

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 29
([Licensee Number])
REASONS FOR DECISION REGARDING
ADMINISTRATIVE PENALTY RECONSIDERATION REQUEST
[This Notice has been redacted before publication.]

DATE AND PLACE OF HEARING: Via Written Submissions

HEARING OFFICER: Gareth Reeves

Introduction

1. On May 5, 2025, the BC Financial Services Authority (“**BCFSA**”) issued a Notice of Administrative Penalty (the “**NOAP**”) in the amount of \$2,500 to [Applicant 29] 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 29] had contravened section 28(1) of the *Real Estate Services Rules*, BC Reg 209/2021 (the “**Rules**”) by failing to ensure that his brokerage, [Brokerage 1] (the “**Brokerage**”), filed its financial statements, accountant’s reports, and brokerage activity reports (the “**Section 75 Filings**”) for the years ending June 30, 2023 and June 30, 2024 which were required to be filed by October 28, 2023 and October 28, 2024, respectively, pursuant to section 75 of the Rules. [Applicant 29] became the managing broker of [Brokerage 1]. on August 29, 2024 and the required Section 75 Filings had not been filed by the date the NOAP was issued.
3. [Applicant 1] 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 May 5, 2025 NOAP should be cancelled or confirmed.

Jurisdiction and Standard of Proof

5. This reconsideration application 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 a memorandum provided by BCFSA, the tabs thereto, and the information provided by [Applicant 29] in his 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.
10. [Applicant 29] was first licensed as a representative licensee in the trading services category on March 4, 2003. He became licensed as an associate broker in both the trading and rental property management categories on March 4, 2005, but dropped his license in the rental property management category on June 12, 2018. Since March 4, 2005, he has been either an associate broker or managing broker at various brokerages. He was a managing broker for the following periods: from April 8, 2008 to January 29, 2010; June 23, 2014 to June 12, 2018; March 19, 2021 to September 25, 2021; from August 29, 2024 to February 20, 2025; and April 15, 2025 to present.
11. Most notably, he was licensed as the managing broker of the Brokerage from August 29, 2024 to February 20, 2025. [Applicant 29] took over the role of Managing Broker after the departure of [Individual 1] who was managing broker of the Brokerage from July 24, 2020 to September 18, 2024.
12. [Applicant 1] has no disciplinary record under RESA that I am aware of.
13. At all relevant times, the Brokerage's fiscal year end was June 30. This meant that its Section 75 Filings were due on October 28 of each year.
14. On or about July 18, 2023, the Brokerage changed ownership and appointed new directors. During this transition, the Brokerage set up new trust, commission trust, and general accounts with [Credit Union 1]. The new shareholders and directors of the Brokerage were made signatories on these new accounts; no managing broker was made a signatory on those accounts.
15. In October 2023, one of the Brokerage's directors contacted BCFSA to advise that it wished to change its fiscal year end to December 31. BCFSA then emailed [Individual 1], the then managing broker, and through a series of emails in late October 2023, BCFSA advised [Individual 1] that it needed confirmation from him that the Brokerage wanted to change its fiscal year end and also required the Brokerage to file Section 75 Filings to bring it onto the revised filing schedule associated with the change to a December 31 year end in one of two ways:
 - a. by filing a stub Section 75 Filings for July 1, 2022 to December 31, 2022 as soon as possible and then filing for January 1, 2023 to December 31, 2023 in the usual course; or
 - b. by filing the July 31, 2022 to June 30, 2023 Section 75 Filings by the due date and filing a stub filing for July 1, 2023 to December 31, 2023.
16. [Individual 1] emailed BCFSA to confirm that the Brokerage would proceed with the first option and he would be in further contact once the Brokerage's accountant had confirmed the date the filings would be available. Despite BCFSA following up with [Individual 1] in November 2023 and January

2024, the Brokerage did not make any Section 75 Filings after October 2023 on the usual schedule or finalize the change in its fiscal year end. As a result, the Brokerage's fiscal year end remained June 30.

17. On June 30, 2024, BCFSA sent [Individual 1] an automated reminder email reminding him that the Brokerage's Section 75 Filings for the year ending June 30, 2024 was due October 28, 2024.
18. On October 21, 2024, approximately two months after [Applicant 29] took over the role of managing broker for the Brokerage, BCFSA sent [Applicant 29] an automated reminder email that the Brokerage's Section 75 Filings for the year ending June 30, 2023 was due October 28, 2024.
19. On October 28, 2024, one of the Brokerage's directors, [Individual 2], emailed BCFSA to ask why the Brokerage's fiscal year end remained June 30, 2024 and noted that BCFSA had been previously advised by one of the Brokerage's directors that the fiscal year end was being changed to December 31. [Individual 2] indicated that the change in fiscal year end would make the due date for the Brokerage's Section 75 Filings in April, not in October as indicated on BCFSA's online system. I note that [Individual 2] is a qualified Chartered Professional Accountant.
20. On October 29, 2024, BCFSA emailed [Applicant 29] copying [Individual 2], following a phone call with [Applicant 29]. BCFSA advised that the fiscal year end for the Brokerage had not been changed because the filing requirements to make that change had not been met. BCFSA set out for [Applicant 29] and [Individual 2] the filing options required to make the change as indicated above. BCFSA indicated that [Applicant 29] should indicate the Brokerage's intention "**as soon as possible**" [emphasis original]. BCFSA also forwarded to [Applicant 29] and [Individual 2] its email correspondence with [Individual 1] from October 2023 in which it laid out the filing options to change the Brokerage's fiscal year end.
21. On October 31, 2024, BCFSA emailed [Applicant 29] attaching a letter noting that the Brokerage's Section 75 Filings for the fiscal year ending June 30, 2024 had not been filed by the October 28, 2024 deadline. The letter noted [Applicant 29]'s obligations under section 28(1), (3), and (4) of the Rules and the Brokerage's obligations under section 75 of the Rules and indicated that administrative penalties could be issued for contraventions of those noted sections, along with section 21 of the Rules. BCFSA indicated that the Brokerage was required to file its Section 75 Filings by November 30, 2024.
22. I note that the letter indicated that "an Administrative Penalty is \$1,000 for a first contravention and \$2,000 for subsequent contraventions". It is not clear what section those amounts are in reference to. When BCFSA issued the letter this was accurate for Category A contraventions, which included section 28(3) of the Rules, but not for Category B Contraventions, which included section 28(1) of the Rules, or for Category D Contraventions, which included sections 21, 28(4) and 75 of the Rules. It may be that this was a holdover from the period between February 21, 2021 and June 30, 2024, during which both sections 28(3) and 75 of the Rules were placed in Category A. Given the placement of the above quote in the letter, following a reference to both of sections 28(3) and 75 of the Rules, I conclude that it was in fact such a holdover. In any case, given this matter turns on a contravention of section 28(1) of the Rules and not sections 28(3) or 75 of the Rules, I do not draw any adverse conclusion from the above quote in BCFSA's letter.
23. On October 31, 2024, [Applicant 29] replied by email to BCFSA to state, "I will take care of it. I am contacting really accountant and pretty soon will submit the report. Thanks for your cooperation" [sic].
24. On November 26, 2024, [Applicant 29] confirmed with BCFSA that the Brokerage would keep its June 30 fiscal year end, and that work was underway on completing the outstanding Section 75 Filings.

25. On January 24, 2025, [Individual 2] spoke with BCFSA. [Individual 2] advised that they were attempting to obtain bank records for the Brokerage for the period prior to July 18, 2023 but were having trouble because [Individual 2] was not an owner prior to that date and the previous owner had refused to provide the banking information. [Individual 2] advised that a Chartered Professional Accountant had been engaged to prepare review engagement financial statements for July 18, 2023 to December 31, 2023 and January 1, 2024 to December 31, 2024.
26. On January 30, 2025, BCFSA had a telephone call with [Applicant 29], who was unable to answer questions regarding the status of the Brokerage's accounts. [Applicant 29] directed BCFSA to the Brokerage's administrator, [Individual 3], the spouse of [Individual 4]. [Individual 4] was a shareholder and director of the Brokerage, and a licensee.
27. BCFSA then called [Individual 4], who advised that the Brokerage was engaging an accountant to prepare trust reconciliations for the Brokerage's trust accounts from July 2022 onward. BCFSA then emailed [Individual 4] to request various banking and accounting documents.
28. On that same day, BCFSA called [Individual 2] who provided information regarding the setting up of the Brokerage's accounts after the transfer in July 2023 and certain issues that had been discovered after the transfer with regard to the Brokerage's debt position. [Individual 2] confirmed that the Brokerage's managing broker, [Applicant 29], was not a signatory on the Brokerage's trust, trust commission, or general accounts. He advised that the Brokerage's trust reconciliations for the period from July 2023 to December 2023 had not been prepared because the previous owners had not transferred the necessary books and records to the new owners. He confirmed that the Brokerage's fiscal year end was December 31. He also confirmed that the Brokerage was in the process of hiring a Chartered Professional Accountant. During the call, BCFSA made requests for various banking and accounting documents and [Individual 2] indicated he would respond the following week. BCFSA followed up on the call by email on the same day.
29. On February 5, 2025, BCFSA emailed [Applicant 29] and [Individual 2] to note that the Section 75 Filings remained outstanding for the fiscal years ending June 30, 2023 and June 30, 2024. BCFSA's email directed [Applicant 29] and [Individual 2] to sections 28, 75, and 92 of the Rules and section 6 of RESA.
30. On February 11, 2025, BCFSA emailed [Individual 2] and [Applicant 29] to follow up on certain outstanding documents requested on January 30, 2025.

Submissions

31. [Applicant 29] submits that the administrative penalty should be cancelled for essentially four reasons:
 - a. He was not responsible for the late filing of the 2023 Section 75 Filings because that report was due in October 2023 when [Individual 1] was the managing broker and he only became the Brokerage's managing broker in August 2024.
 - b. He made efforts to have the 2024 Section 75 Filings completed after he became managing broker, but he had limited time to complete it and did not "have access to financial records and internal support to complete the task properly". He specifically refers to the steps he took after receiving BCFSA's January 30, 2025 email, including contacting the Brokerage's owners to understand what had occurred and bringing [Individual 2] into the discussion with BCFSA.
 - c. He "escalated the issued immediately to" [Individual 2] who dealt with BCFSA on the issue.
 - d. He "acted in good faith throughout [his] short tenure, despite working under significant operational and financial challenges."

32. [Applicant 29] further submits that the Brokerage had inherited issues from the previous owners and that the Brokerage's shareholders were taking steps to resolve those issues and that, by February 2025, BCFSA, [Individual 2], and the Brokerage's external accountant were in correspondence regarding the outstanding requests and filing deadlines for the Section 75 Filings.
33. [Applicant 29] indicates that he resigned from the Brokerage in mid-February 2025 because he had not been paid compensation since February 1, 2025 and because of issues concerning past non-compliance at the Brokerage.

Reasons and Findings

Applicable Legislation

34. Section 56 of RESA provides that BCFSA may designate specific provisions of RESA, the *Real Estate Services Regulation*, B.C. Reg. 506/2004 (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.
35. 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.
36. Effective July 1, 2024, 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 28(1) of the Rules is placed in Category B. Section 27(4) of the Rules provides that a contravention of a section designated in Category B may attract a \$2,500 penalty amount for a first contravention or a \$5,000 penalty amount for a subsequent contravention.
37. I note that between February 1, 2021 and June 30, 2024, Section 26(2) only identified four categories, Category A, B, C, and D. During that time, section 28(1) was not designated within any of those categories.
38. 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.
39. Sections 28(1) and 75 of the Rules provides as follows:

Managing broker responsibilities

28 (1) A managing broker must

- (a) be actively engaged in the management of the managing broker's related brokerage,
- (b) ensure that the business of the brokerage is carried out competently and in accordance with the Act, the regulations and these rules, and
- (c) ensure that there is an adequate level of supervision for related associate brokers and representatives and for employees and others who perform duties on behalf of the brokerage.

Annual financial statements, accountant's report and brokerage activity report

- 75** (1) A brokerage must, within 120 days after the end of each fiscal year of the brokerage, file with the superintendent
- (a) financial statements for that fiscal year,
 - (b) an accountant's report respecting that fiscal year, completed in accordance with any requirements specified by the superintendent, and
 - (c) a brokerage activity report respecting that fiscal year, completed in accordance with any requirements specified by the superintendent.
- (2) The financial statements referred to in subsection (1) (a) must
- (a) be audited by an accountant, in the case of a brokerage that is a public company as defined in the Business Corporations Act, or
 - (b) in any other case, have been subject, at a minimum, to
 - (i) a review engagement by an accountant, or
 - (ii) if authorized under subsection (3), a compilation engagement report prepared by an accountant.
- (3) The superintendent may authorize a brokerage to file financial statements that have been subject to a compilation engagement report prepared by an accountant if all of the following conditions are met:
- (a) for a minimum of 3 consecutive fiscal years immediately preceding the date of authorization, the brokerage has filed financial statements that comply with subsection (2) (a) or (b) (i) and has satisfied the other requirements of this section;
 - (b) during those 3 fiscal years there have been no significant trust account or general books and records exceptions
 - (i) reported in relation to the brokerage, as required by the superintendent, or
 - (ii) discovered in relation to the brokerage in any review under section 74;
 - (c) the superintendent is satisfied that at the end of each of those 3 fiscal years the brokerage's current assets exceeded its current liabilities.
- (4) An accountant who, under subsection (2), audits or reviews the financial statements or prepares a compilation engagement report in relation to the financial statements, or who completes the accountant's report referred to in subsection (1) (b), must be independent of the brokerage and of any director, officer or partner of the brokerage or a related licensee of the brokerage.
- (5) A brokerage must
- (a) disclose to an accountant referred to in subsection (4) every savings institution account that was opened, closed or maintained by the brokerage during the fiscal year,
 - (b) provide the accountant with access to all financial and other records of the brokerage for the fiscal year, and

- (c) provide the accountant with any other information the accountant considers necessary to enable the accountant to conduct the audit, review the financial statements, prepare the compilation engagement report or complete the accountant's report, as required by this section.
- (6) The superintendent may withdraw an authorization given to a brokerage under subsection (3) if
 - (a) the brokerage does not file financial statements that comply with this section,
 - (b) a trust account or general books and records exception has been reported or discovered as described in subsection (3) (b) in relation to the brokerage, or
 - (c) the superintendent is not satisfied that the brokerage's current assets exceed its current liabilities at the end of any fiscal year.
- (7) Before withdrawing an authorization given to a brokerage under subsection (3), the superintendent must give the brokerage notice of the superintendent's intention to do so and the reasons.
- (8) As an alternative to filing an accountant's report under subsection (1) (b), a brokerage that did not hold or receive any public trust money during the fiscal year to which the financial statements relate may file with the superintendent a solemn declaration, completed in accordance with any requirements specified by the superintendent, respecting
 - (a) that fiscal year, or
 - (b) if the brokerage carried on business for only part of the fiscal year, that part of the fiscal year for which the brokerage carried on business.

Analysis

40. 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.

Liability Under Section 28(1)(b), Generally

41. There is no dispute in this proceeding that the Brokerage failed to file its Section 75 Filings for the fiscal years ending June 30, 2023 and June 30, 2024 by the deadlines of October 28, 2023 and October 28, 2024, respectively. There is no dispute that it was required to do so by section 75 of the Rules. It is clear that, by at least May 5, 2025, the Brokerage had not filed those Section 75 Filings. The question therefore is whether [Applicant 29] contravened section 28(1) of the Rules because the Brokerage failed to file those reports. To determine whether [Applicant 29] contravened the Rules, I must set out the connection between [Applicant 29]'s obligations under section 28(1) of the Rules and the Brokerage's regulatory obligations.
42. The facts of this case are somewhat unique in the context of failures to file Section 75 Filings. In many cases where a brokerage contravenes section 75 of the Rules, the managing broker is found to have contravened section 28(1) of the Rules as well: for recent examples see *Jacobson (Re)*, 2023 BCSRE 15; *Song (Re)*, 2023 BCSRE 30; and *Roy (Re)*, 2025 BCSRE 105. I note that this

appears to be a long-standing position of the regulator under RESA: see *Marc Villanueva Realty Inc. (Re/Max Marc Villanueva Realty) (Re)*, 2005 CanLII 63736 (BC REC); *Rai (Re)*, 2006 CanLII 63664 (BC REC); *Sawyer (Re)*, 2006 CanLII 63665 (BC REC); and *Cormack (Re)*, 2007 CanLII 71593 (BC REC). I do note that in some cases, particularly those involving administrative penalties, the managing broker is not sanctioned; however, those cases do not speak to the analytical problem of the connection between the brokerage's contravention and the managing broker's: see *Applicant 13 (Re)*, 2025 BCSRE 65; *Applicant 15 (Re)*, 2025 BCSRE 67; and *Applicant 19 (Re)*, 2025 BCSRE 106

43. None of the cases of which I am aware involve a managing broker who took over the role while their brokerage's Section 75 Filings remained outstanding. Further, none of the decisions of which I am aware deal substantially with the analytical approach to the connection between the brokerage's contravention and the managing broker's liability. This connection is important in this case, because, as [Applicant 29] notes, he, at least in part, inherited the problem of the Brokerage's outstanding Section 75 Filings when he became the Brokerage's managing broker in August 2024 when the filing for the year ending June 30, 2023 was outstanding and the year ending June 30, 2024 had ended and the filing for that year would be coming due in approximately two months. As a result, it is important in this case to explain the connection between the Brokerage's liability and [Applicant 29]'s liability, if any.
44. Before addressing that connection, I note that, in my view, there is no need in this decision for me to address subsections 28(1)(a) or 28(1)(c) of the Rules because the nature of the allegations in the NOAP refer to [Applicant 29] contravening section 28(1) by virtue of the Brokerage failing to make its Section 75 Filing. That is a clear allegation that [Applicant 29] failed to ensure compliance by the Brokerage contrary to subsection 28(1)(b) of the Rules. There may be an argument that [Applicant 29]'s degree of active management of the Brokerage or failure to supervise the Brokerage's employees or those performing duties on behalf of the Brokerage lead to the issues here, but the NOAP does not raise those issues in a way that clearly puts those possible alleged contraventions at issue. Had the NOAP referred to [Applicant 29]'s active engagement, to his degree of supervision, or subsections 28(1)(a) or (c) directly, that would have been sufficient to raise those subsections. Although BCFSa is not required to set matters out in the NOAP as if they were charges in a criminal information, on the wording of the NOAP subsection 28(1)(b) is more directly raised and the other subsections are not sufficiently raised, particularly considering the summary nature of proceedings on an administrative penalty review where there are fewer processes available to clarify allegations: see *Vallee (Re)*, 2025 BCSRE 58, at paras 31-41 regarding the reasons why administrative penalty reviews under section 57(4) are summary in nature.
45. In my view, the question of the connection between the Brokerage's liability and [Applicant 29]'s liability through section 28(1) of RESA is fundamentally a question of the appropriate interpretation of the legislative scheme. In that regard, I am guided by the modern approach to statutory interpretation set out by Iacobucci J in *Re Rizzo & Rizzo Shoes Ltd*, 1998 CanLII 837 (SCC) at para 21 citing *Construction of Statutes* (2nd ed. 1983) at p 87:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
46. I am also guided by section 8 of the *Interpretation Act*, RSBC 1996, c 238, which states as follows:
 8. Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

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47. Viewed globally, RESA places significant reliance on managing brokers to monitor their brokerage's activities and ensure regulatory compliance by their brokerages. The regime relies on managing brokers to oversee the day-to-day compliance obligations of their brokerages. Within the RESA regime, section 6 of RESA and section 28 of the Rules form the core of the complex of statutory obligations and responsibilities RESA places on managing brokers.
 48. Section 6 of RESA requires brokerages to have at least one managing broker and ties the real estate services a brokerage can provide to its managing brokers' licence. It then effectively makes the managing brokers responsible for exercising the brokerage's regulatory rights, performing the brokerage's regulatory duties, controlling the brokerage's real estate business, and supervising the brokerage's licensees.
 49. Section 28 of the Rules then imposes further management and supervisory authority on managing brokers. This includes certain business, compliance, and financial management obligations. Section 28(1) of the Rules, in particular places three obligations on managing brokers:
 - a. First, they must be actively engaged in their brokerage's management.
 - b. Second, they must "ensure" that the brokerage carries out its business "competently and in accordance with" RESA, the Regulations, and the Rules.
 - c. Third, they must "ensure" there is an adequate level of supervision for the brokerage's employees, agents, contractors, and representative and associate broker licensees.
 50. RESA, the Regulations, and the Rules impose various other specific obligations on managing brokers and brokerages that require managing brokers to be involved in the brokerage's management. For example, and of some relevance to this proceeding, section 72(1) of the Rules requires that brokerages have at least one managing broker be a signing authority on the brokerage's trust accounts. However, section 6 of RESA and section 28 of the Rules underpin those various obligations by ensuring that a brokerage always has a managing broker and that the regulatory buck stops with them. These sections therefore set up the managing broker as the central figure answerable for the management of the real estate business and regulatory compliance of the brokerage.
 51. The language used in both section 6 of RESA and section 28 of the Rules is quite strong. Section 6 of RESA provides that the managing broker "acts for the brokerage for all purposes under" RESA and "is responsible" for the exercise of the brokerage's rights and the performance of the brokerage's duties. The wording of section 28 of the Rules repeatedly uses the word "ensure", often together with the mandatory "must" and it uses that phrasing in subsection 28(1)(b) of the Rules in particular. The Merriam-Webster online dictionary defines "ensure" to mean "to make sure, certain, or safe: GUARANTEE": Merriam-Webster, "Ensure", July 11, 2025, online: <https://www.merriam-webster.com/dictionary/ensure>. This wording suggests that the drafters of the Rules intended managing brokers to be required to make sure or certain that their brokerages complied with the requirements of RESA, the Regulations, and the Rules. Reading that wording in its most stringent sense, a contravention of RESA, the Regulations, or the Rules by a brokerage results in a contravention of section 28(1)(b) of the Rules by the managing broker.
 52. The stringency of this wording and the stringency it imports into the obligations placed on managing brokers aligns with the requirements of section 6 of RESA because it supports the centralized authority and responsibility of managing brokers set out in section 6 of RESA by reinforcing the need for managing brokers to be directly involved in the business, regulatory, and financial operations of the brokerage.
 53. In my view, considering the wording of section 6 of RESA, section 8 of the Rules, and the legislative scheme as a whole, along with its purposes, a managing broker will be considered to have contravened section 28(1)(b) where their brokerage has contravened some provision of RESA, the Regulations, or the Rules.

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54. That is not the end of the analysis though, because there is still the question of due diligence and its role in the analysis when addressing an alleged contravention of section 28(1)(b) of the Rules. In my view, and for the reasons that follow, consideration of the due diligence defence must occur through two lenses in the context of an alleged contravention of section 28(1)(b) of the Rules.
55. The first is in the normal course of undertaking the analysis to determine whether the relevant section has been breached. The rationale for having the assessment occur at that stage is straightforward: if there is an established defence to the underlying breach, then the managing broker should not be liable for that breach.
56. The second is in relation to the managing broker's own breach of subsection 28(1)(b). In many cases, particularly those involving a brokerage with a single managing broker, this second consideration of due diligence and the above first consideration will be effectively the same and the lenses will essentially share the same focus for the purposes of assessing the contraventions at issue because of the close connection between the managing broker's regulatory responsibilities and those of the brokerage. In those cases, it will be unlikely that the managing broker would be able to establish that they exercised due diligence when their brokerage did not.
57. In some cases, like the present and those where the brokerage may have multiple managing brokers, a managing broker may be able to raise a due diligence defence despite the failure of their brokerage to establish due diligence. In these cases, it may be that the managing broker acted reasonably but the contraventions arose because of the failures of another managing broker who bore the responsibility for ensuring compliance.
58. This second stage is important for two reasons.
59. First, it allows a brokerage with multiple managing brokers to establish and implement reasonable policies and guidelines that divide management and oversight obligations between or among the managing brokers. Such a system, properly implemented and managed, would allow the managing brokers as a group to efficiently oversee the operation of their brokerage and clearly assign responsibility so that compliance and management obligations are discharged.
60. Second, it avoids punishing managing brokers who may step into a new brokerage with ongoing compliance problems and who take reasonable steps to address those problems. In my view, it would be an undesirable regulatory result if brokerages facing remediable compliance issues were forced to close because no new managing broker would be willing to step in and resolve the issues for fear that, despite reasonable efforts, they would be unable to resolve the issues. Managing brokers in those circumstances will still take on some risk of regulatory liability if they fail to exercise due diligence in bringing their brokerage into compliance, but if they properly investigate the brokerage beforehand, ensure they are empowered to act, and take reasonable steps to promptly achieve compliance, they will not be held liable for contraventions they did not cause.
61. The above analytical structure, which links the brokerages' liability to the managing brokers' and engages the due diligence defence through two lenses, comports with managing brokers' important role within the RESA regime because it places the onus of compliance primarily on managing brokers as envisioned by section 6 of RESA and section 28(1) of the Rules, but allows them to demonstrate that the issues arose by virtue of events that could not have been prevented by exercise of a due degree of diligence.
62. With the above in mind, I turn to the contraventions alleged in this case.

The Brokerage's Contraventions of Section 75 of the Rules

63. As noted above, there is no dispute that the Brokerage failed to file its Section 75 Filings for the fiscal years ending June 30, 2023 and June 30, 2024 by the deadline of October 28 in each respective year. The Brokerage therefore contravened section 75 of the Rules on two occasions.
64. With regard to the Brokerage's exercise of due diligence, there may be some argument that the Brokerage inherited the problems when the new owners purchased the Brokerage and took over ownership in July 2023. The evidence indicates that the new owners were unable to access banking records from before the transfer of ownership and that this stymied their ability to prepare reports. That said, there is no evidence that the new owners or the Brokerage exercised due diligence in making sure that there was ongoing access to that information or that the information was provided on the date of the transfer.
65. Further, [Individual 1], and therefore the Brokerage, knew that the Section 75 Filings were required by virtue of his correspondence with BCFSa in October 2023 and he raised no issue with the filings at that time and instead he sought to have the Brokerage's year end changed. This raises the question of what steps the Brokerage took after July 2023 to arrange preparation of the Brokerage's Section 75 Filings for the year ending June 30, 2023. There is no evidence before me of what was done and the fact that [Individual 2] only raised the issue of the Brokerage's year end with BCFSa in October 2024 and only raised the issue regarding the Brokerage's inability to access bank records prior to July 2023 in January 2025, strongly suggests to me that very little was done before that date and that appropriate due diligence to ensure the Brokerage's books were in order on the transfer date was not done. The passage of time without a reasonable explanation of what steps were taken and evidence that indicates no substantial steps were taken leads me to conclude that the Brokerage did not exercise due diligence in attempting to file its Section 75 Filings for the fiscal year ending June 30, 2023 by the deadline of October 28, 2023.
66. Turning to the June 30, 2024 fiscal year end Section 75 Filings, [Applicant 29] has provided no evidence regarding what steps he took between August 19, 2024 and October, 2024 to discover whether the Brokerage was in compliance with its obligations to make its Section 75 Filings for the fiscal year ending June 30, 2023 or to begin preparing the filings for the fiscal year ending June 30, 2024. As indicated above, it appears that no steps were taken to discover the existing non-compliance, and no steps were taken to address the pending deadline before BCFSa reached out on October 21, 2024.
67. The first concrete steps do not appear to have been taken until after BCFSa sent [Applicant 29] a letter on October 31, 2024 indicating that its Section 75 Filings for the fiscal years ending June 30, 2023 and June 30, 2024 were then both outstanding. In this regard, it appears that the Brokerage eventually engaged an external accountant to work on the necessary reports, but it is not clear to me when exactly this work started or what it entailed.
68. The fact that the Brokerage appears to have done nothing of substance to begin preparing the Section 75 Filing for its fiscal year ending June 30, 2024 between June 30, 2024 and the deadline of October 28, 2024, effectively defeats any due diligence defence in this case. In my view, a brokerage cannot say it exercised due diligence while making no use of the period during which it should be preparing its filings.
69. I am conscious in coming to this conclusion that there appears to have been some confusion about the change in the Brokerage's fiscal year end and it appears that [Individual 2] did not know that the Brokerage's fiscal year end had not been moved from June 30 to December 31. That said, the correspondence between [Individual 1] and BCFSa was sufficiently clear that in order to achieve a change in the fiscal year end the Brokerage would have to have filed either a stub report for the period from July 1, 2022 to December 31, 2022 or to have filed its usual filings for the year ending June 30, 2023 and then a stub report for the balance of that calendar year. There is no evidence

that [Individual 1] or anyone else at the Brokerage took any steps to ensure that this was done and no evidence that anyone other than [Individual 1] knew about the requirement or took steps to know about it. That may be largely [Individual 1]'s failure, but it is also a failure to adequately manage the transition between [Individual 1] and a new managing broker by the Brokerage and, as discussed below, [Applicant 29].

70. I therefore find that [Applicant 29] has not established that the Brokerage exercised due diligence in attempting to comply with its obligation to file its Section 75 Filings for the fiscal years ending June 30, 2023 and June 30, 2024 by October 28, 2023 and October 28, 2024, respectively.

[Applicant 29]'s Contravention of Section 28(1) of the Rules

71. As discussed above, the fact that the Brokerage was not in compliance with its obligations under section 75 while [Applicant 29] was managing broker means that, subject to any due diligence defence, he contravened section 28(1)(b) of the Rules.

72. I therefore turn to [Applicant 29]'s due diligence defence.

[Applicant 29]'s Due Diligence Defence

73. In my view, [Applicant 29]'s submission in this matter can be summarized as arguing that he is not responsible for the late filing of the June 30, 2023 fiscal year end Section 75 Filings because he became managing broker well after they were already late and that he tried to resolve the late filing of the June 30, 2024 fiscal year end Section 75 Filings but was stymied by existing bookkeeping issues and lack of access to the Brokerage's records and had delegated the task to [Individual 2].
74. Those arguments are undermined by the lack of any evidence regarding what steps [Applicant 29] took to ensure that the Brokerage was in compliance with its existing obligations when he took over the role as managing broker and what steps he took to ensure that the Brokerage was undertaking the work to prepare its June 30, 2024 year end Section 75 Filings. In fact, there is some positive evidence that [Applicant 29] had not taken any steps because he was not a signatory on the Brokerage's trust accounts as required by section 72 of the Rules, which suggests that he was not actively involved in the Brokerage's financial management. Although this does not directly indicate that [Applicant 29] took no steps to determine the status of the Brokerage's filings for either relevant year end prior to being directly advised by BCFSA of the need for the Brokerage to file its June 30, 2024 year end Section 75 Filing, it tends to suggest that [Applicant 29] was not sufficiently involving himself in the Brokerage's financial operations as a whole. That, together with the lack of evidence regarding any positive steps between August 19, 2024 and October 28, 2024 to discover the Brokerage's compliance status regarding the June 30, 2023 year end Section 75 Filings or to arrange the June 30, 2024 year end Section 75 Filings leads me to conclude that [Applicant 29] did not exercise due diligence in regard to completing either filing.
75. In my view, it is not a defence for [Applicant 29] to argue that he did not have access to the Brokerage's accounts because he was obliged to have that access. If he was not going to be given that access, he should not have accepted the position as managing broker. In my view, [Applicant 29]'s argument that he was not given sufficient authority or access to do the work actually cuts against his defence because he should have ensured he had that authority from the outset. I note further that there is no evidence that [Applicant 29] took any steps to gain that necessary access.
76. It is also not sufficient, in the circumstances, for [Applicant 29] to point to his delegation of the task of preparing the filings to [Individual 2]. This may have been a reasonable thing to do in some circumstances but given the lack of action between August 19, 2024 and October 28, 2024, the eventual delegation of the task to [Individual 2] after the June 30, 2024 year end Section 75 Filings was due is not a sufficient demonstration of due diligence.

77. Finally, [Applicant 29] has not raised the issue of the confusion regarding the change in the Brokerage's year end, but I find it appropriate to address that point. Had [Applicant 29] raised that argument, I would have rejected it on the evidence before me. Although there is some evidence that [Individual 2] believed the year end had been changed, as demonstrated by his October 28, 2024 email to BCFSA, there is no evidence regarding what inquiries [Applicant 29] took to ensure that this was the case and properly reflected in BCFSA's records. I appreciate that [Applicant 29] may have been relying on the Brokerage's owners and directors in that regard, but there is no evidence that he attempted to independently verify the Brokerage's fiscal year end with BCFSA before BCFSA's October 21, 2024 email to him. Again, this lack of evidence in addition to the fact that he was not a signing authority on the Brokerage's trust accounts as required by section 72 of the Rules, indicates to me that [Applicant 29] was not making the necessary inquiries to determine either the Brokerage's current compliance status or the Brokerage's future compliance obligations in regard to its Section 75 Filings.
78. In my view, [Applicant 29] had a positive obligation when he came on as managing broker to investigate whether the brokerage's books, records, and annual filings were up to date. Although he did not cause the June 30, 2023 fiscal year end filing to be late, he did not take any steps to ensure it had been filed prior to October 21, 2024 and thereby failed to exercise due diligence in bringing the Brokerage into compliance. He therefore contravened subsection 28(1)(b) of the Rules.
79. [Applicant 29] also failed to exercise due diligence by taking no steps to begin the process of preparing the June 30, 2024 year end Section 75 Filings until after October 21, 2024. He therefore contravened subsection 28(1)(b) of the Rules in that regard.

Penalty Amount

80. The penalty amount imposed is the prescribed amount for a first contravention of a section designated in Category B, being \$2,500. Section 28(1) is designated in Category B.
81. I only have the authority to confirm or cancel the administrative penalty. If I cancel it and I find that a discipline hearing would be more appropriate, I can direct that a notice of discipline hearing be issued in regard to the alleged contravention. I have no discretion to vary the administrative penalty. Having found that the contravention alleged occurred, the question before me is not whether the imposition of the administrative penalty is correct, but whether the imposition of the administrative penalty is within the range of appropriate regulatory responses in all the circumstances.
82. I find that [Applicant 29]'s contravention in this case warrants a \$2,500 administrative penalty. It could have also warranted an order that [Applicant 29] undertake remedial education, but the monetary penalty imposed was not inappropriate. I find this because [Applicant 29] took no action, on the evidence before me, to confirm the filing deadlines the Brokerage was required to meet and was not sufficiently involved in the operation of the Brokerage to give himself the authority necessary to have the filings prepared. In coming to this conclusion, I appreciate that [Applicant 29] inherited an outstanding filing, but taking on the role of managing broker is a significant responsibility and that required [Applicant 29] to ensure he was given sufficient authority and that he was aware of the state of the Brokerage's compliance history. Without that authority and information, he was not able to take the necessary steps to fulfill his regulatory obligation to ensure compliance by the Brokerage. In my view, managing brokers should insist on sufficient information and authority to ensure their brokerages discharge their statutory obligations.
83. I find there is a need for an administrative penalty in this case to demonstrate to the industry the importance of the managing broker position and the importance of ensuring they have the power to ensure compliance by their Brokerage. For the same reason, an administrative penalty will help encourage public confidence in the industry because taking enforcement action will help the public be more confident that managing brokers are properly in control of their brokerages.

84. Finally, I find that [Applicant 29]'s conduct and submissions in this case indicate that there is some need for specific deterrence to demonstrate to him the importance of his obligations as a managing broker and the need for him to be proactive in that role so that he does not fail to fulfil his duties as managing broker in the future. As noted above, an administrative penalty that required him to complete some further education may have been appropriate to achieve that end but given the importance of the managing broker's role within the regulatory scheme, I find that a monetary penalty was not inappropriate.

Conclusion

85. I find that [Applicant 29] contravened subsection 28(1)(b) of the Rules by failing to ensure that the Brokerage filed its June 30, 2024 year end Section 75 Filings by October 28, 2024 and by failing to take sufficient steps to ensure the Brokerage filed its outstanding June 30, 2023 year end Section 75 Filings, which were due October 28, 2023. I find that [Applicant 29] has not demonstrated that he exercised due diligence in attempting to discharge his obligations under subsection 28(1)(b).
86. I find that the administrative penalty imposed was appropriate.
87. I confirm the \$2,500 administrative penalty imposed in the NOAP.
88. The \$2,500 administrative penalty is now due and payable to BCFSA.

DATED at Oliver, BRITISH COLUMBIA, this 11th day of July, 2025.

"Originally signed by Gareth Reeves"

Gareth Reeves
Hearing Officer