

BC FINANCIAL SERVICES AUTHORITY

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

**AND IN THE MATTER OF
ALLAN (ALIREZA) ELIASSI
(148063)**

**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 December 18, 2024, the BC Financial Services Authority ("**BCFSA**") issued a Notice of Administrative Penalty (the "**NOAP**") in the amount of \$5,000 to Allan (Alireza) Eliassi 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. Eliassi had contravened section 34 of the *Real Estate Services Rules*, BC Reg 209/2021 (the "**Rules**") by assisting another licensee, Marcie Panah and her personal real estate corporation, Marcie Panah Personal Real Estate Corporation, (collectively, "**Ms. Panah**"), with the listing of a property on [Property 1] in Burnaby (the "**Property**") while Ms. Panah was out of the country and failing to advise the seller that he was not acting as their agent while said other licensee was away, possibly creating an implied agency relationship.
3. Mr. Eliassi 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 December 18, 2024 NOAP should be cancelled or confirmed.

Jurisdiction and Standard of Proof

5. This application for reconsideration is brought pursuant to section 57(4) of RESA, which requires the Superintendent of Real Estate (the "**superintendent**") to provide a person who receives an administrative penalty with an opportunity to be heard upon request.
6. Section 57(4) of RESA permits the superintendent to cancel the administrative penalty, confirm the administrative penalty, or, if the superintendent is satisfied that a discipline hearing under section

40 of RESA would be more appropriate, cancel the administrative penalty and issue a notice of discipline hearing.

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

Background and Factual Findings

9. The evidence and information before me consists of an investigation report completed by BCFSA, the tabs thereto, and the information provided by Mr. Eliassi in the application for reconsideration. Ms. Panah also submitted a reconsideration request for a notice of administrative penalty issued against her in relation to this matter. I have considered both requests together and thus have additionally considered the information provided by Ms. Panah along with this matter. 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 the information before me.
10. Mr. Eliassi was first licensed as a representative in the trading services category on February 21, 2006. He has been licensed at various brokerages since that date. At the time at issue, he was licensed with Team 3000 Realty Ltd (X028937).
11. At the relevant time, Ms. Panah was licensed with RE/MAX Crest Realty (X034180).
12. The background facts to this matter are set out in the companion decision to this one arising from Ms. Panah's reconsideration request which is indexed as *Panah (Re)*, 2025 BCSRE 36. Although the issues surrounding Mr. Eliassi's conduct are somewhat more limited than surrounding Ms. Panah's and focus mostly on the below facts that occurred after July 25, 2022, I reproduce my findings of fact here for context and completeness of this decision.

Initial Discussions Regarding the Property

13. In April 2022, [Client 1] contacted Ms. Panah's brokerage to inquire about listing the Property for sale and the brokerage put him in touch with Ms. Panah. [Client 1]'s father had owned the Property but had passed away leaving it to [Client 1]. [Client 1] lived in Japan and was not able to be in Canada to arrange the sale of the Property.
14. In early May 2022, Ms. Panah's licensed assistant, Thai Do, retrieved the keys to the Property from a previous licensee who had been assisting [Client 1]. Around this time, [Client 1] provided Ms. Panah with a series of emails he had exchanged with his strata corporation and the municipality regarding an issue with the washer and dryer in the Property.
15. As May 2022 progressed, Ms. Panah and [Client 1] discussed the possible listing price for the Property and the potential to renovate the Property prior to the sale. Ms. Panah provided her opinion on the options and their impact on the likely listing price and sale price for the Property but left the decision to [Client 1].
16. During the above discussions, Ms. Panah put [Client 1] in contact with [Individual 1] to obtain quotes for the renovations. Ms. Panah handled the initial negotiations, then [Client 1] took over. In mid-May, [Client 1] engaged [Individual 1] to perform renovations of the Property and began discussing the details of those works. [Client 1] copied Ms. Panah on his emails with [Individual 1].
17. I note that Ms. Panah states that she did not really need to be copied on the emails with [Individual 1] and raises that argument as part of her argument that [Client 1] was overbearing and micromanaging. In my view, it was reasonable for [Client 1] to have included Ms. Panah on these

emails given he was out of the country and attempting to arrange a renovation of a Property that he could not attend in person to oversee. Further, Ms. Panah was, at that time, likely to be engaged by [Client 1] to sell the Property and the details regarding when the renovations might be completed were necessary for her to be prepared to do so quickly, a sentiment that [Client 1] expresses repeatedly.

18. In my view, [Client 1] was very involved and detailed in his dealings with the Property and may have been overly communicative, but I note that he was disposing of a significant asset and spending significant funds to renovate it without being present in the country and thus was relying on those he engaged to perform the work well. It is also notable that Ms. Panah or Thai Do, Ms. Panah's licensed assistant, were in possession of the keys to the Property. In the circumstances, Ms. Panah's involvement in the renovation discussions was necessary.
19. I also note that Ms. Panah did not, in these emails, indicate that she did not need to be included on them. Instead, she confirms receipt of them and, on some occasions replies to thank [Client 1] for keeping her informed.
20. Ms. Panah also notes that she and [Client 1] often spoke over the phone or by video conference throughout this process and that the calls were sometimes lengthy. It is not clear to me exactly how often these calls occurred. There are a few references to calls in the emails, but they are not otherwise documented. In light of the content and frequency of [Client 1]'s emails, I find that he likely called Ms. Panah relatively frequently to discuss the listing and the renovation.
21. In early July, 2022 and as the renovations proceeded, [Client 1] and Ms. Panah began discussing the listing price for the Property.
22. On July 5, 2022, [Client 1] and Ms. Panah exchanged emails regarding the signing of a listing agreement for the Property and the listing price. During that exchange, [Client 1] asked Ms. Panah if she planned to take any vacation in the near future to which Ms. Panah responded as follows, in part:

"My vacation is in August and I have 8 agents who work with me !
We never leave a property unattended.
That's why we are among one of the highest ranking in Vancouver .
Also I'm colisting your condo with an agent so the coverage is there . Yours will be a quicker sale ."
[sic]
23. On July 5, 2022, [Client 1] signed a listing contract (the "**Listing Contract**") with Ms. Panah's brokerage which provided that Mr. Panah was the designated agent for the listing. The Listing Contract is a British Columbia Real Estate Association standard form contract. It provides that Ms. Panah's brokerage will list the property from July 19, 2022 until November 30, 2022 at a price of \$585,000.00. It provides that the brokerage may allow cooperating brokerages and "with the written consent of the Seller, a sub-agent of the Listing Brokerage ("Sub-Agent") to show the Property to prospective buyers." It further provides that [Client 1] will pay a total commission of 7% on the first \$100,000 and 3% on the balance of the eventual sale price if one of the following three things occurs:
 - a. [Client 1] enters into a legally enforceable contract to sell the Property during the term of the Listing Contract;
 - b. [Client 1] enters into a legally enforceable contract to sell the Property to a buyer introduced during the term of the contract to [Client 1] or the Property by the brokerage, Ms. Panah, a sub-agent, or a cooperating brokerage where that contract occurs within 60 days from the end of the Listing Agreement or where the brokerage, Ms. Panah, a Sub-Agent, or a cooperating brokerage were an "effective cause" of that contract, provided the Property is not listed with a new brokerage after the Listing Contract expires; or

- c. A buyer offers to purchase the Property on the terms set out in the Listing Contract during the term of the Listing Contract and is ready, willing, and able to pay the listing price, even if [Client 1] refuses to sign that offer.
24. The Listing Contract also provides that Ms. Panah will not disclose any confidential information obtained during the listing to any other licensees unless authorized by [Client 1] or required by law. It provides that [Client 1] agrees that Ms. Panah will be his sole agent and the brokerage's agency relationship will be limited to listing the Property.
25. On that date, [Client 1] also signed various required disclosure forms, including a disclosure of representation indicating Ms. Panah and the BC Condos & Homes Team would be his designated agents and a "Team Disclosure Appendix A" which provided that a list of 21 individuals who were part of the BC Condos & Homes Team who would all be designated agents for [Client 1]. I note that this list included both licensed and unlicensed individuals, though nothing turns on that point in this matter. This list did not include Mr. Eliassi. It did include Ms. Panah and a licensee named Mr. Thai Do.
26. The renovations continued through July 2022 with [Client 1] continuing to email Ms. Panah and [Individual 1] regarding their progress and various decisions that needed to be made as they neared completion.

Mr. Eliassi's Involvement

27. Mr. Eliassi says, and I find, that Ms. Panah contacted him on July 25, 2022 to ask him to help coordinate the renovation of the Property and to provide access for trades and potential buyers coming to view it. She asked him to report to her office once the renovation was complete so that her brokerage could list it.
28. Mr. Eliassi was not directly involved in the correspondence prior to July 25, 2022. As he notes in his statement to BCFSA Investigations, when he became involved with this matter, he had not seen the Listing Contract and only knew that [Client 1] did not reside in Canada and needed help with the renovations and showings while Ms. Panah was absent. Both Mr. Eliassi and Ms. Panah note in their statements, and I find that, other than as indicated below, Mr. Eliassi was not aware of the background detailed above when he became involved.
29. On July 25, 2022, Ms. Panah's mother passed away. Ms. Panah emailed [Client 1], Mr. Eliassi, and the [Individual 1] that day to advise them. She stated as follows:
- "I lost my mom unexpectedly today so I have to leave the country . My colleague who's cc'd here will be handling your listing from here on . When [Individual 1] is done , we will schedule the rest of the marketing work .
Allan is a great agent and always takes care of my work when I'm away .
The listing is under my name but all the inquiries go through Allan . You can also reach him at [phone number redacted].
[Individual 1] will coordinate with Allan when he's done .
WhatsApp is the best way to reach me in case of emergency.
I will follow up with [Individual 1] soon ."
- [sic]
30. Included in the email chain resulting with the above email were two emails from [Client 1] to Ms. Panah and [Individual 1] regarding installing blinds, the timing that installing blinds would have on the timing of the listing, and [Client 1]'s desire to list the Property before the next interest rate announcement by the Bank of Canada in September 2022. By forwarding these emails to Mr. Eliassi, she thereby provided him with information regarding [Client 1]'s motivation to sell the Property.

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31. Regardless of whether Mr. Eliassi read those emails, he came into possession of them without any issue being raised by either Ms. Panah or Mr. Eliassi that he should not have access to them.
 32. After this email, [Client 1] began communicating with Mr. Eliassi via email and telephone calls. Those emails often copied Ms. Panah and [Individual 1]. From time to time, they would also include Mr. Do. At no point did Mr. Eliassi provide [Client 1] with a Disclosure of Representation in Trade form required by section 54 of the Rules.
 33. In late July and early August 2022, the emails between [Client 1] and Mr. Eliassi largely concerned booking cleaners to attend at the Property after [Individual 1] finished the renovation work. In these emails, [Client 1] was clearly anxious to have the Property listed. In this regard he specifically referenced the rising interest rates being announced by the Bank of Canada and his desire to have the renovations completed soon and the cleaners booked to come as soon as possible thereafter. Ms. Panah explicitly delegated the task of booking cleaners to Mr. Eliassi and he took on the task of communicating between the cleaners and [Client 1]. Neither Ms. Panah nor Mr. Eliassi told [Client 1] that he should not share his desire to sell quickly or the information regarding the renovations with Mr. Eliassi or that he should not issue instructions to Mr. Eliassi.
 34. None of the emails during this time indicated that, although Mr. Eliassi was helping, he did not intend to become [Client 1]'s agent or represent him. To the contrary, Mr. Eliassi's dealings with the cleaners, and to some extent with [Individual 1], suggested Mr. Eliassi was acting on [Client 1]'s behalf. Although this work was not strictly "real estate services" within the meaning RESA, it was clearly connected to the eventual listing and Mr. Eliassi would not have been included had he not been a licensee. This is explicitly acknowledged by Ms. Panah whose evidence stated she included Mr. Eliassi because Mr. Do was more junior and that lack of experience may have concerned [Client 1].
 35. Between August 8 and 10, 2022, [Client 1], Mr. Eliassi, and Ms. Panah exchanged a series of emails regarding the completion of the renovations and shared photographs of the completed work.
 36. On August 15 and 19, 2022, a series of emails regarding the listing of the Property was exchanged between Ms. Panah's unlicensed assistant, Ms. Panah, Mr. Eliassi, and [Client 1]. These emails included information regarding [Client 1]'s residency and occupation and certain corrections [Client 1] requested on the listing, which went up August 15, 2022. Notably, this exchange included the following:
 - a. Ms. Panah emailing to indicate that the unlicensed assistant or Mr. Eliassi would deal with the issues;
 - b. Mr. Eliassi emailing to confirm that he had made the requested changes and advising [Client 1] of kinds of changes that could be made to the listing information, including the square footage;
 - c. Ms. Panah thanking Mr. Eliassi for clarifying the above noted information;
 - d. Mr. Eliassi confirming that he had added a clarification regarding the square footage to the realtor remarks portion of the listing;
 - e. Mr. Eliassi clarifying that the realtor remarks were not publicly viewable and were only available to licensees;
 - f. Mr. Eliassi confirming that he had corrected incorrect wording noted by [Client 1]; and
 - g. The unlicensed assistant confirming she had made certain changes and updates to the listing.
 37. None of Ms. Panah, Mr. Eliassi, or the unlicensed assistant took any issue in this email exchange with Mr. Eliassi's involvement.

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38. I note that Mr. Do was not copied on any of the August 15 and 19, 2022 emails.
39. On August 16, 2022, [Client 1] and Ms. Panah signed an amendment to the Listing Contract to increase the listing price from \$585,000 to \$598,000.
40. Like Ms. Panah, Mr. Eliassi says that [Client 1] called him often during this period to discuss the Property and the listing. I find that [Client 1] did so and for the same reasons I find that he often called Ms. Panah. In my view, that comports with the evidence and the general volume and detail of [Client 1]'s emails in this matter.
41. Mr. Eliassi also says he repeatedly told [Client 1] that he was not [Client 1]'s agent, that he was just helping with the listing while Ms. Panah was gone, and that [Client 1] should direct any questions or instructions about the listing to Ms. Panah's brokerage. I do not find this evidence entirely credible. In my view, Mr. Eliassi likely did mention to [Client 1] that Ms. Panah's brokerage was primarily handling the listing and that Mr. Eliassi did not intend to take on the role as the listing licensee, but it is unlikely that he explained what that meant in any great detail or with regard to what duties he owed or did not owe.
42. I find this primarily because Mr. Eliassi did not state in any of his emails to [Client 1] that he was not acting as an agent for [Client 1], he did not object to [Client 1] giving him instructions on the listing, and he did not object to being included on the emails disclosing the details of his desire to list and sell the Property quickly. Instead, Mr. Eliassi took [Client 1]'s instructions, relayed them to Ms. Panah's brokerage, and then advised [Client 1] that he had implemented [Client 1]'s instructions. In my view, if Mr. Eliassi had been repeatedly telling [Client 1] that he was not his agent, that would have appeared in the emails in some regard. The fact that it does not indicates that Mr. Eliassi was not clearly explaining his role in the listing to [Client 1] as it progressed.
43. In addition, the evidence establishes that Mr. Eliassi was not particularly careful about the nature of the services he provided to [Client 1]. This is demonstrated most clearly by his exchanges with [Client 1] and Ms. Panah's brokerage about the contents of the listing. In my view, that conduct supports a finding that if Mr. Eliassi had discussed his agency relationship with [Client 1], then he likely would have explained that Ms. Panah was the lead licensee responsible for the listing and that her brokerage was responsible for it, but he did not explain that he did not owe duties of confidentiality to [Client 1]. At most, I find Mr. Eliassi would have explained that his role was temporary and secondary. Further, Mr. Eliassi's failure to provide [Client 1] a Disclosure of Representation in Trade form suggests he was not paying explicit attention to the issue of his agency and his duties.
44. In my view, the conclusion that Mr. Eliassi may have said that this was Ms. Panah's listing, not his, but that he failed to discuss the precise details of his own relationship with [Client 1] is supported both by Mr. Eliassi's conduct and emails and by the fact that [Client 1] is clearly a very detail-oriented individual, who would have noted this point in his emails, and likely would have objected to an individual who owed him no duties being included in the listing process.
45. To summarize the above few paragraphs, I find it is likely that Mr. Eliassi explained to [Client 1] that Ms. Panah was still the listing realtor for the Property and that he was just handling the matter until she returned. I find it is unlikely that he explicitly explained to [Client 1] what that meant in terms of the relationship between [Client 1] and Mr. Eliassi and the duties that Mr. Eliassi would owe to [Client 1] as a result.
46. On August 22, 2022, Mr. Eliassi emailed [Client 1] and Ms. Panah to report that he held open houses for the Property on Saturday August 20 and Sunday August 21, 2022. He advised that he attended early on Saturday in anticipation of strata council members attending to inspect the Property but they did not attend. He reported that he had a showing request from one agent and conducted three showings on the Saturday. It is not clear to me if the showing request resulted in

a fourth showing, but I find that at least three showings occurred that day. Mr. Eliassi also reported that he attended at the Property from 1:00 pm until 4:00 pm on the Sunday and had one showing during that time and had two other residents ask to see the Property. Mr. Eliassi advised that one of the residents owned two other units in the building and might be interested in buying a third but would let Mr. Eliassi know. Finally, Mr. Eliassi advised [Client 1] that a screen door at the Property was not working and had been taken off and that the smoke alarm had been making noise. He stated that he had [Individual 1] attend to change the battery, but that this did not fix the problem.

47. Mr. Eliassi stated in his interview with BCFS Investigations that, during these showings, he had very little interaction with the potential buyers and merely allowed them into the unit to view the property. His evidence was that he told them he was not the listing agent for the Property. He also said he had a form of document that explained this to those who attended. Although BCFS Investigations requested this document during the interview, Mr. Eliassi did not provide it. In my view, whether Mr. Eliassi was present in the Property during the showings and what he said to the potential buyers and their agents is not particularly relevant to this proceeding. As discussed below, for the purposes of this proceeding, the primary question is whether Mr. Eliassi's conduct lead [Client 1] to believe that Mr. Eliassi was his agent and whether that belief was reasonable. Therefore, I make no particular finding regarding what happened during these showings other than that they occurred, that Mr. Eliassi attended them at least to permit entry, and that Mr. Eliassi reported what occurred to [Client 1] as described above.
48. Also on August 22, 2022, Ms. Panah emailed to thank Mr. Eliassi for the detailed email. Following that, [Client 1] and Ms. Panah exchanged emails, copying Mr. Eliassi, regarding the possibility of an open house on the Labour Day long weekend. Ms. Panah advised against it saying Mr. Eliassi and Mr. Do would conduct showings by appointment because those potential buyers were more serious, to which [Client 1] responded as follows:

"Sounds good to me!
I'll leave it in your team's capable hands.
49. On August 24, 2022, Mr. Eliassi emailed [Client 1] to advise as follows:

"I will Docusign a New Team Disclosure to you for your signature. Please sign and send it back to me as soon as possible."
50. I do not have a record of how this new disclosure was sent to [Client 1]. It does not appear that Mr. Eliassi sent it directly. In my view, it is most likely that Ms. Panah's unlicensed assistant sent it to [Client 1], as she had with the other forms signed when [Client 1] signed the Listing Contract. I have been provided a copy of the updated form, which is undated. It shows a list of 15 licensees on the BC Condos & Homes Team. Mr. Eliassi is not listed on the form.
51. On the same day, [Client 1] confirmed he signed it and Mr. Eliassi confirmed he received the signed disclosure.
52. On August 27 and 29, [Client 1] and Mr. Eliassi exchanged emails regarding the replacement of a screen door on the Property. In this exchange, Mr. Eliassi confirmed with [Client 1] that if he were going to change one of the screen doors, he should do both. Mr. Eliassi also confirmed that he received an inquiry regarding the Property but had not conducted any showings the preceding weekend.
53. The emails indicate [Client 1] contacted a handyman on August 29, 2022, it is not clear why he did so but what is clear is that [Client 1] provided the handyman with Mr. Eliassi's phone number and referred to Mr. Eliassi as his "local realtor".

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54. On September 1, 2022, [Client 1] emailed Ms. Panah and Mr. Eliassi to ask about how the Property was being marketed and to ask about multilingual video tours offered by another licensee at Ms. Panah's brokerage.
55. Ms. Panah replied by email on September 2, 2022, to confirm that the other licensee was on her team and provides services to a community that does not speak English and that marketing a strata property takes time. I take this to be a suggestion that a multilingual video tour was not necessary. The email provided to me does not show if Ms. Panah included Mr. Eliassi on her reply but I find that she did because Ms. Panah did not remove Mr. Eliassi from any other email chain and the email itself does not ask [Client 1] not to include Mr. Eliassi on emails of that type. In addition, [Client 1] responded on the same date via email to Ms. Panah and Mr. Eliassi to confirm receipt.
56. On September 5, 2022, Mr. Eliassi emailed [Client 1] to confirm that he had shown the Property to an individual and their agent who said they would "contact us". He also reported that the strata president had attended to attempt to address a beeping smoke detector and to recommend that [Client 1] have his electrician investigation. Finally, he notes that he will be leaving on September 7, 2022 and that "Marcie will arrange a colleague in the office to take care of showings and to provide access for trades."
57. On September 5, 2022, [Client 1] emailed his electrician to provide the contact information for Mr. Eliassi and Ms. Panah, noting that Ms. Panah was away until mid-September. In that email [Client 1] referred to Mr. Eliassi and Ms. Panah as "my realtors". In response, Ms. Panah reminded [Client 1] that Mr. Eliassi was leaving on September 7th and directed [Client 1] to contact [Licensee 1], another licensee at Ms. Panah's brokerage to arrange access. [Licensee 1] was also on the BC Condos & Homes Team. [Client 1] provided the electrician with [Licensee 1]'s contact information via email on September 6, 2022. I note that Ms. Panah did not reply to state that Mr. Eliassi was not [Client 1]'s agent.
58. Mr. Eliassi says that after these emails, he asked [Client 1] not to introduce him to others as [Client 1]'s "realtor" because, although he was a realtor, he was not [Client 1]'s realtor and he had "nothing to do with [Client 1]'s listing." I find that this conversation likely was of the same tenor as described above in regard to what I find Mr. Eliassi likely explained to [Client 1]: he likely explained that Ms. Panah was the listing licensee and primarily responsible for the listing, but he failed to explain what that meant for the relationship between [Client 1] and Mr. Eliassi.
59. Considering the above, I find that it is likely that [Client 1] believed that Mr. Eliassi was representing him during the period from July 25, 2022 to September 6, 2022. I find that Mr. Eliassi did not clearly explain to [Client 1] what the difference was between his role and Ms. Panah's and what that meant for [Client 1] and Mr. Eliassi's relationship. I find that the evidence establishes that [Client 1] subjectively believed that Mr. Eliassi was there to act in Ms. Panah's stead and to represent his interests in the Property. In my view, if [Client 1] had believed otherwise he would have very likely raised that issue in his correspondence, given how verbose and detailed his emails are. In addition, and for the same reason, I find that [Client 1] likely would have raised an issue if he believed that Mr. Eliassi did not owe him the duties generally owed by an agent to a client. The emails in which [Client 1] refers to Mr. Eliassi as his "realtor", refers to leaving matters with Ms. Panah's "team's capable hands", and freely shares information with Mr. Eliassi also support the conclusion that [Client 1] subjectively believed Mr. Eliassi was his agent.

The Listing and Payment Disputes

60. Over the course of late September and into mid-October 2022, [Client 1] and Ms. Panah signed a series of amendments to the Listing Contract that reduced the listing price from \$598,000 to \$558,000.

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61. Mr. Eliassi was out of town from September 7 to October 8, 2022 and did not speak to [Client 1], Ms. Panah, or Ms. Panah's team. On his return two of Mr. Eliassi's buyer clients asked him to submit an offer on the Property on their behalf.
62. On October 22, 2022, two other buyers submitted an offer to purchase the Property for \$495,000 through their agent. [Client 1] did not accept this offer.
63. On October 23, 2022, Mr. Eliassi submitted an offer to purchase the Property for \$500,000 on behalf of his two buyer clients. [Client 1] did not accept this offer. This appears to be Mr. Eliassi's last direct involvement in this matter. I note also that he does not appear to have been involved in the matter after September 7, 2022, except for the submission of this offer.
64. After these offers came in, [Client 1] became concerned that he needed to sell the Property in 2022 for tax purposes. This pressure in addition to the lack of a sale and [Client 1]'s repeated emails to Ms. Panah resulted in the relationship between Ms. Panah and [Client 1] breaking down, resulting in a dispute between them regarding the plan to renovate the Property and how that occurred. In addition, [Client 1] and [Individual 1] became embroiled in a payment dispute and [Individual 1] filed a lien. This resulted in a series of emails between [Client 1], Ms. Panah, and [Individual 1] over the course of November and December 2022 about possibly extending the Listing Contract, the lien claim, and the payment dispute. I will not reproduce the whole of that correspondence, but I note the following key pieces of correspondence.
65. On November 24, 2022, Ms. Panah sent [Client 1] an email noting her position on the payment dispute between [Client 1] and [Individual 1]. This email contains many notable statements including that Mr. Eliassi and Mr. Do showed the Property "over 18 times", that she "can't leave them with no compensation", and that if [Client 1] wants to terminate the listing he must "pay [Ms. Panah's] assistants". She offers to end the listing in exchange for payment of \$8,000 plus GST. She also, incorrectly, states that she hopes [Individual 1] does not place a lien because that would stop [Client 1] from selling.
66. In early December 2022, [Client 1] engaged a new licensee to list the Property for sale. I have not been provided the details of that engagement.
67. On December 6, 2022, in an exchange of emails regarding the transfer of keys for the Property from Ms. Panah to the new agent, Ms. Panah emailed [Client 1] to state the following:
- "I have explained the whole situation to my managing broker . Since you still owe money to the contractor you won't be able to have clear title transferred to the new buyers . The only way to prevent this is to sell through Remax so our office directly pay off the contractor from proceeds of sale . If you like to sell successfully, you need to relist with me to prevent the Lien. This way a clear title can get transferred to the new buyer . As always my intention is to help you.
I can go on the market effective today . This will prevent delays and help you sell quickly since it will be a new listing that will get a lot of attention .
The suggestive list price can be \$568,800 for a quick sale .
Hope this helps ."
- [sic]
68. I note the above is largely incorrect: [Client 1] did not need to relist with Ms. Panah or her brokerage to secure a removal of the lien or to secure clear title for a sale of the Property. [Client 1] noted as such in a reply email on the same date.
69. On December 18, 2022, [Client 1] emailed Ms. Panah's managing broker to attempt to have her address the outstanding disputes. In that email, [Client 1] explains his position regarding the payment dispute with [Individual 1], accuses Mr. Eliassi of engaging in a conflict of interest on the

basis that he was [Client 1]'s agent in regard to the Property during the summer, and to advise that he had accepted an offer on the Property. He also states that if the matter is not resolved he might proceed with a complaint against Ms. Panah with BCFSa.

70. On December 22, 2022, [Client 1] emailed to reiterate many of the points he made in his December 18, 2022 email, including his position that he might refer the matter to BCFSa. In this email, [Client 1] makes an offer to resolve the lien issue, which [Individual 1] accepted, resulting in the lien being removed on December 23, 2022.
71. I understand, although the information before me does not clearly establish, that [Client 1] was able to sell the Property in January 2023 for \$524,900.

Submissions

72. In Mr. Eliassi's submissions he notes that he has been a licensed realtor for 18 years and has not had any prior enforcement or disciplinary proceedings. He submits that he has "worked diligently to maintain the trust of [his] clients, colleagues, and the community." He submits that this event does not reflect his commitment to professionalism.
73. Mr. Eliassi submits that the administrative penalty should be waived because of his long licensing history without issue and what he calls the "lack of clarity regarding the nature of this complaint." He submits that the complaint was submitted based on spite because [Individual 1] filed a lien.
74. Mr. Eliassi also submits that he has not been provided a copy of the complaint and does not know why he was included in the complaint. He submits that he was included in [Client1]'s complaint despite not being involved in any transaction with [Client 1], never having received any funds from anyone involved with the Property, and not causing [Client 1] any harm.
75. Mr. Eliassi submits that [Client 1] was not his client and they never met. He submits that he did not have any personal information about [Client 1] and that his only involvement was to supervise the renovations prior to the listing.
76. Mr. Eliassi submits that the events at issue happened more than two years ago and much of Mr. Eliassi's interaction with [Client 1] occurred by telephone call "and were unrelated to the actual Real Estate Transaction". He submits that his services were "solely logistics and supervision of his property's renovation, not real estate."
77. Mr. Eliassi submits that he repeatedly told [Client 1] that he was not [Client 1]'s agent and that he would convey his instructions to Ms. Panah's brokerage. He submits that the penalty is a "steep financial penalty" imposed "purely on a technicality" in circumstances where he acted in good faith to help and without expecting any benefit to himself. He submits that BCFSa is penalizing him for "not putting that in writing". He submits that he never "acted in a way that misled [Client 1] into implied agency." He submits that he would be willing to take remedial education if required.
78. Mr. Eliassi finally submits that the NOAP and this decision should not be published by BCFSa because of the possible damage it will do to his reputation, which he submits is unjust. Although he frames this as not publishing the "incident", I take him to be referring to the NOAP and this decision.

Reasons and Findings

Applicable Legislation

79. 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.

80. 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.
81. 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. Section 34 of the Rules was 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.
82. 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.
83. Section 34 of the Rules provide as follows:
34 When providing real estate services, a licensee must act with reasonable care and skill.

Analysis

84. 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.
85. The central question in this matter is whether Mr. Eliassi failed to act with reasonable care and skill, contrary to section 34 of the Rules, by allowing an implied agency relationship to arise between himself and [Client 1]. In order to answer that question, I must first determine if an implied agency arose at all.

Implied Agency

86. The well-established test for an implied agency was set out in *Siemens v Howard*, 2018 BCCA 197 ("**Siemens**") as follows:

[11] I note that the judge cited the 20th edition of *Bowstead & Reynolds on Agency*, when in fact the quotation she included in her reasons came from the 15th edition. The 20th edition describes deemed agency this way at 61:

Agreement between principal and agent may be implied in a case where one party has conducted himself towards another in such a way that it is reasonable for that other to infer from that conduct assent to an agency relationship.

[12] Although the test is expressed somewhat differently in the two editions, both rely on the same jurisprudence. In my view nothing turns on the difference in

phrasing. The question is whether it is reasonable for the party asserting an agency relationship to infer from the conduct of the other party that he or she consented to an agency relationship.

87. Previous consent orders by the superintendent's predecessor regulator, the Real Estate Council of British Columbia ("RECBC"), have found that implied agency relationships can arise even if a licensee discloses that they are not acting as an agent if the licensee's later conduct implies an agency relationship: *Liu (Re)*, 2019 CanLII 37500 (BC REC) at paras 8-19.
88. The superintendent and RECBC have previously issued administrative and discipline penalties for a contravention of section 34 of the Rules where a licensee failed to properly disclose the nature of their representation and an agency relationship arose: *Lau (Re)*, 2020 CanLII 12248 (BC REC); *Khabra (Re)*, 2022 BCSRE 21 (CanLII); *Jinnah (Re)*, 2024 BCSRE 51 at para 148.
89. On July 25, 2022, Mr. Eliassi became involved with the Property. At that time, Ms. Panah introduced him by noting that, given Ms. Panah's departure, Mr. Eliassi would "be handling your listing from here on" and that Mr. Eliassi "is a great agent and always takes care of my work when I'm away". Although Ms. Panah said that the listing would remain under her name, this email strongly suggests that Mr. Eliassi was taking responsibility for the listing. Mr. Eliassi did not object to this characterization or clarify his role in writing with [Client 1] and instead began taking instruction from [Client 1].
90. In addition, the July 25, 2022 email included preceding emails forwarding confidential information about [Client 1]'s desire to sell the Property quickly. Neither Ms. Panah nor Mr. Eliassi raised any issue with Mr. Eliassi coming into possession of this information or indicated that [Client 1] should be cautious regarding his disclosure of possibly confidential information to Mr. Eliassi.
91. Mr. Eliassi's failure to clearly respond to advise that he was not [Client 1]'s agent supports an inference, by [Client 1], that Mr. Eliassi was acting as an agent.
92. Thereafter, Mr. Eliassi became involved with the renovation work by providing [Individual 1] with access to the Property. In my view, that conduct, on its own, does not necessarily support an inference that Mr. Eliassi was [Client 1]'s agent; however, Mr. Eliassi received information during those communications about the amount of money [Client 1] was spending on the renovations. That information, in addition to the other information Mr. Eliassi obtained regarding [Client 1]'s desire to sell quickly, gave Mr. Eliassi information regarding [Client 1]'s motivations to sell, which would generally only be available to an agent. There is no evidence that Mr. Eliassi indicated he should not be receiving this kind of information from [Client 1].
93. When the Property was eventually listed, Ms. Panah's unlicensed assistant copied Mr. Eliassi on the listing discussions, which included confidential information regarding [Client 1]. During these exchanges, Mr. Eliassi was not a silent observer but received and conveyed instructions regarding the listing from [Client 1] to Ms. Panah's brokerage. He also informed [Client 1] of the restrictions on certain features of the listing. Mr. Eliassi did this despite Ms. Panah's unlicensed assistant being copied on the emails and thus his input and involvement being unnecessary. Again, no one raised any issue with Mr. Eliassi receiving information or instructions from [Client 1] in this way and in fact Ms. Panah thanked him for doing so.
94. This conduct strongly supports an inference that Mr. Eliassi was involved in the transaction and had accepted the role of [Client 1]'s agent.
95. After that, Mr. Eliassi then attended several showings of the Property and reported their results to [Client 1] and Ms. Panah. Although Mr. Eliassi says he was merely providing access to the Property and had little engagement with those viewing the Property and he told those attending that he was

not the listing agent, the natural inference that someone in [Client 1]'s position would draw from receiving Mr. Eliassi's emails is that he was there representing [Client 1].

96. Mr. Eliassi's actions in relation to the listing information and in showing the property belie his submissions that he was merely providing "logistics and supervision". Contrary to this submission, Mr. Eliassi was directly involved in listing the Property, was involved in showing it, and was communicating information from potential interested parties to [Client 1].
97. In this regard, I note that "showing the real estate" is included within the definition of "trading services" in RESA which is one of three kinds of "real estate services" explicitly regulated by RESA. Mr. Eliassi was therefore providing real estate services to [Client 1] by conducting showings of the Property. Given Mr. Eliassi was not representing anyone else, this suggests he was acting on behalf of [Client 1] in doing so.
98. Again, during this period, Mr. Eliassi received emails regarding [Client 1]'s desire to sell the Property quickly and took no issue with having received this information. In addition, he was obtaining information regarding the level of interest in the Property that would generally only be available to a listing agent.
99. Although Mr. Eliassi submits that he knew nothing about [Client 1], this was clearly incorrect because he repeatedly received information regarding [Client 1]'s desire to sell quickly, the cost and duration of renovations to the Property, and the details of the listing.
100. I acknowledge two things in regard to the above.
101. First, I accept that Mr. Eliassi spoke to [Client 1] on the phone early on and throughout the course in their relationship and that during those calls it is likely that Mr. Eliassi repeatedly indicated to him that he was not the listing agent for the Property, but I find it unlikely that he had a sufficiently detailed conversation to explain to [Client 1] that he was not [Client 1]'s agent and owed him no duties. In my view, Mr. Eliassi's explanation went little further than confirming that Ms. Panah was remaining the listing agent.
102. Second, even if Mr. Eliassi had provided those explanations, he continued to provide services that suggested he was, in fact, [Client 1]'s agent. Those include receiving confidential information about [Client 1]'s motivations to sell the Property, receiving instructions on the listing and relaying them to Ms. Panah's brokerage, providing input on the listing, attending showings, and reporting on those showings to [Client 1]. In my view, despite Mr. Eliassi's protestations, he acted as an agent throughout his involvement from July 25 to September 6, 2022.
103. Third, Mr. Eliassi has indicated that he did not receive and never expected to receive remuneration for his work on the Property. I accept this submission; however, an implied agency relationship can be established without an expectation of remuneration. Further, the expectation of remuneration is not required for licensees to be subject to the requirements of RESA and the Rules: section 2(2)(b) of RESA.
104. Viewing the whole of the circumstances together, I find that it was reasonable for [Client 1] to have believed Mr. Eliassi was his agent. In other words, the facts establish that Mr. Eliassi "conducted himself towards [[Client 1]] in such a way that is reasonable for [[Client 1]] to [have inferred] from that conduct assent to an agency relationship": *Siemens*, para 11. Mr. Eliassi's verbal indications otherwise are not sufficient to undermine the clear contrary indication implied by his actions and written correspondence.

Reasonable Care and Skill

105. Having found Mr. Eliassi was in an implied agency relationship with [Client 1], I turn to the question of whether Mr. Eliassi acted with reasonable care and skill. For the reasons that follow, I find that he did not.
106. In my view, the question of whether Mr. Eliassi acted with reasonable care and skill asks whether a reasonably prudent licensee would have done what Mr. Eliassi did. In my view, a reasonably prudent licensee in Mr. Eliassi's circumstances would have made the nature of his representation clear in writing in advance of providing real estate services to [Client 1]. This is supported by the above noted decisions in *Khabra (Re)*, *Lau (Re)*, and *Jinnah (Re)*, which all find that a failure to make this disclosure early constitutes a failure to act with reasonable care and skill.
107. Further, Ms. Panah's July 25, 2022 email advising [Client 1] that Mr. Eliassi was "handling your listing from here on" and that "[t]he listing is under my name but all inquiries go through Allan" created a strong inference that Mr. Eliassi was coming on as an agent in Ms. Panah's absence. In my view, a reasonably prudent licensee who did not intend to become [Client 1]'s agent would have quickly, clearly, and in writing responded to clarify what their role would be. I find this because the agency relationship is a fundamental aspect of real estate licensees' role in real estate transactions and, in my view, it is unreasonable for a licensee to permit the representation made by Ms. Panah's email to go unanswered if they did not intend to become an agent for the client.
108. Further and even if it were the case that Mr. Eliassi's failure to disclose the nature of his representation at the outset were not a failure to act with reasonable care and skill, [Client 1]'s clear misunderstanding of whether Mr. Eliassi was his agent as the matter progressed, evidenced by his explicit reference to Mr. Eliassi as his "realtor" and his continuous sharing of confidential information, should have triggered Mr. Eliassi to clarify his role, what duties he intended to owe [Client 1], and which duties he did not intend to owe in writing or it should have triggered him to withdraw from providing any services in relation to the Property.
109. I note in this regard that Mr. Eliassi submits his failure to clarify his relationship in writing is a mere technicality given he says he repeatedly told [Client 1] that he was not his agent. In my view, this is not a mere technicality. Mr. Eliassi's conduct and receipt of confidential information leads to a clear inference that he was acting for [Client 1] from July 25, 2022 until at least September 6, 2022 and that [Client 1] reasonably concluded as such as a result of Mr. Eliassi's continued involvement in the listing of the Property. This ongoing confusion was exacerbated by Mr. Eliassi failing to lodge any objection at all in writing to [Client 1]'s repeated communications that suggested, and at points stated, he believed Mr. Eliassi was his agent.
110. I find that Mr. Eliassi's failure to clarify the nature of his intended relationship with [Client 1] as he continued to provide services and [Client 1] continued to disclose information and rely on Mr. Eliassi to assist in marketing the Property created an implied agency relationship and constitutes a failure to act with reasonable care and skill.

Penalty Amount

111. The penalty amount issued in the NOAP is \$5,000. That is the prescribed amount for a first contravention of section 34 of the Rules.
112. Mr. Eliassi submits that this penalty is imposed for a technical contravention for conduct that caused no harm and for which he was not remunerated and did not expect to be. He submits that he is being penalized for not putting the fact that he was not an agent in writing. He submits that the penalty is a significant one in those circumstances.

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113. As indicated above, the contravention is not merely technical. The allegations in the NOAP relate to two fundamental aspects of a licensee's role: agency relationships and the meeting of reasonable conduct standards.
114. The agency relationship is the main way through which real estate services are provided in British Columbia and that relationship carries with it fiduciary duties owed by the agent to the client. That importance is highlighted by the requirements to make clear disclosure of the nature of a licensee's relationship with those involved in real estate transactions in Part 5, Division 2 of the Rules. It is reflected in the fact that licensees' duties to their clients are specifically listed in section 30 of the Rules. It is also reflected in the fact that a contravention of any subsection of section 30 of the Rules constitutes a Category C contravention for the purposes of administrative penalties attracting some of the highest prescribed administrative penalties in the current regime.
115. The designation of section 34 as a Category C contravention indicates that a failure to meet the standards generally required of licensees when providing real estate services emphasizes the baseline importance of those standards.
116. In light of that, the fact that Mr. Eliassi's conduct may not have caused any clear harm to [Client 1] and that Mr. Eliassi never received or expected any remuneration but that he created a significant risk of a conflict of interest and the risk of [Client 1] sharing confidential information outside an agency relationship, serves to indicate that this matter is suitable for an administrative penalty, as opposed to justifying the greater resources and possible consequences of a discipline hearing. In my view, this is the type of contravention that generally justifies an administrative penalty.
117. Although Mr. Eliassi submits that he would be willing to take remedial education, I have no power to vary the administrative penalty issued. I can cancel or confirm it. Although I am of the view that remedial education could have been an appropriate part of an administrative penalty, I find that a monetary penalty was not inappropriate. I note in this regard, that Mr. Eliassi is not precluded from taking remedial or additional education if he believes that it is warranted.
118. Finally, Mr. Eliassi has made submissions on not having a clear understanding of why [Client 1] complained about him and about the nature of the complaint lodged by [Client 1] in light of the fact that the lien issue, in which Mr. Eliassi was never directly involved, was resolved. In my view, these submissions are largely irrelevant. [Client 1]'s motivations for reporting Mr. Eliassi and Ms. Panah to BCFSa do not impact whether BCFSa has any jurisdiction to investigate the matter or proceed with discipline or enforcement action as a result of that investigation. [Client 1]'s motivations may have some bearing on the assessment of his evidence, but on the evidence before me, which largely consists of emails and statements provided by Mr. Eliassi and Ms. Panah, [Client 1]'s motivations for making a complaint are not particularly relevant. In my view, Mr. Eliassi's and Ms. Panah's actions created substantial confusion regarding what exactly Mr. Eliassi's role was and, regardless of [Client 1]'s motivations for filing the complaint, it was reasonable of him to assume Mr. Eliassi acted as his agent in from July 25 to September 6, 2022.
119. Further, Mr. Eliassi was sufficiently advised of the nature of the issue in this matter by BCFSa's Investigations' investigation letter which summarized that he was under investigation to determine if he had provided real estate services to [Client 1], failed to disclose the nature of his representation to [Client 1], and created a conflict of interest when presenting an offer on behalf of his buyer clients. During Mr. Eliassi's interview by BCFSa Investigations, it also became clear that the issue of implied agency and the nature of Mr. Eliassi's conduct was alive in the investigation. Mr. Eliassi's written statements and his answers in the interviews make it clear that he understood that the nature of his relationship with [Client 1] was at issue here. Although the matter resulted only in an allegation with regard to the creation of an implied agency as opposed to the conflict of interest issue raised in BCFSa Investigations' investigation letter, the regulatory issue was explained to Mr. Eliassi.

Publication

120. Mr. Eliassi has asked that the NOAP and this decision not be published.
121. In general, the superintendent operates according to an open courts principle. The leading case on the conflict between privacy interests and the open courts principle in civil cases 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 the open courts principle should be restricted. 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.
122. 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.
123. 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 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.
124. When 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.
125. 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**”).
126. I have previously found that *Sherman Estate* applies to administrative penalties and reconsideration decisions under RESA with the modification that the second element of the test should include an assessment of whether the usual redactions applied by the superintendent are adequate to protect the risk: *Sra (Re)*, 2024 BCSRE 90 at paras 52-55.
127. In this matter, I will not go through a full application of the *Sherman Estate* test because the matter clearly does not meet the third element of that test. Even if we were to assume that Mr. Eliassi’s reputation as a licensee was an important public interest and was at risk, the detriments of restriction outweigh its benefits. I note in this regard that the Court of Appeal recognized professional reputational interests as an important public interest in *A Lawyer*, paras 75-76.
128. I also note that Mr. Eliassi has submitted no particular evidence that would suggest publication of this matter would place his reputation at risk. He does indicate he has no prior disciplinary record

and has a long history as a licensee and in that regard any publication would tarnish his reputation to some extent. That said, I take it as effectively granted that publication of an enforcement decision will have some negative impact on a licensee's reputation.

129. That said, the detriments to refusing to publish would be significant. If the NOAP and this decision were not published, there would be a significant detriment to the general deterrent effect of this regulatory action by sending the message that licensee's names and reputations will be protected in these processes, notwithstanding their breach of the Rules. The necessary result of refusing to publish the NOAP or this decision, or to redact Mr. Eliassi's name or otherwise anonymize it so that it would not potentially damage Mr. Eliassi's reputation, would be to effectively make that mandatory in all disciplinary or enforcement proceedings because in all such cases the subject's reputation would be at stake to some extent.
130. Further, it would also reduce the transparency of the superintendent's and BCFSA's operations by depriving the public and licensees in general of the knowledge of these proceedings and how they moved forward. That would deny both licensees and the public of an understanding of the superintendent's and BCFSA's approach to these matters, which could be used to hold the superintendent and BCFSA accountable both in the public forum and in future proceedings before the superintendent. That lack of transparency would therefore have detrimental effects on the superintendent's and BCFSA's accountability and consistency.
131. Finally, failing to publish the NOAP and this decision would reduce the public protection aspect of the superintendent's and BCFSA's role. Publishing licensee's names and the details of their misconduct serves to notify the public of that conduct so that they can make decisions when selecting a real estate licensee to represent them. In my view, depriving the public of the information that their licensees have breached the regulatory regime by which they are bound defeats a primary purpose of the regulatory regime.
132. I note in this regard that, in the balancing of risk of harm to a licensee's reputation and the above detriments of refusing to publish, more serious conduct tends to both create a larger impact on one's reputation and also increase the need for publication to improve deterrence, transparency, and public confidence. Conversely, less serious conduct impacts a licensee's reputation less and attracts a reduced need to enhance deterrence, transparency, and public confidence; however, as these considerations scale, they will almost always come out in favour of publication where a licensee is adjudicated to have contravened the legislation.
133. Finally, this matter is distinguishable from *A Lawyer*, where the lawyer's identity was withheld, on a similar basis as *A Lawyer* was distinguished in *Sager (Re)*, 2022 LSBC 49, para 42. In *Sager (Re)*, the presiding adjudicator distinguished *A Lawyer* because *A Lawyer* involved a matter that was merely under investigation whereas in *Sager (Re)* the Law Society Discipline Committee had decided to issue a citation. In this case, the matter has been investigated and a notice of administrative penalty has been issued and reconsidered. Mr. Eliassi has been found to have contravened section 34 of the Rules. For the reasons indicated above, the fact that he has been found to have contravened the Rules should be made public and there is nothing unjust about publishing that fact.
134. For those reasons, even if Mr. Eliassi were able to satisfy the first two elements of the *Sherman Estate* test, his request fails on the balancing element. I therefore find that the NOAP and this decision should be published in accordance with BCFSA's usual publication policies.

Conclusion

135. I find that Mr. Eliassi's conduct created an implied agency relationship between himself and [Client 1], notwithstanding his verbal indications to [Client 1] that he was not the listing agent. I find that Mr. Eliassi failed to act with reasonable care and skill in providing real estate services to [Client 1]

in relation to the Property by allowing that implied agency to arise and persist in this case contrary to section 34 of the Rules.

136. I find that the NOAP and these reasons should be published in accordance with BCFSA's usual publication policies.

137. I confirm the NOAP.

138. The \$5,000 administrative penalty is now due and payable to BCFSA.

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

"Original signed by Gareth Reeves"

Gareth Reeves
Hearing Officer