

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

**REASONS FOR DECISION REGARDING
EXTENSION OF 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 and August 31, 2023. The offences were contraventions of section 95(1) and 102(a) of the *Motor Vehicle Act*, RSBC 1996, c 318.
3. The NOAP was personally served on Mr. Dong on December 3, 2024.
4. Mr. Dong applied for a reconsideration of the NOAP under section 57(4) of RESA on February 3, 2025, 32 days after the 30-day deadline for his request for an opportunity to be heard under section 57(2)(d) of RESA. This is my decision as to whether Mr. Dong should be allowed an extension of the time to make his request for an opportunity to be heard.

Issues

5. The issue is whether Mr. Dong should be granted an extension of time to file his request for an opportunity to be heard.

Jurisdiction and Standard of Proof

6. This application for reconsideration is brought pursuant to section 57(4) of RESA, which requires the superintendent to provide a person who receives an administrative penalty with an opportunity to be heard upon request. Section 57(2)(d) requires a person to submit that application within 30

days of receipt of the notice of administrative penalty unless a longer time is permitted by the superintendent.

7. The superintendent has delegated the statutory powers and duties set out in section 57 to Hearing Officers.

Background

8. The NOAP was issued on November 25, 2024.
9. BCFSA effected personal service of the NOAP on Mr. Dong on December 3, 2024.
10. The deadline for Mr. Dong to make a request for an opportunity to be heard regarding the NOAP was on January 2, 2025.
11. Mr. Dong made his request for an opportunity to be heard on February 3, 2025. That date is 32 days after the 30-day deadline.
12. In that request to be heard, he admitted that he was charged with the *Motor Vehicle Act* offenses on August 2, 2022 and August 31, 2023. He says he challenged the charges. He refers to the charges as “tickets”. He says he was convicted in April 2024. He also said being unable to drive caused a “huge impact” on him financially and he is unable to afford the penalties and is struggling to make rent for his family. He asked for a payment arrangement.

Submissions

13. On February 3, 2025, BCFSA Hearings Division requested Mr. Dong’s submissions on why he should be provided an extension to the 30-day deadline to request a reconsideration of the NOAP.
14. On February 4, 2025, Mr. Dong replied to say his child was born on January 10, 2025 via cesarean section and he was too busy taking care of his wife and child.

Reasons and Findings

Applicable Legislation

15. Section 56 of RESA provides that BCFSA may designate specific provisions of RESA, 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.
16. 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.
17. 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 A contravention was \$2,500 for a first contravention and \$5,000 for a subsequent contravention.
18. 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);

...

19. 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 along with the time limit of "30 days or a longer period allowed by the superintendent" to request a reconsideration. If the person does not apply for reconsideration within the indicated timeline, including any extensions, the person is deemed to admit the contraventions and the penalty becomes due and payable to BCFSA.

Analysis

20. Sections 57(2) and 57(4) of RESA provide that the superintendent must provide an opportunity to be heard if requested and must confirm the penalty, cancel the penalty, or cancel the penalty and issue a notice of discipline hearing or notice of hearing. Although it could have been more clearly drafted, the intention of the legislation is to provide a deadline of 30 days from the date of service for the recipient of an administrative penalty to apply for an opportunity to be heard which may be extended by the superintendent. This is confirmed by guidance published by BCFSA online entitled "Administrative Penalty Process". Although I am not bound by that guidance, I am guided by it with regard to the process to be followed here and I take it as representing the regulator's interpretation of its home statute and persuasive in that regard.

21. Many courts and regulators have addressed the question of late filing and have considered a variety of factors in regard to those filings in the circumstances of their processes. The BC Court of Appeal has a long-standing test expressed in *Davies v CIBC*, 1987 CanLII 2608 (BC CA) at para 20. This case has been relied on by other regulators in deciding whether to permit time extensions for appeals and reconsiderations: *Applicant v College of Physicians and Surgeons of British Columbia*, 2019 BCHPRB 13 (CanLII) at paras 33-37.

22. In my view, the decision to extend the deadline is discretionary and should be decided on the whole of the context. The applicant has the burden of demonstrating that the extension should be granted. The following, non-exhaustive factors are relevant to the exercise of the discretion to grant or refuse the extension:

- a. The date(s) of the alleged contravention(s);
- b. The amount at issue;
- c. The complexity of the alleged contravention(s);
- d. The length of the delay between the deadline and the reconsideration request;
- e. The explanation offered for the delay;

- f. If any special or extenuating circumstances impacted the applicant's ability to apply within the timeline;
 - g. Whether the application, on the merits, is bound to fail;
 - h. Any prejudice to the applicant in denying or the superintendent in permitting the extension; and
 - i. Whether an extension would advance or stymie the interests of justice or the purposes of RESA as a whole and the administrative penalty provisions in particular, being, efficient regulation of the real estate industry and the protection of the public.
23. Two comments on the above list are appropriate. First, the final factor is the primary factor and, to some extent, encompasses the preceding ones. Second, the question of merit, at the extension stage, is restricted to the question of whether the application is "doomed to fail" or has no merit such that it cannot succeed: see *Clock Holdings Ltd v Braich*, 2009 BCCA 269.
 24. The contraventions at issue are both more than a year old. Although I do not know when BCFSa first became aware of Mr. Dong's charges, there does not appear to be any urgency in proceeding with this matter. This weighs in favour of granting an extension.
 25. The amount at issue is reasonably large in terms of administrative penalties and Mr. Dong has indicated that it is substantial for him. Although I do not have any direct evidence of Mr. Dong's financial situation, this weighs in favour of granting an extension.
 26. The simplicity of the alleged contraventions weighs against granting the extension. The allegation is that Mr. Dong failed to report the charges as required. Mr. Dong does not argue that he did report them or that he was not charged as alleged. Therefore, the complexity of the allegations does not explain why Mr. Dong could not have made his request within the statutory timeline.
 27. Regarding explanation and extenuating circumstances, the explanation Mr. Dong has provided for the delay is not particularly cogent. He says his wife gave birth via cesarean section on January 10, 2025. That date is after the deadline for him to make his request. Even assuming Mr. Dong was planning for the birth of his coming child, this does not explain why he failed to submit what amounts to a simple request for reconsideration on or prior to January 2, 2025. At most, this provides some explanation for the additional delay from January 10, 2025 to February 3, 2025. I note however that Mr. Dong has not provided any evidence to indicate that the birth was complicated or that his child or wife required any more attention than would generally be required in attending to a newborn and a spouse recovering from a caesarian childbirth. Although both of those events are significant, I do not find that they are extenuating or would have prevented him from making the request in a timely manner. Therefore, these facts explain some of the delay, but in my view, not all of it, particularly in light of the simplicity of the submissions Mr. Dong provided in his reconsideration request.
 28. Regarding the merits, I am of the view that Mr. Dong has raised a possibly meritorious defence. He refers in his request to "tickets" issued against him. I note that section 23(2)(d)(ii) of the Rules explicitly excludes violation tickets from the scope of the requirement to report charges under section 23(2)(d). If the charges were made by violation ticket, then Mr. Dong did not contravene section 23(2)(d). It is possible that the proceedings on the charges at issue were commenced by violation ticket and that would be easily verified if the extension was granted and BCFSa's investigation materials were before me. Although Mr. Dong's submission that he was not convicted until much later lacks merit because section 23(2)(d) includes a requirement to disclose charges as well as convictions, the issue of whether the charges were commenced by violation ticket may be meritorious. Given the foregoing, I do not opine here on whether Mr. Dong's submissions regarding his financial situation have merit, except to say they may not be "doomed to fail". This factor weighs in favour of granting an extension.

29. The prejudice to Mr. Dong in denying him the extension will be to deprive him of an opportunity to be heard, making the NOAP payable immediately. The prejudice to the superintendent will be to require the matter to proceed and take approximately a month longer than would usually be the case had he made his request on time. In my view, the prejudice to the superintendent is minimal in this case. The evidence of whether and in what way Mr. Dong was charged is likely to be documentary and therefore there is little risk that evidence has been lost or degraded over time.
30. Considering the final factor, I am of the view that the interests of justice favour allowing the extension. Although the extension here effectively doubles Mr. Dong's time to request an opportunity to be heard and he has not provided a very compelling reason for his delay, which he attributes to the birth of his child, there appears to be a rather easily addressed issue of some merit which will allow the issue to be disposed of relatively efficiently. In my view, permitting the extension falls within the purpose of RESA as a whole and the administrative penalty provisions in particular

Conclusion

31. Mr. Dong is granted the extension to file his request for an opportunity to be heard until February 3, 2025.
32. Mr. Dong may make any further submissions he may deem necessary in accordance with BCFS Hearing Divisions usual timelines on reconsideration requests.

DATED at North Vancouver, BRITISH COLUMBIA, this 28th day of February, 2025.

"Original signed by Gareth Reeves"

Gareth Reeves
Hearing Officer