

BC FINANCIAL SERVICES AUTHORITY

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

AND IN THE MATTER OF

**ANDREW JAMES IRVINE
(162646)**

**REASONS FOR DECISION REGARDING
ADMINISTRATIVE PENALTY RECONSIDERATION REQUEST**

[These Reasons have been redacted before publication.]

DATE AND PLACE OF HEARING: Via Written Submissions

HEARING OFFICER: Gareth Reeves

Introduction

1. On January 7, 2025, the BC Financial Services Authority ("BCFSA") issued a Notice of Administrative Penalty (the "NOAP") in the amount of \$6,000 to Andrew James Irvine 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. Irvine had contravened section 29(1)(b) of the *Real Estate Services Rules*, BC Reg 209/2021 (the "Rules") by failing to promptly submit transaction documents to his brokerage in relation to a property in Kelowna (the "Property") and contravened section 27(1)(a) of RESA by failing to promptly provide the deposit received on July 22, 2024 for the purchase of the Property to his brokerage when he delivered it to the brokerage on August 28, 2024.
3. Mr. Irvine 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 January 7, 2025 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 Mr. Irvine in the application for reconsideration. I have reviewed all that information. 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.

Licensing and Conduct

10. Mr. Irvine was first licensed as a representative in the trading services category on September 2, 2011 and has remained licensed in that category and at that level since that date.
11. The background to this matter arises from Mr. Irvine acting as an agent for two prospective purchasers (the “**Buyers**”) regarding their intended purchase of the Property from its then owners (the “**Sellers**”).
12. On July 12, 2024, the Buyers and Sellers executed a contract of purchase and sale whereby the Buyers agreed to purchase the Property for \$965,000 (the “**Contract**”). The Contract contemplated that completion would occur on September 5, 2024. It also provided that the Buyers were to pay a deposit of \$50,000 (the “**Deposit**”) to Mr. Irvine’s brokerage (the “**Brokerage**”) within 48 hours of subject removal, not including weekends and statutory holidays.
13. The Buyers removed subjects on July 19, 2024, rendering the Deposit payable by July 23, 2024, which is 48 hours not counting the intervening weekend.
14. On July 22, 2024, the Buyers obtained a \$50,016 bank draft (the “**Deposit Draft**”) and delivered it to Mr. Irvine for payment of the Deposit. The evidence establishes that the \$16 excess was inadvertently included because of confusion regarding banking fees and was returned to the Buyers.
15. On August 28, 2024, the conveyancing lawyer for the transaction contacted the Brokerage to request documents on the deal. The Brokerage’s staff had no record of the deal and brought the matter to the attention of [Managing Broker 1], the Brokerage’s managing broker. [Managing Broker 1] then contacted Mr. Irvine immediately and Mr. Irvine provided the Deposit Draft and all required documents.
16. The evidence indicates that Mr. Irvine was using a virtual assistant at the time who was located in Regina, Saskatchewan. Mr. Irvine’s assistant was formerly in-person but had moved to Regina. Mr. Irvine says that his assistant was supposed to deliver the deal documents for the Contract to the Brokerage, but failed to do so.
17. Mr. Irvine’s evidence, which I accept, is that the deal documents and the Deposit Draft were in his office and once he was made aware of the failure to submit both he immediately provided them to his Brokerage. It is not clear to me on the evidence whether Mr. Irvine had provided the deal documents to his virtual assistant to be submitted. BCFSA has the burden of proof in this proceeding as regards the contravention and, as noted below, BCFSA has not provided me with all

the emails Mr. Irvine provided during the investigation. I therefore cannot conclude that Mr. Irvine failed to provide the deal documents to his assistant.

18. On September 4, 2024, the Buyers and Sellers executed an amendment to the Contract providing that they agreed the Deposit was received on July 22, 2024 but was not deposited into the Brokerage's trust account until August 28, 2024.
19. On that same date, [Managing Broker 1], the Seller's, and the managing broker for the Seller's brokerage signed an acknowledgment form acknowledging the late delivery of the Deposit.
20. On September 5, 2024, the transaction completed with no further issues.
21. On September 6, 2024, [Managing Broker 1] reported the matter to BCFSA.
22. Mr. Irvine has since terminated his engagement of his virtual assistant, has been trained on the document submission platform used by the Brokerage, and submits deal documents himself. Mr. Irvine's evidence in his interview by BCFSA Investigations indicated that part of the reason he had terminated his virtual assistant's engagement was because her work was becoming "sloppy" and the conduct in this case was further to that decline, I accept that as an accurate description of his reasons for doing so.

BCFSA Investigation

23. BCFSA Investigations conducted telephone interviews of [Managing Broker 1] and Mr. Irvine on September 24, 2024 to gather their statements. Their evidence comports with the above findings regarding what occurred.
24. On October 4, 2024, BCFSA Investigations emailed Mr. Irvine an investigation letter requesting his statement and documents in relation to the failure to submit documents and to provide the Deposit. The investigation letter required Mr. Irvine to respond by October 18, 2024.
25. BCFSA Investigations did not receive a response to the October 4, 2024 letter by October 18, 2024. So, BCFSA called Mr. Irvine on October 21, 2024 and issued a non-compliance warning letter to Mr. Irvine regarding his failure to provide a response by the required deadline. In the telephone call, Mr. Irvine advised that he would have the documents submitted by the end of the day.
26. On October 21, 2024, Mr. Irvine delivered nine emails to BCFSA Investigations attaching various documents in response to the October 4, 2024 investigation letter. I have only been provided with three of those emails. The information disclosed in the emails and documents provided to me is summarized above.

Submissions

27. Mr. Irvine submits that when he realized the Deposit had not been submitted, he immediately notified his managing broker who notified BCFSA. Mr. Irvine submits that he discovered the issue and that he notified the seller's agent and her managing broker.
28. Mr. Irvine submits that he has taken corrective action "by bringing all administration control back in house under [his] control."
29. Mr. Irvine submits that he cooperated with the investigation and ensured that BCFSA Investigations had everything required.
30. Mr. Irvine submits that he has been licensed since 2011 and has no history of missing deposits or failing to promptly deliver documents. He submits that he keeps informed about the market and

changes to regulatory requirements at weekly sales meetings at his brokerage. He says he prides himself on his professionalism as a licensee. He submits that the administrative penalty is harsh for a first-time contravention that was self-reported. He requests a reconsideration or reduction of the administrative penalties.

Reasons and Findings

Applicable Legislation

31. Section 56 of RESA provides that BCFSA may designate specific provisions of RESA, the *Real Estate Services Regulation* (the “**Regulations**”), or the Rules as being subject to administrative penalties, and may establish the amounts or range of amounts of administrative penalty that may be imposed in respect of each contravention of a specified provision. Pursuant to section 56(2), the maximum amount of an administrative penalty is \$100,000.
32. 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.
33. Section 26(2) of the Rules identifies six categories, Category A, B, C, D, E, and F, for designated contraventions for the purpose of determining the amount of an administrative penalty. Section 29(1) of the Rules is placed in Category D and section 27(1) of RESA is placed in Category C. Section 27(4) of the Rules provides that Category D contraventions may attract a \$1,000 base penalty for a first contravention or a \$2,000 base penalty for a subsequent contravention plus a \$250 penalty for each day or part of a day that the contravention continues. Section 27(3) of the Rules provides 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.
34. 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.
35. Sections 29 and 94 of the Rules provides, in relevant part, as follows:

Associate broker and representative responsibilities

- 29 (1) An associate broker or representative must promptly provide to the managing broker the original or a copy of all records referred to in any of the following sections that are in the possession of the associate broker or representative and that were prepared by or on behalf of the associate broker or representative, or received from or on behalf of a principal:
 - (a) section 83 [*general records*];
 - (b) section 84 [*trading records*];
 - (c) section 87 [*rental property management records*];
 - (d) section 88 [*strata management records*].

...

Trading records

- 84 (1) A brokerage must retain the following records with respect to trades in real estate in relation to which it provides trading services:

- (a) the contracts for the acquisition or disposition of real estate;
- (a.1) the offers for the purchase or sale of real estate, or for the assignment of a contract for the purchase and sale of real estate, that a related licensee of the brokerage has delivered or received on behalf of a party to a trade in real estate;
- (b) any accounting statements prepared by or on behalf of the brokerage that are provided to a party by the brokerage in relation to a trade in real estate;
- (c) any notices of rescission, referred to in section 42 (1) of the *Property Law Act [residential real estate — right of rescission]*,
 - (i) that are prepared by or on behalf of the brokerage and served on a seller, or
 - (ii) that are received by the brokerage.

(2) If a brokerage or a related licensee holds or receives money in relation to a trade in real estate, the brokerage must prepare and retain a record sheet respecting the trade, in a form approved by the superintendent, that includes the following information:

- (a) the nature of the trade in real estate;
- (b) a description sufficient to identify the real estate involved in the trade in real estate;
- (c) a deal number for the purposes of identifying the trade in real estate;
- (d) the sale price or other consideration for the trade in real estate;
- (e) the name and address of every party to the trade in real estate;
- (f) the amount of money received that is required by section 27 [payment into trust account] of the Act to be paid into the brokerage's trust account and the details of every disbursement of that money;
- (g) the amount of remuneration paid or payable to any licensee or other person, the name of the party paying the remuneration and the name of the person who has received or is to receive it.

36. Section 27 of RESA provides, in relevant part, as follows:

Definitions

1 In this Act:

"money" includes currency, government or bank notes, cheques, drafts, money orders and amounts credited or received by electronic means;

Payment into trust account

27 (1) A licensee engaged by a brokerage must promptly pay or deliver to the brokerage

- (a) all money held or received from, for or on behalf of a principal in relation to real estate services,
- (b) all money held or received on account of remuneration for real estate services, including a share of remuneration received from another brokerage and whether or not the remuneration has already been earned, and

- (c) all money held or received on account of remuneration paid as a result of the licensee recommending the products or services of any of the following persons:
 - (i) a home inspector, mortgage broker, notary public, lawyer or savings institution;
 - (ii) any other person in a business, profession or occupation relating to real estate.

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Analysis

37. The imposition of an administrative penalty under section 57 of RESA is a discretionary decision. A request to reconsider the imposition of an administrative penalty requires a Hearing Officer to consider not only whether a contravention of RESA, the Regulations, or the Rules has occurred, but also whether a licensee exercised due diligence, that is: took reasonable steps or precautions, to prevent the contravention of the designated sections identified in the notice of administrative penalty. 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.

Contraventions

38. Mr. Irvine does not deny that he failed to deliver the Deposit Draft or the deal documents to the Brokerage.
39. The facts establish that Mr. Irvine was in possession of the fully executed Contract on July 12, 2024 and the Deposit Draft on July 22, 2024. The Contract is a form that licensees are required to promptly deliver to their brokerage pursuant to sections 29(1)(b) and 84(1)(a) of the Rules. The Deposit Draft was money received by Mr. Irvine which he was required to promptly deliver to the Brokerage pursuant to s 27(1)(a) of RESA.
40. Although the Deposit was due on July 23, 2024, the documents and the Deposit Draft were not delivered to Mr. Irvine's brokerage until [Managing Broker 1] brought the issue to Mr. Irvine's attention on August 28, 2024. This was a delay of more than a month. In my view, the delivery was not prompt, particularly in light of the July 23, 2024 deadline for delivery of the Deposit.
41. Absent establishing due diligence, Mr. Irvine has therefore contravened section 27(1) of RESA and section 29(1) of the Rules as alleged.

Due Diligence

42. Mr. Irvine bears the onus of demonstrating he exercised due diligence in attempting to avoid the contraventions that occurred here.
43. I start first with the contravention of section 29(1) of the Rules. As noted above, I am not able to find that Mr. Irvine failed to deliver the required documents to his virtual assistant. That said, Mr. Irvine has not established that he had reasonable systems in place to ensure that the documents were delivered to the Brokerage. In fact, Mr. Irvine's evidence was that his virtual assistant's work was becoming "sloppy". It was Mr. Irvine's responsibility to ensure that his assistant, or any other person engaged by him and tasked with submitting documents, did so and that proper checks and systems were in place to ensure that occurred. Mr. Irvine has not provided any evidence of such systems or checks and his evidence that his virtual assistant's work had become sloppy tends to indicate a greater need for such checks to have been put in place. I

therefore find that Mr. Irvine has failed to establish a due diligence defence, even assuming that he did deliver the required documents to his assistant.

44. Turning to the contravention of section 27(1) of RESA, Mr. Irvine has not demonstrated that he had any system or process in place to ensure that deposit funds were delivered to the Brokerage on time. His evidence is that the Deposit Draft was in his file in his office. I see no reason why, if it were not immediately delivered to the Brokerage, a bank draft of approximately \$50,000 would go into a file without some notation placed to remind Mr. Irvine that the draft was there.
45. Mr. Irvine has noted that he has never had an issue with the failure to deliver a deposit before; however, I do not find this to be a compelling explanation as to why he would have failed to make that delivery in this case and I do not find it to provide evidence that he exercised due diligence in handling the Deposit Draft.
46. I therefore find that Mr. Irvine has not made out a due diligence defence in this case and I find that the contraventions of section 29(1) of the Rules and 27(1) of RESA occurred as alleged.

Penalty Amount

47. In assessing the penalty amount, the question before me is whether a penalty is appropriate. Given I only have the power under section 57(4) to cancel or confirm a penalty and, if I cancel it, to issue a notice of discipline hearing, the question is not whether the penalty is the correct one or the best one. In my view, the question is whether the penalty falls within the range of appropriate regulatory responses to the misconduct identified in the NOAP.
48. The penalty amount imposed by the NOAP for Mr. Irvine's contravention of section 29(1) of the Rules was the base amount for a first contravention of a section designated in Category D, being \$1,000. The penalty amount imposed by the NOAP for Mr. Irvine's contravention of section 27(1) of RESA was the base amount for a first contravention of a section designated in Category C, being \$5,000.
49. Looking at the two contraventions in this case, I note that they touch on similar, but distinct, obligations.
50. The obligation to deliver documents to the Brokerage is concerned with ensuring proper record keeping and also with ensuring that the Brokerage and its managing brokers have access to the information that needed to comply with their regulatory obligations. To use a relevant example, a failure to comply with section 29(1) of the Rules by a licensee renders it difficult or impossible for a managing broker to comply with section 28(5) of the Rules by immediately notifying the parties to a transaction that a required deposit has not been received. It also impacts the managing broker's ability to properly manage the brokerage's business and supervise the related licensees as required by section 28(1) of the Rules. A licensee's obligation to deliver documents to their brokerage is therefore a key part of how the regulatory regime is intended to operate to ensure real estate transactions proceed properly. A breach of this section on its own may not cause harm, but it can lead to other failures that do.
51. In this case, Mr. Irvine's failure to comply with section 29(1) meant that the Brokerage was unaware that a transaction was pending until the conveyancing lawyer contacted them. Had the Brokerage known about the transaction in a timely way, they could have inquired with Mr. Irvine regarding the status of the deposit, and possibly avoided the further breach of section 27(1) of RESA.
52. In my view, the base penalty amount of \$1,000 for section 29(1), which is low relative to the penalties prescribed for other categories, obscures the importance of that section; however, the importance of section 29(1) is demonstrated by the daily penalties that can accrue while the

documents remain outstanding. This signals that the failure to promptly deliver documents is a problem that can become more serious as the failure continues.

53. I note in this regard that the failure in this case continued for more than a month and was only resolved once the completion date in the Contract was looming. That fact created a risk for Mr. Irvine's clients that the Sellers could have sought to undo the Contract on the basis of the failure to properly deliver the Deposit. Although that risk did not crystalize here, that is more a matter of good fortune that the Sellers wanted to proceed with the Contract, than something that arises from Mr. Irvine's or the Brokerage's actions. That is not to say that Mr. Irvine and the Brokerage did not act promptly or that they failed to take any appropriate steps to ensure no harm flowed from the misconduct here. It is simply to note that the obligation breached is important and the risk caused by that breach was not entirely within Mr. Irvine's or the Brokerage's power to repair.
54. Turning to the obligation under section 27(1) of RESA. That obligation is a crucial regulatory obligation. Its importance is reflected in the fact that it is placed in Category C, a category that generally contains sections dealing with agency issues and duties to clients. It is also reflected in the fact that section 27 of RESA is one of only a few sections designated as offences pursuant to section 118(1) of RESA.
55. Further and as noted above, a contravention of section 27(1) puts the real estate transaction for which the licensee receives the money at risk and thereby puts the licensee's clients at substantial risk in what is often one of the most important transactions of their lives. Again, I find that the fact that that risk did not crystalize into harm in this case is substantially a matter of luck.
56. Mr. Irvine submits that he has no disciplinary record, that the contraventions were inadvertent, that he acted quickly to address the issue, that there was no harm suffered, and that he has taken corrective action to ensure similar misconduct does not occur in the future. I accept those submissions and I find they are mitigating.
57. Mr. Irvine also submits that he reported the issue to his managing broker and BCFSA when it was discovered. This is not accurate. [Managing Broker 1] brought the issue to Mr. Irvine's attention when the conveyancing lawyer contacted the Brokerage requesting documents.
58. Mr. Irvine further submits that he was contacted by BCFSA Investigations, provided all paperwork, and confirmed with BCFSA investigations that he had done so. I do not entirely accept this submission. The evidence in fact establishes that Mr. Irvine failed to respond within the timeline set by BCFSA Investigations to the first investigation letter. It appears that he then provided sufficient information for BCFSA Investigations to conclude its investigation.
59. In my view, Mr. Irvine has slightly overstated the extent of his involvement in the discovery, reporting, and investigation of this matter. Although Mr. Irvine certainly did not fail to cooperate and was likely aware that [Managing Broker 1] would report the matter to BCFSA, the sequence of events does not disclose that he self-reported and diligently complied with BCFSA Investigations requests. That said, I do not find that Mr. Irvine's submissions in this regard weigh in any significant way against a finding that he acknowledges his misconduct and has addressed it.
60. Viewed in total then, Mr. Irvine inadvertently breached an important record keeping obligation which undermined protections in place to prevent a further breach of a crucial regulatory duty to deliver deposit funds. There is no evidence that Mr. Irvine was anything other than careless with regard to his duty to deliver the Deposit Draft or the Contract and related documents to the Brokerage, but it does not appear he had any system in place to ensure he delivered them as required. The failure to deliver the Deposit Draft to the Brokerage put Mr. Irvine's clients at substantial risk. That risk did not materialize, through a mixture of luck and prompt action by Mr. Irvine and the Brokerage, and the contravention was reported by the Brokerage. Mr. Irvine complied with his obligations during

the investigation, took steps to prevent reoccurrence, and has no prior disciplinary record or history of similar record keeping or deposit handling issues.

61. Against that backdrop, I turn to the general goals of regulatory sanction, each of which is aimed at ensuring compliance and protecting the public: specific deterrence, rehabilitation, general deterrence, and maintenance of public confidence in the industry and the regulator.
62. In my view, there is little need for specific deterrence or rehabilitation here. Mr. Irvine knows he contravened RESA and the Rules and he knows how he did so. He has taken steps to ensure the misconduct does not occur again. Some specific deterrence is likely necessary to solidify this understanding, but in my view, not a significant degree.
63. Turning to general deterrence, Mr. Irvine's contravention of section 27(1) of RESA requires some general deterrence to demonstrate to licensees that they simply cannot be careless with funds they receive from their clients and particularly cannot be careless with deposit funds.
64. Regarding Mr. Irvine's contravention of section 29(1) of the Rules, I find that it requires some general deterrence, but because the contravention is a record keeping contravention, the need for general deterrence is reduced as compared to that required in regard to the contravention of section 27(1) of RESA. There is still a need for general deterrence though, given Mr. Irvine's contravention of section 29(1) of the Rules contributed to his contravention of section 27(1) of RESA. In my view, the fact that a further contravention flowed from the section 29(1) contravention increases the need for the regulator to indicate to licensees that it will take steps to address record keeping contraventions where they lead to issues.
65. Turning to the issue of public confidence in the industry and the regulator, there is clear value in demonstrating to the public that the safeguards in place to ensure their transactions proceed properly are maintained and appropriate processes are followed. Where they are not, the public should know that the superintendent will take appropriate action.
66. Considering the matter as a whole and the goals motivating regulatory intervention, I find that the administrative penalty imposed in regard to Mr. Irvine's contravention of section 27(1) of RESA is appropriate. Although the contravention led to no harm and was inadvertent and Mr. Irvine took steps to prevent reoccurrence, the obligation is too important for the regulator to not take action and to clearly indicate that carelessness is not acceptable in regard to handling client funds, particularly where that carelessness puts the client's transaction at risk. In my view, the mitigating factors in this case indicate that an administrative penalty is warranted as opposed to proceeding with a discipline hearing, but they do not render it inappropriate to issue a monetary penalty.
67. I find that the administrative penalty imposed in regard to Mr. Irvine's contravention of section 29(1) of the Rules is at the upper end of the appropriate range, but it is appropriate. I find this because the section 29(1) contravention was not just a record keeping contravention that stands on its own, it contributed to the contravention of section 27(1) of RESA. Had the failure to deliver documents not contributed to a further contravention, I would have found that the monetary penalty was inappropriate and that other forms of administrative penalty, such as remedial education or licensing conditions, were appropriate. That said, Mr. Irvine's contravention of section 29(1) of the Rules made a more serious contravention possible and allowed it to persist for longer, that increases the need for a regulatory response to achieve general deterrence and improve public confidence.
68. I therefore find that the administrative penalties issued in the NOAP are appropriate.

Conclusion

69. I find that Mr. Irvine contravened section 29(1) of the Rules when he failed to promptly deliver the Contract to the Brokerage. I find that Mr. Irvine contravened section 27(1) of RESA when he failed to promptly deliver the Deposit Draft to the Brokerage. I find that Mr. Irvine has not established that he exercised due diligence in regard to the above contraventions. I find that the administrative penalties issued in the NOAP are appropriate.
70. I confirm the \$6,000 in administrative penalties issued in the NOAP.
71. The \$6,000 in administrative penalties is now due and payable to BCFSA.

DATED at North Vancouver, BRITISH COLUMBIA, this 1st day of April, 2025.

“Original signed by Gareth Reeves”

Gareth Reeves
Hearing Officer