

**BC FINANCIAL SERVICES AUTHORITY**  
**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT***  
**SBC 2004, c 42 as amended**  
**AND IN THE MATTER OF**  
**SIU CHEONG (CHARLES) TSANG**  
**(147221)**  
**AND**  
**CHARLES TSANG PERSONAL REAL ESTATE CORPORATION**  
**(147221PC)**  
**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 October 25, 2024, the BC Financial Services Authority ("**BCFSA**") issued a Notice of Administrative Penalty (the "**NOAP**") in the amount of \$5,000 to Siu Cheong (Charles) Tsang and Charles Tsang Personal Real Estate Corporation (collectively, "**Mr. Tsang**") 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. Tsang had contravened the *Real Estate Services Rules*, BC Reg 209/2021 (the "**Rules**") as follows:

You failed to act with reasonable care and skill, contrary to section 34 of the Real Estate Rules when you failed to disclose to the tenant that you are the owner / landlord of the property on [Property 1] and materially misled the tenant by making references to checking with "the landlord" when discussing requested repairs, etc., thus falsely indicating you were merely the property manager and not the owner/landlord. You confirmed to BCFSA that you intentionally withheld these disclosures from the tenant. Additionally, you failed to make the required written disclosure to your brokerage advising them that you would be providing rental property management services on your own behalf for the property.
3. Mr. Tsang 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 October 25, 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. Tsang 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. Siu Cheong (Charles) Tsang was first licensed as a representative in the trading category on November 22, 2005 and has remained so licensed since that date. Charles Tsang Personal Real Estate Corporation was first licensed on May 2, 2017 and has been licensed in the same fashion as Siu Cheong (Charles) Tsang since that date. Mr. Tsang was never licensed in the rental property management category.
11. On July 20, 2021, Mr. Tsang acquired a property in Burnaby (the “**Property**”). Mr. Tsang was the sole legal owner on title to the property for financing reasons, but his wife held a substantial portion of the beneficial interest in the Property.
12. On October 15, 2021, Mr. Tsang entered into a tenancy agreement (the “**Lease**”) with a tenant for a one-year lease of the Property to run from October 20, 2021 to October 20, 2022, which would continue month-to-month thereafter. The Lease has the following material features:
  - a. Mr. Tsang’s legal name is listed as the “Landlord” and no other names are listed as landlord;<sup>1</sup>
  - b. The address box next to “landlord’s agent” is checked in the area designated for the address for service and not the box next to “landlord”; and
  - c. Mr. Tsang’s signature on the Lease reads “Charles Tsang PREC\*\*”.
13. In the exchange of messages on October 15, 2021 between Mr. Tsang and the tenant leading up to signing the Lease, Mr. Tsang refers to the tenant’s application being considered by “the landlord”.

---

<sup>1</sup> I note that “Landlord” under the Lease has the same meaning as in the *Residential Tenancy Act*, SBC 2002, c 78, which includes property owners’ agents.

He also signs his text messages with “Charles Tsang PREC” and the name of his brokerage. The same signature appears in his messages to the tenant on October 24, 2021 regarding the tenancy.

14. On December 20, 2021, Mr. Tsang sent the tenant a text message that referred to himself as the “landlords [sic] agent” and refers to himself as a third party as between the landlord and the tenant regarding a human rights issue which seems to have arisen from a notice of infraction issued by the strata corporation for the Property.
15. During the tenancy, the tenant issued cheques in the name “Siu Cheong Tsang” for payment of rent. These cheques were deposited into Mr. Tsang’s personal account.
16. Over the course of the tenancy, several issues arose which resulted in dispute proceedings before the Residential Tenancies Branch.

### ***Investigation***

17. On March 10, 2023, the tenant filed a complaint against Mr. Tsang alleging that he misled her by representing that he was an agent for the owner of the property as opposed to an owner. The tenant provided a copy of a craigslist.org advertisement for the Property. That advertisement includes the words “Charles Tsang PREC” at the bottom and the name of Mr. Tsang’s brokerage.
18. On July 10, 2024, BCFSA Investigations reached out to Mr. Tsang’s managing broker to request a copy of any disclosure Mr. Tsang made that he was managing the rental of the Property. Mr. Tsang’s managing broker responded that he did not have any record of any such disclosure from Mr. Tsang regarding the Property.
19. On August 12, 2024, BCFSA Investigations sent Mr. Tsang an investigation letter asking about this matter.
20. On August 13, 2024, Mr. Tsang responded to BCFSA Investigations to provide his statement and a series of documents including correspondence between himself and various individuals regarding the Property and Residential Tenancy Branch materials. In that statement, Mr. Tsang advised that he had disclosed that he would be providing rental property management services on his own behalf and on behalf of his spouse to his managing broker in 2008 and made a written disclosure of that fact. He said that he put the legal owner of the Property, himself, on the Lease and that the tenant did not ask who the real owner was.
21. Mr. Tsang’s statement included the following statements:
  - a. “During our interview with [the tenant] in 2021 as one of the potential tenant candidates, I verbally explained to her that I am not the true owner; I am only managing it for a family member. When we signed the RTA, I included my name as the property owner, fulfilling the requirement that the landlord disclose their name.”
  - b. “I disclosed that I was the property owner by putting my full legal name on the original RTA as the owner. Moreover, in our last dispute between [the tenant] and me in July 2024, the Residential Tenancy Branch’s arbitrator verbally confirmed in the hearing recording that landlords are not legally obligated to disclose their ownership to their tenants.”
  - c. “I withheld my identity as the property owner and presented myself as the rental property manager on behalf of the landlord to avoid harassment, discrimination, and other threats to myself and my family.”
  - d. “The tenant knows my primary home address and has already breached my privacy rights. This is why I “pretended” to be the property manager while I was the property owner: there was no ill or malicious intent. There has been no issue between [Individual 1], myself as the agent, and the owner since 2022.”; and

- e. "I was protecting my family from the potential dangers of disclosing my personal information, which has now been realized. I specifically withheld my identity as the property manager for safety reasons, which, in hindsight, I do not regret and which is a practice I will consider continuing in future."
22. On August 14, 2024, Mr. Tsang emailed BCFSA Investigations to provide a copy of an email from the Residential Tenancy Branch confirming that tenancy agreements can disclose the rental property manager's name and not the true owner's name. I note that in the email chain Mr. Tsang asks if owners can "disclose their property manager's information instead of" the owner's.
23. On August 15, 2024, in response to an inquiry from BCFSA investigations, Mr. Tsang's managing broker stated he did not remember Mr. Tsang advising him that Mr. Tsang would be managing his own properties. He also stated that he had reviewed his records and was not able to find a record of a disclosure from 2008 from Mr. Tsang advising that Mr. Tsang would be managing the rentals for his own properties.

## Submissions

24. Mr. Tsang submits that he has managed his and his wife's properties since 2008. He submits that he and his wife are joint owners of the Property, although he is the sole person on title for the Property. I accept that Mr. Tsang is the legal owner of the Property and that he and his wife are the beneficial owners of the Property.
25. He submits that he referenced the landlord in his communications with the tenant to "clarify" that he would need to check with his wife, as a part owner.
26. He submits that he provided a written notice that he would be managing his own property in 2008 and that his manager's inability to deliver that document does not indicate that he did not make this disclosure to his managing broker. He suggests that the notice might have been misplaced or not retained past the seven-year requirement to hold documents.
27. He submits that he has since made another disclosure to his managing broker in writing that he intends to manage his own property. He provided a copy of that October 28, 2024 document and his managing broker's confirmation of receipt of it.
28. He submits he had no intention of misleading anyone, and that he was not required to disclose the landlord's identity.
29. He supports his submissions with a letter from his wife and a mortgage specialist confirming his wife's interest in the Property along with a postponement agreement from April 2024 giving a mortgage on the Property priority over Mr. Tsang's wife's interest in the Property.

## Reasons and Findings

### *Applicable Legislation*

30. 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.
31. 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.

32. 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 34 of the Rules was placed in Category C. Section 27(3) of the Rules set out that a Category C contravention could attract a \$5,000 penalty for a first contravention and \$10,000 for a subsequent contravention.
33. 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.
34. Section 34 of the Rules states:

When providing real estate services, a licensee must act with reasonable care and skill.

### **Analysis**

35. 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. Some contraventions, like a contravention of section 34 of the Rules, explicitly include an assessment of an exercise of care in the contravention itself. 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**

36. I find that Mr. Tsang intentionally misled the Property's tenant regarding the ownership of the Property and misrepresented himself as a property manager and not an owner. By his own admission he did so to protect his wife's privacy interests. He has repeatedly confirmed both that he represented himself as the manager of the property and not the owner and that he did so for the purpose of protecting his wife's privacy.
37. Although Mr. Tsang submits that he placed his name on the Lease to disclose his ownership, I find that the evidence clearly establishes that including his name on the Lease was in fact part of his representation that he was a property manager and not an owner. In my view, Mr. Tsang wanted to portray himself as a mere manager of the Property and not an owner and he believe that this was necessary as part of his plan to protect his wife's privacy interests. This is confirmed by his references to consulting with the "landlord" in his text messages, his use of "Charles Tsang PREC" to sign his text messages and the Lease, and his use of his brokerage's name in his text messages. It is confirmed by his own admission that he told the tenant he was managing the Property on behalf of a family member. It is also confirmed by his statement to BCFS Investigations that he is considering doing the same thing again to protect his family's privacy interests.
38. In addition, his explanation that he portrayed himself as a property manager to protect his and his wife's privacy contradicts any assertion that he intended to have the tenant believe he was an owner; according to Mr. Tsang he could not have protected his privacy and disclosed his ownership at the same time. For this reason, I reject his explanation that he referred to the landlord because he wanted to "clarify" to the tenant that his wife was a part owner. The use of "landlord" in his text is not clarifying and any such clarification would have undermined his stated privacy goals.

- 
39. Regarding the required disclosures to Mr. Tsang's brokerage, I find that it is more likely than not that Mr. Tsang failed to make the required disclosures to his brokerage regarding his rental property management services provided to his family members. I make this finding for because the disclosure Mr. Tsang has provided along with his submissions does not include a copy of the disclosure he is required to make to his family members under sections 94(2)(c)(i) and (ii) and 95(2)(b)(i) of the Rules. Under those sections, a licensee is required to disclose to their family member that they are not acting as a licensee and they are not regulated under RESA for their management services. Section 95(2)(c)(i) then requires the licensee to provide to their managing broker a copy of the disclosure they have made to their relatives.
40. Although the disclosure he submitted references both sections 94(2) and 95(2) of the Rules, and references the required disclosures to tenants that Mr. Tsang is not acting as a licensee and is not regulated under RESA for their services, it has two deficiencies. First, it is a disclosure to his managing broker which is required by section 94(2)(d) of the Rules but it is not a disclosure to his wife, which is the disclosure that section 95(2)(b)(i) of the Rules requires he provide to his wife and his managing broker. Second, it does not address his obligations to disclose to his wife that he is not acting as a licensee and is not regulated by RESA for his rental property management services.
41. Therefore, the disclosure Mr. Tsang has provided does not meet the requirements of section 95(2)(b)(i).
42. If Mr. Tsang had made the appropriate disclosures to his family and then provided that disclosure to his brokerage in the past, he would have made them now in his attempted replacement disclosure. I note in this regard that the predecessors to sections 94 and 95 of the Rules that existed in 2008 included the same requirements; they have remained in place, substantively unamended since before 2008. In my view, Mr. Tsang has not understood that his disclosures must be made both to his managing broker and his family and that the disclosure to his family must be provided to his brokerage, when he provides rental property management services to his family. In short, Mr. Tsang's conduct and his responses in this matter demonstrates a lack of understanding of the requirements and that lack of understanding supports an inference that he did not make all the disclosures required in 2008.
43. This lack of understanding is further evidenced by Mr. Tsang's failure to understand that, to qualify for an exemption from RESA when providing rental property management services on his or his family's behalf, he had to make it clear to the tenant that he was not acting as a licensee, was not representing his brokerage, and was not regulated by RESA. The lack of understanding is further demonstrated by Mr. Tsang's use of "Charles Tsang PREC" and his brokerage's name in his text messages and using "Charles Tsang PREC" in the advertisement for the rental of the Property and his signature on the Lease.
44. Having found Mr. Tsang engaged in the alleged conduct, the next question is whether his conduct constitutes a failure to act with reasonable care and skill in the provision of real estate services. In my view, the question is whether a reasonably prudent real estate licensee would have acted in the way Mr. Tsang did.
45. I find that a reasonably prudent real estate licensee would not have acted in the way Mr. Tsang did for the reasons that follow.
46. A reasonably prudent real estate licensee would have ensured that they complied with sections 94 and 95 of the Rules to ensure that they qualified for the exemptions contained in those sections. Failing to do so places the licensee at immediate risk of being offside a variety of other regulatory requirements. For example, it could place them offside the following provisions:
- a. the prohibition on providing real estate services outside of their brokerage in section 7(3) of RESA,

- b. the requirement to deliver funds to their real estate brokerage to be held in trust in section 27(1) of RESA,
  - c. the requirement to only provide real estate services in their licensee name in section 39 of the Rules,
  - d. the requirements to keep one's managing broker informed regarding one's real estate services in section 29(2) of the Rules, and
  - e. the requirements to make disclosures under Part 5 of the Rules.
47. I do not mean to suggest that every contravention of RESA or the Rules constitutes a failure to act with reasonable care and skill. That said, the breadth of the possible contraventions that arise because of the failure to make the disclosures required under sections 94 and 95 supports a finding that Mr. Tsang's failure to comply with those sections constitutes a failure to act with reasonable care and skill.
48. Further, I find that a reasonably prudent licensee in Mr. Tsang's situation would not have misled the tenant into thinking that Mr. Tsang was merely a property manager for the Property. I find this because Mr. Tsang's conduct was an imprudent means by which to achieve the goal of protecting his client's privacy interests in this case. As was confirmed by the RTB, property managers are not obliged to disclose the name or contact information of the owners of properties they manage. Mr. Tsang could have achieved that end by complying with the Rules, making the disclosures required under section 94(2)(c) to the tenant, and not making any representation to the tenant regarding the ownership and management of the Property beyond that. In that circumstance, the tenant could have still discovered that Mr. Tsang was the legal owner of the Property but would have no reason to believe there was any involvement of another person. Instead, Mr. Tsang's conduct resulted in significant suspicions regarding the nature of the ownership of the Property which put his wife's privacy interests at risk.
49. This is not to say that Mr. Tsang failed to act with reasonable care and skill by failing to effectively implement an improper scheme. Rather, Mr. Tsang could have achieved his proper ends without employing an improper scheme at all. In this case, Mr. Tsang could have simply declined to disclose if he were representing a family member in dealing with the Property.
50. I therefore find that Mr. Tsang failed to exercise reasonable care and skill when he misled the tenant of the Property into believing he was a property manager and not an owner of the Property and in failing to make the required disclosures under sections 94 and 95 of the Rules.

#### **Penalty Amount**

51. The penalty amount of \$5,000 issued in this case was the prescribed amount for a first contravention of section 34 of the Rules. Although there was no clear harm suffered by the tenant as a result of Mr. Tsang's dishonesty, there was some risk to his wife's privacy interest as noted above. Further, this matter involves intentional dishonesty, which is an aggravating factor in discipline proceedings.
52. Finally, Mr. Tsang explicitly expressed a lack of remorse for his conduct when he stated the following:
- "I specifically withheld my identity as the property manager for safety reasons, which, in hindsight, I do not regret and which is a practice I will consider continuing in future."
53. In my view, that kind of clear insouciance combined with intentional dishonesty would generally indicate a need for a significant monetary penalty.

54. In the circumstances, Mr. Tsang should consider himself fortunate that BCFSa did not decide to proceed with a notice of discipline hearing in this matter.
55. In my view, the administrative penalty is appropriate and should trigger Mr. Tsang to reconsider continuing with this kind of conduct in the future.

### **Conclusion**

56. I find that Mr. Tsang failed to exercise reasonable care and skill when he misled the tenant of the Property into believing he was a property manager and not an owner of the Property and in failing to make the required disclosures under sections 94 and 95 of the Rules
57. I confirm the \$5,000 administrative penalty issued on October 25, 2024.
58. The NOAP is now due and payable to BCFSa.

DATED at North Vancouver, BRITISH COLUMBIA, this 10<sup>th</sup> day of December, 2024.

“Original signed by Gareth Reeves”

---

Gareth Reeves  
Hearing Officer