

BC FINANCIAL SERVICES AUTHORITY
IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended
AND IN THE MATTER OF
QI XIN (CHARLIE) DONG
(169559)
REASONS FOR DECISION REGARDING
ADMINISTRATIVE PENALTY RECONSIDERATION REQUEST
[These Reasons have been redacted before publication.]

DATE AND PLACE OF HEARING: Via Written Submissions

HEARING OFFICER: Gareth Reeves

Introduction

1. On November 25, 2024, the BC Financial Services Authority (“**BCFSA**”) issued a Notice of Administrative Penalty (the “**NOAP**”) in the amount of \$5,000 to Qi Xin (Charlie) Dong pursuant to section 57(1) and 57(3) of the *Real Estate Services Act*, RSBC 2004, c 42 (“**RESA**”).
2. In the NOAP, BCFSA determined that Mr. Dong had contravened section 23(2)(d) of the *Real Estate Services Rules*, BC Reg 209/2021 (the “**Rules**”) by failing to disclose to the Superintendent of Real Estate (the “**superintendent**”) offences on August 2, 2022 and August 31, 2023. The offences were contraventions of section 95(1) and 102(a) of the *Motor Vehicle Act*, RSBC 1996, c 318, respectively.
3. Mr. Dong applied for a reconsideration of the NOAP under section 57(4) of RESA. I previously granted Mr. Dong an extension to file his reconsideration application in *Dong (Re)*, 2025 BCSRE 38. This is my decision on the reconsideration. The application proceeded by written submissions.

Issues

4. The issue is whether the penalties issued in the November 25, 2024 NOAP should be cancelled or confirmed.

Jurisdiction and Standard of Proof

5. This application for reconsideration is brought pursuant to section 57(4) of RESA, which requires the Superintendent of Real Estate (the “**superintendent**”) to provide a person who receives an administrative penalty with an opportunity to be heard upon request.

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

Background and Findings

9. The evidence and information before me consists of an investigation report completed by BCFSA, the tabs thereto, and the information provided by Mr. Dong in the application for reconsideration. I have also considered the material provided by Mr. Dong in relation to his application for an extension in the context of the reconsideration itself. The following is intended to provide some background to the circumstances and to provide context for my reasons. It is not intended to be a recitation of all of the information before me.

Licensing and Discipline History

10. Mr. Dong was first licensed as a representative in the trading services category on November 14, 2014 and acquired a license in the rental property management services category on November 14, 2020. Except for a one-week period in November 2022, Mr. Dong has been so licensed since that date.
11. Mr. Dong has no discipline history.

The Charges

12. On October 5, 2022, Mr. Dong was charged via information¹ with one count of driving while prohibited or suspended under section 95(1) of the *Motor Vehicle Act* (the “**First Charge**”). The date of the offence for the First Charge was August 2, 2022. Mr. Dong had his first court appearance under that charge on October 12, 2022.
13. On June 15, 2023, Mr. Dong pleaded guilty and received a sentence of a \$750 fine and a one-year driving prohibition.
14. The evidence indicates that Mr. Dong was charged with two counts of driving while prohibited under section 102(a) of the *Motor Vehicle Act* (the “**Second Charges**”). The date of offence for both counts was August 31, 2022. It is not clear to me when Mr. Dong was charged with those counts. I note however that court appearances in relation to the Second Charges started on December 5, 2023. It is also not immediately apparent from the investigation report or the tabs thereto how Mr. Dong was charged with those counts. Both issues arise from the fact that the Court Services Online search appended to establish what occurred during the criminal proceedings regarding the Second Charges, does not include the “Documents” page, which would have indicated the form by which the Second Charges were laid and the date the information or violation ticket was sworn.
15. On April 11, 2024, Mr. Dong pleaded guilty to the Second Charges. He was sentenced to a 14-day period of incarceration, a \$1,000 fine, and an 18-month driving suspension for count 1 of the Second Charges. Count 2 of the Second Charges was stayed on that date.

¹ An information is a type of document that commences offence or criminal proceedings. For some offences proceedings can also be commenced by way of a violation ticket. Some criminal proceedings can be commenced or continued by way of indictment.

16. I note that the investigation report before me references a renewal application and a transfer application Mr. Dong submitted, apparently on November 18, 2022 and June 26, 2024, respectively. It also references the questions asked in those applications regarding Mr. Dong's criminal or offence convictions. In my view, those records are only of marginal relevance to this matter such that I do not need to make findings of fact based on them, but it is worth noting the deficiencies in the evidence provided. In that regard, I note that the document supplied include Mr. Dong's responses and point form notation of the questions but do not indicate the date the applications were made or the text of the questions asked in those questions along with any qualifying information. Presumably, the investigator drafting the report had some source for the content of those questions and the date of the applications that could have been appended to the report. Without the source of that information, it is difficult to determine its reliability and its context and may, in certain cases, impact BCFSa's ability to meet its burden of proof.
17. On August 8, 2024, BCFSa Licensing confirmed to BCFSa Investigations that it had not received any declaration from Mr. Dong regarding his record of convictions.
18. On October 24, 2024, BCFSa Investigations wrote to Mr. Dong to inquire about his failure to disclose the First Charge and the Second Charges promptly or in a renewal application dated June 26, 2024.
19. Mr. Dong responded on October 24, 2024 to advise that he did not believe he had to disclose the First Charge or the Second Charges because they were *Motor Vehicle Act* charges and not criminal offences. He also said that when he was caught driving while suspended the second time it was "due to some kind of family emergencies" [sic]. He provides no explanation of what emergency that was.

Biographical Information

20. Mr. Dong's [family member], had an MRI conducted on February 3, 2022 which revealed a [description of medical issue]. I have no information on how this issue impacted Mr. Dong's life or his [family member]'s life.
21. Mr. Dong had a child born on January 10, 2025 via caesarian section. I have no evidence as to whether that caesarian birth was planned or emergency or how the birth and following care has impacted Mr. Dong. I assume it has been as impactful as a normal birth of that nature and has come along with the usual responsibilities for a caregiver that accompany a childbirth. Again, I have no details in that regard.
22. Mr. Dong provided a screenshot from his banking app showing approximately \$[redacted] in his bank accounts. He has not disclosed any information that would show his individual income, his total household income, his current debt load, or his expenses on either an individual or household basis. The screenshot he provided discloses no debts. He has only disclosed the total amount in his accounts and it is not clear to me if Mr. Dong's balance is unusually low or high or even when exactly the screenshot was taken; however, I infer from its content that it was taken in March 2025. I do not know if his spouse has a separate source of income or maintains separate accounts.
23. Mr. Dong has advised that he rents his home. He has not disclosed how much his rent is or what type or location of the home he resides in from which I might be able to infer some information about the cost of that rent.
24. Mr. Dong says he is "on the edge of bankruptcy". Without Mr. Dong providing more comprehensive information regarding his finances, I am not able to conclude that he is truly "on the edge of bankruptcy." That said, the limited evidence before me indicates that Mr. Dong does not have significant funds on hand.

Submissions

25. Mr. Dong submits that the “charges actually do not exist” until he is convicted for the charges. He refers to the charges as “tickets”.
26. He submits that he is “on the edge of bankruptcy” and that he will need to make arrangements for payment of the administrative penalties.

Reasons and Findings

Applicable Legislation

27. 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.
28. 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.
29. Section 26(2) of the Rules at the relevant time identified four categories, Category A, B, C, and D, for designated contraventions for the purpose of determining the amount of an administrative penalty. Section 23 of the Rules was placed in Category B. Section 27(2) of the Rules provided that the amount of an administrative penalty for a Category B contravention was \$2,500 for a first contravention and \$5,000 for a subsequent contravention.
30. Section 23(2)(d) of the Rules provides as follows:

23 ...

(2) A licensee must promptly notify the superintendent, in writing, if any of the following circumstances apply:

(d) the licensee is charged with or convicted of an offence under a federal or provincial enactment or under a law of any foreign jurisdiction, other than

(i) highway traffic offences resulting only in monetary fines or demerit points, or both, and

(ii) contraventions in respect of which proceedings were commenced by means of a violation ticket under the *Offence Act* or a ticket under the *Contraventions Act* (Canada);

...

31. 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.

Analysis

32. The imposition of an administrative penalty under section 57 of RESA is a discretionary decision. A request to reconsider the imposition of an administrative penalty requires a Hearing Officer to

consider not only whether a contravention of RESA, the Regulations, or the Rules has occurred, but also whether a licensee exercised due diligence, that is: took reasonable steps or precautions, to prevent the contravention of the designated sections identified in the notice of administrative penalty. A Hearing Officer may also consider information on any extenuating circumstances that prevented compliance, or any other information the licensee believes a Hearing Officer should consider.

Contraventions

33. In regard to the First Charge, Mr. Dong was charged with a contravention of section 95(1) of the *Motor Vehicle Act* in 2022 by way of information sworn on October 5, 2022. He was found guilty and sentenced on June 15, 2023.
34. In regard to the Second Charges, Mr. Dong was charged with two counts of contravening section 102 of the *Motor Vehicle Act*. As indicated above, the evidence does not establish when exactly the Second Charges were laid, but it must have happened prior to his December 5, 2023 initial court date in regard to the Second Charges.
35. Further, the evidence does not directly indicate how the Second Charges were initiated: by information or by violation ticket. That said, neither section 95(1) nor 102 of the *Motor Vehicle Act* are eligible for violation ticket: see section 5 and Schedule 3 of the *Violation Ticket Administration and Fines Regulation*, BC Reg 89/97. Therefore, it was not possible for the First Charge or the Second Charges to have proceeded by violation ticket and could only have proceeded by information. Therefore, the exception in section 23(2)(d)(ii) of the Rules cannot apply.
36. In addition, both sets of charges could have resulted in incarceration and the Second Charges in fact did result in a 14-day jail term and both in fact resulted in driving prohibitions: see section 95(1)(c) and (d) and 102(c) and (d) of the *Motor Vehicle Act*, which all provide for a term of imprisonment as a possible result of conviction for those offences. Therefore, the First Charge and the Second Charges were not “highway traffic offences resulting only in monetary fines or demerit points, or both,” and the exception in section 23(2)(d)(i) cannot apply.
37. In regard to both the First Charge and the Second Charges, Mr. Dong’s first contact with BCFSa was on October 24, 2024, more than two years after he was charged in regard to the First Charge and more than 10 months after he was charged in relation to the Second Charges, counting from his first court date for the latter charges.
38. I find that Mr. Dong did not promptly disclose the First Charges or the Second Charges and therefore contravened section 23(2)(d) as alleged in the NOAP.

Due Diligence

39. Mr. Dong has not argued that he exercised due diligence with regard to his obligation to disclose the First Charge or the Second Charges.
40. He has said that he thought he only had to disclose criminal proceedings and has also intimated that he only has to disclose convictions and not charges. Both views are incorrect and plainly so on the text of the Rules, which provide that a licensee must disclose if they are “charged with or convicted of an offence under a federal or provincial enactment...”. Further Mr. Dong has not provided any evidence as to how he came to this incorrect view or what steps he took to understand his obligations to report the charges.
41. In my view, Mr. Dong has not established that he exercised due diligence with regard to his obligation to disclose the First Charge or the Second Charges.

Penalty Amount

42. The penalty amounts imposed for the contraventions noted in the NOAP are each \$2,500, being the designated amount for a first contravention of a provision designated in Category B.
43. Section 23 of the Rules includes the obligation to report a variety of different proceedings including the following: regulatory or disciplinary proceedings, certain kinds of civil proceedings, offence proceedings, and bankruptcy or insolvency proceedings. It was enacted to ensure that the superintendent and managing brokers have the information they need to take timely and appropriate action to ensure regulatory compliance and to protect the public. In particular, charges under provincial or federal enactments are often serious and can impact a licensee's fitness to practice, the reputation of the real estate industry, and issues of public protection. Failing to make required disclosures under section 23 of the Rules deprives the superintendent and a licensee's managing brokers of information they need to monitor and regulate licensees: see *Sra (Re)*, 2024 BCSRE 90 at paras 34-36.
44. Although Mr. Dong's failure to disclose arises from his misunderstanding of his obligations as opposed to an intentional withholding of information, the conduct was repeated and his responses to BCFSa's investigation and the NOAP suggest he has not fully understood that he must disclose charges even before they have led to a conviction.
45. Mr. Dong has not raised sufficient evidence to establish that there were extenuating circumstances preventing his compliance. He has raised the issue of his [family member]'s health but he has provided no information regarding how that might have prevented him from complying with his disclosure obligations. There is some reference in his evidence to the Second Charges arising from a family emergency, but Mr. Dong provides no details of that emergency and an emergency that may have given rise to the charges themselves does not indicate extenuating circumstances as they relate to his obligation to report the charges at issue.
46. Finally, Mr. Dong submits that his financial circumstances indicate that he is unable to pay the penalties imposed. As noted above, he has provided little information regarding the whole of his financial circumstances, but in March 2025 he had a total of approximately \$[redacted] in his bank accounts. I do not have any information regarding Mr. Dong's income, expenses, or debt load or his other assets although it appears he rents and does not own his home. As a result, I cannot tell if that balance is an anomaly, is the result of Mr. Dong having a large income and substantial discretionary expenditures, is the result of Mr. Dong having a low income consumed by necessary expenditures, or some other complexion of income and expenses. The information before me does not indicate that Mr. Dong will be unable to pay the administrative penalties, provided time to do so. In my view, the information he has provided suggests his financial circumstances are mitigating, but I cannot conclude that it is so substantially mitigating that the relatively low administrative penalties are inappropriate here.
47. I find that administrative penalties in this matter would help achieve general deterrence and to educate licensees on the importance of compliance with section 23 of the Rules and would also improve public confidence in the industry by sending a message that undermining the superintendent's supervisory authority will be addressed.
48. I find that the penalties imposed are appropriate having considered the seriousness of the contraventions, the apparent inadvertence of the contraventions, the fact that the first failure to disclose was repeated in the second, Mr. Dong's continued misunderstanding of his obligation to disclose charges prior to conviction, Mr. Dong's personal circumstances, and Mr. Dong's financial circumstances as disclosed to me.

Conclusion

49. I find that Mr. Dong contravened section 23(2)(d) of the Rules by failing to disclose the First Charge and the Second Charges to the superintendent promptly. I find that each of the \$2,500 administrative penalties issued in the NOAP are appropriate.

50. I confirm the \$5,000 NOAP issued on November 25, 2024.

51. The administrative penalty is now due and payable to BCFSA.

DATED at North Vancouver, BRITISH COLUMBIA, this 15th day of April, 2025.

“Original signed by Gareth Reeves”

Gareth Reeves
Hearing Officer