

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

AND

IN THE MATTER OF
[Applicant 5]
([Licensed Number Redacted])

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

DATE AND PLACE OF HEARING: Via Written Submissions

HEARING OFFICER: Gareth Reeves

Introduction

1. On March 18, 2024, the BC Financial Services Authority ("**BCFSA**") issued a Notice of Administrative Penalty (the "**NOAP**") in the amount of \$2,500 to [Applicant 5] pursuant to section 57(1) and 57(3) of the *Real Estate Services Act*, RSBC 2004, c 42 ("**RESA**").
2. In the NOAP, BCFSA determined that [Applicant 5] had contravened section 23(2)(d) and 23(4) of the *Real Estate Services Rules*, BC Reg 209/2021 (the "**Rules**") by failing to promptly notify the Superintendent of Real Estate (the "**superintendent**") and his managing Broker, in writing, that he was arrested and charged on or about March 25, 2022 under section 266 of the *Criminal Code of Canada*, RSC 1985, c C-46 (the "**Criminal Code**").
3. [Applicant 5] applied for a reconsideration of the NOAP under section 57(4) of RESA. The application proceeded by written submissions.

Issues

4. The issue is whether the March 18, 2024 NOAP should be cancelled or confirmed.

Jurisdiction and Standard of Proof

5. This application for reconsideration is brought pursuant to section 57(4) of RESA, which requires the superintendent to provide a person who receives an administrative penalty with an opportunity to be heard upon request.
6. Section 57(4) of RESA permits the superintendent to cancel the administrative penalty, confirm the administrative penalty, or, if 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.
7. The superintendent has delegated the statutory powers and duties set out in section 57 to Hearing Officers.

8. The standard of proof is the balance of probabilities.

Background

9. The evidence and information before me consists of an investigation report completed by BCFSA, and the information provided by [Applicant 5] in the 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

10. [Applicant 5] was first licensed as a representative in the trading services category on July 29, 2008. He has remained so licensed since then, except for a brief period in 2018. I note that his current license was continued under section 12 of RESA until at least the date of BCFSA's investigation report.
11. On March 25, 2022, [Applicant 5] was arrested and charged with two counts of assault contrary to section 266 of the *Criminal Code*. He was released the same day on an undertaking with certain conditions.
12. On April 14, 2022, one of the counts of assault was amended to remove an allegation that it was assault by choking. [Applicant 5] was served with the amended charges on April 17, 2022.
13. On July 27, 2022, [Applicant 5] applied to renew his real estate licence. In that application, he disclosed that he had been charged with assault. It was not until he was completing this application that he disclosed the assault charges to his managing broker.
14. [Applicant 5] pleaded not guilty, and, on October 31, 2022, he was placed under a peace bond under section 810 of the *Criminal Code*, which remained in effect until October 31, 2023. A section 810 peace bond is not a conviction, but is sometimes used by criminal courts as an alternative means to resolve charges. Although [Applicant 5] was not placed on probation, the peace bond included a requirement to report to a probation officer and to complete any assessments, counselling, or education required by that probation officer. I understand [Applicant 5] complied with the terms of his peace bond.
15. I note that [Applicant 5] denies that he assaulted anyone and has provided his version of events. [Applicant 5] was never convicted of the alleged offences. I express no view on whether the alleged assaults occurred, that issue is not before me.
16. [Applicant 5] has no disciplinary history before the superintendent, or the predecessor regulator, the Real Estate Council of British Columbia.

Submissions

17. [Applicant 5]'s submissions are dated April 7, 2024. In them, he acknowledges the seriousness of failing to promptly notify the superintendent of criminal charges. He submits that this was an isolated incident that does not reflect a pattern in his conduct. He states that he takes full responsibility for his failure to report. He says he has taken steps to ensure such a lapse in communication does not occur in future. He notes that he cooperated with BCFSA's investigation of the matter and provided documents when required. He notes that he does not have a disciplinary record and asks that this be considered on a reconsideration.

Reasons and Findings

Applicable Legislation

18. 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.
19. Section 26(1) of the Rules indicates that for the purposes of section 56(1) of RESA, contraventions of the Rules listed in section 26(2) of the Rules are designated contraventions to which Division 5 (Administrative Penalties) of Part 4 of RESA applies.
20. At the relevant time, section 26(2) of the Rules identified four categories, Category A, B, C, and D, for designated contraventions for the purpose of determining the amount of an administrative penalty. Section 23 of the Rules was placed in Category B. Section 27(2) of the Rules provided that a Category B contravention could attract a \$2,500 penalty for a first contravention and a \$5,000 penalty for subsequent contraventions.
21. Section 57(1) of RESA sets out that if the superintendent 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.
22. Section 23 of the Rules provides as follows, in relevant part:

23 ...

(2) A licensee must promptly notify the superintendent, in writing, if any of the following circumstances apply:

(d) the licensee is charged with or convicted of an offence under a federal or provincial enactment or under a law of any foreign jurisdiction, other than

(i) highway traffic offences resulting only in monetary fines or demerit points, or both, and

(ii) contraventions in respect of which proceedings were commenced by means of a violation ticket under the *Offence Act* or a ticket under the *Contraventions Act (Canada)*;

(4) In the case of notice required to be provided by an associate broker or representative, the licensee must give a copy of the notice under subsection (2) to the managing broker of the related brokerage.

Analysis

23. The imposition of an administrative penalty under section 57 of RESA is a discretionary decision. A request to reconsider the imposition of an administrative penalty requires a Hearing Officer to consider not only 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 designated sections 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.

Contravention and Argued Defences

24. The NOAP in this matter was issued based on contraventions of both section 23(2)(d) of the Rules and section 23(4). The former section requires licensees to promptly disclose offence charges and convictions to the superintendent. The latter section requires licensees to provide a copy of the disclosure made under section 23(2) to their managing broker. Prior decisions under RESA have found that a licensee's failure to promptly provide notice of criminal charges to their managing broker constitutes a contravention of section 23(4) of the Rules: *Kanda (Re)*, 2024 BCSRE 40.
25. [Applicant 5] was charged with two counts of assault on March 25, 2022. He was notified of amendments to those charges on April 17, 2022. He failed to disclose these charges to the superintendent until his renewal application on July 27, 2022, approximately three months later. His disclosure to his managing broker occurred at roughly the same time.
26. In my view, a delay of approximately three months in reporting charges is not prompt.
27. Further, I agree with the reasoning in *Kanda (Re)* that a licensee's failure to make a disclosure to the superintendent results in an inability to provide a copy of the disclosure to their managing broker such that a failure to make prompt disclosure to the superintendent effectively causes a contravention of section 23(4) of the Rules.
28. [Applicant 5] has raised several considerations that he submits should result in a cancellation of the NOAP. Those include his own ignorance of the requirement to report, his cooperation with the investigation, his lack of disciplinary history, and his acknowledgement of his misconduct.
29. Regarding [Applicant 5]'s argument that he was unaware of the obligation to disclose his charges, this does not mean he did not contravene the Rules. Licensees are expected to know the requirements of the regulatory regime and to comply with those requirements. Although this may explain [Applicant 5]'s failure to report his charges, it does not excuse it.
30. Regarding his cooperation, his lack of disciplinary history, and his acknowledgment of his misconduct, I also find that these do not establish a defence. In my view, these factors, and the inadvertence of the contravention, are relevant to a determination of the appropriate penalty but are not relevant to the question of whether [Applicant 5] contravened the legislation.
31. I find [Applicant 5] did not promptly disclose the charges to the superintendent contrary to section 23(2)(d) of the Rules and also did not provide a copy of the disclosure of his criminal charges to his managing broker contrary to section 23(4) of the Rules.

Penalty Amount

32. The NOAP imposes a \$2,500 monetary penalty, being the set amount for first time contravention of section 23 of the Rules.
33. Section 23 covers a range of reporting requirements. It includes obligations to disclose regulatory or disciplinary proceedings, certain kinds of civil proceedings, offence proceedings, and bankruptcy or insolvency proceedings. Section 23 also requires that licensees provide particulars of and additional information regarding the disclosed matters upon request by the superintendent.
34. In my view, disclosure under section 23 is required to ensure the superintendent and a licensee's managing broker can take appropriate and timely action to ensure regulatory compliance and, if necessary, to protect the public.
35. Criminal charges are often serious matters. They can touch on a licensee's fitness to practice, the reputation of the real estate industry, and issues of public protection. A failure by a licensee to report

criminal charges may delay a regulatory investigation into the matter and resulting enforcement processes or delay the imposition of necessary interim conditions. Without notice of criminal charges, the superintendent cannot assess the matter and take appropriate action to protect the public. Further without that notice, managing brokers cannot ensure they are adequately supervising their real estate licensees during the course of their practice.

36. Therefore, the duty to report criminal charges to the superintendent and one's managing broker is an important regulatory obligation that speaks to the supervisory authority of both the superintendent and managing brokers.
37. I acknowledge that [Applicant 5]'s inadvertent contravention, cooperation with the investigation, acknowledgement of his failure to report, and lack of disciplinary history are mitigating in regard to the appropriate sanction for contravention of section 23 of the Rules; however, I do not find that they are sufficiently mitigating to indicate that the \$2,500 administrative penalty is inappropriate.
38. I note in this regard that BCFSa has published an Administrative Process on its website titled "Administrative Penalties under the Real Estate Services Act". I note that I am not bound by that document but may be guided by it. That document provides a list of factors that should be considered to determine if a matter qualifies for an administrative penalty. The listed factors include that the incident was isolated, the contravention was unintentional or inadvertent, and the licensee took steps to correct or remedy the contravention when it was brought to their attention. In my view, the factors identified by [Applicant 5] are of the same type that would suggest an administrative penalty was more appropriate than a notice of disciplinary hearing.
39. I further note that an administrative penalty in this matter will help achieve general deterrence and educate licensees on the importance of their compliance with section 23 of the Rules.
40. Therefore, considering that [Applicant 5]'s conduct was an inadvertent and isolated contravention of an important reporting requirement and that he cooperated with BCFSa's investigation, I find that the administrative penalty in this case was appropriate. In my view, the penalty amount is appropriate to the seriousness of the contravention. Had the failure to report been more prolonged, intentional, or obscured by [Applicant 5], a much more significant enforcement approach could have been warranted.

Conclusion

41. I find that [Applicant 5] contravened sections 23(2)(d) and 23(4) of the Rules. I find that the administrative penalty of \$2,500 was appropriate.
42. I confirm the \$2,500 administrative penalty issued on March 18, 2024.
43. The administrative penalty is now due and payable to BCFSa.

DATED at North Vancouver, BRITISH COLUMBIA, this 1st day of November, 2024.

"Original signed by Gareth Reeves"

Gareth Reeves
Hearing Officer