BCFSA determined that Ms. Wan had:

...relied solely on your licensee’s evidence of what transpired in the cancellation of the listing at [Property 1], Vancouver, BC without conducting your own due diligence, and made representations to the REBGV and the seller clients about the cancellation that you knew, or ought to have known, were incorrect. In so doing you failed to act with reasonable care and skill when dealing with the matter.
16. BCFSA also issued an administrative penalty to [Licencee 1] on January 11, 2024. That penalty was in the amount of \$15,000, for breaches of:
 - Rule 30(a), for failing to act in the best interests of the clients by cancelling the listing contract, refusing to communicate with the clients, and not attempting to have the clients sign the cancellation form;
 - Rule 30(c), for acting outside the scope of authority given by the client in cancelling the listing contract without authorization; and
 - Rule 34, for failing to act with reasonable care and skill by failing to verify the requirements with respect to how and when a listing can be cancelled, and for making

incorrect representations to his managing broker (Ms. Wan) about the reasons for cancelling the listing.

Ms. Wan's Involvement in the Cancellation of the Listing Agreement

17. On November 15, 2021, [Licencee 1] emailed Ms. Wan regarding the listing agreement on the property. In that email, [Licencee 1] indicated that an incident had occurred with one of his "now former clients/friends"¹. [Licencee 1] noted in that email that he would not be surprised if the clients made a complaint to BCFSA, and that he wished to ask Ms. Wan's advice regarding cancelling the listing of the property without obtaining a signature from the sellers, as well as in respect of sending the sellers an invoice for marketing costs.
18. After meeting with Ms. Wan to discuss the issues he described in his email, [Licencee 1] provided Ms. Wan (by way of another November 15, 2021 email) copies of email correspondence he had received from the sellers. That email correspondence was as follows:
- A November 12, 2021 email from [Seller 2] to [Licencee 1]. In that email [Seller 2] indicated that he agreed with [Licencee 1]'s suggestion that the property listing should be taken off the market, and that [Licencee 1] should invoice the sellers with his expenses to date, and cancel a showing scheduled for November 14, 2021.
 - A November 14, 2021 email from [Seller 1], to [Licencee 1]'s licensee partner, [Licencee 2]. In that email [Seller 1] indicated that he was requesting the termination of the listing agreement as the sellers had not heard from [Licencee 1] in more than two days.
19. Having received that information Ms. Wan, on November 16, 2021, wrote to the Real Estate Board of Greater Vancouver ("REBGV") to request cancellation of the listing of the property on the multiple listing service. In her email to the REBGV, Ms. Wan indicated that:

The listing needs to be canceled as the sellers do not want to cooperate for any more showings and refused any incoming offers as well.

Per my agent, [Licencee 1], he is not able to get the sellers to sign the Cancellation form and the sellers had been told for any listing not able to be shown to the buyers for over a certain period of time, will have to be cancelled from MLS.

Please see attached form with my signature.

[quotes reproduced as written unless otherwise noted]

20. Attached to that November 16, 2021 email was a "Cancellation of Multiple Listing" form (the "cancellation form") to the Greater Vancouver Real Estate Board. The cancellation form sets out that the sellers:

...AGREE THAT THE SAID PROPERTY WILL NOT BE SOLD PRIOR TO THE DATE OF EXPIRY OF THE LISTING SET OUT IN THE LISTING AGREEMENT OR PRIOR TO 60 DAYS FROM THE DATE OF SIGNING HEREOF, WHICHEVER IS THE SOONER; AND IF IT IS SOLD OR AN OFFER FOR SALE IS ACCEPTED BY ME/US DURING THE SAID PERIOD, I/WE AGREE TO PAY

¹ I note that although [Licencee 1] did not refer to the sellers by name in this email, I accept that he was in fact making reference to the sellers.

YOU THE FULL SALES COMMISSION AS PROVIDED IN THE LISTING AGREEMENT SIGNED BY ME/US, AND REFERRED TO ABOVE.

21. Although the November 16, 2021 "Cancellation of Multiple Listing" form was signed by both [Licencee 1] and Ms. Wan, it was not signed by the sellers.

22. The REBGV wrote back to Ms. Wan on November 16, 2021 and indicated that:

Per Rules of Cooperation if a listing is not to be shown then it must be cancelled.
So you are doing the right thing by send this form. **I have put a cancel protection of 60 days on it now.**

[emphasis added]

23. On November 17, 2021, the sellers wrote to Ms. Wan. In that letter, the sellers requested that the brokerage return the keys to the property, and that the brokerage provide an "unconditional release" to the sellers from the listing agreement. The sellers indicated in their November 17, 2021 letter that the termination of the listing agreement for the property had in fact been suggested and executed by [Licencee 1], and that the sellers mutually agreed that a termination was appropriate. The sellers further indicated in that letter that:

- On November 12, 2021 they had informed [Licencee 1] by text message that they would not agree to a \$60,000 price reduction on the sale price of the property, as they had personal debts, and as a result required a certain price for the sale of the property;
- That [Licencee 1] had then informed them by text message dated November 12, 2021 that depending on information provided by the sellers regarding their personal debt, the listing agreement needed to be terminated, with the listing taken down;
- That they had provided further information to [Licencee 1] regarding their personal debts, but that they had not heard from him further; and
- That they had still not, as of November 17, 2021, heard any further from [Licencee 1].

24. Attached to that November 17, 2021 letter were print-outs of text messages between [Seller 1] and [Licencee 1]. In what [Seller 1] indicated was the November 12, 2021 text message from [Licencee 1], [Licencee 1] indicated that if the sellers insisted on a price higher than he recommended, then [Licencee 1] would be:

...taking the listing off the market and whether I decide to invoice you for the marketing expenses as per the listing agreement is something I haven't decided yet.

25. On November 17, 2021, Ms. Wan replied to the sellers by way of an email sent to [Seller 1] at 3:26 pm. In that email Ms. Wan indicated that:

The MLS listing agreement is a binding contract between sellers and the brokerage (which was represented by [Licencee 1]), Unconditional Release Form is also a binding agreement, needs to be agreed by both the Seller and the designated agent. Either party does not provide the signature, the Real Estate Board will not allow it to happen, it is beyond my capacity to urge [Licencee 1] to sign it. However, I had been told the sellers were asking to get the keys back and no more showing could be done anymore, according to the Rule of Cooperation, the Real Estate Board had cancelled the listing yesterday.

26. [Seller 1] replied to Ms. Wan on November 17, 2021, by email at 11:53pm. In a letter attached to that email [Seller 1] indicated that he was of the view that the information

[Licencee 1] had provided to Ms. Wan was incorrect. [Seller 1] indicated that he considered that [Licencee 1] had given the sellers an ultimatum regarding removing the property from the multiple listing service on November 12, 2021, and that despite [Seller 1] replying to [Licencee 1] on that date, he had not heard further from [Licencee 1] on the following two days². [Seller 1] indicated that [Licencee 1] continued to hold the keys to the property, and that [Licencee 1] had not attended for a scheduled viewing of the property on November 14, 2021.

27. [Seller 1] attached to the November 17, 2021 letter an unconditional release form in respect of the property, signed by the sellers, and requested that Ms. Wan sign the same.
28. Ms. Wan replied the following morning and indicated that without mutual consent to terminate the listing contract, she was not authorised to sign the unconditional release form.
29. [Seller 1] continued to write Ms. Wan over the following days. In that correspondence he requested a copy of the form the brokerage had sent to the REBGV cancelling the listing of the property on the MLS service,
30. Of note, the sellers contacted another licensee, [Licencee 3], regarding listing the property. In a November 18, 2021 email, [Licencee 3] informed the sellers that the listing was “cancel protected”, and that as a result it could not be listed by another licensee until it was released or the cancellation protection period (of 60 days duration) had expired.
31. Ms. Wan ultimately signed an unconditional release form on December 1, 2021, thereby allowing the sellers to relist the property and not be subject to the cancellation protection or the 60 day period. The “Unconditional Release Form”, signed by Ms. Wan, as well as by the sellers, specifically indicates that the sellers were released from the terms and conditions of the listing contract. [Licencee 1] and [Licencee 2], who are noted on the form as the designated agents, did not sign.

Submissions

32. In her submissions, Ms. Wan indicated that when [Licencee 1] had told her that the sellers no longer wished to have him sell the property, and that the sellers had requested to cancel the listing and get their keys back, she had engaged in appropriate due diligence by asking that [Licencee 1] provide her with documentation from the seller confirming the information provided by [Licencee 1]. Ms. Wan indicated that [Licencee 1] had subsequently provided her with that information by way of the November 12 and 14 emails from the sellers, which, in her view, clearly indicated that the sellers wished to terminate the listing agreement.
33. Ms. Wan submitted that upon receiving that information she requested that [Licencee 1] send the cancellation form to the sellers to sign. Ms. Wan submitted that [Licencee 1] had subsequently informed her that the sellers would not sign the cancellation form as they wanted to be unconditionally released from the listing contract, and that they had requested return of their keys.
34. Ms. Wan submitted that, in her view, she had at that point collected sufficient information to demonstrate that the listing could no longer be shown, given that the sellers had asked to terminate the listing agreement and have the agent return the keys. In Ms. Wan's submission, as the listing could no longer be shown for an undefined period of time, it was appropriate to send the cancellation form to the REBGV. Ms. Wan noted that the REBGV had confirmed that she was correct in this regard.

² [Licencee 1] admitted, in a November 21, 2021 email to [Seller 2], to having “ghosted” the sellers the week following November 12, 2021.

Reasons and Findings

Applicable Legislation

35. Rule 34 sets out that when providing real estate services, a licensee must act with reasonable care and skill.
36. Section 56 of RESA provides that BCFSA may designate specific provisions of RESA, the Real Estate Regulation (the "Regulations"), or the Rules as being subject to administrative penalties, and may establish the amounts or range of amounts of administrative penalty that may be imposed in respect of each contravention of a specified provision. Pursuant to section 56(2), the maximum amount of an administrative penalty is \$100,000.
37. Rule 26(1) indicates that for the purposes of section 56(1) of RESA, contraventions of the Rules listed in Rule 26(2) are designated contraventions to which Division 5 (Administrative Penalties) of Part 4 of RESA applies.
38. Rule 26(2) identifies four categories, Category A, B, C, D, for designated contraventions of the Rules for the purpose of determining the amount of an administrative penalty. Rule 34 is placed in Category C. Rule 27(3) sets out that:
 - 27(3) For each contravention of a rule listed in Category C in section 26(2)(c), the amount of the administrative penalty is as follows:
 - (a) \$5,000 for a first contravention
 - (b) \$10,000 for a subsequent contravention
39. Section 57(1) of RESA sets out that if the Superintendent of Real Estate is satisfied that a person has contravened a provision of RESA, the Regulations, or the Rules designated under section 56(1)(a) of RESA, the superintendent may issue a notice imposing an administrative penalty on the person. Section 57(2) requires that a notice of administrative penalty indicate the rule that has been contravened, indicate the administrative penalty that is imposed, and advise the person of the person's right to be heard respecting the matter.

Analysis

40. The imposition of an administrative penalty under section 57 of RESA is a discretionary decision. Requests for reconsideration of the imposition of an administrative penalty require a Hearing Officer to engage in a consideration not only of whether a contravention of RESA, the Regulations, or the Rules has occurred, but also whether a licensee exercised due diligence, that is: took reasonable steps or precautions, to prevent the contravention of the Rules identified in the notice of administrative penalty. A Hearing Officer may also consider information on any extenuating circumstances that prevented compliance, or any other information the licensee believes a Hearing Officer should consider.

Representations to the REBGV

41. The question at issue is whether Ms. Wan failed to act with reasonable care and skill when she made representations to the REBGV about the cancellation of the listing agreement.
42. In issuing the administrative penalty, BCFSA concluded that Ms. Wan's failure to act with reasonable care and skill lay in the fact that that Ms. Wan had relied solely on Mr. Kubeska's

evidence as to what had transpired with respect to his listing agreement with the sellers, without undertaking any steps to obtain further information from the sellers.

43. BCFSa further concluded that Ms. Wan's representations to the REBGV regarding the cancellation of the listing from the multiple listing service were incorrect, and that she knew or ought to have known that those representations were incorrect at the time she made them.
44. Specifically, BCFSa referred to Ms. Wan's representations to the REBGV that the listing of the property on the MLS had to be cancelled as the sellers refused to cooperate for any showings, refused offers, and refused to sign the cancellation form.
45. Ms. Wan, on the other hand, says that she did in fact conduct appropriate due diligence prior to filing the cancellation form with the REBGV.
46. Having reviewed the evidence and information before me, I consider that there can be no doubt that the contractual relationship between the sellers and Mr. Kubeska was in a difficult position as of early November 2021. Mr. Kubeska was of the opinion that a price reduction was required in order to effectively market and ultimately sell the property. The sellers were not in agreement with the price reduction suggested by Mr. Kubeska.
47. It would appear, at least to some degree, that longstanding personal relationships between the sellers and Mr. Kubeska also played some role in the difficulties in the contractual relationship. The personal nature of some of the emails and text messages makes this fact evident.
48. As I have noted above, Mr. Kubeska has been the subject of administrative penalties in respect of how he handled his contractual relationship with the sellers. Those penalties are not before me in this matter. Again, the question before me is whether Ms. Wan's actions in respect of the cancellation of the listing on the multiple listing service constituted a failure to act with reasonable skill and care.
49. I will first address BCFSa's conclusion that Ms. Wan failed to act with reasonable skill and care contrary to section 34 by relying solely on Mr. Kubeska's evidence as to what had transpired in respect of the listing agreement between him and the sellers, without conducting her own due diligence.
50. I consider that if Ms. Wan had in fact taken no steps to confirm Mr. Kubeska's account of the termination of the listing agreement, and proceeded to contact the REBGV and provide it with the cancellation form in those circumstances, it would be a straightforward matter to conclude that she had failed to act with reasonable care and skill.
51. The evidence does not, however, support a conclusion that that is what occurred.
52. I accept that, as Ms. Wan indicated in her submissions, Mr. Kubeska contacted her on November 15, 2021 and indicated that he wished to discuss the breakdown of his relationship with the sellers. I further accept that after that discussion Ms. Wan requested that Mr. Kubeska provide her with emails from the sellers indicating that the listing needed to be cancelled.
53. The evidence and information before me makes clear that Mr. Kubeska then, on November 15, 2021, provided Ms. Wan with copies of Mr. MacLeod's November 12, 2021 email, in which he wrote "you should take the listing off the market, invoice us for your expenses to date...cancel the Sunday showing, and we will figure out where we are going from here"; and Mr. Iourassov's November 14, 2021 email, in which he indicated that he wanted to "request the termination of the sales Agreement".

54. I am satisfied, based on the above, that Ms. Wan did in fact take some steps to confirm the information that had been provided to her by Mr. Kubeska regarding the breakdown in the contractual relationship. In sum, she did not rely solely on Mr. Kubeska's evidence. Rather, she relied in part on the emails from the sellers.
55. Certainly, given that Ms. Wan had the opportunity to review the emails from each of the sellers, in which each of the sellers indicate that they want the property taken "off the market", to cancel a showing, and to terminate the sales agreement, I consider that it was reasonable for Ms. Wan to conclude that the property ought not to be listed on the multiple listing service any longer.
56. I acknowledge in reaching that conclusion that Ms. Wan had not spoken or communicated directly with the sellers in obtaining the information she did from Mr. Kubeska. On the other hand, I do not consider there to be any real ambiguity in the November 12 and November 14 emails from the sellers. Rather, as I have indicated above, I consider that a reasonable person in Ms. Wan's position would have concluded that the sellers wanted the property to be removed from the multiple listing service, did not want to have any further showings of the property, and wanted to terminate the listing agreement they had signed with Mr. Kubeska and the brokerage.
57. However, the question is not merely one of whether Ms. Wan took some steps to confirm the information Mr. Kubeska had provided to her. There is a further consideration of whether Ms. Wan took sufficient steps to ensure that her representations to the REBGV demonstrated reasonable care and skill.
58. As set out above, Ms. Wan informed the REBGV that the listing needed to be cancelled due to the fact that the sellers did not want to have any more showings and were refusing any incoming offers as well. Ms. Wan further informed the REBGV that Mr. Kubeska had informed her that he was not able to get the sellers to sign the cancellation form, and that the sellers had been told that if a listing was not able to be shown for more than a certain period of time, the listing would have to be cancelled on the MLS.
59. In my view, it is these statements that present a difficulty for Ms. Wan on this application for reconsideration.
60. While Ms. Wan has stated in her submissions that Mr. Kubeska had informed her that the sellers were refusing to sign the cancellation form, I consider that a managing broker acting with reasonable care and skill, who had the information that Ms. Wan had, including the November 12 and November 14 emails from the sellers, ought to have enquired further as to why the sellers, who had indicated a desire to cancel a listing contract and no longer show their property, were now unwilling to sign the cancellation form.
61. In my view, given that Ms. Wan had seen the November 12 and November 14, 2021 emails from the sellers, the fact that the sellers were unwilling to sign the cancellation form, despite the clear indication in those emails that they no longer wished for the property to be listed, ought to have raised for Ms. Wan questions requiring further follow-up in order to ensure that Mr. Kubeska was providing her with accurate information and was complying with the Act and the Rules. I note, in reaching this conclusion, that Ms. Wan's role as a managing broker requires that she ensure that the business of the brokerage is carried out competently and in accordance with the Act, the *Real Estate Services Regulations*, and the Rules.
62. Ms. Wan does not indicate that she engaged in any further follow-up with either Mr. Kubeska or the sellers prior to writing to the REBGV on November 16, 2021.
63. Ms. Wan's position is simply that she considered that it could be proven from the seller's emails that the property would not be available for showing, and that as such she had a duty

to have the listing taken down from the MLS system to avoid misleading the public to think that the property was still available for showing.

64. I do not agree with Ms. Wan's submission that the fact that she had information to indicate that the listing would not be available to show for more than 5 days was a sufficient basis upon which to press the REBGV to cancel the listing, thereby creating a hold on the property as provided for in the above excerpted portion of the cancellation form, without a signature from the sellers on the approved form.
65. That is not to say that I do not accept Ms. Wan's submission that she felt that the listing needed to be removed from the MLS given the REBGV "Rules of Cooperation", which set out at Rule 3-22 that listings that cannot be shown for a period of 5 consecutive days is not acceptable for listing on the MLS system. I accept that Ms. Wan viewed the situation in that manner.
66. However, I further consider it to be clear from Ms. Wan's submission of the cancellation form to the REBGV that she was seeking to ensure that the cancellation protection provided for in that form was applied to the listing agreement and to the property.
67. As I have indicated above, I consider that in order to be found to have been acting as a managing broker with reasonable care and skill, additional follow-up was required from Ms. Wan as to why the sellers were not willing to sign the cancellation form, when it appeared from the correspondence she had been provided that the sellers were in fact amenable to the cancellation of the listing.
68. Such follow-up would, inevitably in my view, have provided Ms. Wan with the November 12, 2021 text message from Mr. Kubeska to the sellers which set out his position that the listing agreement needed to be terminated and that the listing needed to be taken down. I note specifically in reaching this conclusion that Mr. Iourassov provided Ms. Wan with a copy of that text message on November 17, 2021.
69. In my view, Mr. Kubeska's November 12, 2021 text message paints the nature of the cancellation of the listing agreement in a dramatically different light than do the two emails from the sellers dated November 12 and November 14, 2021.
70. Each of the November 12 and November 14 emails were sent by the sellers to Mr. Kubeska only after Mr. Kubeska had texted the sellers to inform them that he felt the listing agreement needed to be terminated and that the listing needed to be taken down. Simply put, while it is clear that the relationship between the parties was not going well, I consider the November 12, 2021 text message from Mr. Kubeska to have been the impetus for the cancellation of the agreement, with the follow-up emails from the sellers confirming the same later that day on November 12 and on November 14, 2021.
71. I also consider Mr. Kubeska's November 12, 2021 text message to make it clear that not only was he of the view that the listing agreement ought to be terminated, but that even though the agreement was being cancelled at his impetus, he was going to consider whether or not to issue a bill to the sellers for activities he had undertaken to that point.
72. Ms. Wan, having not yet seen Mr. Kubeska's November 12, 2021 text message, was not aware of these facts at the time she sent the cancellation form in to the REBGV on November 16, 2021.
73. In short, due to the fact that Ms. Wan did not take reasonable steps to determine the reason for the sellers' refusal to sign the cancellation agreement, she was not aware of the fact that it was in fact Mr. Kubeska who initiated the termination of the listing agreement, not the sellers.

74. To the contrary, Ms. Wan had been left with the impression, due to the limited information Mr. Kubeska had given her, that it was the clients who had sought termination of the listing agreement and removal of the listing from the market, and were now being uncooperative in refusing to sign the cancellation form. This impression was inaccurate.
75. This inaccurate impression held by Ms. Wan was then passed on to the REBGV. The REBGV took the information provided by Ms. Wan at face value, and as a result put a hold on the listing, which prevented the sellers from relisting the property with another agent for a period of 60 days.
76. While it would require speculation to determine whether that “hold” would have been placed on the property if the REBGV was aware that the listing agreement cancellation was suggested by the licensee, and not the sellers, the fact remains that the REBGV was not provided with that information. The REBGV was not provided with that information because Ms. Wan was not in a position to provide it, as she had not undertaken the diligence required to have obtained that information herself.
77. Given the above, I find that Ms. Wan failed to exercise reasonable care and skill in providing information to the REBGV which was inaccurate and incomplete, and which, had she conducted reasonable enquiries, she would have known was incomplete.
78. I therefore consider that Ms. Wan to have contravened Rule 34, and that in doing so she failed to exercise the required due diligence to ensure that she met the requirements of Rule 34.

Representations to the Sellers

79. I turn to Ms. Wan’s indication to the sellers, in her November 18, 2021 email, that she was not authorized to sign the unconditional release form. Specifically, in that email Ms. Wan wrote:

Unfortunately, the Unconditional Release form is to terminate a binding contract, without mutual consent I am not authorized to give my signature to it.
80. Given that Ms. Wan did ultimately sign the unconditional release form in question, I consider her November 18, 2021 representations to the sellers in this respect to clearly have been incorrect. I therefore have no difficulty finding that Ms. Wan did not exercise reasonable care and skill when she made that November 18, 2021 representation to the sellers that constitutes a contravention of Rule 34.
81. While I acknowledge Ms. Wan’s submission that she was not “obliged” to provide the unconditional release, that is not what the representation she made to the sellers in the November 18, 2021 email. Rather, Ms. Wan represented to the sellers that she was not “authorized” to sign the release. Again, given that she did ultimately sign the release in question, I find that Ms. Wan’s statement in this regard was clearly incorrect and a misrepresentation to the sellers.
82. I note that Ms. Wan did not, in her submissions, indicate what steps she took to confirm the accuracy of the representation regarding her “authorization” to sign the release. Again, given that she did ultimately determine that she was authorized to sign the unconditional release, I

consider the evidence to indicate that Ms. Wan did not exercise due diligence prior to making that representation to the sellers.

Penalty Amount

83. As set out above, Rule 27(3) sets out that the amount of an administrative penalty for a first contravention of Rule 34 is \$5,000, which is the penalty that was applied in this case.
84. Given my findings above, and the fact that the penalty applied was the base penalty of \$5,000, I find that the Penalty should be confirmed.

Conclusion

85. I find that Ms. Wan contravened Rule 34 of the Rules, by making incorrect representations to the REBGV, and to the sellers, when she knew or ought to have known that those representations were incorrect, and without conducting appropriate due diligence, such that she failed to act with reasonable care and skill when dealing with the cancellation of the listing agreement.

86. As a result, the January 11, 2024 administrative penalty is confirmed.

87. The administrative penalty is now due and payable to BC Financial Services Authority.

DATED at KELOWNA, BRITISH COLUMBIA this 28th day of March, 2024.



Andrew Pendray
Chief Hearing Officer