

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

AND IN THE MATTER OF

HYUNSOO KIM
(185028)

AND

JAKE KIM PERSONAL REAL ESTATE CORPORATION
(185028PC)

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 January 8, 2025, the BC Financial Services Authority ("**BCFSA**") issued a Notice of Administrative Penalty (the "**NOAP**") in the amount of \$10,000 to Hyunsoo Kim ("**Mr. Kim**") and Jake Kim Personal Real Estate Corporation 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. Kim had contravened the *Real Estate Services Rules*, BC Reg 209/2021 (the "**Rules**") as follows:
 - a. He contravened section 30(a) of the Rules by failing to deliver all strata corporation documents to his client in relation to a property on Ross Drive in Vancouver (the "**Property**") and
 - b. He contravened section 34 of the Rules by having his client sign a counteroffer to purchase the Property for \$1,038,000 after the seller had signed the original offer at \$1,030,000.
3. Mr. Kim applied for a reconsideration of the administrative penalty issued for the alleged section 34 contravention set out in the NOAP (the "**Section 34 AP**") under section 57(4) of RESA. The application proceeded by written submissions.

Issues

4. The issue is whether Section 34 AP should be cancelled or confirmed.

Jurisdiction and Standard of Proof

5. This application for reconsideration is brought pursuant to section 57(4) of RESA, which requires the Superintendent of Real Estate (the “**superintendent**”) to provide a person who receives an administrative penalty with an opportunity to be heard upon request.
6. Section 57(4) of RESA permits the superintendent to cancel the administrative penalty, confirm the administrative penalty, or, if the superintendent is satisfied that a discipline hearing under section 40 of RESA would be more appropriate, cancel the administrative penalty and issue a notice of discipline hearing.
7. The superintendent has delegated the statutory powers and duties set out in section 57 to Hearing Officers.
8. The standard of proof is the balance of probabilities.

Background

9. The evidence and information before me consists of an investigation report completed by BCFSA, the tabs to that report, and the information provided by Mr. Kim 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. In particular, Mr. Kim has only sought a reconsideration of the Section 34 AP and I therefore set out only the facts that are relevant to the alleged contravention of section 34 of the Rules.
10. Mr. Kim was first licensed as a representative in the trading services category on November 26, 2019. Jake Kim Personal Real Estate Corporation was first licensed on January 30, 2024 and has been licensed in the same fashion as Mr. Kim since that date.
11. In late 2020, Mr. Kim began acting as a buyer’s agent for Isabelle Kim (the “**Complainant**”), showing her properties.
12. On December 17, 2020, the Complainant viewed the Property and became interested in purchasing it. At the time, the Property was listed for sale at a price of \$1,088,000.
13. On December 28, 2020, Mr. Kim prepared an offer to purchase the Property on behalf of the Complainant in the amount of \$1,008,000 (the “**First Offer**”) and submitted it to the owner of the Property (the “**Seller**”) through the Seller’s agent, Vincent Meng. The First Offer was not accepted.
14. On January 3, 2021, Mr. Kim submitted a second offer to Mr. Meng to purchase the Property for \$1,030,000 on behalf of the Complainant (the “**Second Offer**”).
15. On January 4, 2021, the Seller countered the Second Offer at \$1,038,000.
16. On March 5, 2021, Mr. Kim prepared and submitted a third offer to purchase the Property for \$1,030,000 on behalf of the Complainant (the “**Third Offer**”). The Third Offer provided for a completion date of June 29, 2021 with the possession and adjustment dates both set for June 30, 2021.
17. On March 6, 2021 at 9:47 pm, Mr. Meng delivered a copy of the Third Offer signed by the seller to Mr. Kim. The email from Mr. Meng attaching the fully executed Third Offer states:

“Hi Jake,
After talking with the seller for one hour, finally she agreed the price as 1,038K.

Pls find the counter offer.”

[sic]

18. Mr. Kim provided the fully executed Third Offer to the Complainant. I do not have evidence of when exactly this happened. It is clear that the Complainant obtained a copy of the fully executed Third Offer. I find it likely occurred very shortly after Mr. Kim received Mr. Meng's email. In any event, I do not consider the precise timeline of when the Complainant received the Third Offer to be particularly relevant here.
19. At 10:20 pm on March 6, 2021, Mr. Meng sent Mr. Kim a counteroffer to the Third Offer (the **“Counteroffer”**) which contained the following changes:
 - a. It changed the purchase price to \$1,038,000,
 - b. It changed the completion date to July 29, 2021, and
 - c. It changed the possession and adjustment dates to July 30, 2021.
20. The email attaching the Counteroffer simply states, “Here you go, Jake.” Given how terse this email is, I find it is likely that Mr. Kim and Mr. Meng spoke between 9:47 pm and 10:20 pm and that Mr. Meng likely explained that the Third Offer was sent in error and the Counteroffer would be sent to Mr. Kim. In my view, the 10:20 pm email would not have been so short if that call had not occurred. It is not clear to me who initiated that call, based on the evidence before me. But for the purposes of this decision that fact is not relevant.
21. Mr. Kim delivered the Counteroffer to the Complainant who signed it on March 6, 2021.
22. The Complainant says that Mr. Kim told her on the phone, before sending the Counteroffer for her to sign, that there was an error on the contract. Mr. Kim confirms that he advised the Complainant of the issue. I find that Mr. Kim spoke with the Complainant on the phone and explained what had occurred regarding the Third Offer and the Counteroffer.
23. At 10:38 pm on March 6, 2021, Mr. Kim emailed the fully signed Counteroffer back to Mr. Meng.
24. I note that, in her complaint, the Complainant says verbal negotiations occurred around the time of the First Offer and the Second Offer and the parties arrived at an understanding that the Complainant would offer to purchase the Property for \$1,038,000. The Complainant then viewed the Property again with her son and decided not to purchase it. The Complainant says that after this occurred, the Seller attempted to have the Complainant make an offer of \$1,030,000. The Complainant says Mr. Kim forgot about this portion of the negotiation and Mr. Meng noticed Mr. Kim had forgotten this and so they made the Counteroffer.
25. In my view the Complainant's account is not entirely accurate. I find that discussions about a \$1,038,000 price likely occurred in early January 2021 and the Complainant may have changed her mind after a subsequent viewing. That said, there is no evidence that Mr. Kim forgot about the prior exchange of offers or that Mr. Meng took advantage of such forgetfulness. In my view, the evidence establishes that the Seller signed the Counteroffer in error and Mr. Meng forwarded it to Mr. Kim without noticing that error. This is reflected by Mr. Meng's email sent at 9:47 pm on March 6, 2021 which explicitly notes that it attaches a counteroffer and that the Seller agreed to a price of \$1,038,000, not \$1,030,000.
26. On March 10, 2021, the Complainant and the Seller signed an addendum to the Counteroffer pursuant to which the Complainant agreed to change the possession date for April 30, 2021 and to

move the date for possession and adjustments to May 1, 2021. The Addendum also provided that the Seller would continue to stay in the Property at no cost until July 29, 2021 and that the Seller would pay the Complainant a \$2,000 non-refundable security deposit and credit her \$7,000 on completion.

27. On March 15, 2021, the Complainant removed subjects on the Counteroffer.

28. On April 30, 2021, the purchase and sale of the Property completed pursuant to the Counteroffer.

Submissions

29. Mr. Kim submits that he and the Complainant discussed the issue with the Third Offer and the Counteroffer over the phone and the Complainant agreed to the Counteroffer. He submits that when preparing the Counteroffer, the Complainant instructed him to secure an agreement in the amount of the January 4, 2021 counteroffer by the Seller, which he did.

30. Mr. Kim submits that he communicated with the Complainant throughout the process and that he acted in his client's best interests.

31. He submits that the scenario was a valuable experience and he will implement better processes to review documents before presenting them to his clients. He submits that he acted in good faith.

Reasons and Findings

Applicable Legislation

32. 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.

33. 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.

34. At the material 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. Sections 30(a) and 34 of the Rules were placed in Category C. Section 27(3) of the Rules provided that Category C contraventions may attract a \$5,000 administrative penalty for a first contravention and a \$10,000 administrative penalty for a subsequent contravention.

35. 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.

36. Section 34 of the Rules provide as follows:

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

Analysis

37. 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. In the case of a section 34 contravention, an analysis of whether the licensee exercised due diligence is required to assess whether a contravention has occurred at all. A Hearing Officer may also consider information on any extenuating circumstances that prevented compliance, or any other information the licensee believes a Hearing Officer should consider.

Contravention

38. The question before me is whether a reasonably prudent licensee in Mr. Kim's circumstances would have done what he did. In my view, Mr. Kim acted in a reasonably prudent manner in this case.
39. I accept Mr. Kim's submission that he spoke to the Complainant about the circumstances surrounding the Third Offer and the Counteroffer. I note that, based on the email from Mr. Meng attaching the Counteroffer, the Seller very clearly did not intend to accept the Third Offer on its terms. In particular, that email specifically notes a different purchase price than reflected in the Third Offer.
40. In this case, it was or should have been immediately apparent to Mr. Kim and the Complainant that the Seller or Mr. Meng had made a mistake regarding the terms of the agreement the Seller had executed and delivered. Although that mistake was small relative to the purchase price, it was a mistake as to a fundamental term of the contract. Given Mr. Kim concurrently received Mr. Meng's email stating both that it attached a counteroffer and that the counteroffer was for \$1,038,000, it would have been unfair for the Complainant to have seized upon the contract and insisted on its performance.
41. In my view, this is a circumstance that very likely would have resulted in the ability of the Seller to seek and obtain a rescission of the Third Offer on the basis of a unilateral mistake regarding a fundamental term of the contract. The concept of a unilateral mistake has been long recognized at law and in equity. The doctrine arises from the fundamental concept that a contract requires a meeting of the minds between the parties, at least as to the fundamental terms of the agreement between them. To establish a unilateral mistake there must be a mistake on the part of one party regarding a material or fundamental term of the agreement, which is actually or constructively known by the non-mistaken party and which would create an unconscionable result if the agreement were enforced: see *256593 BC Ltd v 456795 BC Ltd et al*, 1999 BCCA 137 at para 28; see also *First City Capital Ltd v BC Building Corp*, 1989 CanLII 2868 (BC SC) and *Beverly Motel (1972) Ltd v Klyne Properties Ltd*, 1981 CanLII 576 (BC SC).
42. Looking at the circumstances of this case, it would have been inequitable for the Complainant to have relied on the Seller's signature on the face of the Third Offer where the Third Offer had been delivered along with a written statement that indicated the Third Offer had not been accepted and therefore did not reflect what the Seller intended.
43. Given the Third Offer was very likely not enforceable, it was not unreasonable for Mr. Kim to have spoken to the Complainant about the circumstances and then arranged for her to sign the Counteroffer. This course of action gave up his client's tenuous claim to the enforceability of the Third Offer and replaced it with a contract containing terms that were acceptable to the Complainant at the time.

44. Although it may have been better if Mr. Kim had recommended that the Complainant obtain independent legal advice on the enforceability of the fully executed Third Offer in the circumstances, I find that it was not unreasonable for Mr. Kim to explain the background circumstances to the Complainant and recommend that she sign the Counteroffer instead of relying on the fully executed Third Offer, in the circumstances of this matter.
45. Although this created a circumstance in which there were two fully executed signed contracts in place at the time between the same parties, those circumstances were unlikely to cause confusion because all parties were aware of what had occurred.
46. In addition, I find it was unlikely to cause any prejudice to the Complainant because she had agreed to a higher amount on a shorter closing timeline and therefore there could not be any conflict between the agreements. In fact, if the Seller attempted to back out of the terms contained in the Counteroffer and to insist on the terms of the Third Offer, that would likely be a benefit to the Complainant.
47. Therefore, from Mr. Kim's and the Complainant's perspective there was very little risk that would render this scenario prejudicial for the Complainant such that it would be unreasonable to proceed as Mr. Kim did.
48. In my view, a reasonably prudent licensee in Mr. Kim's circumstances could have proceeded as Mr. Kim did.
49. Therefore, I find that Mr. Kim did not fail to act with reasonable care and skill when he had the Complainant sign the Counteroffer when the Seller had already signed the Third Offer.

Conclusion

50. I find that Mr. Kim did not fail to act with reasonable care and skill when he had the Complainant sign the Counteroffer when the Seller had already signed the Third Offer.
51. I cancel the Section 34 AP in the amount of \$5,000.
52. Mr. Kim has not asked for an opportunity to be heard regarding the \$5,000 administrative penalty for his alleged contravention of s 30(a) of the Rules. Pursuant to s 57(2)(d)(i) and (ii) Mr. Kim was deemed to have acknowledged that contravention 30 days after receiving the NOAP and the \$5,000 administrative penalty in that amount became due and payable to BCFSa on that date. I am not aware if Mr. Kim paid that amount, if he did not it remains due and payable to BCFSa.

DATED at North Vancouver, BRITISH COLUMBIA, this 28th day of February, 2025.

"Originally signed by GARETH REEVES"

Gareth Reeves
Hearing Officer