

**BC FINANCIAL SERVICES AUTHORITY**

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

**AND IN THE MATTER OF**

**MARCIE (MEHRNOOSH MADJIDI-PANAH) PANAH  
(150546)  
AND  
MARCIE PANAH PERSONAL REAL ESTATE CORPORATION  
(150546PC)**

**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 Marcie Panah and Marcie Panah Personal Real Estate Corporation (collectively, “**Ms. Panah**”) 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 Ms. Panah had contravened section 34 of the *Real Estate Services Rules*, BC Reg 209/2021 (the “**Rules**”) by having another licensee, Allan (Alireza) Eliassi, assist with her listing of a property on [Property 1] in Burnaby (the “**Property**”) while she was out of the country and failing to advise her seller client that Mr. Eliassi was not the seller’s agent.
3. Ms. Panah 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

9. The evidence and information before me consists of an investigation report completed by BCFSA, the tabs thereto, and the information provided by Ms. Panah in the application for reconsideration. Mr. Eliassi also submitted a reconsideration request for a notice of administrative penalty issued against him in relation to this matter. I have considered both requests together and thus have additionally considered the information provided by Mr. Eliassi 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 of the information before me.

### *Licensing History*

10. Marcie Panah was first licensed as a trading services representative on December 5, 2006. Since that date, she has been licensed at various brokerages. At the time at issue, she was licensed with RE/MAX Crest Realty (X034180). Marcie Panah Personal Real Estate Corporation was first licensed on December 5, 2014 and has been licensed in the same fashion as Marcie Panah since that date.
11. At the relevant time, Mr. Eliassi was licensed with Team 3000 Realty Ltd (X028937).

### *Initial Discussions Regarding the Property*

12. 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.
13. 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.
14. 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].
15. 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].
16. 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.

17. 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.
18. 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.
19. 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.
20. In early July, 2022 and as the renovations proceeded, [Client 1] and Ms. Panah began discussing the listing price for the Property.
21. 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]
22. On July 5, 2022, [Client 1] signed a listing contract (the “**Listing Contract**”) with Ms. Panah's brokerage which provided that M[s]. 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.
23. 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.
24. 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.
25. 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***

26. 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.
27. 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.
28. 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]
29. 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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30. 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.
  31. 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.
  32. 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.
  33. 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].
  34. 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.
  35. 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.
  36. 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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37. I note that Mr. Do was not copied on any of the August 15 and 19, 2022 emails.
  38. 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.
  39. 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.
  40. 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.
  41. 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.
  42. 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.
  43. 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.
  44. 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.
  45. 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.

46. Mr. Eliassi stated in his interview with BCFSA 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 BCFSA 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.
47. 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.
48. 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.”
49. 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.
50. On the same day, [Client 1] confirmed he signed it and Mr. Eliassi confirmed he received the signed disclosure.
51. 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.
52. 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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53. 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.
54. 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.
55. 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."
56. 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 7<sup>th</sup> 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.
57. 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.
58. 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***

59. 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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60. 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.
61. 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.
62. 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.
63. 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.
64. 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.
65. 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.
66. 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]
67. 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.
68. 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.

69. 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.
70. 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

71. Ms. Panah submits that she was under "extreme duress" and mourning the loss of her mother who lived overseas and attempted to make the best decision possible to protect her client, [Client 1].
72. Ms. Panah submits that [Licensee 1], who was responsible to supervise the BC Condos & Homes Team at the time, should have "advised and protected his team member/colleague".
73. Ms. Panah submits that [Client 1]'s indication that he may not pursue a complaint to BCFSA during the negotiations surrounding the lien dispute should be considered. She submits also that her managing broker at the time, [Managing Broker 1], should be held responsible for failing to document this statement from [Client 1] and that [Managing Broker 1] was biased.
74. She submits that her Google reviews indicate her "integrity, honesty and professional services" and that "one incident like this [should not] destroy my 2 decades of career".
75. Finally, Ms. Panah indicates that she donates to certain charities and that publishing the NOAP and this decision will negatively impact her business, her future clients, and those charities she contributes to will be negatively impacted.

## Reasons and Findings

### *Applicable Legislation*

76. 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.
77. 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.
78. 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.
79. 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.

80. Section 34 of the Rules provide as follows:

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

### *Analysis*

81. 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.

### *Reasonable Care and Skill*

82. In assessing whether Ms. Panah acted with reasonable care and skill, the primary question is whether a reasonably prudent licensee in Ms. Panah's circumstances would have interceded to clarify the nature of Mr. Eliassi's relationship with [Client 1].

83. In my view, whether an implied agency relationship in fact arose is not directly relevant to that question. Instead, the question is whether a reasonably prudent licensee in Ms. Panah's position and with her knowledge would have taken steps to clarify the nature of the relationship between Mr. Eliassi and [Client 1]. In effect, the question is what standard of response was required from Ms. Panah given what she knew about the interactions between Mr. Eliassi and [Client 1] and her own actions in regard to that conduct.

84. To begin, I note that in most circumstances, it is reasonable for a licensee to assume another licensee will discharge that other licensee's statutory obligations to properly disclose the nature of their intended relationship to those to whom that other licensee provides real estate services. Put more simply, licensees can expect other licensees will be clear about their agency relationships with clients and potential clients. So, in most circumstances, Ms. Panah could have initially expected Mr. Eliassi to take the necessary steps to clarify the nature of his relationship with [Client 1].

85. That said, licensees cannot rely on this presumption where they either unreasonably contribute to a misunderstanding of that other licensee's role or fail to address what, based on information within their knowledge, appears to be a developing implied agency relationship. In this case, Ms. Panah both contributed to the misunderstanding and failed to act on information within her knowledge.

86. Looking at the evidence as a whole, Ms. Panah introduced Mr. Eliassi as her "colleague" who would be "handling [Client 1's] listing from here on". She also stated that "When [Individual 1] is done , we will schedule the rest of the marketing work" [sic], implying that she and Mr. Eliassi would work together to market the Property. She also indicated that Mr. Eliassi would be taking on the bulk of the responsibility during her absence by saying, "The listing is under my name but all the inquiries go through Allan". She did indicate that she could be reached by WhatsApp, but noted that this was "in case of emergency". That email strongly suggested that Mr. Eliassi was coming on in Ms. Panah's place as [Client 1]'s agent. It contributed to a strong initial impression that Mr. Eliassi was taking on the role of agent in lieu of Ms. Panah.

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87. The email also forwarded to Mr. Eliassi confidential information regarding [Client 1]'s motivations to sell the Property, which further strengthened the inference that Mr. Eliassi was stepping in as [Client 1]'s agent.
88. I note, however, that the July 25, 2022 email and both Ms. Panah's and Mr. Eliassi's evidence confirmed that this was not the first time Mr. Eliassi had assisted Ms. Panah with her listings. In my view, if they had used this arrangement before they should have been prepared to explain it clearly to [Client 1]. I note also, that Ms. Panah was planning to leave on vacation in August 2022. That evidence suggests, and I find, that Ms. Panah likely planned to have Mr. Eliassi cover for her on [Client 1]'s listing during her planned absence. This is further supported by Ms. Panah's July 5, 2022 email advising [Client 1] of her planned August vacation and stating that she had eight agents who work with her and that she intended to co-list with another, at that time unnamed, agent. In my view, that email, combined with the above noted evidence indicates that Ms. Panah had planned on Mr. Eliassi covering for her during her vacation.
89. In my view, the July 5, 2022 email contributed to the backdrop in which the confusion arose regarding Mr. Eliassi's role in dealing with the Property by indicating that, in addition to the team working with Ms. Panah, there was another agent who would co-list the Property with her. I note that no formal co-listing was arranged for the Property. Although it is possible that Ms. Panah expected to bring on a co-listing agent at that time and that this merely did not occur, this email in the entire context, including that the co-listing issue was raised in response to a question about Ms. Panah's vacation, gave the impression that another licensee would come on to act as [Client 1]'s agent for the listing when Ms. Panah left.
90. Even if Ms. Panah was in a highly emotional state on July 25, 2022 in my view it was unreasonable for Ms. Panah to have introduced Mr. Eliassi in the fashion that she did. That introduction strongly suggested Mr. Eliassi was stepping in as an agent as noted above. I acknowledge in this regard that Ms. Panah was grieving and making plans to travel abroad as a result of her mother's passing. In my view, that goes some way to explaining why she might have been less than careful in introducing Mr. Eliassi to [Client 1], but it does not render it reasonable.
91. Further, even if there had been clarity regarding Mr. Eliassi's role initially, agency relationships can arise by implication from the conduct of the parties notwithstanding prior disclosure to the contrary. The test to determine if an implied agency has arisen 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.
92. 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.

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93. Leaving aside for the moment the nature of the initial introduction, Ms. Panah failed to object to Mr. Eliassi's ongoing involvement in the listing process and to his continued receipt of confidential information from [Client 1] through August and into early September 2022. Ms. Panah was copied on many of the emails between [Client 1] and Mr. Eliassi during this time and her responses to them indicate she was aware of them. Instead of taking issue with Mr. Eliassi's involvement, Ms. Panah thanked him for his contributions and provided her own instructions, with Mr. Eliassi included. She did not advise [Client 1] that he should not share his desire for a quick sale or the details of the cost of the renovations with Mr. Eliassi. She did not instruct her unlicensed assistant not to take instructions from Mr. Eliassi on the contents of the listing agreement. She did not remove him from email chains in which she explained her marketing strategy for the Property.
94. I also note that there is nothing in the correspondence that treated Mr. Do, who was a part of Ms. Panah's team and a designated agent for [Client 1], differently from Mr. Eliassi. This contributed to the confusion regarding Mr. Eliassi's role while he was performing effectively the same services as one of [Client 1]'s agents, if not more.
95. In my view, Ms. Panah was included on sufficient correspondence that she should have considered whether an implied agency relationship had emerged between the licensee she had arranged to assist in the transaction, Mr. Eliassi, and her client, [Client 1]. It was incumbent on her, as [Client 1]'s agent and the individual who brought Mr. Eliassi into the relationship, to seek to clarify Mr. Eliassi's role. In the context of the evolving relationship, she should have interceded.
96. Without clarifying Mr. Eliassi's role, two risks arose. First, if Mr. Eliassi was not [Client 1]'s agent and thereby owed [Client 1] no duties, a risk arose that [Client 1] would assume Mr. Eliassi was his agent and disclose confidential information about his motivations to sell the Property to Mr. Eliassi. Second, if Mr. Eliassi had become [Client 1]'s implied agent, a risk arose that Mr. Eliassi would end up in a conflict of interest with regard to [Client 1]'s sale of the Property given it was unclear whether Mr. Eliassi and [Client 1] both understood what Mr. Eliassi's duties were.
97. In my view, a reasonably prudent licensee in Ms. Panah's circumstance would not have sent the July 25, 2022 email which indicated that Mr. Eliassi was responsible for the listing during her absence, thereby bringing Mr. Eliassi into the relationship between her and [Client 1], without also being explicit regarding Mr. Eliassi's expected agency relationship. Even though she could usually have relied on Mr. Eliassi to make this clear, the content of the July 25, 2022 email went beyond merely introducing Mr. Eliassi and positively suggested that Mr. Eliassi was stepping into Ms. Panah's place. In my view, licensees owe their clients fiduciary duties and as a result, notwithstanding their own interests or personal struggles, they are obliged to fully and fairly inform their clients of the real estate services being provided to them, particularly where the licensee arranges those services.
98. Further, a reasonably prudent licensee would not have permitted their client to engage with Mr. Eliassi in the way [Client 1] did for more than a month without stepping in to seek to clarify Mr. Eliassi's role.
99. Both of these failures on Ms. Panah's part were unreasonable and they do not comport with the standard of clarity regarding the formation and maintenance of an agency relationship expected of licensees. Agency is a fundamental aspect of the licensee's role. It forms the primary basis through which real estate licensees provide their services. The Rules provide clear requirements to disclose and protect the agency relationship: see section 30 and Part 5, Division 2 of the Rules. In my view, the careless approach taken by Ms. Panah does not align with the standard expected of licensees when bringing in another licensee to cover their work during their absence.
100. In my view, the duties owed by a licensee to their client and a reasonable standard of care includes a requirement that they not contribute to or allow confusion regarding the nature of the relationship between their client and a licensee they bring in to assist them in providing services to their clients.

101. I therefore find that Ms. Panah failed to act with reasonable care and skill by failing to clarify Mr. Eliassi's agency relationship with [Client 1] by clearly advising [Client 1] in writing.

**Penalty Amount**

102. 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.

103. In my view, that penalty is appropriate in the circumstances. Although there was no clear harm arising from the agency issue in this case, agency is a fundamental aspect of licensees' operations in British Columbia. The importance of that relationship is indicated in the provisions requiring disclosure of the agency relationship in Part 5, Division 2 of the Rules and the listed specific duties set out in section 30 of the Rules. The designation of a contravention of section 30 as a Category C contravention, some of the highest penalties in the current administrative penalty provisions, also indicates that issues surrounding agency relationships should attract special attention.

104. In addition, this case touches on another fundamental element of a licensee's obligations: the duty to act with reasonable care and skill when providing real estate services. In my view, the designation of section 34 as a Category C contravention emphasizes the baseline importance of the reasonable care and skill standard.

105. In this case, the lack of clarification, the significant risk that [Client 1] was sharing confidential information outside of an agency relationship, and the risk of a conflict of interest considered along with the lack of demonstrated harm indicates this matter is suitable for administrative penalty.

106. As noted above, I acknowledge that Ms. Panah was under stress and grieving in late July 2022, but that does not excuse her failure to address this fundamental aspect of her client's relationship with a licensee she was introducing and does not explain her failure to take care in that regard through August and into September 2022.

107. Ms. Panah suggests that her team leader and managing broker should face some consequence for their failures in this matter. I am not able to decide that issue in this proceeding, nor do I have the information necessary to do so. The question before me is directed toward Ms. Panah's conduct. Whether others involved will face enforcement action is not before me. It is irrelevant to this matter whether it is appropriate for the superintendent to take action against those individuals. I therefore do not opine on that point in this decision.

108. Ms. Panah also points to her good reputation, lack of disciplinary record, and charitable involvement. I have not read Ms. Panah's Google reviews as she suggests, I assume they all speak well of her and her services. That said, her lack of disciplinary record and relatively long licensing history along with her character and community involvement all serve to indicate that an administrative penalty is more appropriate than a disciplinary proceeding as opposed to indicating that an administrative penalty is inappropriate.

109. Further, Ms. Panah's concerns about the impact of the publication of this decision and the NOAP do not weigh substantially against the appropriateness of the sanction. In my view, publication is a common part of regulatory enforcement proceedings and is necessary to ensure that the public is informed regarding the processes of the regulator, the conduct of licensees, and the conduct history of particular licensees. Further, the extent of the impact on Ms. Panah's reputation is relative to the nature of the misconduct disclosed in this decision and to that extent the publication will almost always part of an appropriate response by the regulator.

## Conclusion

110. I find that Mr. Eliassi's conduct gave rise to an implied agency relationship between himself and [Client 1]. I find that Ms. Panah contributed to that implied agency and failed to advise [Client 1] that Mr. Eliassi was not intended to be [Client 1]'s agent and thereby failed to act with reasonable care and skill contrary to section 34 of the Rules.

111. I confirm the NOAP.

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

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

"Original signed by Gareth Reeves"

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Gareth Reeves  
Hearing Officer