Citation: Applicant 25 (Re), 2025 BCSRE 107
Date: 2025-06-16
File No. 24-5686

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 25]
([License Number Redacted])

REASONS FOR DECISION REGARDING
ADMINISTRATIVE PENALTY RECONSIDERATION REQUEST

[These Reasons have been redacted before publication.]

DATE AND PLACE OF HEARING:	Via Written Submissions
RESPONDENT'S COUNSEL:	Ian Donaldson K.C.
HEARING OFFICER:	Gareth Reeves

Introduction

1. On March 27, 2025, the BC Financial Services Authority ("**BCFSA**") issued a Notice of Administrative Penalty (the "**NOAP**") in the amount of $5,000 to [Applicant 25] 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 25] had contravened section 37(4) of RESA in the following five ways, in summary:

   a. Failing to provide the addresses at which he resided from January 2021 to present;

   b. Failing to provide a detailed statement of his involvement in regard to the matter under investigation;

   c. Failing to attend a scheduled virtual interview by cancelling a March 13, 2025 scheduled interview 50 minutes before the interview, citing illness;

   d. Failing to attend on alternative schedule virtual interview dates on March 18 and 20, 2025; and

   e. Failing to provide substantiation of medical issues cited in regard to the cancellation of the March 13, 2025 scheduled interview.

3. BCFSA issued a $1,000 administrative penalty for each of the above alleged contraventions.

4. [Applicant 25] applied for a reconsideration of the NOAP under section 57(4) of RESA. The application proceeded by written submissions.

Issues

5. In this proceeding, I must determine whether the administrative penalties issued in the March 27, 2025 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 thereto, and the information provided by [Applicant 25] and his legal counsel during the application for reconsideration. The following is intended to provide some background to the circumstances and to provide context for my reasons. I do not intend it to be a recitation of all of the information before me.

Licensing Background

11. [Applicant 25] was first licensed as a representative in the trading services category on August 9, 2006. He became licensed in the rental property management category on April 17, 2009. He has been licensed in that fashion since.

The Investigation

12. On January 6, 2025, BCFSA Investigations sent [Applicant 25] an investigation letter (the "**Investigation Letter**") in regard to his allegedly subleasing the following properties for short-term rentals without authorization from the owners:

    a. [Property 1], Vancouver ("**Property 1**");

    b. [Property 2], Vancouver ("**Property 2**");

    c. [Property 3], Vancouver ("**Property 3**");

    d. [Property 4], Vancouver ("**Property 4**"); and

    e. [Property 5], Vancouver ("**Property 5**").

    (collectively, the "**Properties**")

13. The Investigation Letter also noted that BCFSA Investigations was investigating whether [Applicant 25] had engaged in the following conduct:

> "1. Tenanting multiple properties in Vancouver, BC, under false pretences and renting the properties for short-term rentals without the owner's knowledge and authorization;
>
> 2. Advertising real estate without the owner's knowledge and authorization;
>
> 3. Falsifying contractual documents;
>
> 4. Exposing owners to fines during your tenancy; and
>
> 5. Making any false or misleading statement in a document that is required or authorized to be produced or submitted under the act in relation to your application for licensing renewal as it pertains to pending and historical litigation, including court orders and judgments."

14. The Investigation Letter additionally indicated that a failure to comply with the requests made in the letter could constitute contraventions of section 21 of the *Real Estate Services Rules*, BC Reg 209/2021 (the "**Rules**") or section 37 of RESA. It indicated that such contraventions could attract administrative penalties.

15. The Investigation Letter requested a detailed statement regarding [Applicant 25]'s involvement in the matter and in regard to each property, copies of all agreements or contracts between [Applicant 25] and any owners of properties he rented from January 2021 to present, and the addresses of his primary residence from January 2021 to present. The Investigation Letter set a January 20, 2025 deadline for [Applicant 25] to respond.

16. On January 9, 2025, [Applicant 25]'s legal counsel emailed BCFSA Investigations a letter advising that he would be in court for two weeks and for another week following a short break. [Applicant 25]'s legal counsel requested an extension of the deadline in the Investigation Letter to February 21, 2025. [Applicant 25]'s legal counsel also requested copies of the complaints that commenced the investigation and any documents relating to the orders or litigation to which the Investigation Letter referred.

17. BCFSA Investigations replied by email on the same day extending the deadline to February 3, 2025. BCFSA refused to provide any documents in response to [Applicant 25]'s legal counsel's request and noted that if the matter proceeded to a disciplinary action, [Applicant 25] would receive disclosure. BCFSA Investigations referred [Applicant 25]'s legal counsel to Court Services Online regarding the court orders and litigation.

18. On January 15, 2025, [Applicant 25]'s legal counsel emailed a letter to BCFSA Investigations advising that he would do his best to meet the February 3, 2025 deadline. He argued that without disclosing the complaints, the investigation will be unfair. He also requested particulars of the alleged false pretenses, copies of allegedly falsified documents, particulars of any false or misleading statement allegedly submitted by [Applicant 25] to BCFSA, and a copy of any such statement. [Applicant 25]'s legal counsel argued that [Applicant 25] could not provide a detailed statement because the investigation letter did not provide sufficient detail regarding the matter under investigation to allow [Applicant 25] to address it.

19. On January 16, 2025, BCFSA Investigations replied to [Applicant 25]'s legal counsel to state that the false pretenses at issue related to the subletting of the subject properties for short-term rentals without authorization. BCFSA Investigations noted that they were seeking copies of all agreements between [Applicant 25] and the owners of the subject properties to determine if [Applicant 25] falsified any contractual documents. BCFSA Investigations also directed [Applicant 25] to question #4 of his application dated June 11, 2024 regarding the allegedly false and misleading statement submitted to BCFSA. BCFSA Investigations also

reminded [Applicant 25] of his obligation to cooperate with the investigation under section 35(e) of RESA and the possibility of administrative penalties as set out in the Investigation Letter.

20. On February 3, 2025, [Applicant 25] emailed BCFSA Investigations to state that he was unable to provide a detailed statement to BCFSA Investigations because they had not provided him with the requested further information regarding the investigation. [Applicant 25] denied "any false pretenses or false statements". Regarding his address, he stated that he had lived at several different addresses since January 2021, that his "primary residence" has varied, and that his "permanent address" is [Property 6], Port Moody. [Applicant 25] attached tenancy agreements for Properties 1, 2, 3, and 4 and stated that he did not rent Property 5 but believes his brokerage managed Property 5. Regarding the allegedly false or misleading statement in [Applicant 25]'s June 2024 license application, [Applicant 25] stated that he did not have access to the form in question, but he suspected that it might relate to litigation in relation to Property 5 and he apologized if there was an error in that regard.

21. The four residential tenancy agreements [Applicant 25] provided are signed by him as tenant. Each of them is a fixed term agreement that continues month-to-month thereafter. The stated fixed term of the tenancy agreements are as follows;

    a. for Property 4, January 19, 2023 to July 18, 2023;

    b. for Property 2, March 1, 2023 to February 29, 2024;

    c. for Property 3, June 1, 2023 to May 31, 2024; and

    d. for Property 1, April 15, 2024 to April 30, 2025.

22. On February 4, 2025, BCFSA Investigations issued a Non-Compliance Warning Letter ("**NCWL 1**") alleging that [Applicant 25] was in contravention of section 21 of the Rules to [Applicant 25] by email copying [Applicant 25]'s legal counsel and registered mail to [Property 6], Port Moody. NCWL 1 provided a summary of the above steps taken in the investigation to that date. NCWL then stated as follows:

    "- [Applicant 25] has not provided a detailed statement of involvement in regard to this matter pertaining to each property. In particular, [Applicant 25] has not addressed each of:

        o whether he advertised real estate without the owner's knowledge and consent;

        o whether he exposed owners to fines during his tenancy; and

        o why the tenancy agreements that he submitted overlap in their dates of the lease, which speak to tenanting multiple properties.

    - [Applicant 25] has not provided his address of primary residence from January 2021 until present."

23. NCWL 1 set a February 11, 2025 deadline for [Applicant 25] to cure the above alleged contraventions, otherwise daily penalty amounts could begin to accrue. It also references a need to provide an "above noted outstanding complete deal file", but does not otherwise reference a deal file.

24. On February 5, 2025, BCFSA Investigations emailed [Applicant 25] and his legal counsel to schedule an interview for the first week of March 2025 and offered dates of March 3, 4, and 5, 2025. The letter stated that "delays will only be considered for extraordinary circumstances."

25. On February 11, 2025, [Applicant 25] emailed BCFSA Investigations to respond to the request for an interview and to NCWL 1. He stated that his counsel was out of the country on the dates

provided and asked for alternative dates. He advised that his "primary (or permanent) residence from January 2021 until present is [Property 6] in Port Moody." He further stated, "I have also resided at other locations from time to time in the last four years." With regard to the three bullet points under the request for a detailed statement, [Applicant 25] responded as follows:

> "1. No
>
> 2. No
>
> 3. This question was not previously asked. I have previously sublet a unit to another person on a long term lease. This was not a short term rental. The question is not specific concerning with agreement(s) or date(s)."
>
> [*sic*]

26. On February 13, 2025, BCFSA Investigations replied to [Applicant 25] to argue that [Applicant 25]'s legal counsel being out of the country did not constitute exceptional circumstances. BCFSA Investigations stated that BCFSA had an obligation to investigate matters promptly where there may be ongoing misconduct. Notwithstanding BCFSA Investigations' position on that point, they offered interview dates on March 11 and 13, 2025. BCFSA Investigations requested a response from [Applicant 25] by February 14, 2025. BCFSA Investigations also reminded [Applicant 25] of his obligations under section 21 of the Rules and section 37(4) of RESA.

27. [Applicant 25] replied the next day to object to the short timeline for his response and to state that no ongoing misconduct had been identified. He noted that he would respond regarding the interview dates as soon as he could and that, considering the long weekend, that response would likely come by Tuesday February 18, 2025.

28. On February 18, 2025, [Applicant 25] emailed BCFSA investigations to request that BCFSA Investigations schedule the interview for March 13, 2025. The interview was scheduled to commence at 10:00 am on March 13, 2025.

29. On February 21, 2025, BCFSA Investigations emailed [Applicant 25] a Microsoft Teams link for the interview and provided a summary of its position on [Applicant 25]'s obligations to participate in the interview. This included a specific reference to the obligation under section 37(4) of RESA.

30. At 9:02 am on March 13, 2025, [Applicant 25]'s legal counsel emailed BCFSA Investigations to advise that [Applicant 25] was unable to attend the interview due to a fever, headache, and vomiting along with "other gastrointestinal issues". [Applicant 25]'s legal counsel requested new interview dates.

31. BCFSA Investigations replied at 9:41 am that day to object to the cancellation as "last minute" and "unacceptable and highly irregular". BCFSA Investigations reserved the right to proceed under section 37 of RESA. BCFSA Investigations stated they had made "numerous attempts in good faith to provide multiple options for [Applicant 25] to attend an interview." BCFSA Investigations also requested substantiation of the health issues [Applicant 25] had identified.

32. [Applicant 25]'s legal counsel replied at 10:37 am that day. He objected to BCFSA Investigations' description of the cancellation, noting that adjournments or postponements occur due to illness in a variety of contexts. He disagreed with any suggestion that [Applicant 25] had not cooperated with the investigation. He finally noted that he would discuss the issue of providing evidence of [Applicant 25]'s illness with [Applicant 25] but noted that this might not be possible or advisable if [Applicant 25] were contagious. He also noted that sick notes are not necessarily appropriate or useful uses of medical resources.

33. BCFSA Investigations replied at 1:40 pm that day. BCFSA Investigations again reserved its rights to proceed under section 37 of the Rules and again requested substantiation of [Applicant 25]'s illness. BCFSA Investigations provided the option for new interview dates on March 18 and 20, 2025.

34. On March 14, 2025, [Applicant 25]'s legal counsel wrote to advise BCFSA Investigations that [Applicant 25] would be out of the country during the week of March 18, 2025 on a family holiday. He advised that he would provide evidence of this in due course and requested alternative dates.

35. On March 17, 2025, [Applicant 25]'s legal counsel provided BCFSA Investigations with a portion of an Air Canada flight itinerary issued November 14, 2024 showing a flight leaving Vancouver on March 14, 2025 at 10:40 pm and routing through Toronto and on to Aruba. The flight to Aruba was flight number AC1826 and was scheduled to land at 2:00 pm on March 15, 2025. The itinerary also showed a flight leaving Aruba on March 28, 2025 and returning to Vancouver through Toronto on March 29, 2025 at 1:11am. The document does not include passenger information. [Applicant 25]'s legal counsel suggested a new interview date of April 3, 2025.

36. BCFSA Investigations replied to [Applicant 25]'s legal counsel the same day to note that the itinerary provided did not include passenger information or a ticket number and to note that [Applicant 25] had not substantiated his illness. BCFSA Investigations noted that [Applicant 25]'s illness immediately preceded his supposed departure for his trip to Aruba. BCFSA Investigations stated that they had made seven attempts to schedule an interview with [Applicant 25] and that failure to attend an interview contravenes section 37 of RESA. It is not clear to me how BCFSA Investigations arrived at the number seven. BCFSA Investigations also required [Applicant 25] to attend an interview on March 18 or 20, 2025 by Microsoft Teams or teleconference.

37. Later that day, BCFSA Investigations sent a second Non-Compliance Warning Letter ("**NCWL 2**") to [Applicant 25] by email copying his legal counsel and registered mail to [Property 6], Port Moody. NCWL 2 alleged that [Applicant 25] had contravened section 37(4) of RESA. NCWL 2 provided a summary of the investigation and alleged the following:

> "- [Applicant 25] failed to provide the addresses of where he resided from January 2021 to present and referred to "*other locations from time to time in the last four years*" and *"My 'primary residence' has varied*". [Applicant 25]'s addresses of residence since January 01, 2021 are pertinent to the investigation.
>
> - [Applicant 25] failed to provide a detailed statement of his involvement pertaining to each property by addressing whether he advertised real estate without the owner's knowledge and consent; whether he exposed owners to fines during his tenancy; and why the tenancy agreements he submitted overlap in their dates of the lease."
>
> - [Applicant 25] failed to attend the scheduled interview on March 13, 2025.
>
> - [Applicant 25] failed to provide any proof of a substantiated medical issue for his failure to attend the March 13, 2025 scheduled interview."
>
> [*sic*] [*emphasis* original]

38. NCWL 2 required [Applicant 25] to cure the above noted alleged contraventions by March 25, 2025 by providing the following:

> "- All of the addresses of residence from January 01, 2021 to present.

- A detailed statement of your involvement pertaining to each property by addressing whether you advertised real estate without the owner's knowledge and consent; whether you exposed owners to fines during your tenancy; and why the tenancy agreements that you submitted overlap in their dates of the lease.
- Provide proof of a substantiated medical issue for your failure to attend the March 13, 2025 scheduled interview.
- Attend a scheduled interview with BCFSA."

[*sic*]

39. I note that NCWL 2 no longer asked for [Applicant 25]'s primary residences but instead asked for all the addresses at which he resided after January 1, 2021.

40. On March 19, 2025, NCWL 2 was delivered by registered mail. The signatory name for the package shows the initials "M K". The signature appears to be an "M" and an angular shape that is not clearly any particular letter. [Applicant 25]'s initials appear on the tenancy agreements. None of those initials clearly match that on the registered mail delivery confirmation.

41. On March 19, 2025, [Applicant 25]'s legal counsel emailed BCFSA Investigations a letter. In that letter, he indicated he did not notice the missing portion of the itinerary provided and was confident a "satisfactory ticket" would be provided. He argued that an unwell person may still decide to attend a pre-planned trip rather than cancel. He disagreed with the allegation that BCFSA Investigations made "seven attempts" to schedule an interview and that [Applicant 25]'s illness was a reasonable excuse not to attend the interview. He noted that he had not spoken to [Applicant 25] and was unsure if he had access to internet or cellular service.

42. On March 26, 2025, BCFSA Investigations wrote to [Applicant 25] to allege that he had failed to cure the defaults set out in NCWL 2. They noted that the deadline in NCWL 2 had passed and that he may therefore be subject to a base penalty amount plus a daily penalty amount of $1,000 per day. BCFSA Investigations indicated that [Applicant 25]'s interview was scheduled for April 4, 2025 from 10:00 am to 12:00 pm to proceed virtually.

43. The next day, the NOAP was issued. I do not know if [Applicant 25] attended the interview scheduled for April 4, 2025.

Submissions

44. [Applicant 25] provided several documents in his submission and his legal counsel provided written submissions on the alleged contraventions.

45. [Applicant 25] provided an undated image of a digital thermometer displaying a temperature of 40.4 degrees Celsius, an embarkation/disembarkation card from Aruba numbered [redacted] for [Applicant 25] showing flight number [redacted] and an arrival date of March 15, 2025.

46. [Applicant 25] provided an Air Canada itinerary for his trip to Aruba, it shows the same information as indicated in the version provided to BCFSA Investigations, except that the version he provided to Hearings Division includes a page with his name and that of his family members travelling with him on the trip.

47. On his own behalf, [Applicant 25] submitted that he provided the required address. He further submitted that he was refused clarification for a request for information that "was broad subjective and lacked clarity". He maintained that he was ill and unable to attend the March

13, 2025 interview and that it was irresponsible for him to go out in public to obtain a doctor's note. He submits that the photo of the thermometer he took establishes that he had a high fever. He submits that the Minister of Health has indicated going out to get a doctor's note is irresponsible and that it will "soon be unlawful" to demand such a note. He maintains that he was in Aruba from March 14 to March 29, 2025 on a vacation booked in advance and that it was not reasonable for BCFSA Investigations to require an interview during that time. He submits there was no prejudice in having BCFSA wait until he returned.

48. [Applicant 25]'s legal counsel also made submissions on [Applicant 25]'s behalf. He submitted that [Applicant 25] was asked for his residential address and provided his permanent residential address", which did not change. He submits that [Applicant 25] sometimes slept at different addresses because his "marriage is not always stable" and [Applicant 25] and his wife sometimes spend brief periods apart. [Applicant 25]'s counsel also submitted that imposing an administrative penalty must be "anchored in some behaviour or actions to which some measure of fault can be attributed" and that there was no fault on [Applicant 25]'s behalf because he directly answered a direct question.

49. With regard to the allegation that [Applicant 25] refused to provide a detailed statement, [Applicant 25]'s counsel submitted that the matter under investigation was set out in a list of five statements in the Investigation Letter. He submitted that [Applicant 25] responded to the four questions directly asked of him by providing information, providing documents, and providing his address. He submitted that the superintendent cannot impose a penalty for refusing to provide a detailed statement when [Applicant 25] answered every question asked of him. He submitted that NCWL 1 and NCWL 2 addressed different issues than raised in the Investigation Letter. He submitted that NCWL 2, for example, calls for proof of [Applicant 25]'s illness, which prevented [Applicant 25] from attending the March 13, 2025 interview, which was not within the scope of the Investigation Letter. He submits that the superintendent cannot "arbitrarily decide that a statement is not sufficiently 'detailed'".

50. Regarding [Applicant 25]'s failure to attend the March 13, 2025 interview, [Applicant 25]'s counsel submitted that [Applicant 25]'s was ill and argued that BCFSA Investigations should not have required him to prove he was ill because such a requirement was unreasonable. He referenced the photograph of a thermometer that [Applicant 25] provided. He submitted that requiring a doctor's note is wrong and contrary to pending amendment to the *Employment Standards Act*. He submitted that surgeons, teachers, judges, and lawyers are not required to produce medical evidence when they are unable to work and that the usual practice is to phone in sick.

51. Regarding [Applicant 25]'s failure to attend the March 18 and 20, 2025 interview dates, [Applicant 25]'s counsel submitted that [Applicant 25] was travelling, which can be established by records with the Canada Border Services Agency. No such records have been provided to me. Although [Applicant 25]'s counsel indicated that such records have been requested and will be provided, I have determined that [Applicant 25] was in fact travelling at the time and such records are not necessary and have decided to proceed without them. He submitted that BCFSA Investigations cannot set dates arbitrarily and must set deadlines on a reasonable basis based on information known to BCFSA Investigations at the time. He relies on *Shums (Re)*, 2025 BCSRE 11, paras 58-60 for this proposition. He submitted that the interview dates were selected "arbitrarily and unilaterally" and that an extension request was denied despite being raised in a timely way. He submitted that the investigation was not so time sensitive or urgent as to require the interview to be conducted while [Applicant 25] was away on a trip that was planned months prior. He submits that proof of the travel was not required for the investigation as framed in the Investigation Letter.

52. Regarding the alleged failure to provide proof of [Applicant 25]'s illness, [Applicant 25]'s counsel relied on his submissions regarding the March 13, 2025 interview. He submitted that

[Applicant 25] had no obligation to do more than advise BCFSA that he was ill. He submitted that substantiation of the illness was not reasonably required for the investigation as framed in the Investigation Letter.

Reasons and Findings

Applicable Legislation

53. 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.

54. 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.

55. 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 37(4) of RESA is placed in Category E. Section 27(5) of the Rules sets out that contravention of a section designated in Category E may attract a base penalty amount of $1,000 for a first contravention or $5,000 for a subsequent contravention plus a daily penalty amount of $1,000 for each day or part of a day that the contravention continues.

56. 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.

57. Section 37 of RESA states as follows:

> **37** (1) The superintendent may conduct an investigation to determine whether a licensee may have committed professional misconduct or conduct unbecoming a licensee.
>
> …
>
> (3) For the purposes of an investigation, the superintendent may do one or more of the following:
>
> (a) at any time during business hours, inspect and remove or copy records that are located on the business premises of
>
> (i) a licensee or former licensee, or
>
> (ii) an officer, director, controlling shareholder or partner of a licensee or former licensee;
>
> (b) require a person referred to in paragraph (a) to
>
> (i) answer, or meet with the superintendent to answer, inquiries relating to the investigation, and
>
> (ii) produce information, records or other things in the person's possession or control for examination by the superintendent.

(4) A person referred to in subsection (3) (a) must not withhold, destroy, conceal or refuse to provide any information or thing reasonably required for the purposes of an investigation under this section.

Analysis

58. 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 whether a contravention of RESA, the Regulations, or the Rules has occurred. In many such reconsiderations, the presiding Hearing Officer must also determine whether a licensee exercised due diligence or whether extenuating circumstances precluded the licensee's compliance; however, those considerations do not squarely arise in the context of an alleged contravention of section 37(4) of RESA. In that context, a contravention can only be established if BCFSA establishes that the person subject to the administrative penalty acted intentionally: *Fisher (Re)*, 2025 BCSRE 5 at paras 118-128. Proving this intent requires proof that the person subject to the administrative penalty intentionally withheld, destroyed, concealed, or refused to provide information or things reasonably required for the investigation or failed to take steps to find and deliver relevant information or things that were within their possession or control either intentionally or in a fashion that renders them willfully blind to the information or things: *Shums (Re)*, para 118. Although an exercise of due diligence or the existence of overriding extenuating circumstances may speak to the whether intent exists, they are not stand-alone considerations in this context because they either defeat an allegation of intent or they do not.

59. With that in mind, I turn to the specific alleged contraventions in this case.

Contravention: Address

60. The Investigation Letter asked [Applicant 25] for the addresses of his "primary residence from January 2021 until present."

61. [Applicant 25] responded on February 3, 2025 to state that his primary residence varied but his "permanent address" was [Property 6], Port Moody.

62. Following this, BCFSA Investigations sent NCWL 1, which noted that [Applicant 25] had not provided his "addresses of primary residence from January 2021 until present".

63. [Applicant 25] responded on February 11, 2025 to state that his "primary (or permanent) residence from January 2021 until present" was [Property 6], Port Moody. He also indicated he had resided at other locations "from time to time" during that period.

64. The next time BCFSA Investigations followed up on this issue was in NCWL 2 on March 17, 2025. In NCWL 2, BCFSA Investigations frames the outstanding address information as follows:

> "[Applicant 25] failed to provide the addresses of where he resided from January 2021 to present and referred to "*other locations from time to time in the last four years*" and "*My 'primary residence' has varied*". [Applicant 25]'s address of residence since January 01, 2021 are pertinent to the investigation."
>
> [*sic*] [*emphasis* original]

65. NCWL 2 then required [Applicant 25] to comply by providing:

> "- All of the addresses of residence from January 01, 2021 to present."

66. The further correspondence provided to me does not address the issue of [Applicant 25] providing his addresses.

67. In my view, BCFSA first asked for [Applicant 25]'s primary residence and [Applicant 25] provided that by February 11, 2025. Although he could have been more clear, he answered the question, which was to provide the addresses of his primary residences during the period in question. I should not be taken to mean that [Applicant 25]'s response was exemplary. He initially distinguished between his "permanent residence" and his "primary residence" and then collapsed that distinction in his next response; however, he did provide his answer to the question asked.

68. In my view, [Applicant 25] was not obliged, in response to the narrow question actually asked of him regarding his primary address, to offer more. I do note that [Applicant 25] was also asked a more broad question, which is addressed below, but he is facing an administrative penalty for both his alleged failure to respond to the narrow question and his failure to respond to the broad question. As discussed below, the broad question overlapped the narrow question in certain respects. As a result, I find that in regard to this alleged refusal to answer the question regarding his primary residence, [Applicant 25] did not refuse to answer or withhold or conceal his answer.

69. In NCWL 2 the scope of the question then changed to all his addresses and not just the address of his primary residence. I note that [Applicant 25] was on vacation when NCWL 2 was delivered, as discussed below. There is no evidence before me that [Applicant 25] was aware of NCWL 2, that he read NCWL 2 and understood it was asking for more information than previously requested, or that he refused to answer it.

70. I acknowledge that [Applicant 25] was emailed NCWL 2 at the email address he had corresponded with BCFSA through, but proving a contravention of section 37(4) of RESA requires proof of intent, which requires proof that [Applicant 25] knew about the request being made. For example, it is not sufficient to establish a contravention of section 37(4) of RESA that a person refused to sign for a registered letter; there must be some evidence that the person knew that its contents related to the regulatory investigation: *Scoffield (Re)*, 2023 BCSRE 13, para 127. In my view, it is not sufficient to demonstrate that [Applicant 25] should have known about the request or its contents, it must be shown that he knew what the letter contained or was willfully blind to it. Demonstrating that the licensee ought to have known about the correspondence may be sufficient to establish a breach of the duty to cooperate under section 35(1)(e) of RESA or the obligation to respond promptly under section 21 of the Rules, where the standard is not intent; however, those are separate sections with separate obligations. It may well be the case that a licensee subject to regulatory investigation has a duty to keep watch for correspondence, to read it, and to attempt to understand it; however, section 37(4) of RESA requires something more. It requires proof of intent, or at minimum willful blindness.

71. I also note that, in most cases, delivery of correspondence to a person's counsel is sufficient to conclude they have received notice of its contents; however, that is not the case where, as is the case here, [Applicant 25]'s counsel explicitly told BCFSA Investigations that he had not been in contact with [Applicant 25].

72. Finally, even if [Applicant 25] was aware of NCWL 2 and its contents, or was willfully blind to it, the only evidence that I have that he might have refused to answer is that he did not provide a response before March 27, 2025 when the NOAP was issued. The evidence before me does not establish that [Applicant 25] was intentionally avoiding providing the addresses at which he resided from January 1, 2021 until the present when asked that question. It might speak to a certain degree of dilatoriness, which I do not decide here because I merely need to decide if [Applicant 25]'s failure was intentional, and I find that the delay here, between NCWL 2 and

the NOAP being issued, is not sufficient to establish intent in the circumstances. To prove intent, BCFSA Investigations would have to show that [Applicant 25] knew about NCLW 2 or was willfully avoiding it and could have responded in time such that it could be said he was willfully avoiding his obligation to respond to it. That is not shown here.

73. I find that BCFSA has not established that [Applicant 25] contravened section 37(4) of RESA by refusing to provide his addresses of residence from January 2021 to present or withholding or concealing that information. The evidence establishes that [Applicant 25] answered the question regarding his primary residence. The evidence does not establish the requisite degree of intent with regard to the request for [Applicant 25]'s residences as put to him in the NCWL 2. As a result, I cancel the administrative penalty in regard to that allegation.

Contravention: Detailed Statement

74. In addressing this alleged contravention, I note that there is nothing in RESA that specifies the extent of disclosure BCFSA or the superintendent must make during an investigation under section 37 of RESA. What is required though, is that the investigation be conducted in compliance with the applicable standard of procedural fairness which applies to regulatory investigations. The standard of procedural fairness, and in particular the standard of disclosure required in the context of a regulatory investigation, is lower than exists in the context of a disciplinary proceeding. During the investigation, what is required is that the individual be advised that they are subject to investigation and that they be provided with a summary of the substance of the investigation against them that is sufficient to allow them to meaningfully respond: *Kuny v College of Registered Nurses of Manitoba*, paras 45-49 ("***Kuny***"); *Puar v Association of Professional Engineers and Geoscientists (British Columbia)*, 2009 BCCA 487 at paras 18-24. The decision in *Kuny* indicates so long as the subject has sufficient information to provide a meaningful response to the questions asked, the time, manner, and breadth of disclosure of information by the investigator is largely a matter for the investigator to decide based on the needs of the investigation. In my view, once a sufficient summary of the matter under investigation has been given to the subject of an investigation under section 37 of RESA that allows them to meaningfully respond to the questions posed, they must meaningfully respond. Assessing the meaningfulness of the response requires consideration of both the questions asked and the information supplied to the subject because the nature of the information supplied sets the boundaries on what can be expected of a meaningful response.

75. In this case, BCFSA Investigations provided [Applicant 25] with the Investigation Letter which indicates that the subject matter of the investigation was his tenancies of five identified properties and further indicates that he is alleged to have sublet or re-rented the Properties for short-term rentals without the owners' knowledge and authorization. Within that context, the Investigation Letter noted that the investigation concerned him advertising the Properties without the owners' knowledge and authorization, falsifying contractual documents, and exposing the owners to fines during his tenancy. The letter also noted that BCFSA was investigating whether [Applicant 25] provided a false or misleading statement in a renewal application.

76. In my view, the request for a detailed statement is informed by, but not restricted to, the scope of the more direct requests made by BCFSA Investigations. For example, the request for the address of [Applicant 25]'s primary residence along with the allegation that [Applicant 25] rented residential properties on false pretenses and then sublet them for short-term rentals clearly indicates that the actual use [Applicant 25] made of the Properties as tenant needed to be addressed in his response.

77. In response to the Investigation Letter, [Applicant 25] and his counsel asked for further information and documents and for copies of the complaints. BCFSA Investigations refused

to provide any further documents or copies of the complaints, but on January 16, 2025 it did provide some further context by specifying that the false pretenses related to the subletting of the Properties for short-term rentals without authorization, indicated that the alleged falsified contracts related to the alleged tenancies, and indicated the renewal application in which he had allegedly made a false or misleading statement. At that point, [Applicant 25] was aware that he was being investigated regarding his renting of the Properties, whether he had rented the Properties on false pretenses and for the purposes of short-term rentals, whether he had falsified contracts in that regard, and whether he had exposed the owners of the Properties to fines as a result of his conduct.

78. On February 3, 2025, [Applicant 25] stated he could not provide a detailed statement because he did not have enough information to do so. He also provided copies of four tenancy agreements along with a denial that he rented Property 5 from the owner. He further stated that he may have answered the question regarding ongoing litigation incorrectly and apologized for that.

79. BCFSA then issued NCWL 1 on February 4, 2024.

80. On February 11, 2024, [Applicant 25] responded to NCWL 1. His responses were to simply state “No” in response to the questions asking for a detailed statement regarding whether he had advertised real estate without the owner’s knowledge, and whether he exposed the owners to fines. In regard to the question about why the tenancies evidenced in the tenancy agreements he had supplied overlapped, [Applicant 25] said he had sublet a unit for a long-term rental but does not specify what unit he is referring to nor does he identify the person to whom he sublet the unit. He then notes that the question did not provide specifics concerning which agreements or dates the question regarding overlap related to.

81. [Applicant 25] provided no further information or documents in response to BCFSA Investigation’s request for a detailed statement. [Applicant 25] and his counsel have raised several arguments seeking to establish that he was not required to provide anything more than what he did in response to the requests. I will address each of those arguments below.

82. [Applicant 25] argued that he was not provided with sufficient information to provide a further response. In my view, BCFSA Investigations provided [Applicant 25] with sufficient information to meaningfully respond to the Investigation Letter’s request for a detailed statement. As noted above, the Investigation Letter and the January 16, 2025 email indicated to [Applicant 25] that his tenancies of the Properties were at issue and that he was alleged to have rented them on false pretenses and then sublet them out without the knowledge or authorization from the owners, and had allegedly falsified contract documents to achieve this end. That is sufficient information to require [Applicant 25] to provide a statement regarding the details of the tenancies. It is clear that BCFSA Investigations was seeking to have [Applicant 25] to explain the reasons why he rented the subject properties, to advise what use he made of the properties he rented, to explain what representations he made to the owners regarding the use of the subject properties, and to speak to the authenticity of any contracts signed in relation to the subject properties.

83. In his February 3, 2025 response, [Applicant 25] explicitly declined to provide any information regarding his tenancy of the Properties, except to provide the tenancy agreements and to state that he was not a tenant of Property 5, but it was managed by his brokerage. Although the tenancy agreements provide some detail regarding the tenancies of Properties 1, 2, 3, and 4, they did not explain [Applicant 25]’s use of those properties. In my view, as indicated above, the fact that the fixed terms of the tenancies in those agreements overlapped, when viewed in light of the allegations summarized in the Investigation Letter, clearly called for an explanation of [Applicant 25]’s use of them, which would have fallen within the ambit of a detailed statement concerning the matter. The fact that he provided the documents may have

indicated that he considered them authentic, which would have spoken to the allegation that he had falsified contractual documents, but he did not explicitly deny that allegation. He also did not speak at all to the advertising allegation or the allegation regarding fines.

84. NCWL 1 then reiterated the demand for a detailed statement and specifically directed [Applicant 25] to address the advertising and fines issues and to provide an explanation for the overlapping dates of the tenancy agreements. Again, the fact and degree of the overlap is obvious on the face of the tenancy agreements. [Applicant 25]'s responses were flat denials to the advertising and fines issues and a statement that he had sublet an unidentified property for a long-term rental. [Applicant 25] did not provide any explanation of the overlapping tenancy agreements or provide any further details.

85. [Applicant 25] and his counsel have argued that he provided responses to all of the questions asked of him by providing information and documents. In my view, he clearly did not. None of [Applicant 25]'s responses provided any real detail concerning the central issue in this matter, which was [Applicant 25]'s alleged subletting of the Properties for short-term rentals. Within that context, he did not provide an explanation of his use of Properties 1, 2, 3, and 4 or an explanation of why the fixed terms of the tenancy agreements overlapped to some extent. The fact that a mere review of these documents reveals that overlap indicates to me that [Applicant 25] did not need BCFSA Investigations to particularize the overlap for him. In response to BCFSA's inquiries, [Applicant 25] did not explain why he had rented four properties between January 2023 and April 2025. A detailed statement in response to the allegations summarized in the Investigation Letter, BCFSA's January 16, 2025 email and NCWL 1 would have provided that context. The questions BCFSA Investigations asked were not opaque or obscure, they were direct. Although they were somewhat broad, they were sufficiently clear to have required [Applicant 25] to produce an explanation of his use of the Properties. [Applicant 25] did provide answers, documents, and information, but his answers lacked any real detail, which is what he was required to provide.

86. I pause to note that [Applicant 25]'s "No" answers to the advertising and fine issues are likely sufficient. Those answers are direct answers to direct questions about whether he advertised the Properties or exposed the owners of the Properties to fines. The issue in this case though is that [Applicant 25] provided almost no detail regarding his use of Properties 1, 2, 3, and 4 in response to the Investigation Letter and the further correspondence sent by BCFSA Investigations. In my view, the lack of detail is telling by particular reference to [Applicant 25]'s February 11, 2025 statement that he did sublet an unidentified unit to an unidentified person for a long-term rental. A detailed response would have included the details of that sublease and the fact that [Applicant 25] did not provide that detail indicates to me that he was intentionally withholding clearly relevant information that fell within the scope of BCFSA Investigations' request.

87. In my view, [Applicant 25] could not have been confused about what was being asked of him and he intentionally withheld and refused to provide the information requested, despite being asked to do so repeatedly. He was asked for detail and he did not provide it.

88. I find that [Applicant 25] contravened section 37(4) of RESA when he withheld and refused to provide a detailed statement regarding the matter under investigation in response to the Investigation Letter.

Contravention: March 13, 2025 Interview

89. I turn now to the alleged refusal to attend the March 13, 2025 interview.

90. In my view, a refusal to attend a scheduled investigatory interview can constitute a refusal to provide, withholding of, or concealing of information reasonably required for the purpose of an

investigation. Although section 37(4) of RESA does not mention refusing to attend an interview, section 37(3)(b)(i) empowers the superintendent to require a licensee to attend an interview for the purposes of answering questions in relation to the investigation. Refusing to attend that interview is a refusal to answer the question which would have been asked at that interview and withholds or conceals the answers to those questions, which is sufficient to contravene section 37(4) of RESA.

91. Turning to the conduct at issue here. [Applicant 25] advised BCFSA Investigations, through his counsel, that he was unable to attend due to sickness. I have no real evidence that [Applicant 25] was not sick as he alleges or from which I could infer that he was not sick. I note that [Applicant 25] did depart on his vacation the following evening, but it is entirely possible that the illness was intense and short lived and that he was well enough to depart on the vacation the following day. I will note that the fact of his departure does call into question his and his counsel's argument that it would have been irresponsible for him to have gone into public to get a doctor's note, but I do not find that it establishes, on a balance of probabilities, that [Applicant 25] was in fact not ill.

92. Regarding the photograph of the thermometer, I am troubled by the fact that this photograph was only produced in [Applicant 25]'s application for reconsideration. If [Applicant 25] took that photograph on March 13, 2025, when he was supposed to have been ill, it does not make sense that he would have waited to provide that document despite being specifically asked by BCFSA Investigations for proof of illness. That said, I am not willing to conclude, based on the fact that the photograph was not contemporaneously disclosed, that [Applicant 25] was not sick.

93. In this matter, BCFSA has the onus of proving [Applicant 25] contravened section 37(4) as alleged on a balance of probabilities. In my view, BCFSA has not established that [Applicant 25] was well enough to attend the March 13, 2025 interview. Although there are some concerning facts surrounding [Applicant 25]'s cancellation of the interview, the evidence before me is not sufficient to establish that he was not in fact sick as he states he was.

94. I also note that this was the first interview scheduled for [Applicant 25] and there is no evidence that he demonstrated a pattern of unreasonable delay. He did object, from time to time, to the deadlines imposed by BCFSA Investigations, but on the whole, he responded within reasonable timelines. He also did, as I note above, intentionally withhold a detailed statement, which could speak to an intention to delay or obstruct the investigation generally; however, I view [Applicant 25]'s refusal to provide a detailed statement as evidence of a view that BCFSA Investigations had to put pointed questions to him and ask for specifics, as opposed to him being obliged to provide his account of what occurred more broadly. Although that view put [Applicant 25] offside his obligations under section 37(4) of RESA, it does not indicate to me that he intended to delay his interview by exaggerating or inventing an illness.

95. As a result, I find that [Applicant 25] did not intentionally refuse to attend the March 13, 2025 interview. Being too ill is a reasonable basis to decline to attend an interview and BCFSA has not proven [Applicant 25] was not sick. As a result, I cancel the administrative penalty in regard to that allegation.

Contravention: Substantiation of Illness

96. Regarding the request for substantiation of [Applicant 25]'s illness, the first question to be asked is whether the foundation for that request had been properly established such that [Applicant 25] was required to respond to provide substantiation.

97. In my view, it is not sufficient to note that the request for substantiation of [Applicant 25]'s medical records did not fall within the scope of the investigation as set out by the Investigation

Letter. The scope of an investigation under section 37 of RESA, and therefore the scope of the questions which a subject is required to answer, is not static. It is capable of evolving over time as new information comes to light. Questions that were not initially relevant may become relevant. An example of that in this case is the question regarding the overlap in the tenancies for Properties 1, 2, 3, and 4. That question could not have been asked without disclosure of the tenancy agreements for those properties, but the fact that it was new does not mean that it falls outside the scope of the investigation.

98. In this case, [Applicant 25] was told that failing to attend the March 13, 2025 interview and to answer the questions asked of him there could constitute a contravention of his obligations under section 37(4) of RESA before the interview. In addition, BCFSA Investigations told [Applicant 25] and his counsel that it reserved its rights under section 37 of RESA when [Applicant 25] failed to attend on that date. All of that said, however, the request for substantiation did not fall within the original scope of the investigation, nor did it fall within an expanded scope of that investigation. Although the question of whether [Applicant 25] contravened section 37(4) of RESA arose during the investigation it did not arise from the content of the investigation in the same way that questions regarding the subject matter of the investigation might; instead, it arose from [Applicant 25]'s conduct during the investigation itself. In that context, the question is whether [Applicant 25] was sufficiently advised that he was now under investigation for his failure to comply with his obligations in relation to the investigation. Considering the above, it was sufficiently clear that the request was made to prove or disprove whether [Applicant 25] had complied with his statutory obligation to attend the interview in question. I therefore find that that the request for substantiation was properly made under section 37 of RESA.

99. The next question that arises in the context of the request itself is whether substantiation of [Applicant 25]'s illness was "reasonably required" as required under section 37(4) of RESA. In determining that, I must determine whether the information or thing requested is required to prove or disprove the contravention at issue, which is merely a question of relevance, and whether the information or thing is reasonably requested of the licensee.

100. I note in this regard, that BCFSA's request was for "substantiation" of [Applicant 25]'s illness and not specifically for a doctor's note. That word is not particularly clear, but generally speaks to a request for further or additional proof of some assertion. In this case, the request, as phrased, was for some further proof that [Applicant 25] was ill beyond [Applicant 25]'s counsel's report. [Applicant 25] and his counsel appear to have assumed that this meant a doctor's note was required, but, on the wording of the request, that was not necessarily required, though it certainly could have spoken to the issue.

101. Regarding the doctor's note, I tend to agree with [Applicant 25]'s counsel that there is, generally, no need for a doctor's note to excuse attendance at a single regulatory interview, particularly where the surrounding circumstances do not speak to an attempt to delay the investigation. As discussed, there is no clear evidence that [Applicant 25] was attempting to delay the proceeding such that further proof of his illness was reasonably required in the circumstances. That is not to say that no case will require medical evidence to establish an inability to respond to investigatory demands or interviews; if the subject of an investigation is repeatedly unable to attend an interview, medical evidence of the reason for that may be necessary to establish why an interview is not possible and to allow accommodation where appropriate. In such a case, documentation of a medical issue will be required to prove that the subject is not merely avoiding their regulatory obligations. In this case, however, I am not convinced that there is enough evidence to indicate that [Applicant 25] was seeking to avoid his regulatory obligations such that it was reasonable to require him to obtain a doctor's note while he professed to be ill.

102. [Applicant 25] and his counsel raise the issue of the policy concerns about disease transmission and the use of medical resources raised by doctor's notes, which may be addressed by amendments to the *Employment Standards Act* in the future. Although I am sympathetic to these issues, I doubt the relevance of the *Employment Standards Act* in this context and I do not think those concerns are sufficient to raise a general objection to producing a doctors' note to excuse attendance at a regulatory interview; instead, I think they should inform the analysis with regard to whether they are reasonably required in the context of the request made. In this case, my view is that the lack of any clear evidence that [Applicant 25] was attempting to delay or avoid his regulatory obligations indicates that the risk of transmission and the use of medical resources was not warranted to address the regulatory concern in this case.

103. Regarding other forms of substantiation of [Applicant 25]'s illness, I note that [Applicant 25] has produced a photograph of a thermometer purporting to show that he has a fever. In my view, that is substantiating evidence. It is not particularly strong substantiating evidence, but it is some evidence that corroborates [Applicant 25]'s account. That photograph was not provided to BCFSA Investigations in response to the request for substantiation, at least by the time that the NOAP was issued on March 27, 2025. As noted above, I am troubled by the fact that the photograph was delivered late. In my view, it would have made little sense for [Applicant 25] to have taken the photo had he not intended to send it in to prove he was sick. That said and assuming the photograph was taken on March 13, 2025 as [Applicant 25] indicates, I have no evidence that [Applicant 25] intentionally failed to produce the photograph within the period at issue. That issue was simply not investigated on the evidence before me and I therefore cannot conclude that his failure to produce was intentional, as opposed to inadvertent or the result of his illness.

104. I do not find that [Applicant 25] contravened section 37(4) of RESA by failing to produce substantiation of his March 13, 2025 illness. As a result, I cancel the administrative penalty regarding that allegation.

Contravention: March 18 or 20, 2025 Interview

105. I turn now to the March 18 or 20, 2025 interview.

106. To constitute a refusal, withholding, or concealing within the meaning of section 37(4), an interview date and time must be set: *Cambell (Re)*, 2023 BCSRE 14, para 136, *Scoffield (Re)*, paras 121-124. The respondent must also be aware of the demand for an interview: *Scoffield (Re)*, paras 125-127.

107. In this case, no actual interview was scheduled. BCFSA Investigations offered [Applicant 25] and his counsel times on two dates and demanded that they advise which of those dates [Applicant 25] was available for, but BCFSA Investigations did not actually schedule an interview date or time. Even if it had, there is no evidence that [Applicant 25] knew that BCFSA Investigations was requiring [Applicant 25] to attend on those dates. I note in this regard that the March 13, 2025 email from BCFSA Investigations merely proposed these dates; whereas, the March 17, 2025 email, when [Applicant 25] was already away, insisted on them. As discussed above in relation to the addresses question, although [Applicant 25] was copied on the email to his counsel seeking to set the March 18 or 20, 2025 interview date, I do not find that the evidence is sufficiently convincing to conclude that he intentionally refused those dates or was willfully blind to them.

108. Further, even if BCFSA Investigations had scheduled an interview date or time, I generally agree with [Applicant 25]'s counsel that deadlines and dates must be reasonably established; however, I would offer some nuance to that assertion. [Applicant 25]'s counsel cites *Shums (Re)* for the proposition that investigatory deadlines must be reasonably set based on the

information known to BCFSA Investigations. That is a case dealing with the application of section 21 of the Rules, which requires licensees to respond promptly and by the deadline set by the superintendent. Section 21 of the Rules is different from section 37(4) of RESA in that it does not require proof of intent and explicitly includes a requirement to comply with deadlines. In the context of section 37(4), compliance with deadlines is an important factual element, as is the reasonableness of those deadlines, but what is more important is whether the licensee intended to not comply with the requirement. In that context, the reasonableness of the demand is relevant because it speaks to the licensee's intent to comply. It cannot be said that a licensee had refused to comply with an investigatory demand that it would be unreasonable to expect them to comply with.

109. In this case, BCFSA was advised that [Applicant 25] was out of the country on a relatively short trip, shortly after proposing the new dates. Although internet access and telephone connectivity is relatively ubiquitous, there are still parts of the world that lack it. I am not aware of whether the specific location to which [Applicant 25] travelled had sufficient internet or telephone access to permit a remote interview; I simply have no evidence in that regard. Again, BCFSA has the onus to prove the contravention, and in this context that means it must establish that its demand was reasonable and that [Applicant 25] could have complied with it. Without establishing that [Applicant 25] had the means to attend an interview, BCFSA cannot meet its onus in this case.

110. Further, I note that BCFSA Investigations has indicated there was some need for urgency in this case which might establish that the need for an interview on March 18 or 20, 2024, while [Applicant 25] was on vacation, was reasonable as a result of ongoing contraventions; however, I have no evidence before me regarding what those ongoing contraventions are alleged to have been or what degree of urgency accompanied them. I could speculate that they related to Property 1 given the ongoing fixed term of that lease, but that would require an inferential leap that I am not prepared to make on the record before me.

111. Without establishing the need for urgency, the facts before me establish that BCFSA Investigations pushed for an investigatory interview on March 18 or 20, 2025 and [Applicant 25]'s counsel responded quickly to advise that [Applicant 25] was out of the country and to propose new dates. In my view, declining interview dates because of pre-planned travel is reasonable and will not contravene section 37(4) unless the BCFSA proves there was actual urgency to the interview. I do not have any evidence that [Applicant 25] failed to attend the April 4, 2025 interview, so I cannot say that [Applicant 25] entirely refused to attend an interview, merely that he sought to delay it by approximately two weeks as a result of a vacation that had been planned months in advance. In my view, that is not a refusal to attend and be interviewed.

112. To be clear, in my view, licensees are required to attend reasonably scheduled interviews. The urgency of the interview may factor into the reasonableness of the date scheduled by indicating that a licensee must go further to meet otherwise unreasonable dates. If BCFSA Investigations insists on dates that would otherwise appear unreasonable, BCFSA must be prepared to prove the urgency in support of an administrative penalty.

113. Regarding the flight itinerary for [Applicant 25]'s Aruba trip, in my view the allegations in the NOAP concern [Applicant 25]'s failure to attend the March 18 or 20, 2025 interview and reference the deficiency in the itinerary as part of the background. In my view, if BCFSA had meant to include that allegation as a breach of section 37(4) of RESA it would have included it as a separate contravention distinct from the attendance issue as it did with the medical information, or it would have been more clear that this was at issue. Although I have some concerns that the document did not include the passenger information, I do not find those concerns are sufficient to convince me that [Applicant 25] did not go on the trip, particularly given [Applicant 25] produced the full document as part of his application for reconsideration.

114. I am caused some pause by the fact that NCWL 2 was signed for at [Applicant 25]'s primary residence on March 19, 2025 by an individual with the initial "M K" but I have no evidence of who that person was. In my view, the evidence before me is not nearly strong enough to conclude that [Applicant 25] was not in Aruba at the time, as he says he was.

115. I do not find that [Applicant 25] contravened section 37(4) of RESA by refusing to attend an interview on March 18 or 20, 2025. As a result, I cancel the administrative penalty in regard to that allegation.

Penalty Amount

116. The administrative penalty issued for [Applicant 25]'s failure to provide a detailed statement was $1,000, being the base penalty amount for a first contravention of a section designated in Category E, which includes section 37(4) of RESA. I am not able to change the administrative penalty issued, I can only confirm or cancel it. If I cancel it, I may refer the matter to a discipline hearing, if I find that process would be more appropriate. As a result, the scope of my review in regard to the penalty amount is restricted to considering whether the penalty amount is appropriate.

117. With regard to the appropriateness of that penalty in this case, I note that the contravention continued after BCFSA Investigations issued NCWL 1 on February 4, 2025 and after [Applicant 25] purported to respond to NCWL 1 on February 11, 2025. Although NCWL 1 referenced section 21 of the Rules and the issue of [Applicant 25]'s compliance with section 37(4) of RESA was not raised in a non-compliance warning letter until March 17, 2025, the issue could have been raised earlier and [Applicant 25] could have faced daily penalties for his failure to provide the required detailed statement. Further, the issuance of a non-compliance warning letter only speaks to the appropriateness of daily penalty amounts being issued, not whether a contravention warranting a base penalty has occurred. In my view, the penalty imposed in this case could have been much greater as a result of the ongoing nature of [Applicant 25]'s withholding of his detailed statement had BCFSA chosen to rely on a non-compliance warning letter referencing section 37(4) earlier.

118. In addition, the intentional nature of a contravention of section 37(4) generally indicates that a regulatory response to the contravention is required.

119. I therefore find that the $1,000 administrative penalty for [Applicant 25]'s contravention of section 37(4) of RESA in failing to provide a detailed statement was appropriate.

Conclusion

120. I find as follows:

a. [Applicant 25] provided BCFSA Investigations with the address of his primary residence as requested and BCFSA has not established that [Applicant 25] contravened section 37(4) of RESA by withholding or refusing to provide his addresses of residence from January 2021 to present;

b. [Applicant 25] contravened section 37(4) of RESA when he refused to provide a detailed statement regarding the matter under investigation in response to the Investigation Letter.

c. [Applicant 25] did not contravene section 37(4) of RESA by refusing to attend an interview on March 13, 2025;

d. [Applicant 25] did not contravene section 37(4) of RESA by refusing to attend an interview on March 18 or 20, 2025; and

e. BCFSA has not proven that [Applicant 25] contravened section 37(4) of RESA by refusing to provide substantiation of the illness which prevented [Applicant 25] from attending the March 13, 2025 interview; and

f. The $1,000 administrative penalty for [Applicant 25]'s contravention of section 37(4) of RESA by withholding or refusing to provide a detailed statement is appropriate.

121. I confirm the $1,000 administrative penalty for [Applicant 25] refusing to provide a detailed statement regarding the matter under investigation in response to the Investigation Letter.

122. I cancel the administrative penalties, totaling $4,000, issued regarding the request for addresses, the failures to attend interviews, and the request to produce substantiation of [Applicant 25]'s illness.

123. The $1,000 administrative penalty for [Applicant 25] refusing to provide a detailed statement regarding the matter under investigation in response to the Investigation Letter is now due and payable to BCFSA.

DATED at North Vancouver, BRITISH COLUMBIA, this 16th day of June, 2025.

"Original signed by Gareth Reeves"

_____

Gareth Reeves
Hearing Officer