Citation: Rohani (Re), 2024 BCSRE 31
Date: 2024-05-17
File # 19-634

BC FINANCIAL SERVICES AUTHORITY

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*

SBC 2004, c 42 as amended

IN THE MATTER OF

RASHIN ROHANI
(163039)

Corrected Decision: The date in the signature line was corrected on page 22 on May 21, 2024.

DECISION ON SANCTION

[This Decision has been redacted before publication.]

Date of Hearing:	Written Submissions
Counsel for BCFSA:	Menka Sull Jon Peters
Counsel for the Respondent:	Raminder Arora
Hearing Officer:	Andrew Pendray

Introduction

1. In a January 11, 2024 decision, *Rohani (Re),* 2024 BCSRE 3 (the "liability decision"), I determined that the respondent, Rashin Rohani, had committed professional misconduct, as contemplated by section 35(1) of the *Real Estate Services Act* ("RESA"), in that she had breached sections 30(a) and 34 of the *Real Estate Services Rules* when, in 2017, she referred six buyer clients to an individual named Jay Chaudhary, when she knew or ought to have known he was not a registered mortgage broker.

2. I further determined, in the liability decision, that Ms. Rohani breached section 30(a) of the Rules, and thereby committed professional misconduct within the meaning of section 35(1) of RESA, when she referred clients to Mr. Chaudhary in anticipation of receiving remuneration from Mr. Chaudhary and failing to disclose that anticipated remuneration to her clients.

3. I also determined that Ms. Rohani committed conduct unbecoming within the meaning of section 35(2) of RESA when, in 2016, she submitted mortgage applications prepared by Mr. Chaudhary for three properties, with each of those mortgage applications containing falsified income and savings information. Finally, I determined that Ms. Rohani committed conduct unbecoming within the meaning of section 35(2) of RESA when, in 2018, she used the services of Mr. Chaudhary,

who she knew or ought to have known was not a registered mortgage broker and who had previously falsified income documents for her, to obtain mortgage financing for two properties.

4. This decision relates to the sanctions and orders to be issued in respect of Ms. Rohani's conduct.

5. The hearing of the sanctions portion of this matter proceeded by way of written submissions.

6. BCFSA seeks orders that Ms. Rohani's licence be cancelled pursuant to section 43(2)(c) of RESA; that Ms. Rohani pay a discipline penalty in the amount of $100,000 pursuant to section 43(2)(i) of RESA; and that Ms. Rohani pay enforcement expenses in the amount of $116,623.35.

7. Ms. Rohani submits that an appropriate penalty would be a suspension of her licence for a period of six months or, in the alternative, a discipline penalty in the amount of $15,000. She further submits that she should be ordered to pay $20,000 in respect of enforcement expenses.

Issue

8. The issue is the appropriate orders to be issued in respect of Ms. Rohani's conduct, as provided for by section 43 of RESA.

9. Additionally, there is the question of whether Ms. Rohani should be required to pay enforcement expenses pursuant to section 43(2)(h) of RESA and, if so, the appropriate quantum of those expenses.

Jurisdiction

10. 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 with respect to sections 42 through 53 of RESA.

Background and Evidence

11. The background to this matter is set out in the liability decision. I will not reproduce the entirety of that background and evidence here. The following summary is intended to provide context for my reasons.

12. Ms. Rohani was first licensed as a trading representative under RESA in January 2012. She has continued to be licensed since that time, with two periods of approximately one year, from August 2012 to October 2013, and January 2014 to April 2015, where she was unlicensed, until she surrendered her licence in December 2023.

13. Since April 22, 2015, and continuing at the time of the hearing of this matter, Ms. Rohani was licensed with Team 3000 Realty Ltd. (North Vancouver).

14. On June 7, 2019, the former Real Estate Council of BC ("RECBC") received a letter from the former Financial Institutions Commission of BC ("FICOM")[1] regarding a cease and desist order that had been issued for Jay Chaudhary on May 29, 2019. The cease and desist order indicated that Mr. Chaudhary was engaged in unregistered mortgage broker activity.

15. The June 7, 2019 letter indicated that FICOM had obtained evidence which suggested that Mr. Chaudhary had used altered/fraudulent documents such as tax documents, bank account statements, and letters of employment to obtain mortgage financing for clients of real estate licensees, and that he had also assisted licensees in obtaining mortgage financing for their own purposes, also through the use of altered/fraudulent support documents.

16. FICOM further noted that in the course of its investigation into Mr. Chaudhary, it had obtained evidence which suggested that RESA licensees had referred their clients to Mr. Chaudhary, and that the licensees had received a fee for having made that referral.

17. FICOM received complaints that Mr. Chaudhary was doing unregistered mortgage broker activity in 2017. In general terms those complaints were that Mr. Chaudhary was working with realtors and mortgage brokers, creating fraudulent documents and obtaining funding based on that fraudulent documentation.

18. On February 12, 2019, FICOM investigators were involved in a search of Mr. Chaudhary's property, where materials including electronic devices, cell phones, portable drives, and mortgage files that Mr. Chaudhary had been working on were seized.

19. Included in the documents seized during the February 12, 2019 search was a colour coded excel spreadsheet (the "client spreadsheet"). The client spreadsheet provided investigators with an outline of who Mr. Chaudhary's clients were. The client spreadsheet sets out (among other things):

- Closing Date;
- Client Name;
- The name of the person from whom the referral was received;
- The type of deal (purchase or refinancing);
- The bank that provided the funds;
- The broker who had submitted the deal to the bank;
- The mortgage amount;
- Whether there was a third party insurer;
- The client fee;
- The broker fee; and
- The property address.

20. Ms. Rohani was listed as a borrower in the client spreadsheet, and as a realtor who had received a finders fee for client referrals to Mr. Chaudhary.

21. On June 26, 2023 BCFSA issued, pursuant to section 40 of RESA, an amended notice of discipline hearing (the "Notice of Hearing") in relation to Ms. Rohani.[2]

22. The specific allegations against Ms. Rohani set out in the Notice of Hearing were as follows:

> 1. You committed professional misconduct within the meaning of section 35(1) of the RESA and conduct unbecoming within the meaning of section 35(2) of the RESA in that:
>
> > a. you referred at least six (6) buyer clients, including those listed in Schedule 'A', to Jay Chaudhary also known as Mike Kumar

("Chaudhary") in 2017 when you knew or ought to have known that he was not a registered mortgage broker thereby putting your clients at risk, contrary to section 30(a) [duty to act in the best interests of the client] (formerly section 3-3(a)), section 33 [duty to act honestly] (formerly section 3-4) and section 34 [duty to act with reasonable care and skill] (formerly section 3-4) of the Rules; and

b. you received or anticipated receiving remuneration from Chaudhary, who you knew or ought to have known was not a registered mortgage broker, in the form of a referral fee without disclosing the remuneration to your clients, contrary to section 30(a) [duty to act in the best interests of the client] (formerly section 3-3(a)) and section 34 [duty to act with reasonable care and skill] (formerly section 3-4) of the Rules.

2. You committed conduct unbecoming within the meaning of section 35(2) of the RESA in that:

a. you submitted a mortgage application in June 2016 in relation to the purchase of a property located at [Property 1], North Vancouver with falsified income and savings information and using the services of Chaudhary, who you knew or ought to have known was not a registered mortgage broker;

b. you submitted a mortgage application in August 2016 in relation to the purchase of a property located at [Property 2], North Vancouver with falsified income information and using the services of Chaudhary, who you knew or ought to have known was not a registered mortgage broker;

c. you submitted a mortgage application in August 2016 in relation to the refinancing of a property located at [Property 3], North Vancouver with falsified income information and using the services of Chaudhary, who you knew or ought to have known was not a registered mortgage broker; and

d. you used the services of Chaudhary, who you knew or ought to have known was not a registered mortgage broker and who had previously falsified income documents for you, to obtain mortgage financing for two properties you purchased in 2018, while representing yourself as the buyer, located at [Property 4], North Vancouver, and [Property 5], North Vancouver.

23. The properties identified in Schedule A were the following:

- [Property 6], North Vancouver;
- [Property 7], North Vancouver;
- [Property 8], Port Moody;
- [Property 9], Maple Ridge;
- [Property 10], New Westminster; and
- [Property 11], North Vancouver.

24. For the sake of clarity, the allegations set out at item 2 of the Notice of Hearing were essentially that Ms. Rohani, in seeking mortgages for herself:

- Submitted applications for mortgages in 2016 which contained falsified income and savings information, and that this constituted conduct unbecoming;

- Used Mr. Chaudhary as a mortgage broker in 2016, when she knew or ought to have known that he was not a registered mortgage broker, and that this constituted conduct unbecoming; and

- Used Mr. Chaudhary's services again in 2018, when she knew or ought to have known that he was not a registered mortgage broker and had previously falsified income documents for her, and that this was conduct unbecoming.

25. In the liability decision, I concluded that the evidence did not support the conclusion that when she used [Mr.] Chaudhary as a mortgage broker in 2016, she knew or ought to have known that he was not a registered mortgage broker. With respect to the remaining allegations, I made the following findings:

> 123. I consider it to be more likely than not that Ms. Rohani was aware that she was required to provide proof of income in order to qualify for the mortgage for [Property 1]. While I accept that Mr. Chaudhary may have told Ms. Rohani that there was a way to estimate the earnings for self-employed people, I also consider the reality of the situation is likely that Ms. Rohani knew that she had to provide proof of income of approximately $168,000 per year as required by the commitment letter, that she knew that she could not provide such information, but that she felt that Mr. Chaudhary could.
>
> 124. In my view, the most likely scenario is that Ms. Rohani relied on Mr. Chaudhary to provide falsified income and savings information to the lender in order to enable her to obtain the mortgage for [Property 1] that she would otherwise not have been able to obtain. In summary, I consider that it is more likely than not that Ms. Rohani was relying on Mr. Chaudhary to perpetuate a deception on her behalf in order to enable her to obtain a mortgage.
>
> 125. I note that Ms. Rohani's evidence was that after the success of the [Property 1] mortgage application, she determined to use Mr. Chaudhary's services on two further occasions in 2016.
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> 126. In my view, in determining to continue to rely on Mr. Chaudhary for those further applications, when she knew that her income was in fact too low to qualify her for further mortgages, Ms. Rohani was once again relying on Mr. Chaudhary to provide lenders with falsified income and savings information for her own mortgages, and thereby perpetuate a deception on her behalf.
>
> 127. I consider Ms. Rohani's engagement of Mr. Chaudhary in each of the above transactions to constitute conduct unbecoming as contemplated by section 35(2) of RESA, in that Ms. Rohani's participation in the deception of the lenders, due to Mr. Chaudhary's use of fraudulent documents, would bring the real estate industry into disrepute.

> 128. Finally, with respect to the 2018 mortgages Ms. Rohani obtained, I consider that, in once again engaging the services of Mr. Chaudhary, when she knew that he was prepared to engage in the production of falsified income and savings documents, and when she knew that she had no employment income in 2016 and limited employment income in 2017 and would therefore not qualify for a mortgage absent Mr. Chaudhary providing those falsified documents, Ms. Rohani was engaged in that deception, and therefore engaged in conduct unbecoming as contemplated by section 35(2) of RESA.
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> …
>
> 134. …I am of the view that even with a minimum amount of diligence in the service of her clients, Ms. Rohani would have become aware, in 2017, of the fact that Mr. Chaudhary was not a registered mortgage broker. As such, I consider that she knew or ought to have known that fact by the time of the 2018 mortgages. I find that, in using Mr. Chaudhary's services as a mortgage broker when she knew or ought to have known that he was not registered, Ms. Rohani acted contrary to the best interests of the public and engaged in conduct that brings the industry into disrepute. As a result, I find that for this reason Ms. Rohani also committed conduct unbecoming in respect of the 2018 mortgage transactions.

26. The allegations set out at item 1 of the Notice of Hearing relate to Ms. Rohani having:

- referred buyer clients to Mr. Chaudhary as a mortgage broker when she knew or ought to have known that Mr. Chaudhary was not a registered mortgage broker, thereby putting her clients at risk; and

- received or anticipated receiving remuneration from Mr. Chaudhary, in the form of a referral fee, without disclosing that remuneration to her clients.

27. At the liability hearing Ms. Rohani admitted having made referrals to Mr. Chaudhary in respect of five of the six buyer clients listed in the Schedule to the Notice of Hearing. I found that the evidence supported the conclusion that she had in fact made such a referral in all six cases, and that those referrals constituted professional misconduct:

> 151…. I consider that in referring her clients to an unregistered mortgage broker who charged a significant fee for his services to applicants, Ms. Rohani was clearly not acting in the best interests of her clients.
>
> 152. Rather, I consider it to be more likely than not, based on the client spreadsheets, that rather than acting in the best interests of her clients, Ms. Rohani was in fact motivated to recommend Mr. Chaudhary's services in order to profit from the arrangement. As BCFSA submits, this was in Ms. Rohani's best interest, but not that of her clients.
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> 153. On that basis alone, I would find that Ms. Rohani committed professional misconduct by being in breach of Rule 3-3.

154. While Ms. Rohani has submitted that she was simply unaware that Mr. Chaudhary was unregistered, I am of the view that she ought to have known of that fact, and that any failure to have been aware constituted a failure to act with reasonable care and skill.

…

160. I note that there was nothing that required Ms. Rohani to make any recommendations about any mortgage broker to her clients. I consider, however, that once she determined that she would make such recommendations to her clients, and particularly in respect of a potentially life altering financial transaction, Ms. Rohani was required, at minimum, to ensure that the recommended party was appropriately qualified to provide those financial services. Here, Ms. Rohani failed to take any steps to do so. I find that she acted without reasonable care and skill for her clients.

161. I therefore find that Ms. Rohani breached Rules 3-3 and 3-4 in recommending Mr. Chaudhary to her clients in respect of the six transactions listed at Schedule A. Given that a breach of a rule constitutes professional misconduct within the meaning of section 35(1) of RESA, I further find that Ms. Rohani committed professional misconduct in making those recommendations.

162. I turn to the allegation that Ms. Rohani committed professional misconduct when she received, or anticipated receiving remuneration, from Mr. Chaudhary.

163. Mr. Chaudhary's evidence at the Commission was that he paid a referral fee to the realtors he worked with. This would appear to be supported by the client spreadsheet, which identifies the referral realtors and the total commission amount Mr. Chaudhary charged.

164. In the face of Mr. Chaudhary's evidence at the Commission, and the client spreadsheet, which specifically sets out what appears to be a fee to be paid to "Rashin", I do not find Ms. Rohani's evidence that she did not receive any fees as a result of providing the referrals from Mr. Chaudhary to be compelling.

…

167. Having considered all of the evidence, I am satisfied that it is more likely than not that Ms. Rohani referred clients to Mr. Chaudhary in anticipation of receiving remuneration for that referral, and that she did not reveal that fact to her clients. I find that such action was contrary to the best interests of her clients (contrary to section 30(a) of the Rules, formerly Rule 3-3(a)).

Applicable Law and Legal Principles

28. 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 license;

(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;[3]

(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.

29. In general terms, sanctions in relation to breaches of RESA are issued with a view to the overarching goal of protecting the public.

30. Sanctions may serve multiple purposes, including:

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

31. Administrative tribunals generally consider a variety of mitigating and aggravating factors in determining sanctions, largely based on factors which have been set out in cases such as *Law Society of British Columbia v. Ogilvie*, 1999 LSBC 17, and *Law Society of British Columbia v. Dent*, 2016 LSBC 5. In *Dent*, the panel summarized what it considered to be the four general factors, to be considered in determining appropriate disciplinary action:

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

[20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim?

Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

(b) Character and professional conduct record of the respondent

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

(c) Acknowledgement of the misconduct and remedial action

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

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

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

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

Discussion

The Misconduct

33. BCFSA describes the nature of Ms. Rohani's misconduct as "egregious". It submits that Ms. Rohani participated not only in perpetuating a fraud on lenders with respect to her own mortgages, but that she also, by referring clients to Mr. Chaudhary, knew that further mortgages with falsified documents would be submitted. BCFSA submits further that in referring clients to Mr. Chaudhary, Ms. Rohani was not acting in the best interests of her clients, as Mr. Chaudhary was charging those clients a significant fee, a portion of which Ms. Rohani received as a referral fee, which she did not disclose to those clients. In BCFSA's submission, Ms. Rohani placed her clients at risk of serious and negative consequences.

34. Ms. Rohani, on the other hand submits that while her misconduct was serious, that misconduct ought to be seen as falling on the low end of the liability spectrum. In making that submission Ms. Rohani notes that there have been minimal, if any, adverse consequences to third parties as a result of her misconduct.

35. I note that Ms. Rohani resiled from some of her submissions, including that she had not been found to have engaged in conduct unbecoming in respect of her own 2016 mortgages, indicating that her counsel had misread a portion of the liability decision. I accept Ms. Rohani's sur-reply submission in that regard.

36. Based on the evidence that was before me at the liability hearing, and the findings made in the liability decision, I am satisfied that Ms. Rohani's misconduct is appropriately described as severe.

37. Simply put, the findings against Ms. Rohani were not of a type that involved a single incident of misconduct or conduct unbecoming. Rather, the findings against Ms. Rohani identify a pattern of both conduct unbecoming and professional misconduct, occurring in at least 11 transactions over the course of three years.

38. As set out above, and in the liability decision, in using the services of Mr. [Chaudhary] in order to obtain her own mortgages in 2016 and 2018, Ms. Rohani was specifically relying on Mr. Chaudhary to provided falsified income and savings information to lenders.

39. In sum, I consider that when she obtained her own mortgages through Mr. Chaudhary, Ms. Rohani was participating in a fraudulent document scheme that would bring the real estate industry into disrepute. Ms. Rohani did this not on one occasion, but five. Further, Ms. Rohani failed to act in the best interest of the public in continuing to use Mr. Chaudhary as mortgage broker in 2018 when she knew or ought to have known that he was not registered, which action again, would in my view, bring the real estate industry into disrepute.

40. On their own, I consider that the findings of conduct unbecoming on Ms. Rohani's part would constitute misconduct that ought to be categorized as severe.

41. In addition, however, there is the fact Ms. Rohani engaged in professional misconduct by referring six clients to Mr. Chaudhary when she knew or ought to have known that he was not a registered mortgage broker, that she did so in anticipation of receiving remuneration from Mr. Chaudhary, and that she did so without disclosing that anticipated remuneration to her clients.

42. As with the conduct unbecoming, that professional misconduct engaged in by Ms. Rohani was not a single incident of misconduct. Rather, Ms. Rohani engaged in repeated actions of misconduct in which she failed to act in the bests interests of her clients and failed to act with reasonable care and skill.

43. Again, even taken on their own, I would consider the nature of Ms. Rohani's professional misconduct activities to be of a type that ought to be categorized as severe.

44. In reaching this conclusion I acknowledge Ms. Rohani's submission that her conduct unbecoming in respect of her personal mortgages had minimal impact on third parties, in that there had been no default on any of those mortgages. Ms. Rohani further submitted that, as far as she was aware, the six clients she referred to Mr. Chaudhary continued to hold the properties they had purchased, without default. In summary, Ms. Rohani submitted that there was no evidence "of any serious implications for third parties" resulting from her professional misconduct.

45. I note, in respect of Ms. Rohani's submission in this respect, that the evidence at the liability hearing was that Ms. Rohani's client, [Client 1], paid a fee to Mr. Chaudhary's company. I concluded, at paragraph 166 of the liability decision that:

> … it is more likely than not that the fact pattern that appears to have played out in the [Client 1] mortgage also played out in respect of the other transactions noted at Schedule A of the Notice of Hearing. I note that the client spreadsheet in each of those transactions sets out a "Fee Client" and a "Fee Broker"

46. While I accept that there was no evidence before me suggesting that there were any defaults on any of the mortgage transactions referred to in the Notice of Hearing, I am satisfied that it is more likely than not that the clients that Ms. Rohani referred to Mr. Chaudhary paid significant fees to Mr. Chaudhary in order to obtain their mortgages. I am satisfied that the payment of those fees, to an unregistered mortgage broker, constitutes some evidence of harm to the public. I further consider the fact that Ms. Rohani likely received a financial benefit from Mr. Chaudhary in respect of her client referrals is an aggravating factor in respect of a consideration of the severity of Ms. Rohani's misconduct.

47. In general terms, I consider that the professional misconduct engaged in by Ms. Rohani was of a type that placed the public at risk of harm. After considering all of the evidence, I am satisfied that Ms. Rohani's actions in respect of her conduct unbecoming and professional misconduct all demonstrated a disregard for the Rules, the regulatory scheme, and the standards expected of real estate licensees to uphold the reputation of and public confidence in the profession. I note, in reaching this conclusion, that Ms. Rohani had been licensed for a number of years prior to the misconduct at issue. I agree with BCFSA's submission that Ms. Rohani ought to, at the time the misconduct at issue occurred, have had extensive knowledge of the Rules, including the importance of acting in the best interests of her clients, and knowledge of the importance of ensuring that her conduct was not of the type which would bring the real estate industry into disrepute.

48. Overall, I find that Ms. Rohani's misconduct is appropriately considered to be severe.

Other Relevant Factors

Professional Conduct Record

49. Ms. Rohani has no prior disciplinary history with BCFSA or its predecessor regulators.

50. On Ms. Rohani's submission, her lack of a prior disciplinary record is a factor that should be found to militate in favour of a less severe penalty.

51. BCFSA submits that Ms. Rohani's lack of a prior disciplinary record should be considered the absence of a further aggravating factor.

52. In my view, Ms. Rohani's lack of a prior disciplinary record is properly considered as a neutral factor.

53. Individuals who participate in regulated industries are subject to the laws, rules, and regulations associated with those industries. They are expected to comply with the laws, rules, and regulations that are applicable to them. Compliance with the regulatory scheme is, in effect, part of the individual licensee's professional responsibility. It does not strike me as logical that the penalty that would normally be appropriate for the misconduct in question should automatically be reduced simply because the person has not previously been disciplined for breaching the applicable regulatory law or rules. Compliance with those professional responsibilities is to be expected.

54. In reaching that conclusion, I note that I have no difficulty accepting that a history of prior discipline can, generally, appropriately be seen as an aggravating factor.

Acknowledgement of Misconduct and Remedial Action

55. BCFSA submitted that Ms. Rohani's denial of any wrongdoing throughout the investigation into this matter weighs in favour of a severe disciplinary sanction. BCFSA further submits that Ms. Rohani's testimony at the liability portion of the hearing was not credible, including her testimony that she had simply failed to review agreements that contained falsified income.

56. Ms. Rohani, submitted that she had been sincerely unaware that Mr. Chaudhary was not a registered mortgage broker, and that she now understood that her failure to exercise more diligence amounted to conduct unbecoming and professional misconduct.

57. In my view, the evidence does not support a conclusion that Ms. Rohani has truly acknowledged her misconduct, such that this ought to be considered a mitigating factor.

58. I note in this respect that Ms. Rohani took the position, throughout the liability hearing, that although she knew she did not have sufficient income to qualify for even a single mortgage, she had understood, when she applied for her personal mortgages through Mr. Chaudhary, that there was a program that enabled her to put a higher than actual income on those mortgage applications. Ms. Rohani provided no evidence of what that alleged program was, and simply indicated that she trusted Mr. Chaudhary. Further, Ms. Rohani's evidence was that she did not review her own personal mortgage transaction documents and that she was simply unaware of the fact that the documents provided to lenders in support of those mortgage transactions were not genuine.

59. As I indicated in the liability decision:

> 124. In my view, the most likely scenario is that Ms. Rohani relied on Mr. Chaudhary to provide falsified income and savings information to the lender in order to enable her to obtain the mortgage for [Property 1] that she would otherwise not have been able to obtain. In summary, I consider that it is more likely than not that Ms. Rohani was relying on Mr. Chaudhary to perpetuate a deception on her behalf in order to enable her to obtain a mortgage.

60. Ms. Rohani has not, in my view, acknowledged the severity of her misconduct in that respect.

Mental Health

61. In her submissions on sanctions Ms. Rohani provided an affidavit dated March 14, 2024. In that affidavit Ms. Rohani indicated that she had been suffering from anxiety and depression since 2012, and that her family doctor had advised her to avoid stressful situations and environments as those could trigger her conditions.

62. In a February 26, 2024 letter Ms. Rohani's family physician, [Doctor 1], indicated that:

> [Ms. Rohani] has been diagnosed with [Redacted] since 2012, and has been struggling with [a] spectrum of symptoms, including [Redacted]. It is definitely recommended that she avoid stressful situation[s] and environment as it can trigger and aggravate her mental condition.

63. In Ms. Rohani's submission, her mental health issues have "adversely impacted her ability to concentrate and pick up on cues that would otherwise be obvious to a reasonable person".

64. I note that Ms. Rohani's claim in her submission does not specifically accord with what Ms. Rohani has indicated in her affidavit, nor to what [Doctor 1] indicated in his letter.

65. That is not to say that I do not accept that [Doctor 1] has diagnosed Ms. Rohani, or that she has experienced symptoms in respect of those conditions since 2012. However, I note that Ms. Rohani did not, on her evidence, explain how it was that her mental health issues may have affected her decisions to engage the services of Mr. Chaudhary in respect of her own falsified mortgage applications, or how those issues may have affected her decisions to refer her buyer clients to Mr. Chaudhary.

66. In sum, I do not consider the evidence before me to demonstrate a nexus between Ms. Rohani's mental health conditions and her misconduct. As a result, I do not consider that her mental health conditions should be taken into account in determining the appropriate sanctions in this case.

Previous Sanctions Decisions and Consent Orders.

67. In determining the appropriate sanction, consideration should be given to disciplinary action that has been issued in similar cases. While prior disciplinary decisions and consent orders are not binding on me, they can be of assistance in determining a penalty that the public will have confidence in.

68. The parties have referred to a number of previous disciplinary decisions and consent orders. I note, prior to reviewing those decisions and consent orders below, that I am of the view that caution must be taken when comparing an agreed upon penalty from a consent order to a penalty that is imposed subsequent to a discipline hearing, given that there are a myriad of reasons for a respondent to agree to a consent order which may not be apparent from a review of that consent order.

69. With that comment in mind, I turn to a review of the cases cited.

70. BCFSA referred to the following cases:

- In *Campbell (Re)*, 2023 BCSRE 54, the respondent was found to have provided unlicensed rental property management services in respect of 17 properties, over a significant number of years, and to have likely earned in excess of $80,000 by providing those unlicensed services. The respondent was found to have demonstrated a disregard for the regulatory scheme and to have created a risk of harm to those he provided services. A penalty of $100,000 was ordered, as well as enforcement expenses of $25,805.26.

- In *Yang (Re)*, 2021 CanLII 86353 (BCREC), a decision under the penalty regime as it existed prior to September 30, 2016, the respondent was found to have engaged in repeated deceptive misconduct in respect of more than 10 properties, including the forging of her managing broker's signature and falsifying amendment forms and listing contracts. The discipline committee suspended Ms. Yang's licence for one year, and ordered her to complete remedial education and pay $150,000 in enforcement expenses. The suspension was reduced to nine months in *Yang (Re)*, 2022 BCFST 1.

- In *Parsons v. Real Estate Council of British Columbia,* FST Decision No. 2015-RSA-002(d), a decision under the penalty regime as it existed prior to September 30, 2016, Mr. Parsons was found to have committed professional misconduct within the meaning of section 35(1) by failing to make sufficient or any inquiries about his client's ability to conduct business in a prudent manner and with due regard for her own interest when Mr. Parsons knew the complainant's status to do so was in question given that she was an inpatient at a psychiatric hospital. Mr. Parsons was also found to have engaged in deceptive dealing or demonstrated incompetence in performing a duty for which a licence is required by withholding facts from the complainant when he knew those facts were of material importance.

  Specifically, Mr. Parsons prepared an offer on behalf of the complainant which did not have an inspection clause, and did not advise the complainant of a material defect, water ingress. Mr. Parsons also did not inform the complainant that the listing agent for the property was his son, which was material information about a conflict of interest. The Financial Services Tribunal upheld the cancellation of Mr. Parsons' licence, with a period of ineligibility reduced from five years to 30 months; as well as reducing the penalty from $10,000 to $5,000. In reducing the ineligibility period, the FST noted that Mr. Parsons had not engaged in activities that were akin to fraud, and that the non-disclosure may have been the result of carelessness or incompetence rather than dishonesty.

- In *Salanga (Re)*, 2017 CanLII 57049 (BC REC), the respondent was engaged in the misappropriation of client funds upwards of $300,000 from what the discipline committee described as gullible and unsophisticated members of the community. He was convicted criminally in respect of some of the fraudulent misappropriation. The respondent, who no longer held a licence, was prohibited from applying for a licence for a period of 15 years, and ordered to pay the maximum discipline penalty of $10,000, and enforcement expenses of $16,952.21.

- In *Lalli (Re),* 2010 CanLII 46486 (RECBC), another decision involving the prior penalty regime, a licensee received deposit funds of $4,280 USD (about $5,292 CAD) but did not deposit the funds into a brokerage trust account, and wrongfully took them as he failed to pay them back on demand. The licensee also contravened various other Rules. Although he was not licensed at the time, the Discipline Committee cancelled his licence and ordered ineligibility for licensure for five years.

- *Nielsen (Re)*, 2012 CanLII 82669 (RECBC) was a consent order in which the licensee admitted to having falsified a contract of purchase and sale as well as various financial documents, including income and tax information presented to a mortgage lender. The licensee agreed to a three-year licence cancellation, undertaking educational courses as a condition of re-licensing, and the payment of enforcement expenses.

71. Ms. Rohani referred to the following decisions and consent orders:

- In *Scoffield (Re)*, 2023 BCSRE 56, the respondent was found to have provided trading services and rental property management services, while not licensed to do so, contrary to section 3 of RESA for approximately five years, to having received remuneration in excess of $20,000 for having done so, and to having withheld, concealed, or refused to provide information required for BCFSA's investigation. A discipline penalty of $40,000 was ordered, as well as enforcement expenses of $13,107.

- In *Siemens (Re)*, 2020 CanLII 63581 (RECBC), the respondent provided a loan to his client without advising the client to obtain independent legal advice or advising that the loan could put him in a conflict of interest situation. The respondent also failed to document the terms of the loan before proceeding with it. The respondent was ordered to pay a $5,000 fine[4], and to undertake remedial education and training. No suspension was ordered.

- *Erfani (Re)* (27 August 2020), BCFSA[5], was a consent order issued pursuant to the *Mortgage Brokers Act* ("MBA"). Ms. Erfani admitted having conducted mortgage business in a manner prejudicial to the public and contrary to section 8 of the MBA by facilitating Mr. Chaudhary's unregistered mortgage broker activities, including by submitting mortgage documents in respect of 18 borrowers and 20 mortgage applications, which mortgage applications included income and banking information when she knew or ought to have known that at least some of the information included in the application was inaccurate, and at least some of the supporting documents were not genuine. Ms. Erfani, who was no longer registered as a mortgage broker, consented to never re-apply for registration and to pay partial investigation costs.

- *Esmaili (Re)* (11 December 2020), BCFSA[6], was another consent order issued pursuant to the MBA. Mr. Esmaili admitted to similar misconduct as did Ms. Erfani, in respect of facilitating Mr. Chaudhary's unregistered mortgage broker activities. Mr. Esmaili agreed to the same orders as Ms. Erfani.

- *Parsaeian (Re)*, 2024 BCSRE 11, was a consent order in which Mr. Parsaeian agreed to pay a discipline penalty in the amount of $20,000, undertake remedial education, and pay enforcement expenses. Mr. Parsaeian admitted to referring at least two buyers, over four transactions, to Mr. Chaudhary in 2017 when he knew or ought to have known that Mr. Chaudhary was not a registered mortgage broker. Mr. Parsaeian also admitted to failing to properly complete forms in relation to two clients. The consent order specifically sets out that Mr. Parsaeian did not receive any referral fees or commissions for his referrals to Mr. Chaudhary.

Decision on Sanction

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

73. I note at the outset of my consideration of the appropriate sanction in this case that in her submissions Ms. Rohani described herself as a single mother who is solely responsible for all expenses associated with her household, with a monthly income that is just enough to cover expenses. Ms. Rohani noted that she at times would receive financial help from her family in Iran to keep up with expenses, and provided documents supporting that fact.

74. Ms. Rohani submitted she would be incapable of paying the penalty BCFSA sought against her, and that the amount of the penalty sought would have a retributive or punitive effect rather than one of general or specific deterrence, or otherwise protecting the public.

75. While I do not consider a party's financial situation to generally constitute one of the factors for determining an appropriate sanction, I note that regardless of my view in that regard, I would not consider the evidence and submissions provided by Ms. Rohani to in fact provide a basis upon

which to conclude that the imposition of a penalty such as that sought by BCFSA would serve only to have a punitive or retributive effect.

76. I note that while Ms. Rohani submitted that she had limited income, she also indicated that her "name is on title" for three properties. While Ms. Rohani indicated that she did not pay the expenses on two of those properties and did not receive rental income for them, she did not provide any evidence to indicate that she was not entitled to whatever equity may exist in those properties for which she is the registered owner. Nor did Ms. Rohani provide any financial statements which would have provided evidence of her assets or liabilities.

77. The only additional information Ms. Rohani has provided regarding her finances are letters documenting the mortgages she has on one of her properties. I do not consider the fact that Ms. Rohani has mortgages on her property, and that she relies on her family to provide her with funds at times, to mean that she is not entitled to the equity that would exist in the properties she owns, or to support a conclusion that Ms. Rohani's financial situation is such that she would be incapable of paying the penalty sought by BCFSA. As BCFSA pointed out in its submissions:

> The fact is that Ms. Rohani, by some means, was able to service five mortgages in the past and currently services three mortgages.

78. Further, as the court noted in *Thow*, I consider the fact that a sanction imposes a burden, even a very heavy burden, on an offender, does not mean that that sanction is necessarily punitive in nature, as long as the sanction is designed to encourage compliance with regulations in the future.

79. I am of the view that, having regard to the number of transactions at issue, as well as the severe nature of the misconduct engaged in, a significant sanction is warranted in this case.

80. I do not agree with Ms. Rohani's submission that her case should be compared favourably with the orders set out in any of the consent orders that she referenced in her submissions which specifically related to individuals who were involved with Mr. Chaudhary.

81. First, as I have noted above, caution must be taken when comparing an agreed upon penalty from a consent order to a penalty that is imposed subsequent to a discipline hearing, given that there are a myriad of reasons for a respondent or the regulator to agree to a consent order which may not be apparent from a review of that consent order.

82. Second, I consider it to be clear, on a review of the consent order in *Parsaeian*, that the misconduct admitted to by Mr. Parsaeian was much less significant in its nature than that Ms. Rohani has been found to have engaged in. Mr. Parsaeian admitted to misconduct in respect of a total of four transactions, involving only two clients, as well as the misconduct in failing to properly sign the "working with a realtor" forms.

83. I consider Ms. Rohani's misconduct to have been far more significant and to warrant a significantly greater sanction than that agreed to by Mr. Parsaeian.

84. I note specifically, in reaching that conclusion, that not only was Ms. Rohani found to have referred more clients to Mr. Chaudhary than Mr. Parsaeian did, Ms. Rohani made those referrals only after having already used Mr. Chaudhary for her own mortgages. In sum, Ms. Rohani, having already used Mr. Chaudhary's services, having already known that Mr. Chaudhary was engaged in a deception of the lenders on her personal mortgage applications, and in fact having permitted and relied upon Mr. Chaudhary to provide lenders with falsified income in order to achieve that deception, specifically sent her clients to use what she knew to be fraudulent services.

85. I consider it to be clear, given those facts, that a penalty of greater significance than that agreed to by Mr. Parsaeian is required in order to ensure both the principles of specific and general deterrence are met and that public confidence in the profession is upheld.

86. Turning to the consent orders issued under the MBA, I note that penalties issued under that Act are limited to $50,000. As a result, the penalties in *Erfani* and *Esmaili* included not only lifetime prohibitions from being registered as a mortgage broker, but also the payment of a penalty at 40% of the maximum.

87. I note that a similar penalty under RESA, given that the majority of Ms. Rohani's misconduct occurred after September 30, 2016, would be the $100,000 amount that BCFSA seeks in its submissions.

88. I do, however, accept Ms. Rohani's submissions that the misconduct described in some of the cases cited by BCFSA is more egregious than that which she has been found to have engaged in.

89. While I consider that Ms. Rohani willingly participated in Mr. Chaudhary's deceptive scheme in order to obtain her personal mortgages, and that in sending her clients to Mr. Chaudhary she was continuing to perpetuate that fraudulent scheme, I do not consider her actions can properly be seen as being of the "egregious" type such as that described in *Salanga*, where the financial impact on the victims was in the hundreds of thousands of dollars; or *Parsons*, where the respondent clearly took advantage of an extremely vulnerable party.

90. None of the cases referred to by the parties are directly comparable to that of Ms. Rohani. What I do consider to be clear, from a review of prior decisions, is that cases involving fraudulent conduct attract significant sanction: see for example *Yang* and *Nielsen*.

91. In setting out the above, I consider it to be of note that this is not a situation in which Ms. Rohani engaged in a single transaction involving falsified documents, as was the case in *Nielsen*, or engaged in the falsifying of a number of documents, but only over a very brief period of time as was the case in *Yang*.

92. Rather, in this case Ms. Rohani repetitively, over the course of a number of years, elected to personally participate in a deceptive mortgage application scheme for her own benefit, and subsequently, arranged for her clients to participate in the same deceptive mortgage application scheme.

93. In my view, given the repetitive and ongoing nature of Ms. Rohani's activities over a number of years, a degree of both specific and general deterrence is required in order to address Ms. Rohani's misconduct.

94. First, I consider that the importance of general deterrence in this case is clear. It must be communicated to other licensees that repetitive participation in deceptive schemes, and the failure to act in the best interests of one's clients, are actions that will be met with a sanction of significance.

95. In order for general deterrence to be effective in this case, I consider it to be appropriate to order that Ms. Rohani's licence be cancelled pursuant to section 43(2)(c) or RESA.

96. In determining that Ms. Rohani's licence should be cancelled, I note that Ms. Rohani did in fact surrender her licence in December of 2023. The parties were provided with an opportunity to

make submissions on the appropriateness of cancellation as part of the discipline process given that fact, and both BCFSA and Ms. Rohani provided supplemental submissions.

97. I consider it to be clear, and the parties agree, that despite Ms. Rohani having surrendered her licence, the Superintendent retains jurisdiction to determine that Ms. Rohani's licence should be cancelled. Section 34 of RESA provides that for the purpose of Part 4, a licensee includes a former licensee in relation to matters that occurred while the person was a licensee. In my view, as a result of the operation of section 34, and the resulting continuing jurisdiction over former licensees pursuant to section 35, there exists a continuing jurisdiction to make any of the discipline orders enumerated under section 43 of RESA, regardless of the fact that Ms. Rohani is no longer licensed.

98. I note, in reaching this conclusion, that I agree with the comments of the panel in *Kim (Re)*, 2020 CanLII 36927 (BCREC) that to conclude that to interpret the Superintendent's ongoing jurisdiction to make discipline orders against former licensees otherwise would have the potential to lead to absurd results. For example, if the Superintendent did not have that ongoing jurisdiction to make discipline orders, a licensee who had engaged in conduct warranting a suspension or cancellation could avoid that disciplinary outcome simply by relinquishing their license, with the licensee then being in a position to reapply for a license having no record of having been subjected to any suspension or cancellation.

99. In reaching the conclusion that Ms. Rohani's licence should be cancelled, I note in particular that although she was licensed for a significant period of time, Ms. Rohani's participation in the real estate industry has been relatively limited. In fact, Ms. Rohani's brokerage, Team 3000 Realty Ltd., only recorded earnings for Ms. Rohani on six transactions in total for time period from December 1, 2015 to February 28, 2020. Of those six total transactions, four of those transactions were implicated in the Notice of Hearing (Ms. Rohani's own properties at [Property 4 and Property 5], as well as at [Property 6] and [Property 7]), and were found to constitute transactions that involved conduct unbecoming or professional misconduct.

100. In sum, Ms. Rohani's minimal participation in the real estate industry as a licensee has, for the majority of that minimal participation, involved her engaging in conduct unbecoming involving deceptive practices and professional misconduct.

101. I acknowledge, in reaching that conclusion, that on her own evidence, and on my findings in the liability decision, Ms. Rohani had involvement in additional real estate transactions for which her brokerage has not identified Ms. Rohani having received remuneration; namely those in which she referred buyer clients to Mr. Chaudhary. I consider that the reason the brokerage did not provide earnings for Ms. Rohani on those transactions is likely due to the fact that Ms. Rohani's friend and colleague, Ms. Contreras, was the listing agent in those transactions. In acknowledging this fact, I do not consider it alters my conclusion that Ms. Rohani's was, largely, in respect of her involvement in the real estate industry, involved in transactions that included deceptive practices and/or professional misconduct. Certainly the transactions in which Ms. Rohani referred buyer clients to Mr. Chaudhary would fall into that category.

102. In my view, in such a case, where it is clear that the licensee conducts the majority of their business in a manner that is contrary to the expectations of the regulatory regime, licence cancellation is an appropriate penalty.

103. To allow Ms. Rohani to remain licensed, would, in my view, fail to communicate to other licensees that repetitive participation in deceptive schemes, and the failure to act in the best interests of one's clients, are actions that will be met with a sanction of significance. Further, I consider that to allow Ms. Rohani to remain licensed would cause the public to question whether they could have confidence that the industry was being appropriately and sufficiently regulated.

104. For the reasons set out above, I consider that of Ms. Rohani's license should be cancelled pursuant to section 43(2)(c) of RESA.

105. I note that while in many cases, the cancellation or suspension of a licence will be seen as being focused on specific deterrence, I do not consider that to be an accurate description of the impact of the penalty of cancellation in Ms. Rohani's case.

106. As I have noted above, although she has been registered for a significant number of years, Ms. Rohani has participated in the industry in only a minimal manner in terms of being involved in actual purchases or sales. In my view, given that fact, the cancellation of Ms. Rohani's licence has a limited role to play in providing specific deterrence. Simply put, the effect on Ms. Rohani of cancelling her licence would, in my view, be minimal.

107. As a result, I consider that this is a case in which is it appropriate, in addition to ordering that Ms. Rohani's licence be cancelled, to order that Ms. Rohani pay a penalty of significance.

108. While Ms. Rohani denied having received payments from Mr. Chaudhary for referring clients to him, as I indicated in the liability decision, I do not find Ms. Rohani's evidence that she did not receive any such fees to be compelling. Rather, I concluded that Ms. Rohani referred clients in the anticipation of receiving some remuneration for those referrals.

109. I consider that in those circumstances, where it is clear that Ms. Rohani was in fact seeking to profit off the referrals she was making to Mr. Chaudhary, and more likely than not did in fact receive such profit, it is appropriate to issue a penalty in order to provide specific deterrence. Simply put, I consider it to be appropriate for Ms. Rohani, in circumstances where the evidence indicates that she likely made a profit as a result of her misconduct, be required to a pay a monetary penalty as a result. I consider further that a monetary penalty will have an appropriate general deterrent effect in demonstrating to other licensees that a monetary penalty will likely be imposed in similar circumstances of misconduct which seek to profit in an inappropriate manner from one's clients.

110. Having considered the previous decisions and consent orders, as well as the need for specific and general deterrence in this case, I note again that while I consider Ms. Rohani's misconduct to be serious, I consider it to fall short of the egregious conduct engaged in by the respondents in *Parsons* and *Salanga*. Further, while I acknowledge Ms. Rohani's involvement in Mr. Chaudhary's deceptive practices, I do not consider the evidence to show that she had the same level of involvement that the respondents did in *Erfani and Esmaili*, and as such I consider that a monetary penalty on the lower end of the scale provided for by RESA is appropriate.

111. In my view, a penalty in the amount of $40,000 provides an adequate degree of specific and general deterrence, in that it is an amount that is sufficient to not only sanction Ms. Rohani for her misconduct, but to deter others who may seek to engage in deceptive practices with a view to receiving a commission or referral fee. This is the same penalty amount as that applied in

Scoffield, where the respondent similarly engaged in conduct that was contrary to the public interest over a number of years.

112. While the sanctions I have imposed are significant, I am of the view that they are required in order to maintain the integrity of the real estate industry, and to ensure that the public will have confidence that disciplinary action of a sufficient nature will be taken to ensure that integrity.

Enforcement Expenses

113. Sections 43(2)(h) and 44(1) and (2) of RESA provides that the Superintendent may, after determining a licensee has committed professional misconduct, require the licensee to pay the expenses, or part of the expenses, incurred by BCFSA in relation to either or both the investigation and the hearing to which the order relates. Pursuant to section 44(2)(a), amounts ordered under section 43(2)(h) must not exceed the applicable prescribed limit in relation to the type of expenses to which they relate, and may include the remuneration expenses incurred in relation to employees, officers or agents of BCFSA engaged in the investigation or hearing.

114. Section 4.4 of the *Real Estate Services Regulation* sets out the maximum amounts the Superintendent may order a licensee to pay under section 43(2)(h) or 49(2)(c) in relation to various activities such as investigator costs, legal services costs, disbursements, administrative expenses for days of hearings, witness payments, and other expenses, reasonably incurred, arising out of a hearing or an investigation.

115. BCFSA has submitted an appendix of enforcement expenses which identifies the hours incurred by the investigator assigned to Ms. Rohani's case, the hours incurred by legal counsel in association with the hearing of this matter, witness expenses, and disbursements and other costs arising out of the hearing of this matter. That schedule sets out that the total amount of the enforcement expenses claimed is $116,623.75.

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

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

117. The hearing of this matter was not particularly lengthy, totalling approximately four days, for a claimed expense of $8,000. The investigation into this matter was lengthy, totalling approximately 180 hours, with a claimed cost of 18,702.15.

118. By far the largest expense claimed by BCFSA are those pursuant to section 4.4(c)(ii), that is for "reasonably necessary legal services". BCFSA claimed a total of 263.9 hours, for a total cost of $81,985.12. A variety of other expenses are claimed for disbursements, witness attendance, and

other general expenses arising out of the hearing or investigation, leading to the total of $116,623.35.

119. While I accept Ms. Rohani's submission that the actual hearing in question was perhaps not as complicated as some others in which significant enforcement expenses have been ordered, such as *Yang,* where the respondent was ordered to pay 65% of enforcement expenses for a total of $150,000 related to a matter that involved a 12 day hearing, I do not consider the evidence to show that the investigation and legal preparation for this hearing was a straightforward matter such that a significant reduction in the enforcement expenses claimed is warranted.

120. I note further that I do not consider the consent orders in the MBA cases of *Erfani* and *Esmaili* are appropriate comparators in respect of what a reasonable award of enforcement expenses would be in the circumstances. First, those matters were resolved without the need for a hearing. Second, as I have noted above, there may be a variety of reasons for which the parties to a consent order have agreed to certain orders. Without being privy to those reasons, I do not consider much weight can be placed on the amount of enforcement expenses ordered in such cases.

121. While it is true that the enforcement expenses sought in this case are greater than the monetary penalty I have ordered, I note, as did the committee in *Siemens*, that unlike monetary penalties, enforcement expenses are based on the resources reasonably expended by the Superintendent to address misconduct, including the expense of an investigation and the greater expenses arising from a discipline hearing. As a result, I consider, as the committee did in *Yang*, that:

> 44. …where the duration of a hearing was not excessive, then subject to the discretion of the Committee to reduce enforcement expenses due to divided success, the amount of enforcement expenses will not be unreasonable due simply to the expenses exceeding some multiple of an ultimate fine amount.

122. This case involved allegations regarding 11 difference transactions. It required a lengthy period of investigation, and the parties were unable to reach an agreed statement of facts in advance of the hearing. BCFSA was substantially successful in proving the allegations set out in the Notice of Hearing. In all of the circumstances, I am satisfied that this case is an appropriate one for which only a minimal reduction of the claimed enforcement expenses is warranted.

123. Recognizing the discretionary nature of an award of enforcement expenses, as well as the Ms. Rohani's submissions regarding the additional day of hearing, and the potential that some of the investigation time claimed for may have involved a matter that although initially alleged in the Notice of Hearing was withdrawn, I am satisfied that an order for enforcement expenses in the amount of $90,000, which reflects a reduction of around $26,000 from the expenses sought by BCFSA, is appropriate in the circumstances. In my view, that amount of enforcement expenses appropriately reflects the duration, nature, and complexity of both the investigation and hearing process as described above.

Orders

124. Having found in *Rohani (Re),* 2024 BCSRE 3 that the respondent, Rashin Rohani:

- Committed professional misconduct, as contemplated by section 35(1) of the *Real Estate Services Act*, in that she had breached sections 30(a) and 34 of the *Real Estate Services Rules* when, in 2017, she referred six buyer clients to an individual named Jay Chaudhary, when she knew or ought to have known was not a registered mortgage broker;

- Breached section 30(a) of the Rules, and thereby committed professional misconduct within the meaning of section 35(1) of RESA, when she referred clients to Mr. Chaudhary in anticipation of receiving remuneration from Mr. Chaudhary and failing to disclose that anticipated remuneration to her clients;

- Committed conduct unbecoming within the meaning of section 35(2) of RESA when, in 2016, she submitted mortgage applications prepared by Mr. Chaudhary for three properties; with each of those mortgage applications containing falsified income and savings information; and

- Committed conduct unbecoming within the meaning of section 35(2) of RESA when, in 2018, she used the services of Mr. Chaudhary, who she knew or ought to have known was not a registered mortgage broker and who had previously falsified income documents for her, to obtain mortgage financing for two properties.

I would now make the following orders:

- Pursuant to section 43(2)(c) of RESA, I order that Rashin Rohani's licence be cancelled;

- Pursuant to section 43(2)(i) of RESA, I order that Rashin Rohani pay a penalty to BCFSA in the amount of $40,000, within 90 days of the date of this order;

- Pursuant to section 43(2)(h) of RESA I order that Rashin Rohani pay enforcement expenses in the amount of $90,000.

125. Pursuant to section 54(1)(e) of RESA, Rashin Rohani has a right to appeal the above orders to the Financial Services Tribunal within 30 days from the date of this decision: *Financial Institutions Act,* section 242.1(7)(d), and *Administrative Tribunals Act, section 24(1).*

Issued at Kelowna British Columbia, this 17 day of May, 2024.

"Original signed by Andrew Pendray"

_____
Andrew Pendray
Chief Hearing Officer

[1] BCFSA was established in November 2019 pursuant to the *Financial Services Authority Act*, at which time the operations and affairs of FICOM were transferred to BC Financial Services Authority ("BCFSA"). In August 2021, RECBC was integrated into BCFSA.
[2] The Notice of Hearing was initially issued on March 7, 2023. The amendment to the Notice of Hearing issued on June 26, 2023 was the removal of one of the allegations against Ms. Rohani.
[3] I note that three of the mortgages obtained by Ms. Rohani occurred prior September 30, 2016, when amendments to section 43(2)(i) of RESA came into force. Prior to September 30, 2016 the maximum financial penalty for an individual licensee was $10,000.
[4] The misconduct in this case took place prior to September 30, 2016.
[5] Available online at www.bcfsa.ca: https://www.bcfsa.ca/media/268/download
[6] Available online at www.bcfsa.ca: https://www.bcfsa.ca/media/2925/download