

**BC FINANCIAL SERVICES AUTHORITY**

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

**AND IN THE MATTER OF**

**JOHN RYAN  
(074293)**

**AND**

**JOHN RYAN PERSONAL REAL ESTATE CORPORATION  
(074293PC)**

**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 21, 2024, the BC Financial Services Authority (“**BCFSA**”) issued a Notice of Administrative Penalty (the “**NOAP**”) in the amount of \$6,000 to John Ryan and John Ryan Personal Real Estate Corporation (collectively, “**Mr. Ryan**”) 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. Ryan had contravened the *Real Estate Services Rules*, BC Reg 209/2021 (the “**Rules**”) as follows:
  - a. Section 40(3)(b) by failing to display his personal real estate corporation’s licensee name on his Facebook page until September 25, 2024 and his website until October 8, 2024;
  - b. Section 41 by failing to qualify the following statements with sufficient particulars:
    - i. “Whistlers Top Realtor” advertised on his Facebook page;
    - ii. “Whistler’s #1 Realtor” advertised on his Facebook page;
    - iii. “Whistler’s #1 Selling Team” advertised on his website;
    - iv. “We are #1 in Whistler” advertised on his website;
    - v. “Consistently Whistler’s top performing agent” advertised on his website;
    - vi. “No one has sold more” advertised on his website;
    - vii. “Sold more developments off plan than any other agent” advertised on his website;

- viii. "Our brokerage represented 35% of both dollar volume and value in the total Whistler market – significantly more than any other brokerage operating in Whistler" advertised on his website; and
    - ix. "MLS Medallion Club Member" advertised on his website; and
  - c. Section 40(2) for failing to prominently display his brokerage's name on his Facebook page.
3. The administrative penalty issued for the section 40(3)(b) contravention totaled \$4,000, comprising a \$1,000 base penalty and 12 days of daily penalties from September 26 to October 7, 2024, inclusive for a total of \$3,000 in daily penalties.
4. Mr. Ryan applied for a reconsideration of the NOAP under section 57(4) of RESA. The application proceeded by written submissions.

### Issues

5. The issue is whether the October 21, 2024 NOAP should be cancelled or confirmed.

### Jurisdiction and Standard of Proof

6. 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.
7. 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.
8. The superintendent has delegated the statutory powers and duties set out in section 57 to Hearing Officers.
9. The standard of proof is the balance of probabilities.

### Background

10. The evidence and information before me consists of an investigation report completed by BCFSA, the tabs thereto, and the information provided by Mr. Ryan 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 Enforcement Background*

11. John Ryan was first licensed on May 30, 1988 as a representative in the trading services and rental property management services categories. On May 30, 2018, he dropped the rental property management services category, remaining licensed in the trading services category until the present. At all material times, Mr. Ryan's licensed brokerage was Whistler Real Estate Company Limited, doing business as Whistler Real Estate Company (the "**Brokerage**"). John Ryan Personal Real Estate Corporation was first licensed on February 13, 2012 and has been licensed in the same fashion as John Ryan since that date.
12. Mr. Ryan was previously issued a \$250 administrative penalty on April 17, 2012 for contraventions of then section 4-6 of the Rules. That section is the predecessor to the current section 40 of the Rules. That administrative penalty was issued for advertising an unapproved team name, failing to

display his brokerage's name in a prominent and easily readable manner, and not advertising with his personal real estate corporation's licensee name.

### *Investigation and Compliance*

13. On April 10, 2024, BCFSA received an anonymous complaint regarding Mr. Ryan's advertising on his Facebook page and website. That complaint included a series of screenshots of Mr. Ryan's Facebook page and website. Those screenshots are undated.
14. The screenshots show that Mr. Ryan's Facebook page showed the following:
  - a. the name "John Ryan – Personal Real Estate Corp. – Team JR",
  - b. the text "WHISTLER'S #1 REALTOR" in the banner image,
  - c. the text "John Ryan Personal Real Estate Corporation" in the profile picture,
  - d. Mr. Ryan's brokerage's address and "Whistlers Top Realtor", in the "Intro" portion, and
  - e. Mr. Ryan's brokerage's address and the category "Real Estate Agent", on the "About" page.
15. Mr. Ryan's Facebook page did not display the Brokerage's name.
16. The screenshots also show that Mr. Ryan's website showed the following:
  - a. The text "JOHN RYAN PERSONAL REAL ESTATE CORPORATION" in the top banner;
  - b. the text "WHISTLER'S #1 SELLING TEAM" with no adjacent qualifying information or note indicating further information was elsewhere on the website;
  - c. the text "No one has sold more in Whisler in either sales volume or dollar value YTD" with no adjacent qualifying information or note indicating further information was elsewhere on the website;
  - d. the text "Sold more developments off plan than any other agent" with no adjacent qualifying information or note indicating further information was elsewhere on the website;
  - e. the text "Consistently Whistler's top performing agent" with no adjacent qualifying information or note indicating further information was elsewhere on the website;
  - f. the text "NO ONE HAS SOLD MORE" in several locations with no adjacent qualifying information or note indicating further information was elsewhere on the website;
  - g. the text "WE ARE #1 IN WHISTLER" with no adjacent qualifying information or note indicating further information was elsewhere on the website;
  - h. the text "Our brokerage represented 35% of both dollar volume and value in the total Whistler market – significantly more than any other brokerage operating in Whistler" with no adjacent qualifying information or note indicating further information was elsewhere on the website;
  - i. an image showing the text "MLS MEDALLION CLUB MEMBER" with no date attached, which was located adjacent to three other award images noting the dates for those awards and below text reading "Our team has been recognized many times for our ongoing success in our market, as well as consistently being Whistler's #1 realtor in both sales volume and value.\*" with the asterisk leading to text immediately below the noted images stating "\*Based on cumulative number of sales and total dollar volume 1988 – to date"; and
  - j. in the bottom banner:
    - i. the text "JOHN RYAN PERSONAL REAL ESTATE CORPORATION";
    - ii. the Brokerage's name and address;

- iii. the text “NOTE: This representation is based in whole or in part on data generated by the Chilliwack & District real Estate Board, Fraser Valley Real Estate Board or Greater Vancouver REALTORS® which assumes no responsibility for its accuracy”; and
  - iv. the text “Any sales claim is based on cumulative number of sales & total dollar volume recorded on the Whistler Listings Services from 1988-to date”.
17. On June 18, 2024, BCFSA Investigations obtained another screenshot of Mr. Ryan’s Facebook page showing the detail section of the profile’s “About” page showing the use of the words “John Ryan PREC” alongside a shortened version of the Brokerage’s name missing the “Ltd.” near the top. At the bottom the text “John Ryan – Personal Real Estate Corporation” appears above the Brokerage’s name and address.
18. On September 18, 2024, BCFSA emailed a Non-Compliance Warning Letter to Mr. Ryan, copying his managing broker. The letter also went out by registered mail. It listed 13 alleged contraventions, 12 of which correspond to allegations in the NOAP. The additional allegation relates to the statement “Whistler’s #1 realtor in both sales volume and value” on his website, which did not appear in the NOAP. The letter required compliance by September 25, 2024 and defined the “Compliance Warning Period” as the period from the date of the letter until September 25, 2024. The letter stated the following:

The purpose of this Non-Compliance Warning Letter is to bring the contravention(s) to your attention so that you may take appropriate remedial action to come into compliance. This is not a Notice of Administrative Penalty.

...

**While BCFSA has issued this Non-Compliance Warning Letter**, BCFSA may still take enforcement action initiated by Notice of Discipline Hearing.

**If you cease the Contravention and comply with the Rules within the Compliance Warning Period**, BCFSA may impose an administrative penalty for the base amount associated with the Contravention.

**If you cease the Contravention and comply with the Rules only after the Compliance Warning Period**, BCFSA may impose an administrative penalty, including a daily penalty for the Contravention based on the number of days or partial days the Contravention continued after the Compliance Warning Period.

[emphasis original]
19. On September 18, 2024, the marketing manager from Mr. Ryan’s brokerage (the “**Marketing Manager**”) sent two emails to BCFSA’s investigator in reply to the Non-Compliance warning letter. The first advised that the Brokerage’s name had been added to the “Intro” section of his Facebook page and had added qualifying information to the award and ranking information on his Facebook page. The email requested information on what qualification was necessary for the representation that Mr. Ryan was an MLS Medallion Club member. The email also took the position that Mr. Ryan was otherwise compliant for the following reasons:
  - a. his Facebook profile name used “Corp.” as a short form for “Corporation” to allow for the posting of his team’s name in the profile name;
  - b. his website used the full name of his personal real estate corporation in the top and bottom banners, and
  - c. his website noted qualifying information with regard to his awards and rankings at the bottom of the page.

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20. The second email noted the asterisk note immediately below the representation regarding Mr. Ryan's Medallion Club membership.
  21. On September 19, 2024, BCFSA Investigations emailed Mr. Ryan, copying his managing broker, to reply to the Marketing Manager's first email on September 18, 2024. BCFSA's email advised that qualifying information for awards and rankings should be with the claim made and it is not sufficient to place the notices at the bottom of the website. It also directed Mr. Ryan to the following resources:
    - a. BCFSA's Practice Standards Advisors;
    - b. Guidance published on BCFSA's website dated May 4, 2021 entitled "Personal Real Estate Corporation Guidelines" (the "**PREC Guidance**"); and
    - c. Guidance published on BCFSA's website entitled "Advertising Checklist and Sample Advertising" (the "**Ad Checklist**").
  22. On September 21, 2024, the Marketing Manager sent BCFSA an email to realestate@bcfsa.ca asking for a response regarding whether compliance had been achieved.
  23. On September 23, 2024, BCFSA Investigations replied to the Marketing Manager to advise that the concerns raised by the Marketing Manager were raised directly with Mr. Ryan as the licensed individual involved.
  24. 25 minutes later, Mr. Ryan replied via email to state that he had not received the email BCFSA Investigations had referenced as raising the issues with him directly. In essence, Mr. Ryan was saying he had not received BCFSA's September 19, 2024 email.
  25. In the morning of September 24, 2024, BCFSA Investigations forwarded its September 19, 2024 email to Mr. Ryan and his managing broker.
  26. At 12:40 pm that day, Mr. Ryan emailed BCFSA Investigations to request confirmation that they had received the September 18, 2024 emails from the Marketing Manager. He advised that he had added the words "MLS Medallion Club Member for over 12 Years" to the qualifying statement below the image showing his membership. He also provided a screenshot from the Greater Vancouver Realtors website showing his membership corresponding to that duration.
  27. On September 25, 2024, Mr. Ryan's managing broker also emailed to ask for confirmation that BCFSA had received the Marketing Manager's responses and to ask that BCFSA advise if there were any further issues.
  28. At 2:33 pm that day, BCFSA Investigations responded to Mr. Ryan's managing broker to advise that the qualifying information for award and ranking information must be shown with the claim, as opposed to only at the bottom of the page, and that shortened forms of "Personal Real Estate Corporation" like "Corp." or "Company" were not acceptable.
  29. Mr. Ryan's managing broker responded at 3:34 pm that day to advise they would work to resolve the outstanding issues and to state that he had not received the September 19, 2024 email from BCFSA. He asked for that email be resent.
  30. At 5:10 pm that same day, Mr. Ryan wrote to BCFSA Investigations attaching screenshots showing his steps to correct the issues. In brief, this included the following:
    - a. Changing his Facebook profile name to "John Ryan – Personal Real Estate Corporation – Team JR",
    - b. Adding source and date range information to his award and ranking statements on his website and Facebook, and

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- c. Noting the following regarding his Medallion Club membership “MLS Medallion Club Member from 2011 to 2023 year period”.
  31. Mr. Ryan’s email did not address the use of his personal real estate corporation’s full name on his website.
  32. On September 26, 2024, BCFSA Investigations emailed Mr. Ryan and his managing broker to provide copies of the September 19 and 24, 2024 emails.
  33. On October 1, 2024, Mr. Ryan emailed BCFSA Investigations to ask for confirmation of receipt of his September 25, 2024 email and for any further steps needed.
  34. On October 7, 2024, Mr. Ryan emailed BCFSA Investigations to ask for a status update and to ask if any items were outstanding.
  35. On that day, BCFSA Investigations took screenshots of the teams page of Mr. Ryan’s website. That screenshot shows that the website showed the following:
    - a. “JOHN RYAN PERSONAL REAL ESTATE CORPORATION” at both the top and bottom of that page; and
    - b. in an overlay portion it showed
      - i. “JOHN RYAN Personal Real Estate Company”,
      - ii. “John Ryan PREC”
      - iii. the claim that Mr. Ryan “is consistently Whistler’s top selling realtor” with no adjacent qualifying information or note indicating further information was elsewhere on the website;
      - iv. the claim “in the history of Whistler real estate no one has sold more than John” with no adjacent qualifying information or note indicating further information was elsewhere on the website.
  36. At 9:22 am on October 8, 2024, BCFSA Investigations replied to Mr. Ryan to reiterate that shortened forms of “Personal Real Estate Corporation” were not acceptable. The email noted that Mr. Ryan’s teams page on his website included shortened forms of “Personal Real Estate Corporation” and included award or ranking claims that did not include qualifying information.
  37. At 10:32 am on October 8, 2024, Mr. Ryan replied to BCFSA Investigations to provide screenshots showing the changes made to add qualifying information and change instances of “Personal Real Estate Company” to “Personal Real Estate Corporation” on the teams page of his website. Mr. Ryan reiterated that there were communication issues and that he and his managing broker had not received the September 19 and September 24, 2024 emails from BCFSA Investigations. He asked that those emails be resent.
  38. On October 8, 2024, BCFSA Investigations emailed Mr. Ryan to provide copies of the September 19 and September 24, 2024 emails and to advise that these were also sent to him on September 26, 2024.
  39. On October 18, 2024, Mr. Ryan followed up to see if there were any outstanding issues.
  40. On October 19, 2024, BCFSA issued the NOAP.
  41. BCFSA did not receive any delivery failure notifications for its emails to Mr. Ryan or his managing broker.

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## Submissions

42. Mr. Ryan notes his commitment to abiding by his regulatory obligations. He submits that he acted “with a complete openness and willingness to make all efforts to bring [his] Facebook page and website into complete compliance at the earliest opportunity.”
43. He submits that the nature of the contraventions, his responsiveness and remedial actions, and the “challenging communication timelines” militate against administrative penalties in this case.
44. He notes that the complainant in this matter did not raise any issue with Mr. Ryan or his managing broker, which is suggested by BCFSA’s guidance regarding the submission of complaints.
45. He submits that issuance of an administrative penalty is contrary to the spirit and intent of the warning period imposed by the Non-Compliance Warning Letter. In this regard, he notes the promptness of his responses to BCFSA and the portions of the Non-Compliance Warning Letter that reads as follows:

The purpose of this Non-Compliance Warning Letter is to bring the contravention(s) to your attention so that you may take appropriate remedial action to come into compliance. This is not a Notice of Administrative Penalty.”

46. He submits that the BCFSA website, in its guidance entitled “The Administrative Penalty Process” (the “**AP Process**”) published online, states as follows:

Timeliness of compliance and providing evidence to BCFSA of steps to come into compliance may be factors that are considered by the Superintendent in deciding whether to impose an administrative penalty or to take other enforcement action in respect of the contraventions.

...

“Category D contraventions are related to requirements for licensees. Penalties issued under Category D include a daily penalty to encourage timely compliance and the provision of accurate information.”

47. With regard to the section 41 contravention, Mr. Ryan submits that the Ad Checklist and the guidance published on BCFSA’s website on May 4, 2021 and entitled “Advertising Guidelines” do not specify that there are any proximity requirements regarding qualifying statements for awards, honours, or comparative statements, only that the qualifying information must be present.
48. Mr. Ryan also argues that this matter does not satisfy the factors used to assess whether a matter qualifies for an administrative penalty as set out in BCFSA’s guidance published online entitled “Administrative Penalties Under the Real Estate Services Act” (the “**AP Guidance**”). He submits as follows regarding those factors:
  - a. Harm to the client, a consumer, or a member of the public:
    - i. Mr. Ryan submits that all of his statements were factually true. He says the section 41 contravention was based on proximity of the qualifying statements not their absence. He says his registered name was used prominently on his website and Facebook and the shortened version was only used in a “very limited number of instances”. He submits that the brokerage’s name was included in the details portions of his Facebook page’s “About” page and the brokerage’s address was on his the “About” page.
  - b. Harm to the reputation of the industry:
    - i. Mr. Ryan submits there was no harm to the industry.
  - c. Isolated incident:

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- i. Mr. Ryan notes that he has not received prior warning, and he is committed to compliance with regulatory requirements.
    - d. Inadvertent or unintentional contravention or contravention preventable using an ordinary standard of care:
      - i. Mr. Ryan submits that he believed he was in compliance and any contraventions were unintentional.
    - e. Prompt action and reasonable steps taken when contravention brought to licensee's attention:
      - i. Mr. Ryan submits that he responded immediately and confirmed his updates with BCFSA promptly and requested feedback from BCFSA. He argues that his requests for feedback were ignored.
    - f. Evidence of lack of good faith:
      - i. Mr. Ryan submits that his correspondence with BCFSA demonstrates that he acted in good faith and was willing to address the issues quickly. He argues that he had no intention to mislead anyone. He argues that qualifying statements were included at the bottom of each page. Mr. Ryan advises that he sought guidance from BCFSA when the issue was raised.
    - g. The contravention is easily substantiated:
      - i. Mr. Ryan argues that the Non-Compliance Warning Letter was not sufficiently clear and BCFSA's delayed responses contributed to any lack in timeliness in his compliance with the Rules. He submits that contrary to the statements in the Non-Compliance Warning Letter his personal real estate corporation's registered name was displayed on his Facebook page and qualifying information for his awards was included at the bottom of his website.
    - h. Benefit to the licensee or risk to a client or consumer:
      - i. Mr. Ryan submits that there was no risk to a client or consumer.
    - i. Economic benefit from the contravention:
      - i. Mr. Ryan submits that he gained no economic benefit from the contraventions.
    - j. An administrative penalty would serve the public interest:
      - i. Mr. Ryan argues that his website and Facebook page were "predominantly compliant". He reiterates that his registered name was displayed on his Facebook page and website, although there were some uses of the short form; that his brokerage's name was on his website's "About Us" page, that his brokerage's address was used on his Facebook page; and that qualifying statements for his awards were present on his website.
49. Mr. Ryan includes a timeline of his response to BCFSA and BCFSA's responses to him. His responses came within 34 minutes, 2 hours 43 minutes, and 1 hour 10 minutes of the emails from BCFSA he received. BCFSA's responses, according to Mr. Ryan, came 7, 12, and 14 days after Mr. Ryan's. Mr. Ryan arrives at these calculations because he says he and his managing broker did not receive response emails from BCFSA Investigations dated September 19 and 24, 2024.
50. Mr. Ryan submits that the response from BCFSA on September 25, 2024 clarified for him that he was not permitted to use a shortened form of "personal real estate corporation" on his materials at all. He submits that he immediately attempted to correct all occurrences of the short form on his Facebook page and his website. He submits that his team used a search function on his website's backend to attempt to address the issue and thought they had caught all occurrences of the shortform. Unbeknownst to him, further instances of the shortform appeared on "pop up 'blocks'". I

understand those to be portions of the website displayed within a browser over the content of the page without having to navigate away from the URL of that page, as opposed to pop ups which would appear in a new browser window or tab. Mr. Ryan states he not learn of this until October 8, 2024, when BCFSA wrote to him to confirm the issue persisted on the portion of his website regarding his team, at which point he took further steps to address the issue.

51. Mr. Ryan's submissions attached his correspondence with BCFSA Investigations.

## Reasons and Findings

### *Applicable Legislation*

52. Section 56 of RESA provides that BCFSA may designate specific provisions of RESA, the Real Estate Services 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.

53. 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.

54. Rules, section 26(2) identifies six categories, Category A, B, C, D, E, and F, for designated contraventions for the purpose of determining the amount of an administrative penalty. Section 40 and 41 of the Rules are placed in Category D. Section 27(4) of the Rules sets out that Category D contraventions can attract a base penalty of \$1,000 for a first contravention or \$2,000 for a subsequent contravention plus an additional \$250 for each day or part of a day that the contravention continues.

55. 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.

56. The Rules provide as follows:

**1** In these rules:

**"publish"**, in relation to real estate advertising, includes

- (a) causing or permitting real estate advertising to be published, and
- (b) displaying real estate advertising, or causing or permitting real estate advertising to be displayed;

**38** ...

(3) The licensee name of a personal real estate corporation is the legal name of the corporation.

**40** (1) A licensee must not publish real estate advertising unless the advertising complies with this section.

(2) In all cases, the licensee name of the brokerage must be displayed in a prominent and easily readable way.

- (3) Real estate advertising that identifies a managing broker, associate broker or representative must do so,

...

- (b) if that person is a personal real estate corporation or a controlling individual of a personal real estate corporation, by using the licensee name of the personal real estate corporation only.

- 41** A licensee must not publish real estate advertising that the licensee knows, or reasonably ought to know, contains a false or misleading statement or misrepresentation concerning real estate, a trade in real estate or the provision of real estate services.

### ***Analysis***

57. 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.

### **The Section 41 Contravention**

58. To establish that a licensee contravened section 41 of the Rules, the following must be shown:
- a. The licensee published the material by causing or permitting it to be published, displaying it, or causing or permitting it to be displayed;
  - b. The material was real estate advertising;
  - c. The content made a false or misleading statement or misrepresentation concerning real estate, a trade in real estate, or the provision of real estate services; and
  - d. The licensee knew or ought to have known the material contained the above noted false or misleading statement(s) or misrepresentation(s).
59. The question of due diligence arises in two contexts within that analysis. First, it arises in the knowledge section in regard to the licensee exercising due care regarding the content published. Once it is proven that the material contained false or misleading statements or misrepresentations, the question is whether the licensee exercised due diligence with regard to those statements or representations. Second, it arises in the publication analysis when addressing whether the licensee exercised due care when causing or permitting publication. In this second context, the question is whether the licensee exercised due care in the way in which they caused, permitted, or continued publication.
60. In many cases, the content question is of primary concern because the licensee is actively involved in the production and dissemination of the material and the question of care in publishing does not arise; however, in some cases the question of care in publication arises as well because the licensee shares, disseminates, or otherwise becomes connected to the publication after it is published. As is apparent from the below, this case involves primarily the first question.
61. I have no trouble concluding that Mr. Ryan's Facebook page and his website were real estate advertising. The website was used solely to market Mr. Ryan's and his team's real estate services.

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His Facebook page described his history providing real estate services and it referred to his team and his personal real estate corporation, though not using its full name.

62. I also find that Mr. Ryan published this material within the meaning of the Rules. The evidence establishes that the statements alleged in the NOAP were on Mr. Ryan's Facebook and his website on September 18, 2024 and many remained there until September 25, 2024. This is confirmed by the material provided in the complaint and by the responses provided by Mr. Ryan to BCFSA Investigations. Mr. Ryan had sufficient control over the material to direct the Marketing Manager to change and update it and therefore had sufficient control to have caused its publication.
63. On the issue of whether the statements regarding his awards and rankings were false or misleading, I note that the Advertising Guidelines discussed the need for these kinds of awards or comparative statements to indicate the basis for them including the source, date, and any qualifying information. This guidance is not binding on me, but I find that it represents some evidence of the standing position of the superintendent regarding the requirements of the Rules and the standards of the industry. In addition, I agree with the guidance on the basis that the qualifying information is necessary to ensure the nature of those awards and rankings is clearly communicated and the public is not misled into believing the awards indicate more than they actually do or apply to times they do not.
64. If that clarifying and qualifying information is not presented along with the award or ranking, the public may be misled into thinking the awards apply for longer than they actually do or based on qualifications other than those that they truly apply to. In this case, a good example of this is Mr. Ryan's qualification for Medallion Club membership. The first representation his website made in this regard lacked any clear qualifying information. Its proximity to the asterisked qualifier suggests that it applied from 1988 onward, which is supported by the fact that the asterisk appears next to the introductory text next to the image. This was then clarified by Mr. Ryan's amendments to first clarify that he was qualified for 12 years and then to further clarify the years during which he qualified.
65. I also consider the inclusion of a disclaimer at the bottom of the website to have been ineffective in clarifying the source, date, or qualifying information for the claims made. Prior to September 25, 2024, there was no indication in any proximity to the claims, that qualifying information might be found elsewhere on the page and therefore no reason for a member of the public to go looking for it. In my view, a member of the public would not be likely to go looking for that information without some indication it was there leaving them to take the claim on its face and as a result would be left with the misleading impression described above. Further, I do not mean this to endorse the practice of including an asterisk next to a claim along with a qualification at the bottom of a website. Unless the qualification is placed reasonably close to the initial claim, members of the public must go searching for it, may not appreciate its relevance to the claim made, and may not find it at all. The qualifying information should be located near to and be clearly connected to the claim or claims it qualifies.
66. I therefore find that the presentation of the awards and ranking information on Mr. Ryan's Facebook page and website was misleading with regard to his provision of real estate services.
67. Regarding whether Mr. Ryan knew or ought to have known that the information was false or misleading, I find that he ought to have known this. The Advertising Guidelines and Ad Checklist were available for his review and there is no information indicating that he sought that information out when creating or updating his website or Facebook page. The availability of this specific guidance on the issue indicates to me that he did not exercise the required degree of diligence when publishing the statements at issue and that he ought to have known this was offside. Although the Marketing Manager expressed that they aim to ensure compliance in their advertising, there is no evidence that Mr. Ryan or the Marketing Manager consulted this readily available information prior to BCFSA bringing it to their attention.

68. Further, I find that the inclusion of a qualifying statement at the very bottom of the page with no mark or other reference to it in the page itself or in proximity to the claims made would not be clarifying for a member of the public viewing Mr. Ryan's website and that a reasonable person reviewing the website would not have considered that positioning to have been clarifying.
69. I therefore find that Mr. Ryan published misleading information with regard to his provision of real estate services by publishing the claims regarding his awards and rankings on his website and Facebook page without sufficient qualifying information contrary to section 41 of the Rules. The NOAP does not impose a daily penalty for this contravention and so I will not address the question of any ongoing contravention of this section past September 25, 2024.

#### **The Section 40(2) Contravention**

70. Turning to the alleged contravention of section 40(2), the evidence establishes that Mr. Ryan did not include his brokerage's name on his Facebook page in a prominent or easily readable way. The name was included on the detail section of the "About" portion of that page but not on the main profile and therefore was not immediately viewable by members of the public viewing the page.
71. The Advertising Guidelines provide that, the brokerage name must be shown on the profile screen on social media pages.
72. The Ad Checklist reiterates this proposition and notes that the information is not required on each post. The Ad Checklist also provides specific guidance for Facebook pages where it states that the brokerage name can appear in the cover or banner photo and in the content of the page.
73. Again, this guidance is not binding on me, but I find it represents evidence of the superintendent's standing position regarding compliance with the Rules and industry standards around advertising.
74. In my view, the inclusion of the Brokerage's name only in the details section of the "About" portion of his Facebook page was not prominently displaying that information. The public had to take additional steps to discover that information once they landed on the page. Had Mr. Ryan complied with the Advertising Guidelines and Ad Checklist by placing the information on his Facebook page and in his cover or banner photo, that would have been sufficiently prominent.
75. Regarding due diligence. There is no evidence that Mr. Ryan exercised any due diligence with regard to displaying his brokerage's name prior to being contacted by BCFSA. The Advertising Guidelines and the Ad Checklist were readily available to him when publishing his Facebook page and his website and there is no evidence that he consulted them prior to publication or prior to being directed to them by BCFSA. The Rules also clearly specify that a licensee's brokerage's name must be prominently displayed in an easily readable way. That requirement is reasonably clear and understandable, in my view. There is no evidence that Mr. Ryan or the Marketing Manager consulted those resources before publishing his Facebook page.
76. I therefore find that Mr. Ryan failed to display his brokerage's name on his Facebook page in a prominent and easily readable way contrary to section 40(2) of the Rules. The NOAP does not impose a daily penalty for this contravention and so I will not address the question of any ongoing contravention of this section past September 18, 2024.

#### **The Section 40(3)(b) Contravention**

77. I have little trouble concluding that Mr. Ryan's Facebook page failed to properly identify his personal real estate corporation's name as required by section 40(3)(b) of the Rules. This is established by the information supplied in the complaint, the information gathered by BCFSA Investigations, and in Mr. Ryan's responses to BCFSA Investigations. Mr. Ryan used the shortform "Corp." instead of

the full term “Corporation” on his Facebook page and it remained that way at least from April 10, 2024 until September 25, 2024.

78. Regarding Mr. Ryan’s website, the evidence is weaker. The material submitted with the complaint showing Mr. Ryan’s website does not contain any evidence that shows Mr. Ryan used any form other than his personal real estate corporation’s full name at the top and bottom of the page. The Marketing Manger’s responses show only the same.
79. The first evidence I have of that is BCFSA Investigation’s October 7, 2024 screenshot of the teams page of Mr. Ryan’s website. I have no direct evidence that Mr. Ryan’s website failed to use the full name of his personal real estate corporation in any instance before that date. I also have evidence that Mr. Ryan corrected the issue on October 8, 2024. The question is therefore whether Mr. Ryan’s website was non-compliant from at least September 18, 2024, when the Non-Compliance Warning Letter was sent, to October 8, 2024, when Mr. Ryan corrected it.
80. I find it unlikely that Mr. Ryan or the Marketing Manager updated his website in a non-compliant fashion between September 25, 2024, when they conducted the back-end search of the website and added the qualifying information to most of his award and ranking claims, and October 7, 2024. During that period, they knew what was required in regard to displaying the personal real estate corporation’s name and would likely not have intentionally made a non-compliant posting while daily penalties were accruing.
81. Regarding the period from September 18, 2024 to September 25, 2024, it is feasible but unlikely that Mr. Ryan or the Marketing Manager updated his website. If they did update the website during that period and updated the teams page specifically, I find that they likely would have recalled changing that page and would have corrected it on September 25, 2024 when they corrected the rest of the website.
82. I therefore find that Mr. Ryan failed to properly identify his personal real estate corporation’s name as required by section 40(3)(b) of the Rules on his website from at least September 18, 2024 until October 8, 2024. In my view, reasonable inferences from the directly evidenced facts before me support this conclusion. Although it would have been preferable to have direct evidence, I find it more likely than not that the website was not updated in a non-compliant fashion during the period at issue.
83. The PREC Guidance includes guidance regarding licensees using personal real estate corporations. That states, in part:

When licensing a personal real estate corporation, make sure that the legal name of the personal real estate corporation is the name in which you wish to advertise. Using the term PREC is not permitted. You must use the entire “personal real estate corporation” term.
84. The PREC Guidance goes on to state a limited exception with regard to MLS® material and provides for specific guidance on how the name should be shown in that context. Importantly, there is no exception for social media or websites.
85. Although this guidance is not binding on me, I find it persuasive regarding the standard required to meet the requirements of section 40(3)(b) of the Rules. In my view, that standard is required to ensure that individuals are aware of who precisely they will receive real estate services from should they choose to engage Mr. Ryan and what name that person or entity has. Using the shortened form “Corp.” or the alternate form “Company” may cause confusion in this regard because some corporations do in fact use those forms, whereas personal real estate corporations are required to use the full term “Corporation”.

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86. My conclusion with regard to Mr. Ryan's exercise of due diligence in regard to his initial posting of his personal real estate corporation's name is essentially the same as that in regard to his brokerage's name. In short, there is no evidence that Mr. Ryan exercised due diligence or sought out guiding information before BCFSA supplied it to him.
87. As demonstrated by the corrective steps Mr. Ryan took, it was possible for him to have published compliant material in this regard. He merely failed to educate himself and ensure the material complied before making the publication. I note in this regard that the Marketing Manager claimed she used the short form "Corp." on Mr. Ryan's Facebook profile name in order to fit his team's name, but this explanation is not supportable because his Facebook profile's name was in fact corrected to include the whole word "Corporation" along with his team's name on September 25, 2024.
88. Because BCFSA has alleged that Mr. Ryan continued his contravention on his website until October 8, 2024 and seeks daily penalties for the period from September 26, 2024 to October 7, 2024, inclusive, I must address the question of whether Mr. Ryan exercised due diligence in correcting his website after September 18, 2024. The evidence establishes that the improper use of shortened or alternative forms of "Corporation" did continue during the alleged period and that Mr. Ryan did not finally correct that until October 8, 2024. The question therefore is whether Mr. Ryan exercised due diligence when seeking to make the required corrections after September 18, 2024.
89. In this regard, Mr. Ryan points to several facts. Those facts are as follows:
- a. that Mr. Ryan and his managing broker did not receive BCFSA Investigation's emails of September 19, 24, and 26, 2024 until October 8, 2024;
  - b. that Mr. Ryan and his managing broker requested copies of the undelivered emails;
  - c. that Mr. Ryan, his managing broker, and the Marketing Manager all followed up promptly and requested further confirmation from BCFSA Investigations;
  - d. that Mr. Ryan acted very promptly after receiving responses to his inquiries from BCFSA Investigations to address outstanding issues;
  - e. that Mr. Ryan performed a search of his website through a back-end search function that, unbeknownst to him, did not search all portions of his website; and
  - f. that BCFSA Investigations did not respond to his request for confirmation of compliance between September 25 and October 7, 2024.
90. These facts show that once Mr. Ryan was aware of the specific details of his contraventions, he did deal with them quickly. Mr. Ryan's submissions seek to leverage these facts to portray BCFSA's responses as dilatory and incomplete; his own responses as reasonable, prompt, and complete; and to argue that his failure to address the outstanding compliance issues was caused mostly by BCFSA's incomplete and dilatory responses.
91. I accept the underlying facts are true; however, I do not accept the inferences Mr. Ryan suggests I should draw from them.
92. The facts, considered in their full context, show that Mr. Ryan took rather limited steps to confirm what the issues were and what steps he needed to take to address them. Mr. Ryan's submissions seek to portray BCFSA as dilatory in its responses to him but the facts show that on most occasions BCFSA responded to Mr. Ryan with reasonable promptness but, for some reason, Mr. Ryan did not receive BCFSA's emails. Mr. Ryan has not submitted any information that would suggest he or his managing broker took any further steps beyond emailing to request copies of the correspondence. For example, he does not state that he conducted a diligent search of his emails, that he conducted a search of his spam folder, or that he investigated any issues that might have prevented his server from receiving or delivering BCFSA's emails. The evidence also does not indicate that he, his

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managing broker, or the Marketing Manager phoned or attempted to phone BCFSA Investigations to discuss the issue despite the fact that the investigator's direct phone number was listed on each of the emails BCFSA Investigations sent and the fact they knew by September 23, 2024 that there were issues with email correspondence.

93. In short, what Mr. Ryan's portrayal leaves out is that BCFSA Investigations had no reason to believe that the September 19 and 24, 2024 emails had not gone through until September 23 and September 25, 2024 respectively, when Mr. Ryan informed them of this fact given the other email correspondence sent to the same email addresses around that time had properly gone through.
94. Mr. Ryan's portrayal also does not indicate that he, his managing broker, or the Marketing Manager took other steps to determine what their obligations were such as searching out information available on BCFSA's website like the Advertising Guidelines, the Ad Checklist, or the PREC Guidance.
95. I do not say that BCFSA's degree of communication in this case was beyond reproach. BCFSA also could have phoned Mr. Ryan. But that said, licensees are primarily responsible for regulatory compliance. Although the superintendent has supervisory and enforcement obligations, that does not mean that individual licensees need not exercise due care to ensure they remain in compliance with the legislation absent oversight from the regulator: *Guo (Re)*, 2024 BCSRE 79, para 61. In my view, that requirement includes a positive obligation for them to take proactive steps to address regulatory issues and not deflect that responsibility onto the regulator. Although Mr. Ryan demonstrated some alacrity in responding once he received BCFSA's guidance, Mr. Ryan's steps to understand his obligations were insufficient to discharge his obligation to inform himself of the regulatory requirements.
96. In any event, the most relevant period in this case is not the period between September 18 and 25, 2024 but the period between September 25, 2024 and October 8, 2024 during which daily contraventions were allegedly accruing. Mr. Ryan's criticism of BCFSA's responsiveness is most compelling during this period, as is his argument that he exercised diligence to address the outstanding issues. I say this because Mr. Ryan conducted the back-end search on September 25, 2024, catching most of the non-compliant short forms, and then requested BCFSA's position on his compliance on September 25, 2024. He then followed up on October 1 and 7, 2024. The only response from BCFSA Investigations during this period was the email forwarding BCFSA's September 19 and 24, 2024 emails sent by BCFSA Investigations on September 26, 2024.
97. The flaw in Mr. Ryan's argument in this regard is this: he had the primary obligation to search his website and ensure it complied with the Rules. Again, I do not say that BCFSA's degree of responsiveness during this period is beyond reproach, but by September 25, 2024 Mr. Ryan knew what was required of him when naming his personal real estate corporation in his advertising. What he did to address this issue may have been expedient, but it was not complete, and all he had to do was a review the pages of his website manually to audit the results of that intervention. I note that this manual review is exactly what BCFSA Investigations would have had to have done to find the remaining contraventions. As noted above, Mr. Ryan had the primary obligation to conduct that review.
98. To state the point directly, Mr. Ryan had the obligation to use the period after he had received the Non-Compliance Warning Letter to inform himself of his obligations and bring himself into compliance. Although he took prompt steps to bring himself into what he considered compliance, he took minimal steps to fully review his website, inform himself of his regulatory obligations, and resolve the correspondence issues with BCFSA. It is because Mr. Ryan had this primary obligation that I find he failed to act with due diligence during the period from September 18, 2024 to October 8, 2024 in regard to the ongoing contravention of section 40(3)(b).

99. I therefore find that Mr. Ryan contravened section 40(3)(b) by failing to use the full name of his personal real estate corporation on his Facebook page from at least April 10, 2024 until September 25, 2024 and on his website from at least September 18, 2024 until October 8, 2024.

### Penalty Amounts

100. The administrative penalties issued for the contraventions of sections 40(2) and 41 of the Rules are the base amounts set for Category D contraventions. I have found Mr. Ryan contravened both of those sections.
101. The administrative penalty for the contravention of section 40(3)(b) of the Rules was the base amount plus 12 days during which the contravention continued, being September 26 to October 7, 2024. I have found that Mr. Ryan contravened section 40(3)(b) and that the contravention continued from September 18 to October 8, 2024.
102. Mr. Ryan raises two arguments regarding the imposition of administrative penalties that I take to impact on the propriety of the penalty amounts.
103. In Mr. Ryan's first argument he submits that the administrative penalties are not warranted because the complainant did not raise the issue with him directly which is generally suggested in BCFSA's guidance regarding complaints.
104. I take this to be a reference to the material published online on BCFSA's website entitled "File a Real Estate Complaint". That material suggests to potential complainants that they should consider addressing the concern to the licensee individually or to the licensee's managing broker, who has supervisory responsibility over the licensee.
105. I reject this argument because, in my view, this guidance is not meant to provide a binding procedure that a complainant must follow before BCFSA can accept a complaint. Instead, it is meant to allow an opportunity for potential complainants to resolve issues directly and perhaps without involving the regulator. It is not meant to say that complaints will not be accepted, an investigation will not occur, or enforcement steps will not be taken if the issue has not first been raised with a licensee. So, even if this guidance could preclude those steps, it does not actually state that it would preclude those steps.<sup>1</sup>
106. Mr. Ryan's second argument is that imposing administrative penalties in this case is contrary to the purposes of Category D administrative penalties which is primarily aimed at encouraging timely compliance. In support of this argument, he refers to excerpts from the Non-Compliance Warning Letter and the AP Process and the factors set out in the AP Guidance.
107. Mr. Ryan's quotes from the Non-Compliance Warning Letter and from the AP Process are largely taken out of context. The full content of the Non-Compliance Warning Letter makes it clear that a base penalty amount may still be issued even if the licensee comes into compliance during the warning period. The AP Process makes it clear that the purpose of the Non-Compliance Warning Letter itself is to bring the matter to the licensee's attention to allow them to take action to correct the non-compliance. It does not state that a base penalty will not apply if compliance is achieved; instead, viewed in its entire context, including the fact that section 27(4) of the Rules provides for both a base and a daily penalty, the general purpose of that provision is to ensure compliance like all regulatory enforcement measures: *Thow v BC (Securities Commission)*, 2009 BCCA 46, para 38. Looking more closely at the provision, the base penalty cannot be an effective means to achieve timely compliance because it cannot change depending on the timeliness of compliance. It can only be issued or not. The daily penalty amounts can respond to the timeliness of the compliance by

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<sup>1</sup> I note that this guidance, as with the other guidance, is not binding and legally could not fetter the superintendent's or BCFSA's exercise of statutory authority. Though it may be guiding in that regard.

increasing as the response becomes more dilatory. Therefore, it is the daily penalties that are generally concerned with the timeliness of compliance; whereas the base penalty is concerned with compliance more generally and therefore with the principles of specific deterrence, general deterrence, and the maintenance of public confidence in the industry.

108. Regarding Mr. Ryan's application of the factors from the AP Guidance, in my view those factors are listed to explain the factors that BCFSa generally considers when determining whether to issue an administrative penalty as opposed to taking the more significant step of issuing a notice of disciplinary hearing. For example, BCFSa will generally consider whether there was harm to the public, a client, or a consumer; whether the licensee obtained a significant benefit from their contravention; whether the misconduct was isolated or repeated; or whether the conduct included multiple contraventions of different regulatory requirements. Those factors might also be considered in determining if informal enforcement steps could be taken, but primarily those factors point to whether a notice of disciplinary hearing should be issued or not.
109. In that context, and in the context of this review, the question is whether the administrative penalty issued is appropriate. In my view, the penalty issued here is within the range of appropriate responses by the superintendent. Mr. Ryan's contraventions were of well-established regulatory requirements for which the regulator has published clear guidance. Mr. Ryan has a history of having contravened these sections with an administrative penalty being issued against him for similar contraventions in 2012. Although that administrative penalty is beyond the five-year limit set out in the AP Process to consider the contraventions before me as "subsequent", I consider it relevant to the question of what regulatory approach is appropriate here.
110. Therefore, I find that issuing administrative penalties and issuing them in the amount set out in the NOAP was appropriate considering that Mr. Ryan did not stand to gain a significant benefit from the contraventions; that the contraventions were relatively isolated; that there is no proof of harm to a client, a consumer, or the industry; that Mr. Ryan acted in good faith; that his contraventions were not intentional; and that his responses were prompt but his steps to understand his obligations were insufficient.

## Conclusion

111. I find that Mr. Ryan contravened the Rules as follows:
  - a. Section 40(3)(b) by failing to display his personal real estate corporation's licensee name on his Facebook page until September 25, 2024 and his website until October 8, 2024;
  - b. Section 41 by failing to qualify the following statements with sufficient particulars:
    - i. "Whistlers Top Realtor" advertised on his Facebook page;
    - ii. "Whistler's #1 Realtor" advertised on his Facebook page;
    - iii. "Whistler's #1 Selling Team" advertised on his website;
    - iv. "We are #1 in Whistler" advertised on his website;
    - v. "Consistently Whistler's top performing agent" advertised on his website;
    - vi. "No one has sold more" advertised on his website;
    - vii. "Sold more developments off plan than any other agent" advertised on his website;
    - viii. "Our brokerage represented 35% of both dollar volume and value in the total Whistler market – significantly more than any other brokerage operating in Whistler" advertised on his website; and
    - ix. "MLS Medallion Club Member" advertised on his website; and
  - c. Section 40(2) by failing to prominently display his brokerage's name on his Facebook page.

112. I confirm the \$6,000 in administrative penalties issued in the NOAP.

113. The \$6,000 administrative penalties are now due and payable to BCFSA.

DATED at North Vancouver, BRITISH COLUMBIA, this 28<sup>th</sup> day of January, 2025.

“Original signed by Gareth Reeves”

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Gareth Reeves  
Hearing Officer