

BC FINANCIAL SERVICES AUTHORITY

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

AND IN THE MATTER OF

TERRY (QING YUN) DENG  
(170305)

AND

TERRY DENG PERSONAL REAL ESTATE CORPORATION  
(170305PC)

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

**[These Reasons have been redacted before publication.]**

DATE AND PLACE OF HEARING: Via Written Submissions

HEARING OFFICER: Gareth Reeves

**Introduction**

1. On June 11, 2024, the BC Financial Services Authority (“**BCFSA**”) issued a Notice of Administrative Penalty (the “**NOAP**”) in the amount of \$15,000 to Terry (Qing Yun) Deng and Deng Personal Real Estate Corporation (collectively, “**Mr. Deng**”) 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 Mr. Deng had contravened sections 30(d), (i), and (j) of the *Real Estate Services Rules*, BC Reg 209/2021 (the “**Rules**”) by
  - a. failing to take reasonable steps to avoid a conflict of interest when he made payment of a bank draft from his own account to pay the deposit on a property on behalf of his client;
  - b. failing to disclose that conflict of interest in writing and separately from a service agreement, any other agreement under which real estate services are provided, or any agreement giving effect to a trade in real estate; and
  - c. failing to advise his client to obtain independent professional advice before doing so.
3. Mr. Deng 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 June 11, 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 of Real Estate (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, the tabs thereto, and the information provided by Mr. Deng 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.

### *Licensing and Disciplinary Background*

10. Terry (Qing Yun) Deng was first licensed as a trading services representative on February 5, 2015. He has been so licensed since that date except for brief periods in 2016 and 2021. His licence was suspended for 30 days in August 2017 as noted below. Terry Deng Personal Real Estate Corporation was first licensed on October 2, 2015 and has been licensed in the same fashion as Mr. Deng since then.
11. On June 28, 2017, a consent order was issued against Mr. Deng in File # 15-541. In that matter, Mr. Deng agreed to a finding that he contravened then section 3-4 of the Rules by altering two listing amendment forms to shorten listing expiry dates to allow the listings to be listed with his new brokerage. He consented to a 30-day suspension, a \$2,500 discipline penalty, six-month enhanced supervision conditions, and payment of \$1,500 in enforcement expenses.<sup>1</sup>

### *Factual Background*

12. In October 2022, Mr. Deng was acting as the buyer’s agent for his client, his [family member]. The client was looking for a property to acquire along with two other individuals (the “**Other Buyers**”). It is not clear to me if Mr. Deng represented the Other Buyers. The client and the Other Buyers were interested in purchasing a property in 100 Mile House, British Columbia (the “**Property**”) and attended a viewing of the Property. Mr. Deng’s client and the Other Buyers were friends.
13. On October 10, 2022, Mr. Deng submitted an offer to purchase the Property on behalf of his client, but not the Other Buyers. After a series of exchanges, a final contract to purchase and sell the Property (the “**Contract**”) was concluded on October 13, 2022. By the time it was finalized, the Contract contained no subjects.
14. The Contract provided for a purchase price of \$975,000 and that Mr. Deng’s brokerage would be paid a commission of 1.5% of the purchase price for the Property, which was more than the 1.3% offered in the Multiple Listing Service advertisement for the Property. Mr. Deng’s commission

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<sup>1</sup> At the relevant time the maximum monetary discipline penalty was \$10,000.

amount was therefore \$14,625. I conclude from the above that Mr. Deng would be paid from the listing realtor's commission, which is the usual practice in the real estate industry in British Columbia.

15. The Contract required Mr. Deng's buyer client to pay a \$40,000 deposit to Mr. Deng's brokerage within 48 hours of acceptance of the contract, not including weekends.
16. At around this time, the client was on a boat travelling from Powell River to Richmond with the Other Buyers and decided to delay his return until the next day due to bad weather. The client asked Mr. Deng to pay the deposit if he was unable to return on time to do so. He promised to repay Mr. Deng on his return. Mr. Deng decided to help in the circumstances.
17. On Monday October 17, 2022, Mr. Deng obtained a \$40,000 bank draft from his personal real estate corporation's bank account to pay the required deposit and delivered it to his brokerage.
18. On Thursday October 20, 2022, Mr. Deng's client repaid the \$40,000 in full, which Mr. Deng deposited into his personal real estate corporation's account.
19. On November 3, 2022, the Other Buyers were added as purchasers to the Contract.
20. In an interview conducted by BCFSA Investigations, Mr. Deng stated that he was "not really clear" at the time if it would be a conflict of interest to pay the deposit on behalf of his buyer client. He stated this was the first time he had paid a deposit on behalf of his client. He also stated that he did not consult with his managing broker prior to paying the deposit because he was helping his family and considered it a personal matter.

## Submissions

21. Mr. Deng's submissions reiterate the background regarding his client's travels and apparent inability to return on time to pay the deposit. He says he transferred the funds from his personal account to his personal real estate corporation's account. He submits that he "clearly explained to [his] [family member] that and the [Other Buyers] that [he] could not pay the deposit on their behalf."
22. Mr. Deng submits that, after talking to his managing broker about why he had paid the deposit from his own account, he told the client "to return to Vancouver and repay the funds as soon as possible to reverse the mistake."
23. Mr. Deng's submissions are signed by his [family member] and the Other Buyers. I assume they are vouching for the information Mr. Deng has submitted.

## Reasons and Findings

### *Applicable Legislation*

24. 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.
25. 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.

26. In October 2022, 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. Sections 30(d), (i), and (j) of the Rules were placed in Category C. Section 27(3) of the Rules set out that Category C contraventions would attract a \$5,000 penalty for a first contravention and a \$10,000 penalty for any subsequent contraventions.
27. 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.
28. In October 2022, sections 30(d), (i), and (j) of the Rules provided as follows:
- 30** Subject to sections 31 [*modification of duties*] and 32 [*designated agency*], if a client engages a brokerage to provide real estate services to or on behalf of the client, the brokerage and its related licensees must do all of the following:
- ...
- (d) advise the client to seek independent professional advice on matters outside of the expertise of the licensee;
- ...
- (i) take reasonable steps to avoid any conflict of interest;
- (j) without limiting the requirements of Division 2 [*Disclosures*] of Part 5 [*Relationships with Principals and Parties*], if a conflict of interest does exist, promptly and fully disclose the conflict to the client.
29. Effective February 1, 2024, section 30(j) of the Rules provides as follows:
- 30** Subject to sections 31 [*modification of duties*] and 32 [*designated agency*], if a client engages a brokerage to provide real estate services to or on behalf of the client, the brokerage and its related licensees must do all of the following:
- ...
- (j) without limiting the requirements of Division 2 [*Disclosures*] of Part 5 [*Relationships with Principals and Parties*], if a conflict of interest does exist, promptly and fully disclose the conflict to the client
- (i) in writing, and
- (ii) separately from a service agreement or any other agreement under which real estate services are provided and separately from any agreement giving effect to a trade in real estate.

### ***Analysis***

30. 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.

***Alleged Contravention of 30(i)***

31. The facts establish that Mr. Deng paid \$40,000 to his brokerage from his personal real estate corporation's bank account to pay the deposit his client was required to pay under the Contract. He did so on the understanding that his client would pay him back those funds. Although there was no interest paid, there was clearly an agreement that the funds be repaid. In my view, that constitutes a loan from Mr. Deng to his client.
32. The Real Estate Council of British Columbia and the superintendent have consistently taken the position that loans from licensees to clients to pay deposits create a conflict of interest between a licensee and their client.
33. This is reflected in a long list of cases including the following: *Luthe (Re)*, 2007 CanLII 71614 (BC REC); *Wensley (Re)*, 2009 CanLII 46411 (BC REC); *Sharif (Re)*, 2009 CanLII 41125 (BC REC); *Magnus (Re)*, 2015 CanLII 90646 (BC REC); *Engelsman (Re)*, 2019 CanLII 55650 (BC REC); *Gasser (Re)*, 2020 CanLII 103125 (BC REC); and *Cheung (Re)*, 2024 BCSRE 35 (CanLII).
34. It is also reflected in BCFSAs guidance online entitled "Conflict of Interest (Trading Services) Guidelines" published May 4, 2021, which confirms that loaning money to clients constitutes an example "of common conflicts of interest" licensees should avoid. I note that this guidance is not binding on me, but I take it to be evidence of both the standing position of the superintendent and of information regarding industry standards available to licensees. I therefore find it persuasive regarding appropriate licensee conduct.
35. In most real estate trades in British Columbia, licensees expect to be remunerated. In general, this occurs on completion of the subject transaction and the money flows from the sale proceeds into the listing licensee's brokerage and from there to the buyer's licensee's brokerage. The evidence in this case establishes that this was likely the case here because the Multiple Listing Service advertisement specifically provided for the amount of the buyer's agent's commission. In that scenario, the licensees for the seller and buyer are both incentivized to see the transaction completed and their clients are expected to understand this fact. This understanding comes both from the nature of real estate licensee's role and from the various disclosures licensees are required to make concerning their relationships to the parties and their remuneration: see Part 5, Division 2 of the Rules. In the usual course, clients understand this conflict exists and accept that their licensee can act in compliance with their duties regardless.
36. When a licensee provides a loan to their client to facilitate the completion or advancement of a real estate transaction that introduces a further financial interest for the licensee in the completion of the transaction. That financial interest may conflict with the licensee's ongoing duties to act in the client's best interest, communicate material facts to the client in a prompt manner, disclose issues with the property that could derail the transaction that might become apparent to the licensee in the lead up to closing, fairly represent the client in discussions regarding assignments, take steps to discover issues prior to closing, or to resolve issues regarding the transaction in the client's interest prior to closing: see sections 30(a)-(h) of the Rules. Even if it does not introduce an entirely new conflicting interest, it materially modifies the degree of the licensee's interest in seeing the transaction complete.
37. Two things are of note in regard to the above.
38. First, the duties of licensees continue past the point when an enforceable contract of purchase and sale are formed. Licensees are obliged to continue to act in accordance with their duties in regard to the whole course of the real estate transaction in which they act.
39. Second, a breach of the duty to take steps to avoid a conflict of interest does not require that there also be a breach of another duty. It is sufficient that a conflict of interest, or a material change in

the nature or degree of existing conflicts of interest, in the transaction occurs and that the licensee fails to take reasonable steps to avoid that occurrence. The conflict of interest does not need to actually cause a breach of another duty.

40. In this case, the loan amount changed Mr. Deng's interest in the transaction from a \$14,625 commission to a total of \$54,625 through the loan and the commission combined. In addition, his relationship to his client changed to add a creditor-debtor relationship that did not exist before. These changes resulted in substantial changes in the nature of his financial relationship with the client and the degree of his financial interests in the transaction itself. In my view, that gave rise to a conflict between Mr. Deng's interests and his client's interests that could have clouded his judgment in a way that might have caused him or incentivized him to fail to fulfill his duties to his client.
41. I do not find the fact that Mr. Deng's client was his [family member] to diminish the fact that Mr. Deng's actions gave rise to a conflict of interest. The fact of that existing relationship may have factored into Mr. Deng's decision to make the loan by increasing Mr. Deng's confidence that he would be repaid, but it does not change the fact that the nature and extent of Mr. Deng's interest in the transaction changed substantially from his initial position.
42. There is no evidence that Mr. Deng took any steps to avoid this conflict of interest. Those possible steps included the following:
  - a. Ensuring the due date for the deposit payment was during a time when his client could pay the deposit themselves;
  - b. Contacting the sellers to request an extension to the deadline for payment of the deposit;
  - c. Discussing other options with the client for financing of the deposit payment; or
  - d. Discussing the possible options available to the client with Mr. Deng's managing broker.
43. I note in this regard that Mr. Deng had two full business days and a weekend to attend to the issue after the Contract became binding and it does not appear that he did anything to find alternative solutions during that time.
44. In my view, Mr. Deng did not exercise due diligence or take reasonable steps to avoid a conflict of interest because he took no steps in that regard.
45. I find that Mr. Deng contravened section 30(i) of the Rules by failing to take reasonable steps to avoid a conflict of interest.

#### **Alleged Contravention of 30(j)**

46. The NOAP is drafted to state as follows:

You failed to promptly and fully disclose the conflict to your buyer/client in writing and separately from a service agreement or any other agreement under which real estate services are provided and separately from any agreement giving effect to a trade in real estate.

47. At the time of Mr. Deng's contravention, section 30(j) of the Rules did not require him to disclose the conflict of interest in writing in the fashion described in the NOAP. It did require him to fully and promptly disclose the conflict, and the evidence establishes that Mr. Deng did not do so. Although Mr. Deng submits that he indicated that he told his client he could not make the loan, the evidence from his managing broker and from BCFSA's interview of Mr. Deng indicated that he did not understand his actions to result in a conflict of interest. As a result, Mr. Deng could not have fully and promptly disclosed the conflict of interest to his client as required by section 30(j) of the Rules. For Mr. Deng to have made this disclosure he would have had to have understood himself to be

changing the nature or degree of his interest in the transaction and to have fully conveyed that understanding to his client. I find that Mr. Deng did not do so.

48. Ideally, the NOAP would have used wording that more closely followed the Rules as they were enacted at the time of Mr. Deng's conduct, but, in my view, the requirement of disclosure in writing is additional and superfluous information in the context of a contravention of Rules 30(j) prior to February 1, 2024. In other words, the inclusion of that wording does not change the section he breached, which is required to be included in the NOAP under section 57(2)(a), or render his conduct compliant with the Rules as they read in October 2022.
49. As a result of the above, I find that Mr. Deng contravened section 30(j) of the Rules by failing to fully and promptly disclose a conflict of interest to his client.

#### **Alleged Contravention of Section 30(d)**

50. The cases dealing with loans to clients are inconsistent with regard to section 30(d) of the Rules and its predecessor sections.
51. Many of the cases do not include findings that a licensee, in providing a loan to advance a transaction contravened section 30(d): *Luthe (Re)*, 2007 CanLII 71614 (BC REC); *Wensley (Re)*, 2009 CanLII 46411 (BC REC); *Sharif (Re)*, 2009 CanLII 41125 (BC REC); *Magnus (Re)*, 2015 CanLII 90646 (BC REC); *Wang (Re)*, 2023 BCSRE 8 (CanLII) rev'd *Wei (Vicky) Wang and Vicky Wang Personal Real Estate Corp v Superintendent of Real Estate*, 2024 BCFST 5.
52. Many of those cases do not address section 30(d) or its predecessor sections at all. One outlier in this regard is *Magnus (Re)*, which involved Mr. Magnus, who was the managing broker of the brokerage working for the buyer, providing a \$37,500 loan at 12% interest to the buyer to pay a required deposit. In that case, Mr. Magnus was not found to have contravened the predecessor to section 30(d) but the representative licensee involved in the matter, who suggested the loan, was found to have contravened that section: *Tracey (Re)*, 2015 CanLII 90645 (BC REC).
53. There are other cases where a licensee consented to a finding that they contravened section 30(d) of the Rules or its predecessor or was found to have permitted conduct that contravened that section: *Tracey (Re)*; *Engelsman (Re)*, 2019 CanLII 55650 (BC REC); *Siemens (Re)*, 2019 CanLII 106154 (BC REC), aff'd *Jacob Giesbrecht Siemens v Real Estate Council of British Columbia*, 2021 BCFST 3; and *Gasser (Re)*, 2020 CanLII 103125 (BC REC).
54. In *Engelsman (Re)*, Mr. Engelsman consented to a finding that he had engaged in a conflict of interest, failed to fully disclose the conflict of interest, and failed to advise his client when he provided her a \$33,864.02 interest bearing loan to be secured by a second mortgage against a property so that the client could make improvements to get it ready for completion. Mr. Engelsman did this at the suggestion of his managing broker, Mr. Siemens. The client ended up not proceeding with the listing of the property, refused to sign a promissory note and the mortgage documents, and Mr. Engelsman sued to recover the advanced funds. Mr. Engelsman agreed this conduct contravened the predecessors to sections 30(d), (i), and (j). Mr. Engelsman's managing broker was also sanctioned for that conduct, though under different sections given his role as managing broker: *Siemens (Re)*, para 35.
55. In *Gasser (Re)*, Ms. Gasser offered her clients a \$10,000 interest free loan as part of the discussions in which she encouraged her clients to purchase a property and had one of the clients sign a promissory note documenting the loan. She was found to have engaged in a conflict of interest which she failed to disclose and to have failed to advise her clients to obtain independent legal advice regarding the loan.



56. In my view, *Gasser (Re)* is most similar to these circumstances in that the loan was interest free and it did not involve additional security as it did in *Englesman (Re)*. Although *Gasser (Re)* is a consent order and not the result of a contested disciplinary proceeding. I find it provides some support for the position that licensees are expected to advise their clients to obtain independent professional advice before the clients take loans from the licensees, particularly where the issue is beyond the expertise of the licensee.
57. In my view, advising clients to seek independent professional advice regarding a loan on a property serves two salutary ends. First, it ensures that a client has independent and unbiased advice regarding the change in the licensee's role in the transaction so that they can agree to or object to that change knowing the risks associated with it. Second, it ensures that licensees, who are not generally qualified in financing or the law of debtors and creditors, do not advise their clients regarding matters that fall outside of their expertise.
58. In this case, I am satisfied that Mr. Deng failed to advise his client to obtain independent professional advice regarding the loan or the conflict of interest. He has not said he did so and his lack of awareness of the above noted conflict of interest suggests he would not have realized independent professional advice may have been advisable.
59. I further find that advising the client about the loan and the conflicts of interest was outside Mr. Deng's expertise for essentially the same reason. Mr. Deng has provided no evidence that he has any particular expertise regarding these matters and the evidence in fact indicates the opposite. In addition, Mr. Deng would not have been an independent advisor regarding the loan if he were to provide any advice regarding it.
60. I therefore find that Mr. Deng contravened section 30(d) of the Rules by failing to advise his client to obtain independent professional advice regarding the loan and the conflict of interest before inserting his own financial interests into the transaction regarding the Property.

#### **Penalty Amount**

61. The penalties issued in this case are the base amounts for contraventions of sections 30(d), (i), and (j). Although Mr. Deng appears to have somewhat inadvertently contravened these Rules and there appears to not have been any harm in this case, in my view, those factors do not indicate that the administrative penalties are unwarranted here. Had there been harm or had Mr. Deng intentionally disregarded his obligations, that would weigh in favour of a disciplinary proceeding in which substantially larger or more significant sanctions could have been issued. The lack of those factors indicate that an administrative penalty was an appropriate way to proceed for contraventions of the duties set out in sections 30(d), (i), and (j).
62. I confirm the administrative penalty amounts issued in this case.

#### **Conclusion**

63. I find Mr. Deng contravened sections 30(d), (i), and (j) of the rules when he provided a \$40,000 loan to his buyer client to pay the deposit required under the Contract and thereby failed to take reasonable steps to avoid a conflict of interest, failed to fully and promptly disclose the conflict of interest to his client, and failed to advise his client to obtain independent professional advice regarding the loan and the conflict of interest.
64. I confirm the \$15,000 discipline penalties issued in the NOAP.



65. The \$15,000 in administrative penalties is now due and payable to BC Financial Services Authority.

DATED at North Vancouver, BRITISH COLUMBIA, this 12<sup>th</sup> day of December, 2024.

“Original signed by Gareth Reeves”

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Gareth Reeves  
Hearing Officer