**Citation: Sra (Re), 2024 BCSRE 90**
**Date: 2024-12-11**
**File No. 22-4099**

**BC FINANCIAL SERVICES AUTHORITY**

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

**AND IN THE MATTER OF**

**JASDEEP SINGH SRA**
**(188804)**
**AND**
**JAS SRA PERSONAL REAL ESTATE CORPORATION**
**(188804PC)**

**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 March 26, 2024, the BC Financial Services Authority ("**BCFSA**") issued a Notice of Administrative Penalty (the "**NOAP**") in the amount of $5,000 to Jasdeep Singh Sra ("**Mr. Sra**") 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. Sra had contravened section 23(2) of the *Real Estate Services Rules*, BC Reg 209/2021 (the "**Rules**") by failing to disclose he was charged under a federal or criminal enactment to the Superintendent of Real Estate (the "**superintendent**").

3. Mr. Sra applied for a reconsideration of the NOAP under section 57(4) of RESA. The application proceeded by written submissions.

## Issues

4. The issue is whether the March 26, 2024 NOAP should be cancelled or confirmed.

5. Mr. Sra has also asked that the NOAP not be published. Therefore, a further issue is whether the NOAP should be published or published in some redacted form.

## Jurisdiction and Standard of Proof

6. This application for reconsideration is brought pursuant to section 57(4) of RESA, which requires the superintendent to provide a person who receives an administrative penalty with an opportunity to be heard upon request.

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. Sra 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.

11. Mr. Sra was first licensed as a representative in the trading services category on July 16, 2021 and has been so licensed since that date. Jas Sra Personal Real Estate Corporation was first licensed on July 18, 2022 and has been licensed along with Mr. Sra since.

12. On April 8, 2022, Mr. Sra was indicted on alleged contraventions of a federal enactment that allegedly occurred in February, 2022 (the "**February Charges**"). It appears that Mr. Sra was charged sometime in February 2022 and released on an undertaking with his first court appearance occurring in April 2022. Mr. Sra pleaded not guilty to the February Charges.

13. On October 14, 2022, Mr. Sra was placed under a one-year peace bond. A section 810 peace bond is not a conviction and does not involve a finding of guilt, but is sometimes used by courts as an alternative means to resolve charges. The charges were stayed on the same date.

14. On October 26, 2022, Mr. Sra was indicted on alleged contraventions of ***a*** federal enactment that allegedly occurred in July and October, 2022 (the "**October Charges**"). Mr. Sra pleaded not guilty to the October Charges.

15. BCFSA was made aware of the above noted proceedings by way of two anonymous reports dated November 23 and December 1, 2022. Mr. Sra did not advise BCFSA or the superintendent of the charges prior to being contacted by BCFSA Investigations on January 13, 2023.

16. On July 11, 2023, Mr. Sra was placed under a one-year peace bond. I understand that the October Charges are no longer before the courts.

17. I emphasize that Mr. Sra was never convicted of the above alleged offences. I make no finding regarding whether the conduct alleged in the above noted charges occurred. That question is not before me in any way.

18. In an interview with Mr. Sra conducted by BCFSA Investigations, he confirmed he had been charged as set out above and stated that he did not report the charges to BCFSA because he thought he was required to inform BCFSA only if he was convicted, which he was not.

19. During its investigation, BCFSA also determined that Mr. Sra's brokerage at the time of the charges had been considering surrendering his licence but had decided not to when Mr. Sra decided to change brokerages.

20. Mr. Sra has no disciplinary history before the superintendent.

## Submissions

21. Mr. Sra admits to being charged as alleged in the NOAP and to having failed to promptly report both the February Charges and the October Charges to BCFSA.

22. Mr. Sra says that his lawyer advised him not to disclose any facts surrounding the subject events. He submits that he had a constitutionally protected right to silence under the *Canadian Charter of Rights and Freedoms* (the "***Charter***") and requiring disclosure of facts surrounding the alleged events may have impaired his defence. As a result, Mr. Sra says he did not expect to be required to disclose the matters underlying the charges to anyone. I do not understand him to assert that he was not required to disclose the fact of the charges to the superintendent, but that he may have not been required to provide a statement about what gave rise to those charges.

23. He submits that he is willing to pay the administrative penalties but submits that the NOAP should not be published. I take that to include these reasons for reconsideration. He submits that he was never convicted of the charges. He notes and I accept that records of his charges will not be publicly available going forward. He says that publication of the fact that he was charged with the type of charges he faced could undermine his real estate business and damage public perception of his reputation and character.

## 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. At the relevant time, section 26(2) of the Rules identified four categories, Category A, B, C, and D, for designated contraventions for the purpose of determining the amount of an administrative penalty. Section 23 of the Rules was placed in Category B. Section 27(2) of the Rules provided that a Category B contravention could attract a $2,500 penalty for a first contravention and a $5,000 penalty for subsequent contraventions.

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. Section 23 of the Rules provides as follows, in relevant part:

> **23** …
>
> (2) A licensee must promptly notify the superintendent, in writing, if any of the following circumstances apply:
>
> (d) the licensee is charged with or convicted of an offence under a federal or provincial enactment or under a law of any foreign jurisdiction, other than
>
> (i) highway traffic offences resulting only in monetary fines or demerit points, or both, and
>
> (ii) contraventions in respect of which proceedings were commenced by means of a violation ticket under the *Offence Act* or a ticket under the *Contraventions Act (Canada)*;

29. Section 57.1 of RESA states as follows:

> **57.1** (1)Subject to the regulations, the superintendent may publish a copy of
>
> (a) each notice of administrative penalty issued under section 57 (1), and
>
> (b) each decision made under section 57 (4) to confirm or cancel an administrative penalty.
>
> (2) The superintendent must provide a copy of a notice or a decision published under subsection (1) to any person requesting the copy, on payment of the prescribed fee.

### *Analysis*

#### ***Contravention***

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.

31. The evidence is clear that Mr. Sra was charged under a federal enactment on two occasions. He did not disclose those charges until BCFSA contacted him nearly a year after the first charges and approximately three months after the second. In my view, neither of those delays were reasonable.

32. Regarding Mr. Sra's argument that he did not make the disclosure because his defence lawyer told him not to discuss what happened with anyone in order to preserve his constitutional right to silence, I find that this does not raise a successful defence. Mr. Sra has not provided any evidence that his lawyer told him he was not required to disclose his charges to BCFSA. I find support for this conclusion from Mr. Sra's own submissions which note that his lawyer told him not to discuss the "pertinent facts around the matter" and that Mr. Sra told BCFSA investigations on January 13, 2023 that he did not think he had to report the charges before a conviction. Those submissions both suggest to me that Mr. Sra likely did not talk to his lawyer about whether he should disclose the charges to BCFSA and assumed they were not disclosable. I accept that Mr. Sra may have been told not to discuss or disclose the underlying events to preserve his *Charter* rights, but this is materially different from not disclosing the fact of the charges.

33. Regarding Mr. Sra's belief that he only had to disclose convictions and not charges, I find that Mr. Sra's ignorance of his obligation to disclose his charges is not a defence. Licensees are

expected to know their obligations under the Rules and comply with them. Although this may explain his failure to disclose, it does not excuse it.

### ***Penalty Amount***

34. The NOAP imposes two $2,500 monetary penalties, being the set amount for first time contraventions of section 23 of the Rules.

35. Section 23 covers a range of reporting requirements. It includes obligations to disclose regulatory or disciplinary proceedings, certain kinds of civil proceedings, offence proceedings, and bankruptcy or insolvency proceedings. Section 23 also requires that licensees provide particulars of and additional information regarding the disclosed matters upon request by the superintendent.

36. In my view, disclosure under section 23 is required to ensure the superintendent and a licensee's managing broker can take appropriate and timely action to ensure regulatory compliance and, if necessary, to protect the public.

37. Charges under provincial or federal enactments are often serious matters. They can touch on a licensee's fitness to practice, the reputation of the real estate industry, and issues of public protection. A failure by a licensee to report such charges may delay a regulatory investigation into the matter and resulting enforcement processes, or delay the imposition of necessary interim conditions. Without notice of such charges, the superintendent cannot assess the matter and take appropriate action to protect the public. Further without that notice, managing brokers cannot ensure they are adequately supervising their real estate licensees during the course of their practice.

38. Therefore, the duty to report such charges to the superintendent and one's managing broker is an important regulatory obligation that speaks to the supervisory authority of both the superintendent and managing brokers.

39. Therefore, considering that Mr. Sra's conduct appears largely inadvertent as opposed to intentional but involved two contraventions of an important reporting requirement and that he cooperated with BCFSA's investigation once BCFSA contacted him, I find that the administrative penalties in this case were appropriate. In my view, the penalty amount is appropriate to the seriousness of the contravention. Had the failure to report been more prolonged, intentional, or obscured by Mr. Sra, a much more significant enforcement approach could have been warranted.

### ***Publication***

40. Mr. Sra has asked that the NOAP not be published. I take that request to include these reasons.

41. Under section 57.1(1) of RESA, the superintendent has the power to publish both administrative penalties and decisions issued on reconsideration requests. Under section 57.1(2) of RESA, the superintendent is obliged, on request, to provide copies of both published administrative penalties and reconsideration decisions.

42. BCFSA has published guidance on its approach to publication dated March 2, 2023 entitled "Publication of Regulatory Actions" (the "**Publication Guidance**"). Although that guidance is not binding on me, I consider it useful in considering this application.

43. The Publication Guidance notes the following principles apply regarding publication of the regulatory actions it takes generally:

    a. Consistency in approach;

    b. Transparency and accountability;

c. Promotion of public confidence; and

d. Privacy of individuals involved.

44. The Publication Guidance also provides that notices of administrative penalty over $2,500 will generally be published and remain published indefinitely. Where an individual requests the information not be published, the Publication Guidance indicates that the following non-exhaustive factors should be considered:

a. The public interest in transparency, accountability, specific deterrence, and general deterrence;

b. The potential harms of publication that could not be addressed by redaction;

c. The potential impacts of publication on procedural fairness; and

d. Any reasonable expectation that the matter will not be published.

45. I note also that the Publication Guidance provides a list of types of sensitive information that might be redacted. That list includes criminal history along with family status, race, ethnic origin, sexual orientation, religion, medical information, and financial information.

46. The Publication Guidance states that sensitive information will generally be redacted unless it is material to the decision made. An example of how BCFSA effects these redactions is found in the published decision in *Kanda (Re)*, 2024 BCSRE 40. A review of other published decisions by the superintendent shows how BCFSA generally redacts other private information that is not necessary to decide an issue such as property addresses, witness or third-party names, and medical diagnoses.

47. In the civil court context, the leading case on the conflict between privacy interests and the open courts principle is *Sherman Estate v Donovan*, 2021 SCC 25 (CanLII). In that case, the Court set out a three-element test that an applicant must meet to prove that a restriction on the open courts principle is required. The applicant must show the following:

a. Allowing an open process creates a serious risk to an important public interest;

b. The restriction proposed is necessary to prevent this risk because other measures will not suffice; and

c. The benefits of the restriction outweigh its detriments: *Sherman Estate*, para 38.

48. The list of important public interests is not closed. Prior cases have identified trial fairness, the administration of justice, and certain commercial interests provided these rise to the level of a public interest, like the interest in preserving confidential business information: *Sherman Estate*, para 41.

49. The Court recognized that “privacy is a fundamental value necessary to the preservation of a free and democratic society”; however, inconvenience, upset, embarrassment, and personal discomfort arising from a loss of privacy is a necessary result of open and public proceedings: *Sherman Estate*, para 31. In the balancing of these two considerations, the Court found that the need for open proceedings should give way where disclosure or publication would result in an “affront to a person’s dignity” in a way that impacts upon an individual’s “core identity”: *Sherman Estate*, paras 33, 34, and 73. The onus of is on the applicant to show that disclosure will create a serious risk of an affront to their dignity by way of disclosure of information at their “biographical core”: *Sherman Estate*, para 35.

50. In determining the seriousness of the risk, the extent of the likely dissemination, the extent to which the information is already in the public domain, and the probability of dissemination must be considered: *Sherman Estate*, paras 80-82. I note that the presence or absence of a serious risk of

dissemination is irrelevant to the preceding question of identifying an important public interest, on the approach in *Sherman Estate*: see paras 93-94.

51. The guidance offered by *Sherman Estate*, although not directly concerning regulatory proceedings, has been found to apply to regulatory enforcement proceedings under other legislation in British Columbia: see *Applicant 20 (Re)*, 2024 LSBC 36 (CanLII), paras 66-68; *Applicant 18 (Re)*, 2024 LSBC 12 (CanLII), at para 62. It has also been applied when considering redacting court files on matters that arose from judicial reviews of regulatory enforcement processes: *A Lawyer v The Law Society of British Columbia*, 2021 BCCA 284 (CanLII) ("***A Lawyer***").

52. In my view, the Publication Guidance confirms that the superintendent generally operates according to an open proceeding principle. The Publication Guidance indicates that transparency, intelligibility, and public availability are important to the superintendent's statutory mandate. Open proceedings enhance the superintendent's supervisory and disciplinary role by permitting public scrutiny of processes and outcomes, by encouraging consistency in the superintendent's approach, and by enhancing the three primary public interest factors underlying enforcement proceedings: specific deterrence, general deterrence, and public confidence in the real estate industry.

53. This approach is confirmed by the requirements in section 47, 53, and 57.1 of RESA that the superintendent publish its disciplinary and enforcement orders and that it provide copies of those orders and published administrative penalty notices and review decisions to the public on request. Providing for the publication of those regulatory actions allows public scrutiny of the superintendent's actions, encourages the superintendent to be consistent, and demonstrates to licensees and the public what consequences flow from a breach of the legislation.

54. The fact that section 57.1 of RESA provides the authority to publish administrative penalties and review decisions as opposed to mandating their publication as set out in sections 47 and 43 indicates that the legislature acknowledges there is a decreased, but not absent, need for an open process in the context of administrative penalties and their review. In my view, this is because administrative penalties are intended to apply to generally less serious matters where the more significant sanctions and orders available under Divisions 2 and 3 of Part 4 of RESA are not necessary. Although the administrative penalty provisions allow for significant orders in appropriate cases, such as penalties up to $100,000 if prescribed, and licensing conditions, they also allow for smaller sanctions for technical issues like late filing of annual returns or minor record keeping infractions. These kinds of matters are of a sufficiently large possible volume that publication could become unwieldy and there is likely a decreased public interest in the outcomes.

55. In the above context, I find that a modified form of the *Sherman Estates* test that considers the regulatory context and the general approach of the superintendent is appropriate in considering whether to direct a restriction on further publication beyond what would usually be contemplated by the Publication Guidance. This modification requires only a change to the second element of that test to determine that the restrictions that the superintendent usually imposes when publishing decisions, which is presently expressed in the Publication Guidance, are insufficient to protect the important public interest identified by the applicant. This modification situates the test within RESA's statutory regime while ensuring that the test is applied in a principled manner considering all of the circumstances without fettering the superintendent's discretion regarding publication.

56. Turning to an application of the modified *Sherman Estates* test, I find that there is an important public interest in not having charges that are both unproven and resolved follow someone in perpetuity. In my view, disclosure of unproven and resolved charges is akin to the disclosure of stigmatizing medical conditions or stigmatized work, which have been recognized as the type of information that, if disclosed, could give rise to a serious risk: *Sherman Estate*, para 77. Charges under provincial or criminal enactments can be stigmatizing and, even if unproven, can result in a stain on an individual's reputation. Canadian society and its legal system acknowledge that

individuals facing such charges may live under a shadow cast by such charges for as long as they remain in the public view.

57. In my view, that public interest is a part of the rationale underlying the requirement that charges proceed efficiently to trial as enshrined in section 11(b) of the *Canadian Charter of Rights and Freedoms* as interpreted by *R v Jordan*, 2016 SCC 27 (CanLII) at para 20.

58. It is also embodied in British Columbia's *Criminal Records Review Act*, RSBC 1996, C 86, which provides for different types of access to records of criminal proceedings depending on whether the matter resulted in a conviction, is ongoing, or resulted in no conviction or an absolute discharge, and federally under the *Criminal Records Act*, RSC 1985, c C-47, which provides for restrictions on the keeping of criminal records including records of matters where an individual is found guilty but discharged either absolutely or conditionally. These enactments suggest that there should, absent important competing public interests, be an end to the stigma that charges create where those charges are never proven.

59. The interest in this case is different from two, somewhat related interests.

60. First, it is different from an interest in not disclosing past convictions. In my view, there is no important public interest in having individuals' convictions barred from publication in themselves. There may be other important interests, such as protecting victims or permitting rehabilitation after a pardon, that would weigh against publication, but in general Canadian society has an interest in ensuring convictions are publicly available.

61. Second, it is different from the interest that may exist regarding the disclosure of the underlying conduct that led to the charges. I make this distinction because there are cases where the conduct gives rise to overlapping criminal or quasi-criminal and regulatory jurisdiction. In that context, if a regulator decides to proceed with regulatory proceedings based on the same underlying facts, despite criminal or quasi-criminal proceedings having been stayed, withdrawn, or discharged, then the subject would have to show more than the mere fact that they were charged and never convicted for the same underlying conduct to support the need to limit the open proceedings principle.

62. In the case where overlapping jurisdiction exists, the regulator has an interest in pursuing allegations and in doing so should presumptively do so in an open proceeding.

63. Turning then to the question of serious risk to the important public interest, I take Mr. Sra's submission to mean that publication of the NOAP and these reasons would cause him to feel embarrassment and shame and may negatively impact on his reputation and his real estate business. Embarrassment and shame alone are not sufficient to establish a serious risk, but reputational effects on members of regulated industries can be: *A Lawyer*.

64. In assessing this risk, I note that Mr. Sra's charges were publicly available while he was subject to proceedings as a result of those charges, but they will not be publicly available going forward. Mr. Sra also faced termination from his previous brokerage because of the charges and so there was some degree of dissemination. Publishing Mr. Sra's charges in the NOAP and these reasons would increase the time for which that information is publicly available. The information would also be connected to his real estate licence and would follow his real estate activities perpetually as a result and may even follow him into other endeavours.

65. Mr. Sra has provided no evidence that would suggest publication of the charges, through publication of the NOAP or these reasons, would result in further dissemination of the fact he was charged. However, I do acknowledge that the media does from time-to-time report on the actions and decisions of the superintendent and there is therefore some risk that publication by the superintendent will be further disseminated. It is difficult to assess that risk in the absence of

evidence because there is nothing before me that indicates the media has paid any special attention to Mr. Sra's charges. There is also nothing in the evidence, other than the nature of the charges, to suggest the media would pay any special attention to him if publication occurred. That said, the indefinite publication of the fact Mr. Sra was charged would likely result in a substantial increase in the possibility of dissemination of the fact that he was charged such that I find there would be a serious risk to the important public interest of finality in unproven and resolved charges if the fact that he was charged or the nature of the charges was published.

66. The next question is whether anything more than the superintendent's usual redactions and restrictions on publication are necessary to prevent the risk.

67. The superintendent's usual process when publishing notices and decisions addressing federal or provincial charges is to redact information regarding the nature of the charges unless a conviction occurred, or they were material to the decision at hand. In this case, that would mean the exact type of charge would not be disclosed but the fact Mr. Sra was charged would be disclosed. In this particular case, no redaction would occur because neither the NOAP or these reasons disclose the nature of the charges.

68. These steps would not completely protect the important public interest in finality of unproven and resolved charges because it would permit the publication of the fact Mr. Sra was charged. It would mitigate that risk by not disclosing the nature of those charges and may thereby limit the stigma which might follow Mr. Sra as a result. However, disclosing the fact that he was charged twice would still place the identified public interest at risk to some extent.

69. In my view, the only way to achieve complete protection of the important public interest in this case would be to require the redaction of the material facts underlying the determination that Mr. Sra contravened section 23 of the Rules or redact Mr. Sra's name. A complete bar on publication would not be necessary to protect the interest because there are a variety of failures to disclose that might result in a contravention of section 23 of the Rules, like certain kinds of civil cases, other regulatory proceedings, or bankruptcy proceedings, that would not impact on the identified public interest. Redaction of Mr. Sra's name would preserve his reputation, while allowing the decision as a whole to be subject to public scrutiny.

70. Assuming the usual process will occur in this case, the question then becomes one of balancing the benefits of redacting either Mr. Sra's name or the fact that he was charged. In my view, the detriments outweigh the benefits in either case for the following reasons.

71. The salutary effects of either are clear, they would preserve Mr. Sra's reputation. Both would mean the charges would not follow Mr. Sra. Not redacting Mr. Sra's name would better preserve his reputation as a whole, but it would do so in a way that goes beyond addressing the important public interest in finality of unproven criminal convictions.

72. The difference in salutary effect between these two options and BCFSA's usual approach, as related to the recognized interest, is the difference between a complete distancing of Mr. Sra from publication of the fact that he was charged and a partial distancing where the fact that Mr. Sra was charged is public but the nature of those charges is not. While I am reluctant to describe any charge as minor, there is a spectrum of severity in the kinds of allegations that could underpin such a charge. Redacting the nature of the charges but not the fact of the charges leaves it unstated whether the charges are at the more or less serious ends of the spectrum.

73. The deleterious effects differ depending on the approach.

74. If the fact of the charge were redacted there would be a significant impact on specific deterrence, general deterrence, transparency, administrative consistency, and public confidence in the regulator. To achieve a redaction of the nature of the contravention, much of the rationale expressed

in this decision would need to be excised, including the reasons regarding the extent of publication. It is crucial to much of the analysis in this decision that Mr. Sra was charged and removing any reference to that fact would render the decision so opaque that it would not be a useful precedent for the industry, the superintendent, or the public.

75. There would be some remaining specific deterrent effect arising from Mr. Sra's name being published on the decision and the NOAP, which would allow the public to be informed of his contravention. There would also be some remaining general deterrent effect in that licensees will know that failing to comply with section 23 of the Rules will result in a response, but the deterrent effect would be less specific to the specific subsection at issue.

76. In my view, the principles of transparency, consistency, public confidence, and general deterrence weigh strongly against redacting the nature of the contravention.

77. If Mr. Sra's name is redacted, the most marked deleterious effect would be the reduction in specific deterrence because the impact of the administrative penalties on Mr. Sra would be reduced. That would have some knock-on effect to general deterrence, because other licensees would know that similar contraventions would not result in any reputational harms. There would also be some deleterious effect on public confidence because the public will have no way of knowing that Mr. Sra contravened the Rules before deciding to engage with him. That said, this approach would largely preserve the general deterrent, transparency, and consistency effects of the NOAP and this decision.

78. In my view, the repeated nature of Mr. Sra's contraventions of section 23(2)(d) of the Rules weighs in favour of a need for increased specific deterrence than in most cases concerning section 23(2)(d) contraventions. This is reflected by the superintendent's approach in the Publication Guidance to anonymize administrative penalty proceedings where the issued notice does not impose penalties of more than $2,500. That represents a decision that, in most cases, single contraventions in Category A, single first contraventions in Category B, and quickly resolved contraventions in Category D are sufficiently minor as to not require publication of the subject licensee's name. However, where there are a sufficient number of contraventions, a subsequent contravention of Category B or E, a contravention in Category C or F, or a sufficiently prolonged contravention of Category D or E, the superintendent has indicated that specific deterrence considerations generally weigh in favour of a need to publicly connect those who are subject to administrative penalties for their misconduct.

79. In my view, the weighing I must undertake then is between the salutary impact of perfectly preserving the important public interest in finality of unproven charges and the deleterious impact of that preservation on specific deterrence, general deterrence, and public confidence in the industry.

80. The salutary effects are relatively small and substantially diminished by BCFSA not disclosing the nature of the charges Mr. Sra faced. Without that information the only remaining fact that is disclosed by the NOAP and these reasons is that Mr. Sra was charged at all. Although publishing that information will allow the fact that Mr. Sra was charged to follow him, the stigma will be dampened by the fact that publication of the nature of the charges themselves will not occur. The only conclusion that can be drawn from the fact that he was charged and the NOAP was issued is that the charges were not sufficiently serious or connected to Mr. Sra's real estate practice that the superintendent found it necessary to pursue the matter further.

81. By contrast, the deleterious effects are relatively greater. In particular, the specific deterrent effects are important on the facts of this case. Mr. Sra has contravened section 23(2)(d) on two occasions, relatively close in time to each other. In my view, that indicates that the superintendent needs to send Mr. Sra a message that a lack of disclosure will not be tolerated. Adding to this the general deterrent effect of the publication of Mr. Sra's name and the effect on public confidence in knowing

that the licensees they engage with are appropriately candid with their regulator, I find that the deleterious effects of redacting Mr. Sra's name outweigh the salutary ones.

82. In my view, this was a reasonably delicate balancing in this case, but the balance comes out in favour of following the Publication Guidance and not in favour of any further restriction on publication.

83. In coming to this conclusion, I distinguish this case from *A Lawyer v The Law Society of British Columbia*, 2021 BCCA 284 (CanLII), which also involved unproven allegations, though those were regulatory and not criminal allegations. The distinguishing feature here is Mr. Sra's contravention of section 23(2)(d) of the Rules. In *A Lawyer*, the subject lawyer had not been adjudicated to have contravened the regulatory regime that applied to their legal practice and in fact had not even formally been charged under that regime. In this case, Mr. Sra in fact contravened the Rules and attending to an appropriate response to that contravention requires some disclosure of other, unproven allegations.

## Conclusion

84. I find that Mr. Sra contravened sections 23(2)(d) of the Rules. I find that the administrative penalty of $5,000 was appropriate.

85. I find that neither the fact that Mr. Sra was charged under a provincial or federal enactment nor Mr. Sra's name should be redacted and that this decision and the NOAP should be published in accordance with the Publication Guidance.

86. I confirm the $5,000 NOAP issued on March 26, 2024.

87. The administrative penalty is now due and payable to BCFSA.

DATED at North Vancouver, BRITISH COLUMBIA, this 11th day of December, 2024.

"Original signed by GARETH REEVES"

_____

Gareth Reeves
Hearing Officer