

BC FINANCIAL SERVICES AUTHORITY

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

AND IN THE MATTER OF

**[Applicant 18]
([Licence # Redacted])**

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

[This Decision has been redacted before publication.]

DATE AND PLACE OF HEARING: Via Written Submissions

HEARING OFFICER: Gareth Reeves

Introduction

1. On December 3, 2024, the BC Financial Services Authority (“**BCFSA**”) issued a Notice of Administrative Penalty (the “**NOAP**”) in the amount of \$2,250 to [Applicant 18] 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 [Applicant 18] had contravened section 21 of the *Real Estate Services Rules*, BC Reg 209/2021 (the “**Rules**”) by failing to provide all requested documents in relation to BCFSA file number 20-896 by the required deadline of November 8, 2024, as set out in a Non-Compliance Warning Letter, and instead providing the documents on November 14, 2024.
3. The \$2,250 penalty amount was calculated as a \$1,000 base penalty for a first contravention plus a \$250 daily penalty for each of the five days from November 9 to November 13, 2024, inclusive.
4. [Applicant 18] applied for a reconsideration of the NOAP under section 57(4) of RESA. The application proceeded by written submissions.

Issues

5. The issue is whether the December 3, 2024 NOAP should be cancelled or confirmed.

Jurisdiction and Standard of Proof

6. 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.

7. Section 57(4) of RESA permits the superintendent to cancel the administrative penalty, confirm the administrative penalty, or, if the superintendent is satisfied that a discipline hearing under section 40 of RESA would be more appropriate, cancel the administrative penalty and issue a notice of discipline hearing.
8. The superintendent has delegated the statutory powers and duties set out in section 57 to Hearing Officers.
9. The standard of proof is the balance of probabilities.

Background

10. The evidence and information before me consists of an investigation report completed by BCFSA, the tabs to that report, and the information provided by [Applicant 18] in the application for reconsideration. The following is intended to provide some background to the circumstances and to provide context for my reasons. It is not intended to be a recitation of all of the information before me.

Licensing and Disciplinary History

11. [Applicant 18] was first licensed as a representative in the trading services category on February 7, 2007 and has been licensed in that fashion since that date. [Applicant 18] Personal Real Estate Corporation was first licensed on June 27, 2016 and has been licensed in the same fashion as [Applicant 18] since that date.
12. [Applicant 18] has been a member of the registered real estate team “[Applicant 18] Group” since August 14, 2023.
13. [Applicant 18], at the time of the relevant contraventions, had no formal disciplinary history. She has previously received a letter of advisement in August 2023 regarding certain alleged contraventions of sections 21, 30(d), and 34 of the Rules. The alleged contraventions in that letter were not proven in a discipline hearing or subject to any other formal enforcement process under RESA and I draw no conclusion from the issuance of that letter other than that [Applicant 18] was reminded of her obligations under the above noted sections of the Rules at the time.
14. [Applicant 18] was also issued a notice of administrative penalty in file number [redacted] for contraventions of sections 40(2), 40(3)(b), 40(6), and 41 of the Rules. The penalties issued in that file were confirmed after a reconsideration under section 57 of RESA: *[Citation Redacted]*.

Conduct

15. In 2024, BCFSA Investigations was investigating [Applicant 18]’s conduct regarding a property at [Property 1], Vancouver (the “**Property**”). During that investigation, [Applicant 18] advised BCFSA Investigations that she was having trouble with her brokerage email and that she preferred to use her Gmail address for correspondence. This included some correspondence in late September 2024 to schedule an interview of [Applicant 18] on October 15, 2024.
16. On October 15, 2024, BCFSA Investigations conducted an interview of [Applicant 18] and followed up with two emails to her Gmail address to make eight requests for information or documents. Those included requests that [Applicant 18] provide the following:
 - a. “All other offers received for the Property”
 - b. “All tenancy agreements related to the Property”
 - c. “All emails and texts with your seller client related to the Property”

- d. "Please have your client contact me to discuss the contents of the January 3, 2020 letter."
17. BCFSA Investigation's October 15, 2024 email set a deadline of October 25, 2024 for [Applicant 18] to respond to the requests.
 18. [Applicant 18] says, and I accept, that BCFSA Investigations' October 15, 2024 email was redirected to her junk mail folder. Around this time, her brokerage email address was compromised as a result of a security breach and she began using forwarding email addresses to prevent further security breaches. In addition, she experienced a high volume of spam emails that resulted in several important emails, including the October 15, 2024 email, being redirected to her junk mail folder.
 19. On November 1, 2024, BCFSA Investigations emailed [Applicant 18] a non-compliance warning letter (the "**NCWL**"). The NCWL confirmed that BCFSA Investigations had not received a response to the October 15, 2024 email, reiterated the eight requests made in that email, and set a November 8, 2024 deadline for [Applicant 18] to come into compliance by responding to those requests. The NCWL noted that BCFSA Investigations considered [Applicant 18] to be in breach of her obligations under section 21 of the Rules, that daily penalties of \$250 per day would accrue if she did not come into compliance by November 8, 2024, and that she may face a base penalty of \$1,000, even if she came into compliance on or before November 8, 2024.
 20. On November 4, 2024, [Applicant 18] sent an email responding in a numbered list to the requests BCFSA Investigations had made (the "**First Response Email**"). In response to the request for offers, [Applicant 18] stated "----Offers are Attached". In response to the request for emails and text communications with her seller client, [Applicant 18] stated "-----All email and text communications related to the property are attached." In response to the request regarding tenancy agreements, she stated as follows:

"----Note that no lease agreement was in place, although tenant belongings remained at the property which were removed before possession of the property.

----It was also mentioned to everyone that accessed the property and Scott acknowledged that in the addendum dated January 13, 2020 and January 16, 2020."

[sic]
 21. The attachments to the First Response Email included, among other things, a February 3, 2020 email from [Applicant 18] to her seller client, certain signed representations by her seller client, a contract of purchase and sale for the Property (the "**CPS**"), and an addendum for the CPS.
 22. During this opportunity to be heard, I directed [Applicant 18] to advise what attachment she was referring to when she stated "----Offers are Attached". She responded to indicate that she was referring to a document entitled "IMG_5700.PNG" containing an image of a printed sheet of paper showing the information on four offers made on the Property, including the name of the person making the offer, the price, the deposit, the subject removal dates, and the closing and possession dates. Included in these four is the offer that eventually formed the CPS. That document was not attached to the First Response Email and no text message correspondence was attached to the First Response Email.
 23. Also on November 4, 2024, [Applicant 18] also sent an email to BCFSA Investigations with the subject "Seller's text messages" in which she attempted to provide several screenshots of text messages in the body of her email and as attachments (the "**Text Message Email**"). That document attempted to attach several documents in png format including one entitled "IMG_5700.PNG". I conclude that this was the same document as supplied by [Applicant 18] during this opportunity to be heard.

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24. BCFSA Investigations was unable to view the inclusions and attachments to the Text Message Email and so, on November 5, 2024, BCFSA Investigations emailed [Applicant 18] to raise this concern and to suggest that she submit the items as a pdf or jpeg document. After a series of exchanges on that date, [Applicant 18] provided a pdf document including text messages between herself and her seller client. Notably, that pdf does not include the contents of the IMG_5700.PNG document, which she had attempted to provide via the Text Message Email.
25. On November 6, 2024, BCFSA Investigations replied to the First Response Email to note that certain images in the First Response Email were not viewable, to reiterate that BCFSA Investigations wanted to be put in contact with [Applicant 18]'s client, and to state, "Other offers to not appear to be attached" [sic]. [Applicant 18] and BCFSA Investigations then exchanged emails in which [Applicant 18] advised that her client was in India and did not want to have any calls with BCFSA Investigations and in which [Applicant 18] attempted to resend material that had not come through by way of attachment.
26. On November 7, 2024, BCFSA Investigations replied to [Applicant 18] stating, "Nothing was attached. I still have not received the other offers."
27. On November 12, 2024, BCFSA Investigations sent an email to [Applicant 18] stating, in part, as follows:
- "You have not ceased the Contravention.
- You still have not provided the four other offers.
- Please clearly state whether or not you obtained the lease agreement when you listed the Property in September 2019 and January 2020. If you have a copy, please provide it."
28. BCFSA Investigations' November 12, 2024 email provided an upload link for [Applicant 18] to upload her documents.
29. On November 12, 2024, [Applicant 18] replied to the request regarding the lease agreement to advise that she was informed there was no lease agreement in place although there was a tenant who had already moved out when the Property was listed in January 2020. She noted that the tenant had left some belongings owned by another tenant in the suite. She described her account of what occurred regarding that other tenant in January and February 2024. She also attempted to attach three images. [Applicant 18] also uploaded those images to the folder provided by BCFSA Investigations.
30. I note that [Applicant 18]'s November 12, 2024 email attached three images, but she uploaded nine images to the folder provided by BCFSA. The names of the images attached to her email correspond to three of the names in the folder, and I infer that those are the same and relate to her text messages exchanged with the tenant. It is not clear to me what the other documents are, given I was not provided with them, but [Applicant 18] has indicated that she provided other documents related to the tenancy of the Property, including an agreement to end tenancy, and so I infer that these documents all relate to the tenancy.
31. On November 14, 2024, BCFSA Investigations emailed [Applicant 18] to ask if [Applicant 18] did not obtain a lease agreement for the Property because she was told there was no lease agreement despite there being a tenant in the Property, and to state that the images in [Applicant 18]'s November 12, 2024 email were not viewable. BCFSA Investigations explicitly stated that [Applicant 18] should answer "yes" or "no" and if she answered "no" to explain.
32. BCFSA Investigations' November 14, 2024 email also stated, "You still have not provided the four offers."

33. [Applicant 18] replied on November 14, 2024. In that reply, she stated that her seller client told her there were no lease agreements in place, advised that she had uploaded the images to a folder provided by BCFSA Investigations, and stated, "there were four offers in total 3 verbal and one on paper, email was attached to your original email." [Applicant 18]'s November 14, 2024 email attached a pdf document that contained the same information as was included in the document entitled "IMG_5700.PNG".
34. On November 15, 2024, BCFSA Investigations emailed [Applicant 18] to reiterate the question regarding the lease agreement and the request for a "yes" or "no" answer and to request that [Applicant 18] "clearly state" how many offers she had received on the Property and how they were received and to provide a copy of any written offer or correspondence.
35. On November 16, 2024, [Applicant 18] replied to state that she had not obtained a lease agreement because the seller told her there was no lease agreement. She also stated that the only written offer received was the accepted one, which became the CPS, and that she recorded the other three verbal offers, as is her standard practice. She advised that she could not provide written correspondence or documentation because of a hack to her brokerage email, which resulted in a loss of data.
36. On November 18, 2024, BCFSA Investigations wrote to [Applicant 18] to state, "Thank you for your response and ceasing the Contravention." [Applicant 18] replied, "You're welcome."

Submissions

37. [Applicant 18] provided two sets of submissions, first in relation to the request for an opportunity to be heard itself, and the second in relation to my directions that the parties answer certain questions about the attachments to and references in her First Response Email. Some of the information contained in [Applicant 18]'s submissions is set out above, particularly the information contained in the documents she submitted. Below is a summary of the balance of her submissions.
38. As noted above, [Applicant 18] indicates that the October 15, 2024 email from BCFSA Investigations was sent to her junk mail and as a result she missed that email and only received the November 1, 2024 email.
39. [Applicant 18] submits that she responded promptly to questions asked of her by BCFSA Investigations by replying the same day or shortly after in most cases and reiterating her prior answers. She submits that she undertook repeated efforts to provide documents, which demonstrates she took reasonable steps to comply with BCFSA Investigations' requests.
40. [Applicant 18] submits that the repeated questions from BCFSA Investigations caused confusion regarding whether her prior emails had been coming through.
41. [Applicant 18] submits that around November 12, 2024 a brain tumor was discovered in her son's brain and she had to fly to Los Angeles, California to deal with that issue and that she had uploaded the documents to BCFSA Investigations' folder while at the airport. [Applicant 18] says she also told BCFSA Investigations on that date that she had previously provided the information regarding the offers in her First Response Email.
42. [Applicant 18] submits that BCFSA should have provided her with the option to upload documents to their shared folder earlier, which would have avoided the issues that arose regarding her sharing images via email. [Applicant 18] states that she raised the issue of uploading the documents through a portal on November 4, 2024, but was not offered that option until November 12, 2024.

Reasons and Findings

Applicable Legislation

43. 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.
44. 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.
45. 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 21 of the Rules is placed in Category D. Section 27(4) of the Rules provides that a Category D contravention may attract a \$1,000 base penalty for a first contravention or a \$2,000 base penalty for a subsequent contravention plus a \$250 daily penalty for each day or part of a day that the contravention continues.
46. 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.
47. Section 21 of the Rules provide as follows:
Licensee must reply promptly to superintendent
 21 (1) A licensee must respond promptly to any inquiry addressed to the licensee by the superintendent.
 (2) The licensee’s response
 (a) must be in writing, unless the superintendent allows it to be provided otherwise, and
 (b) if applicable, must be provided to the superintendent no later than the date set by the superintendent.

Analysis

48. 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.
49. To establish a contravention of section 21 of the Rules, BCFSA Investigations must show that a licensee failed to respond to a request either promptly or by the deadline set for response by the superintendent. BCFSA’s investigators are delegated the authority to set deadlines pursuant to section 21 of the Rules. In my view, those deadlines must be reasonably set; therefore, BCFSA

Investigations must show that they set a reasonable deadline in the circumstances. Further, the reasonableness of that deadline should be assessed based on the information known to BCFSA Investigations at the time: *Shums (Re)*, 2025 BCSRE 11 at paras 58-60. This includes consideration of any extensions requested by the individual subject to the deadline.

50. To show that a licensee failed to respond promptly, BCFSA is not required to show that the licensee entirely failed to respond. It is sufficient that the licensee failed to respond in a way that addresses the substance of the request. In that context, if BCFSA shows that the licensee replied merely to confirm receipt, to discuss deadlines, or to respond to parts but not all of the requests made, that is sufficient to establish a contravention.
51. Once a contravention is established, the licensee may avoid liability for failing to meet a reasonably set deadline if they can show the alleged contravention occurred despite their exercise of due diligence or as a result of extenuating circumstances.
52. The reasonableness of the deadline also arises regarding the deadline set in a non-compliance warning letter. This is acknowledged to some extent in BCFSA's guidance published online entitled "The Administrative Penalty Process" (the "**AP Process**") which provides as follows:

BCFSA may grant an extension of the Compliance Warning Period or cancel the Non-Compliance Warning Letter if the individual or entity provides BCFSA with sufficient information to satisfy BCFSA that there are extenuating circumstances.

If compliance cannot be achieved within the Compliance Warning Period due to extenuating circumstances, a request for an extension of the Compliance Warning Period should be made to BCFSA before the period ends. If an extension is granted, administrative penalties will not be imposed during the extension period. The length of the extension will be determined on a case-by-case basis and will consider the nature of the circumstances.

Granting an extension of the Compliance Warning Period or cancelling the Non-Compliance Warning Letter does not prevent BCFSA from taking action in the future in respect of the matter. If the contravention continued beyond a reasonable timeframe after granting an extension of the Non-Compliance Warning Letter, and the contravention continues to be eligible for an administrative penalty, BCFSA can choose to issue an administrative penalty for the base amount.

53. The AP Process lists examples of circumstances that BCFSA generally considers extenuating and those it generally does not by stating as follows:

Some examples of extenuating circumstances include, but are not limited to:

- Significant disruption to a brokerage's computer system due to a cyber attack, a fire, or a flood;
- Extraordinary work being undertaken by an external auditor;
- Business disruption caused by industrial action, natural disaster, or state of emergency;
- Significant illness, accident, or injury requiring hospitalization; and
- Absence caused by jury duty.

Examples of situations that are unlikely to be considered as extenuating circumstances include:

- Staff changes or absences;
- Minor computer problems, partial system disruptions, or lack of contingency plans;

- Office closures or statutory holidays;
- Personal or domestic events such as moving or attending a wedding;
- Holidays or travel arrangements;
- Postal delivery delays or strikes; and
- Minor illnesses.

54. To summarize, BCFSa generally considers circumstances that are unavoidable, unforeseeable, and beyond a licensee's control to be extenuating. This should be contrasted with events that a licensee could have reasonably avoided or planned for or that the licensee causes.
55. I am not bound by the AP Process and I must consider this matter in its entire context and in accordance with the relevant legislation; however, the AP Process provides some guidance regarding the approach generally taken by BCFSa and the superintendent.

Contravention

56. BCFSa Investigations sent a list of eight requests to [Applicant 18]'s Gmail account on October 15, 2024 with a deadline to respond by October 25, 2024. BCFSa Investigations sent this email to the email address that [Applicant 18] had used to correspond with them in September 2024 and which she had told them to correspond with her through. BCFSa Investigations also sent this email shortly after it had conducted an interview of [Applicant 18].
57. Unbeknownst to BCFSa Investigations, its October 15, 2024 email was diverted to [Applicant 18]'s junk mailbox. As a result, [Applicant 18] did not respond by the October 25, 2024 deadline and so BCFSa Investigations sent the NCWL on November 1, 2024 setting a compliance deadline of November 8, 2024, which was also sent to her Gmail account.
58. [Applicant 18] did see the November 1, 2024 email and responded with two emails on November 4, 2024. The two emails provided by [Applicant 18] that day attempted to respond to all eight requests made by BCFSa Investigations; however, the documents she attempted to attach did not come through. This resulted in her not providing the requested correspondence with her seller client or the list of offers on that date.
59. On November 5, 2024, BCFSa Investigations noted that the information attached to the Text Message Email had not come through resulting in [Applicant 18] sending the text messages with her seller client in pdf format later that day and curing any default regarding the request for correspondence on that date. She did not provide the offers on that date, despite BCFSa Investigations noting that it could not view the images provided in the Text Message Email.
60. On November 6, 2024, BCFSa Investigations followed up regarding the request that [Applicant 18] put them in contact with her seller client. On that same day, [Applicant 18] replied to confirm that her client was not interested in further calls with BCFSa.
61. It is not clear to me if BCFSa Investigations takes issue with the course of [Applicant 18]'s responses regarding the lease agreement. BCFSa Investigations continued to ask questions on this point until November 15, 2024. In my view, [Applicant 18]'s November 4, 2024 response indicating that there were no lease agreements was a sufficient response to the request made by BCFSa in its October 15, 2024 email and in the NCWL, which was confined to requesting copies of the lease agreements. BCFSa Investigations' following emails sought clarification regarding how [Applicant 18] came to believe that there was no lease agreement in place, but all that was originally asked of [Applicant 18] was that she provide the lease agreements and she responded substantively to that request.

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62. Turning back to the request for all offers received with regard to the Property, [Applicant 18] attempted to provide that information on November 4, 2024; however, the png file was not delivered to BCFSA Investigations in a format that allowed them to view it. I note also that the subject of [Applicant 18]'s Text Message Email gave no indication that she attached anything other than correspondence with the seller to that email.
63. I reiterate that BCFSA Investigations sent [Applicant 18] a follow-up email on November 5, 2024 noting that they could not view the attachments to the Text Message Email, which unbeknownst to them was also meant to include the information on offers made. BCFSA then explicitly followed up on the issue of offers on November 6, November 7, November 12, and November 14, 2024. [Applicant 18] only provided the information regarding the offers on November 14, 2024 as a pdf attachment to her email of that date. I note that [Applicant 18] incorrectly indicates in that email that the offer information was attached to her original responses. [Applicant 18] ought to have known this was incorrect because she was explicitly told on November 5, 2024 that BCFSA Investigations had not properly received the attachments to her Text Message Email.
64. [Applicant 18]'s misunderstanding in this regard appears to have persisted through the course of this opportunity to be heard. Her submissions during this opportunity to be heard repeat the position that she provided the offer information on November 4, 2024 in the First Response Email based on her reference to the attachment, despite the fact that that email did not attach the offer information. It may be that she considers the First Response Email and the Text Message Email to be one response and thus her reference to attachments includes the attachments to the Text Message Email; however, as noted above, she also was aware that the attachments to the Text Message Email had not come through.
65. Based on the above, I find that [Applicant 18] failed to meet the October 25, 2024 deadline set in the October 15, 2024 email from BCFSA Investigations and did not cure that failure with regard to all requests until November 14, 2024. [Applicant 18] cured most of the failures on November 4, 2024 including the failure to respond regarding the lease agreements, cured the failure with regard to the correspondence with the seller on November 5, 2024, cured the failure regarding contact with her client on November 6, 2024, and cured the failure with regard to the offer information on November 14, 2024.
66. The remaining questions with regard to contravention are whether the October 25, 2024 and November 8, 2024 deadlines set by BCFSA were reasonable in the circumstances known to BCFSA and whether the November 8, 2024 deadline should have been extended to account for extenuating circumstances.
67. [Applicant 18] does say that the October 15, 2024 email was sent to her junk mail and therefore she did not see it. In my view, given [Applicant 18] was under investigation, had recently changed to using her Gmail as opposed to her brokerage email, had used her Gmail account to correspond with BCFSA Investigations, had told them to use that email, and had been recently interviewed by BCFSA Investigations, it was incumbent on her to ensure that she was able to receive emails at that address. If necessary, this would have included checking her junk mailbox to see if emails intended for her had been delivered there.
68. In my view, there was nothing to indicate to BCFSA Investigations that the October 25, 2024 deadline was not reasonably set. Further, there was nothing to indicate that the November 8, 2024 deadline was not reasonably set as well.
69. I note in this regard that [Applicant 18] did not request any extensions or otherwise indicate that she would not be able to meet those deadlines. Instead, she responded repeatedly between November 4 and November 7, 2024 to provide answers and documents and cured most of the contraventions by November 6, 2024.

70. Regarding extenuating circumstances, [Applicant 18] does raise the issue of her son's brain tumor. Although I accept that this was likely an exceedingly stressful situation for [Applicant 18], it does not appear to have interfered with her ability to respond to BCFSA Investigations' emails and [Applicant 18] does not indicate how it would have, other than to indicate that she was responding despite that issue. In my view, she has not established that her son's illness was extenuating in this case.
71. [Applicant 18] also raises the technical issues she faced when attempting to deliver documents to BCFSA Investigations. On my review of the materials, those issues arose in relation to [Applicant 18] attempting to provide documents in a png format. BCFSA Investigations provided a reasonable alternative on November 5, 2024 when it suggested [Applicant 18] provide the documents in pdf or jpeg format. The reasonableness of this suggestion is demonstrated by the fact that [Applicant 18] in fact converted the text messages between herself and her seller client to a pdf document and provided that on November 5, 2024. It is notable that this is what she eventually ended up doing on November 14, 2024 when she provided a pdf copy of the IMG_5700.PNG document. In other words, she did not avail herself of the upload portal that she says she requested on November 4, 2024.
72. I reiterate that BCFSA Investigations explicitly noted to [Applicant 18] that she had not provided the requested offer information four times: twice before the November 8, 2024 deadline and twice after that deadline. Despite the two explicit notes on November 6 and 7, 2024, [Applicant 18] did not provide the required information until November 14, 2024. All that was required for [Applicant 18] to cure that default was to provide the document in a format that BCFSA Investigations could receive, the same as she had done with the other documents attached to her Text Message Email. [Applicant 18] has provided no clear explanation for why she did not provide the offer information on November 6 or 7 after being explicitly told to do so.
73. I find that the technical difficulties [Applicant 18] faced were not extenuating.
74. I find that BCFSA reasonably set the October 25, 2024 deadline and the November 8, 2024 deadline and that she has not established sufficient extenuating circumstances to show that the November 8, 2024 deadline should have been extended.
75. I therefore find that [Applicant 18] contravened section 21 of the Rules by failing to provide responses to the requests made by BCFSA Investigations in its October 15, 2024 email by the October 25, 2024 deadline provided in that email. I further find that [Applicant 18] failed to cure her breach by delivering a response regarding the offer information until November 14, 2024, after the November 8, 2024 deadline set by the NCWL. I find that her contravention continued until that date, which includes November 9 to 13, 2024, inclusive.

Due Diligence

76. In my view, [Applicant 18] has not demonstrated that she exercised due diligence in responding to BCFSA Investigations' requests. As indicated above, [Applicant 18] was obliged, on indicating to BCFSA Investigations that they were to use her Gmail address to correspond with her, to ensure that she was receiving and viewing emails sent by BCFSA Investigations to that address. In my view, [Applicant 18] ought to have been reviewing her junk mail, given the circumstances described above, to ensure important information was not diverted to her junk mailbox.
77. I acknowledge that [Applicant 18] did not actually know about the October 15, 2024 email from BCFSA Investigations until after she received the NCWL on November 1, 2024; however, she should have taken steps to ensure she was monitoring her junk mail to ensure nothing important was missed or that there were systems in place to ensure that important mail was brought to her attention despite the mail filter capturing it. [Applicant 18] has not indicated that she had any such systems in place.

Penalty Amount

78. The penalty amount issued in the NOAP is the base amount prescribed by section 27 of the Rules for a Category D contravention plus the daily amount of \$250 per day for five days. Section 21 is designated as Category D contravention by section 26 of the Rules.
79. [Applicant 18] inadvertently breached section 21 and there is no clear harm caused by that breach, except a delay to BCFSA's investigation. There is no evidence that [Applicant 18] acted to intentionally obstruct the investigation or that she meant to avoid providing the offer information.
80. I note that [Applicant 18] has previously been warned regarding her obligations under section 21 of the Rules to promptly respond to regulatory requests. Although she was not previously found to have contravened that section of the Rules, I consider it relevant that she has been previously warned that she must respond promptly and by the deadlines set by the superintendent.
81. I also note that, although [Applicant 18] responded promptly to most of the requests once she became aware of them, she failed to provide the offer information until she had been explicitly reminded that she had not provided that information four times.
82. The above considerations, and in particular the lack of intent on [Applicant 18]'s part, indicates that a Notice of Hearing was not required in this case and that the matter is suitable for an administrative penalty, which are generally reserved for technical or minor contraventions. In my view, given the complexion of the facts, the penalty imposed is likely on the high end of the appropriate scale such that an order that [Applicant 18] undertake remedial education or a reduction in the fine amount might have also been appropriate, but I am not convinced that the amount of the fine here, being \$2,250, is outside the scope of appropriate regulatory responses. In my view, the penalty issued in this case is appropriate, particularly in light of the repeated reminders regarding the offer information and [Applicant 18]'s previous warning that she should be responsive to BCFSA's inquiries.

Conclusion

83. I find that [Applicant 18] contravened section 21 of the Rules and has failed to establish that she exercised due diligence in complying with that section. I find that the administrative penalty is appropriate.
84. I confirm the NOAP.
85. The \$2,250 is now due and payable to BCFSA.

DATED at North Vancouver, BRITISH COLUMBIA, this 30th day of April, 2025.

"Original signed by Gareth Reeves"

Gareth Reeves
Hearing Officer