Citation: Bao (Re), 2025 BCSRE 149
Date: 2025-09-16
File No. 25-5754

BC FINANCIAL SERVICES AUTHORITY

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

AND IN THE MATTER OF

YING (BONNEY) BAO
(151466)

AND

BONNEY BAO PERSONAL REAL ESTATE CORPORATION
(151466PC0

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 July 7, 2025, the BC Financial Services Authority ("**BCFSA**") issued a Notice of Administrative Penalty (the "**NOAP**") in the amount of $17,000 to Ying (Bonney) Bao and Bonney Bao Personal Real Estate Corporation (collectively, "**Ms. Bao**") pursuant to section 57(1) and 57(3) of the *Real Estate Services Act*, RSBC 2004, c 42 ("**RESA**"). The NOAP also required Ms. Bao to complete the Rental Property Management Remedial Education course as provided by the Sauder School of Business at the University of British Columbia (the "**Course**") by March 31, 2026.

2. In the NOAP, BCFSA determined that Ms. Bao and Bao PREC had contravened sections 29(2)(a), 29(5)(a), 30(a), and 34 of the *Real Estate Services Rules*, BC Reg 209/2021 (the "**Rules**"). BCFSA imposed the requirement to take the Course for all contraventions and imposed monetary penalties as follows for the following alleged breaches of the Rules:

    a. $5,000 for a contravention of section 34 because Ms. Bao initially decided to comply with a landlord's unlawful direction to retain a tenant's passport as leverage to seek compensation for damage to a rental unit;

    b. $5,000 for a contravention of section 34 because Ms. Bao repeatedly refused to return the above noted passport rather than use appropriate legal recourse and returning the passport only after police intervention;

    c. $5,000 for a contravention of section 30(a) for failing to complete an initial condition inspection report at the commencement of the tenancy, which impacted the landlord's ability to make a Residential Tenancy Branch ("**RTB**") claim for damages;

d. $1,000 for a contravention of section 29(5)(a) because Ms. Bao failed to notify her managing broker of her conduct in retaining the tenant's passport and the police advised Ms. Bao that her conduct could be considered theft; and

e. $1,000 for a contravention of section 29(2)(a) because Ms. Bao failed to advise her managing broker of the real estate services she provided on behalf of her brokerage regarding a response to a fire and subsequent damage to a rental property, specifically, Ms. Bao's decision to retain and not return the tenant's passport.

3. Ms. Bao applied for a reconsideration of the NOAP under section 57(4) of RESA. The application proceeded by written submissions.

Issues

4. The issue is whether the July 7, 2025 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

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

General Background

10. Ying (Bonney) Bao was first licensed as a representative in the trading services category on April 11, 2007. On June 30, 2022, Ms. Bao added the rental property management services category to her licence. She has been licensed at that level and in that category since that date. She has been licensed with Nu Stream Realty Inc (the **"Brokerage**") since May 1, 2021. Bonney Bao Personal Real Estate Corporation was first licensed on October 17, 2014 and has been licensed in the same fashion as Ying (Bonney) Bao since that date. At the relevant time, Ms. Bao's managing brokers at the Brokerage were [Licensee 1] and [Licensee 2].

11. Ms. Bao has no discipline history of which I am aware.

The Fire and Passport Withholding

12. This matter concerns Ms. Bao's conduct following a fire that occurred in a rental property unit in Burnaby (the "**Unit**"). The Unit was rented by [Tenant 1] ("**Tenant 1**") and [Tenant 2] ("**Tenant 2**")

(collectively, the "**Tenants**") from the owners (collectively, the "**Landlords**" or, individually, the "**Landlord**"). The rental commenced September 1, 2024 and was to continue until August 31, 2025. The tenants were to pay rent of $2,900 a month and paid a damage deposit and pet deposit of $1,450 each. I understand from the evidence that the Tenants were international students.

13. The lease required the Tenants to obtain tenant's insurance, but they did not obtain that insurance.

14. The Landlords and Ms. Bao attended the Unit for a move in inspection but did not complete a Condition Inspection Report pursuant to section 23 of the *Residential Tenancy Act*, SBC 2002, c 78 (the "**RTA**"). Ms. Bao, one of the Landlords, and the Tenants did complete a walkthrough of the Unit at the commencement of the tenancy, did take some video, and did complete a furniture list.

15. On April 22, 2025, the Tenants were making sushi in the Unit and attempted to use a culinary torch to finish the sushi. The sushi caught fire when the torch malfunctioned and the Tenants took the burning sushi and torch to the bathroom where they attempted to put it out in the sink but caught a roll of toilet paper on fire, which triggered the sprinklers and flooded several parts of the building. There was damage to the common areas of the building and several other units. The damage included damage to the building's elevators, which were rendered inoperable for a significant time.

16. On that date, Ms. Bao called the Landlords who instructed Ms. Bao to retain the Tenants' passports. It was unknown at the time whether the building's or the Landlords' insurance would cover the damage or in what amount. Ms. Bao has also indicated that it is usual for landlords to retain Tenants' passports in similar situations in China.

17. Ms. Bao stated during the investigation that she usually would engage a lawyer to advise where a tenant damages a unit or leaves before damages can be determined, but she did not in this case because the Landlords did not want to incur legal fees.

18. On the evening of the 22nd, Ms. Bao went to the Unit and met with the Tenants. During that meeting, she asked for copies their identification. She told them that she was going to take photographs of the identification for insurance purposes and then return them. She returned Tenant 2's identification but did not return Tenant 1's. I find that Ms. Bao took Tenant 1's passport on the Landlords' instruction and for the purpose of securing a possible claim for damages by the Landlords. In my view, Ms. Bao had no other reason to take the passport that evening.

19. Between April 22, 2025 and April 28, 2025, Ms. Bao and the Tenants exchanged text messages regarding the damage to the Unit and Ms. Bao's retention of Tenant 1's passport. In those exchanges, the Tenants repeatedly requested the return of Tenant 1's passport. At times, they stated that Tenant 1 required the passport to obtain storage or temporary accommodations. In at least one of these messages, the Tenants indicated to Ms. Bao that they would return the passport after securing storage for Tenant 1's possessions. I note two things in this regard. First, Ms. Bao did not return Tenant 1's passport in response to these requests. Second, the Tenants admitted during BCFSA's investigation that these representations were not true and were ploys to attempt to get Ms. Bao to return Tenant 1's passport.

20. On April 25, 2025, the Tenants sought to terminate the tenancy claiming it had been frustrated by the fire. The Tenants did so by way of an email in which they also claimed that Tenant 1 required his passport back because he was in the process of renewing his visa, leaving him with his passport as his only form of identification. The Tenant's decision to seek to terminate the tenancy caused additional concerns for the Landlords that they would not be able to locate the Tenants after they left, which then caused them to instruct Ms. Bao to continue to hold Tenant 1's passport until the Tenants had provided enough money to cover the damage to the Unit.

21. On April 28, 2025, the Tenants and Ms. Bao, on behalf of the Landlords, filed dispute resolution applications with the RTB. The Tenants sought return of Tenant 1's passport and a declaration that

the tenancy had been frustrated because of the fire and resulting water damage. The Landlords sought to retain the damage and pet deposits and also sought compensation for damage to the Unit caused by the fire.

22. On April 29, 2025, the Tenants reported Ms. Bao to the police for withholding Tenant 1's passport. The police called Ms. Bao who agreed to return Tenant 1's passport. She returned it that morning and met with Tenant 1 at a location of Tenant 1's choice to do so.

23. On April 30, 2025, the Tenants and Ms. Bao conducted a move out inspection of the Unit. The Tenants did not sign the inspection report. I note in this regard that the Landlords, or Ms. Bao as their agent, did not receive the Tenants' RTB application package until May 6, 2025.

24. Also on April 30, 2025, Ms. Bao advised [Licensee 2] of what had occurred at the Unit and that she had filed a dispute resolution application. [Licensee 2] told her that she should have reported the incident to him earlier. It is not clear to me whether Ms. Bao advised [Licensee 2] that she had withheld Tenant 1's passport or that the police had contacted her to advise that it might be theft.

25. On June 17, 2025, the RTB conducted a hearing in relation to the Tenants' and the Landlords' dispute resolution applications. Ms. Bao appeared on behalf of the Landlords and [Licensee 2] was also in attendance, as were the Tenants. On that day, an RTB arbitrator issued a decision regarding the dispute between the Landlords and the Tenants. The arbitrator dismissed the Tenants' claims because they had already been resolved by the return of Tenant 1's passport and the mutually agreed end of the tenancy on April 30, 2025. The arbitrator determined that the Tenants were liable to pay the Landlords $839.68, being the deductible from the Landlords' insurance claim. The arbitrator determined that the Landlords were liable to return double the damage and pet deposits plus interest totaling $5,845.20 because the Landlords were not entitled to retain the deposits because no move in condition inspection report had been completed and the pet deposit could not be withheld in relation to damage not caused by a pet. The Landlords were awarded $100 in filing fees. The net result was that the Landlords were ordered to pay the Tenant's $4,905.52 (the "**Order**").

26. Ms. Bao personally paid $2,945.20 to the Tenants to compensate them for having to repay double the deposits plus interest. It is not clear when this occurred, but Ms. Bao said, in her June 26, 2025 interview with BCFSA, that she intended to pay this amount and [Licensee 2] confirms this payment happened in his supporting statement submitted by Ms. Bao and I accept it occurred.[1]

27. Ms. Bao did not tell [Licensee 1] or [Licensee 2] that she had followed the Landlords' instruction to take and keep Tenant 1's passport as leverage in negotiating payment for damage to the Unit or consult them regarding this plan. [Licensee 1] first learned during BCFSA's investigation that Ms. Bao had taken the passport.

28. [Licensee 2] says he also learned that Ms. Bao had taken the passport during BCFSA's investigation. It is not clear when exactly [Licensee 2] found out about the investigation because the investigation letters, which BCFSA usually issues to licensees and their managing brokers, were not appended to BCFSA's investigation report. I note that Tenant 1 submitted his complaint on April 29, 2025 and Ms. Bao's first interview was held on May 7, 2025. I also note that the Tenants served their RTB materials on May 6, 2025. So, it is possible that [Licensee 2] found out about the passport issue in early May and may have been advised of the passport issue by Ms. Bao on or about April 30, 2025 when she filed the Landlords' RTB application, which appears to be her

[1] Ms. Bao said in her interview with BCFSA Investigations that she intended to make this payment to the Landlords, who would then pay the amount of the Order to the Tenants. She says in her submissions in this proceeding that she paid the Tenants and [Licensee 2] says the same. I prefer the more recent evidence and that which was provided after the payment was made. In any event, the material point is that Ms. Bao paid out of pocket to remediate the consequences to the Landlords of not having a condition inspection report prepared.

evidence, or about May 6, 2025 when the Tenants' served their RTB materials. Regardless, and for the reasons set out below, I do not need to make a finding regarding when exactly Ms. Bao told [Licensee 2] about the passport issue. For now, I merely note the evidentiary issues regarding this point.

Submissions

29. Ms. Bao acknowledges that she should not have retained the tenant's passport but submits that she did not do so for personal gain or with malicious intent. She submits that the decision to retain the passport was made in urgent circumstances, in a stressful situation, under time pressure, and further to direct instructions from the Landlord, who lived overseas. She submits that she remained in direct communication with the Tenants and attempted to return the passport twice, but she was unable to arrange a time to meet with the Tenants and was unwilling to leave the passport at the Unit unattended. She submits that she sought legal advice after realizing the seriousness of the situation, submitted an RTB claim, and informed her managing broker throughout the process.

30. Ms. Bao submits that the two alleged contraventions of section 34 of the Rules constitute duplicate penalties for a single course of action. She argues that the continued withholding was one continuous course of conduct arising from a single error in judgment.

31. Ms. Bao submits that the alleged contraventions of sections 29(2)(a) and 29(5)(a) "arise from the same underlying conduct" and therefore duplicate the sanction. For the reasons discussed below, I consider it unnecessary to address this argument in this proceeding.

32. Ms. Bao also submits that the penalties imposed are disproportionate to the misconduct. She notes that she has a long unblemished regulatory history and notes that she voluntarily reimbursed the Landlords for the order that they repay double the damage and pet deposits. She further notes that she was cooperative and transparent with [Licensee 2], the RTB, and BCFSA. She submits that the penalty is "roughly 30% of a licensee's average post-tax annual income in the current market", that the real estate industry is facing a downturn, and that the penalty imposes a significant hardship on Ms. Bao and her family. [Licensee 2]'s evidence is that the monetary penalties are 20-30% of a licensee's post tax income. Ms. Bao submits that she is committed to ensuring this kind of situation does not occur again.

33. Ms. Bao also argues that the Tenants had not obtained tenant's insurance as required under the lease. She further submits that the Landlord was elderly, did not speak English, had suffered a fall and fractured her foot while attempting to travel to Vancouver after the fire, and relied on Ms. Bao to represent her. She further submits that the building residents were displaced because of the sprinklers activating.

34. Ms. Bao also submits that the Tenants' evidence was unreliable as a result of certain inconsistent statements. In my view, the question of the Tenants' reliability is not seriously at issue. The facts I have found above are all supported by documentary evidence or Ms. Bao's own evidence.

Reasons and Findings

Applicable Legislation

35. 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.

36. 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.

37. 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. Sections 29(2) and 29(5) of the Rules are placed in Category B and sections 30(a) and 34 of the Rules are placed in Category C. Section 27(2) of the Rules sets out that contraventions of sections designated in Category B may attract an administrative penalty of $2,500 for a first contravention and $5,000 for a subsequent contravention. Section 27(3) of the Rules sets out that contraventions of sections designated in Category C may attract an administrative penalty of $5,000 for a first contravention and $10,000 for a subsequent contravention.

38. Section 57(1) of RESA sets out that if the superintendent is satisfied that a person has contravened a provision of RESA, the Regulations, or the Rules designated under section 56(1)(a) of RESA, the superintendent may issue a notice imposing an administrative penalty on the person. Section 57(2) requires that a notice of administrative penalty indicate the rule that has been contravened, indicate the administrative penalty that is imposed, and advise the person of the person's right to be heard respecting the matter.

39. Sections 29(2), 29(5), 30(a), and 34 of the Rules provide as follows:

> **Associate broker and representative responsibilities**
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> **29** (1) …
>
> (2) An associate broker or representative must
>
> (a) keep the managing broker informed of the real estate services being provided, and other activities being performed, by the associate broker or representative on behalf of the brokerage, and
>
> (b) immediately notify the managing broker if a deposit referred to in section 28 (5) (a) has not been received.
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> …
>
> (5) An associate broker or representative must promptly notify the managing broker on learning of conduct that the associate broker or representative considers may be conduct referred to in section 28 (2), whether that conduct is
>
> (a) the licensee's own conduct,
>
> (b) the conduct of an employee of the licensee or of another person who performs duties on the licensee's behalf, or
>
> (c) the conduct of any other person in relation to which the managing broker has responsibility under section 28 (2).
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> **Duties to clients**
>
> **30** Subject to sections 31 [modification of duties] and 32 [designated agency], if a client engages a brokerage to provide real estate services to or on behalf of the client, the brokerage and its related licensees must do all of the following:
>
> (a) act in the best interests of the client;
>
> …

Duty to act with reasonable care and skill

34 When providing real estate services, a licensee must act with reasonable care and skill.

Analysis

40. The decision to impose an administrative penalty under section 57 of RESA is discretionary. 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.

41. I note that, when considering a section 34 contravention, an analysis of whether the licensee exercised due diligence is required to assess whether a contravention has occurred at all. In that context, the onus falls on BCFSA to demonstrate that the licensee did not exercise reasonable care, as opposed to the licensee having the onus to prove it as a defence. The operative question when considering whether a licensee contravened section 34 of the Rules is whether a reasonably prudent licensee, in the same circumstances as the licensee, would have acted as the licensee did.

Section 34 – Initial Withholding

42. Turning to the first alleged contravention of section 34, BCFSA alleges that Ms. Bao failed to act with reasonable care and skill by initially deciding to follow her client's instructions to seize Tenant 1's passport. From her submissions, it does not appear that Ms. Bao opposes this conclusion and that she agrees that she should not have withheld Tenant 1's passport in the circumstances.

43. In my view, a reasonably prudent licensee in Ms. Bao's circumstances would have either not taken Tenant 1's passport or would have sought the advice of their managing broker or sought legal advice on the issue before doing so. I find it unreasonable for a licensee to seize a tenant's possessions to hold as security for a possible damages claim by their landlord client without any confirmed legal authority to do so. The fact that the Landlords already had a damage deposit in their possession compounds the degree to which this conduct was unreasonable, but regardless of what security the Landlord already had, a licensee should not consider themselves entitled to simply take a tenant's possessions as security without any clear legal authority.

44. Ms. Bao has noted that the circumstances surrounding her decision to take the passport were somewhat urgent, chaotic, and stressful. That may go some way to explaining why Ms. Bao made the decision she did, but it does not make her conduct any more reasonable. A licensee cannot be excused for unlawfully taking a tenant's property simply because the licensee or their client felt they could only do so on an urgent basis.

45. In my view, a reasonably prudent licensee in Ms. Bao's situation would have confirmed she had the legal authority to seize Tenant 1's property before doing so. Because Ms. Bao did not do so, she failed to act with reasonable care and skill contrary to section 34 of the Rules.

Section 34 – Continued Withholding

46. BCFSA also alleges that Ms. Bao failed to act with reasonable care and skill by continuing to withhold Tenant 1's passport despite repeated requests and until the police stepped in. Again, it

does not appear that Ms. Bao disputes this conclusion and agrees that she should have returned Tenant 1's passport.

47. Assuming that a reasonably prudent licensee had come into possession of a tenant's passport and was instructed to retain it as security for a damages claim by their landlord client, I find that that licensee would have taken immediate steps to confirm their right to retain the passport or would have returned the passport.

48. I note that I have already found that it would be unreasonable for a licensee to take a tenant's passport as security and that it is therefore awkward to consider what a reasonable licensee would have done having placed themselves in an unreasonable position; however, I am of the view that Ms. Bao had several opportunities to seek advice from her managing brokers or to seek legal advice between April 22 and April 29. That is a period of a week. In my view, Ms. Bao cannot argue that the circumstances were urgent enough that she could not have sought out guidance during that period and in light of the Tenants' repeated requests for return of the passport.

49. In my view, it was unreasonable for Ms. Bao to have failed to take any steps to confirm whether she was entitled to retain Tenant 1's passport between April 23 to April 28, 2025, inclusive, and to have not returned the passport if she was unable or unwilling to do so. I therefore find that Ms. Bao failed to act with reasonable care and skill in this regard.

The Double Jeopardy Principle

50. Ms. Bao argues that the two alleged contraventions of section 34 of the Rules punish her twice for essentially the same conduct. I take her to be raising an argument that she should not be sanctioned twice for that conduct in reliance on what is sometimes referred to as the double jeopardy principle.

51. I have previously discussed the double jeopardy principle and its application to administrative penalty reconsideration proceedings in *Lee (Re)*, 2025 BCSRE 1, at paras 47 to 54, citing *Kienapple v R*, 1974 CanLII 14 (SCC); *R v Prince*, 1986 CanLII 40 (SCC); and *McLeod v Law Society of British Columbia*, 2022 BCCA 280, where I stated as follows:

> 47. The principle of double jeopardy precludes sanctioning an individual twice for the same contravention. It arises where the allegations made arise from the same factual conduct and the contraventions include the same elements, or they form the same "delict". In the administrative law setting, the same conduct can give rise to two contraventions and appropriate sanctions where the conduct results in different delicts: see *McLeod v. Law Society of British Columbia*, for a case where a lawyer was found to have contravened two sections by a single course of conduct, but this resulted in two wrongs by reason of the harm to opposing counsel and to the court. Applying this "principle is an inherently fact-specific and record-dependent exercise": *McLeod v Law Society of British Columbia*, at para 83.
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> 48. For the principle to apply, and to preclude two sanctions, there must be both a factual nexus between the events and a legal nexus between the contraventions: *R v Prince*, para 14. For a factual nexus to be present, the alleged contraventions must arise from the same act, transaction, or occasion: *R v Prince*, paras 17-20.
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> 49. Even where there is a significant factual nexus between the allegations, there must also be a nexus between the contraventions. Assessing that nexus requires assessment of whether there are distinguishing elements of the contravention, if one of the alleged contraventions was merely a particularization of the other, or if the two contraventions are simply two methods of proving the same wrong: *R v Prince*, paras 32-37. As suggested

> by that assessment, consideration of the legal nexus does not involve a mere recitation of the elements of each alleged contravention to find a technical difference; instead, the overarching question is whether the "same cause, matter, or delict underlies both charges" or if they seek to address a different harm, fault, wrongdoing, or concern: R v Prince, para 39.
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> …
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> 54. … the question is not merely whether the contraventions overlap, but whether they address "substantially the same elements" or "one [contravention] embraces the other" in the circumstances of the case: *R v Prince*, para 16 citing *R v Kienapple*. This requires assessing whether, on the facts, there is "no additional and distinguishing element that goes to guilt contained in the [contravention] for which a conviction is sought to be precluded by the" double jeopardy principle: *R v Prince*, at para 31

52. In my view, the facts of this case are comparable to the line of cases which deal with the application of the principle against double jeopardy where the Crown seeks to convict an accused of theft and unlawful possession. Those cases turn on the question of when an unlawful taking and an unlawful possession of the same goods by one person become capable of supporting separate contraventions. The following is a selection of those cases:

    a. In *R v Van Dorn*, 1956 CanLII 583 (BC CA), the Court of Appeal upheld both theft and possession convictions where the accused had stolen goods and was in possession of them "some hours after the theft". Notably, Coady JA refers to an unreported preceding decision of the British Columbia Court of Appeal, *R v Dal*, in which convictions for theft and possession "some months after the theft" were both upheld. Coady JA stated the following principle:

        > "It seems to me that where the possession charged is so removed in time and place from the actual offence of theft as not to be or form a part of the theft, or is not so intimately identified in time and place with the theft as to form part of it that it is then a distinct and separate offence for which the person may be convicted."

    b. In *Regina v Siggins*, 1960 CanLII 109 (ON CA), the accused faced several charges including two of theft of a vehicle and two of possession of those same vehicles. The first vehicle had been stolen on May 16, 1958 and the charge for unlawful possession of that vehicle stated the accused possessed it in May 1958. The second vehicle was stolen on June 12, 1958 and the accused possessed it in "June and July 1958". The majority of the Ontario Court of Appeal found as follows:

        > "Counsel for the Crown referred us to *R. v. Van Dorn* (1956), 1956 CanLII 583 (BC CA), 116 C.C.C. 325, in which it was held that convictions for both offences, i.e. theft and possession, could stand where the possession charged is not so intimately identified in time and place as to form part of the theft itself. It may be that in certain circumstances this might be so. But in a case such as the present where the appellant was the actual thief and had had continuous possession of the motor vehicle from the time it was stolen by him, I think the offences arise from the same act. The same act that constituted the theft constituted the offence of having unlawful possession. To apply the principles of the Quon case it is of course necessary to treat the unlawful possession, whether, it be for a matter of minutes or months, as one continuing offence. In my opinion this is so. It would be clearly wrong to charge a man who had possession of stolen goods for a continuous period of one month with separate charges for each day of that period. It is only where the statute creating the offence provides that it shall be a separate offence or that separate penalties may be imposed for successive periods that a continuing offence can be treated as multiple offences."

c. In *Côté v R,* 1974 CanLII 137 (SCC), the accused had been previously convicted for armed robbery of money, securities, and documents and had served his sentence. On release, he recovered some of the securities from their hiding place and, three years after the original theft, was found in possession of them. He was charged with unlawful possession. The majority of the Supreme Court found that Mr. Côté could be convicted of unlawful possession. In coming to that conclusion, Fauteux CJ, for the majority, reasoned that one cannot draw a bright line between when possession arising from a theft is sufficiently long or discontinuous as to permit conviction for unlawful possession as well, and the cases must be decided on their individual facts: see pages 310 to 311. He reviewed the preceding cases on the issue, including *R v Van Dorn* and *Regina v Siggins* and concluded that the facts of the case before the Court disclosed a sufficient break in possession to permit a separate conviction for unlawful possession.

d. In *Hewson v R*, 1978 CanLII 45 (SCC), the accused was charged with break and enter and theft of electronics and also with unlawful possession of those electronics. The accused was convicted of the theft but found not guilty of unlawful possession of the same electronics. Although the issue of double jeopardy was not at issue on appeal, Ritchie J, for the majority cited *Regina v Siggins* for the proposition that the Crown could charge on both theft and unlawful possession but that a conviction for theft precluded a conviction for unlawful possession of the same goods: page 97.

e. In *R v Cook*, 2010 ONSC 4534, the accused was charged with theft of an MP3 player and with unlawful possession of it. The theft had occurred 101 days before the accused was found in possession of the MP3 player. In applying the *Kienapple v R* decision, and citing the decisions noted above, among others, the Court stayed the possession charge because the possession had been continuous.

53. There are also somewhat relevant fisheries cases, including the following:

a. In *R v Pasco Seafood Enterprises Inc*, 2019 BCPC 228, the accused was charged and found guilty of unlawfully buying fish caught without a licence, purchasing fish caught contrary to the *Fisheries Act*, RSC 1985, c F-14, possessing those fish, and two counts of selling those fish, all contrary to the *Fisheries Act* or its regulations. Judge Smith stayed the purchasing charge, preferring to enter a conviction on the buying charge, and one count of selling on the application of *Kienapple v R*. Regarding the possession charge, Judge Smith found that the accused purchased the fish through a series of phone calls between August 5th and 8th, 2011 but possessed the fish through "a number of additional acts including, directing its off-load, transporting and directing its transport … and shipping it to customers" between August 6 and 11, 2011: paras 143-144. Judge Smith found that these were sufficiently additional acts to avoid the application of the principle against double jeopardy.

b. In *R v Tang*, 2021 BCSC 642, the accused was convicted of the offences of catching and retaining more than his quota of rockfish and possession of the over-quota rock fish contrary to the *Fisheries Act*. Thompson J found that "every act of catching and retaining over-quota fish resulted in the possession of those same fish": para 18. He further reasoned that "retaining" included a continuous act and therefore there was no distinguishing element between "catching and retaining" and possessing. Thompson J therefore overturned the conviction on the possession charge.

54. In this case, the allegations are both founded under the same section and require application of the same legal test. The allegations have the same victims, concern the same property, involve the same motivation, and concern effectively the same conduct: Ms. Bao took Tenant 1's passport and kept it for the purpose of securing payment from the Tenants to address the Landlords' losses. Ms. Bao did not lose possession of the passport between April 22 and April 29, 2025, when she returned it. The only thing that might be considered to have changed during that period is the repeated requests by the Tenants that Ms. Bao return the passport and the intervention of the

police. Those requests and demands may have aggravated Ms. Bao's conduct, but they did not change Ms. Bao's conduct from acceptable to unacceptable; Ms. Bao was continually under an obligation to return the passport from the moment she took it to the moment she returned it.

55. To hold otherwise would be to allow the imposition of additional penalties each time Ms. Bao received a request or demand to return the passport. I consider that result to be plainly improper. Such an approach would allow the superintendent to impose multiple monetary penalties for continuous conduct where section 26 of the Rules does not designate the contravened section in Category D or E. Although there may be cases where some event or series of events renders otherwise continuous conduct subject to multiple contravention findings, this is not that case. I should not be taken to mean that refusing to return the passport in the face of repeated conduct is not aggravating, I address that point below, I merely find that it is not separate conduct on the facts of this case.

56. In my view, the application of *Kienapple v R* in this case and the above precedents indicate that Ms. Bao's conduct in taking and keeping Tenant 1's passport was part of the same course of conduct or transaction. This underlies the awkwardness noted in my analysis regarding the second alleged contravention of section 34 of the Rules above. Ms. Bao did not do something wrong and then do something else wrong, she did something wrong and then continued to do the same wrong thing without interruption until she was compelled to stop.

57. I note that, because the alleged contraventions relate to the same section, it cannot be said that there is some additional legal element associated with Ms. Bao's conduct or that the sections are aimed at separate delicts as in *McLeod v Law Society of British Columbia*. What occurred here is a breach of the standards all licensees should abide by, a continued breach, but a single breach nonetheless. In this regard, I note that there is no indication in the legislation that continued breaches of section 34 of the Rules should attract additional penalties, such as exist in the case of Category D and E contraventions.

58. I note that the NOAP attempts to distinguished the two alleged contraventions of section 34 of the Rules by stating that Ms. Bao's taking of Tenant 1's passport was "conduct that fell below the standard expected of real estate professionals" and Ms. Bao thereby "acted outside the scope of lawful and professional practice" and also stating that Ms. Bao's continued retention of the passport demonstrated "a disregard for professional obligations and the rights of the individual tenant involved"; however, the latter statements equally apply to the taking and the former equally apply to the continued retention.

59. I therefore find that the superintendent is not entitled to find that Ms. Bao contravened section 34 of the Rules twice as set out in the NOAP. I find that the primary wrong in this case was that Ms. Bao took Tenant 1's passport without any legal authority to do so and her retention was a continuation of that wrongful conduct. I therefore cancel the second administrative penalty for a contravention of section 34 of the Rules in the NOAP.

Section 30(a) – Failure to Complete Move-In Inspection Report

60. The next allegation I will consider is whether Ms. Bao failed to act in her clients' best interests contrary to section 30(a) of the Rules by failing to complete a move-in inspection report at the commencement of the Tenants' tenancy.

61. Section 23(1) of the RTA requires landlords and tenants to complete a move-in inspection report for the rental property on the day the tenancy starts or another agreed date. If that report is not completed, section 24(2)(c) precludes a landlord from claiming against a security deposit at all if they have not completed a condition inspection report. The June 17, 2025 RTB decision in this case confirms that the failure to conduct a condition inspection report rendered the Landlords

retention of the deposit unlawful and resulted in the Landlords being ordered to repay double the deposits pursuant to Residential Tenancy Policy Guideline 17.

62. It was clearly not in the Landlords' best interest to not prepare a condition inspection report in these circumstances given Ms. Bao had the opportunity to do so when preparing a furniture inventory for the Unit. I therefore find that Ms. Bao failed to act in the Landlords' best interest when she failed to prepare a condition inspection report at the commencement of the Tenants' tenancy of the Unit.

63. Ms. Bao has not argued or demonstrated that she exercised due diligence regarding her failure to prepare a condition inspection report. She has not indicated what steps she took to attempt to understand the obligations on the Landlord to prepare that report or the consequences that flow from failing to prepare the report. Her answers during BCFSA's investigation indicate that she may still not understand the role of condition inspection reports generally and the various parties' obligations regarding condition inspections. In my view, rental property management licensees should know that their clients are required to prepare such a report as a fundamental part of their role as a rental property manager. I therefore find that Ms. Bao has not proven she exercised due diligence regarding her failure to prepare a condition inspection report at the commencement of the Tenants' lease of the Unit.

Section 29(2)(a) and 29(5)(a) – Failure to Keep Managing Brokers Informed

64. Sections 29(2)(a) and 29(5)(a) of the Rules both require licensees to inform their managing brokers of certain things. Section 29(2)(a) requires licensees to inform their managing brokers of the real estate services they provide or the other activities they engage in on behalf of the brokerage. Section 29(5)(a) of the Rules requires representative licensees to report conduct, including their own conduct, to their managing broker that they believe may constitute professional misconduct, conduct unbecoming, or negligence.

65. For the reasons set out below, I do not need to consider whether BCFSA has established a contravention either of sections 29(2)(a) or 29(5)(a) of the Rules and also do not need to consider if the principle in *Kienapple v R* applies to those allegations. That said, I note that the wording in section 29(5)(a) of the Rules requires a licensee to report conduct the licensee "considers may be" professional misconduct, conduct unbecoming, or negligence. In my view, that likely requires BCFSA to prove that the licensee subjectively considered the matter to possibly fall into one of those categories and then to have failed to report the matter. In addition to the evidentiary issues discussed above regarding when [Licensee 2] discovered that Ms. Bao had withheld Tenant 1's passport, which would impact whether Ms. Bao's report was prompt, the evidence does not clearly establish to me that Ms. Bao actually considered the conduct to have fallen into the category of professional misconduct, conduct unbecoming, or negligence. It is not sufficient that Ms. Bao "ought to have known" her conduct may have fallen into one of those categories, she must have actually had the subjective belief that her conduct might have fallen into one of those categories: see *Dhaliwal (Re)*, 2025 BCSRE 10, at paras 48-52 for a discussion of the application of section 29(5)(a).

Penalty Amount

66. Regarding the penalty amounts, the NOAP imposed administrative penalties of $1,000 for each of the alleged contraventions of sections 29(2)(a) and 29(5)(a) of the Rules.

67. Section 56(1)(b) of RESA permits BCFSA to "establish the amount, or range of amounts" of administrative penalty that may be imposed in respect of each contravention of a specified provision". Section 57(1)(a) of RESA allows the superintendent to issue an administrative penalty consisting of "an amount permitted by the rules", required education, license conditions or restrictions, or any combination of those.

68. Section 26(2)(b)(vi) and (vii) of the Rules designate sections 29(2) and 29(5) of the Rules, respectively, as Category B contraventions. Section 27(2) provides that the amount of an administrative penalty that can be imposed for a first contravention of a section designated in Category B is $2,500. That amount increases to $5,000 for a subsequent contravention.

69. Read together, these sections do not empower the superintendent to select an amount for a monetary administrative penalty that is not either the prescribed amount or within the specified range, if there is a range specified. For example, section 27(6) of the Rules provides for a range of $5,000 to the current maximum of $100,000 for a first Category F contravention. In that case, the superintendent can seek to impose a penalty within that range but cannot impose a penalty below or above the range. The superintendent has no authority under the statutory scheme to impose an administrative penalty that is not either the prescribed amount or within a prescribed range.

70. Category B contraventions do not have a prescribed range, they have prescribed amounts. The amounts the NOAP seeks to impose are not the prescribed amount for a first Category B contravention. Although the amounts in the NOAP are less than the prescribed amount, they are not the prescribed amount and the superintendent lacks the authority to issue a penalty in the amounts imposed by the NOAP just as it would if it had sought to exceed the prescribed amount. I have no authority to vary the penalties. As a result, the administrative penalties imposed by the NOAP are not authorized by RESA or the Rules, are issued without jurisdiction, and I must cancel them.

71. Regarding the remaining contraventions, sections 30(a) and 34 are both designated as Category C contraventions. The superintendent may impose a $5,000 monetary penalty and may also impose a requirement to take remedial education for contraventions of sections designated in Category C. The NOAP seeks to impose a $5,000 monetary penalty for each of the contraventions of section 30(a) and 34 and to require Ms. Bao to take the Course for both. Given I have cancelled one contravention of section 34, only one contravention of section 34 remains to be considered.

72. Regarding the contravention of section 30(a) of the Rules, I accept that the contravention arose from negligence and was not intentional. I also accept that Ms. Bao paid $2,945.20 in compensation for her failure to prepare a condition inspection report. That said, the failure was significant and deprived her clients of their main form of security included in the lease agreement while also exposing them to liability for double the deposit amount. Ms. Bao could have also avoided her clients' liability for double the deposit amount if she had refunded the deposits at the end of the tenancy, but that still would have deprived them of their right to security and exposed them to a risk that they might not have been able to recover their losses against the Tenants. The contravention was also a failure to perform a foundational activity of a rental property management licensee acting as an agent in relation to residential tenancies. In my view, the fact that Ms. Bao remediated the harm she caused renders this matter within the scope of the administrative penalty regime but does not go so far as to render an administrative monetary penalty inappropriate for the breach of a fundamental obligation of a rental property management licensee.

73. Regarding the contravention of section 34 of the Rules, I find that Ms. Bao's taking of Tenant 1's passport was serious and a substantial departure from the standards of reasonable conduct expected of real estate licensees. Her conduct demonstrated a significant disregard for Tenant 1's rights and a lack of concern for whether Ms. Bao had any legal authority to take Tenant 1's passport. Although Ms. Bao argues she did not act maliciously and acted in somewhat urgent and stressful circumstances, I find that she acted to intentionally deprive Tenant 1 of his rightful possession of his passport to attempt to extract further security from him and continued that deprivation for a week without taking any steps to confirm if she was entitled to keep the passport. This may have been in her clients' interests, but licensees cannot be permitted to commit illegal acts without sanction merely because those acts are in their clients' interests.

74. I also reject Ms. Bao's argument that she attempted to arrange a time to meet Tenant 1 to return the passport to him prior to April 29, 2025. Those attempts all implied or explicitly stated that the purpose of such a meeting was to have Tenant 1 pay additional security in order to get his passport back. I do not find it unreasonable for Tenant 1 to have refused to attend such a meeting in which Ms. Bao was likely to have continued to use Tenant 1's passport as a means to pressure him.

75. Finally, I put no weight in these circumstances on the fact that the Landlords were not resident in Canada, did not speak English, and that one had injured herself on the way to Canada. None of those facts excuse Ms. Bao's conduct. Further, the Tenants' own conduct, including their failure to obtain tenants insurance and certain unreliable statements they made to Ms. Bao, do not render Ms. Bao's conduct acceptable or mitigate the extent to which she departed from her statutory obligation to act with reasonable care and skill.

76. I acknowledge that Tenant 1 appears not to have suffered any tangible harm, aside from being deprived of his passport for a week. I also acknowledge that the conduct appears to have been isolated and that Ms. Bao did not personally benefit from this conduct.

77. Regarding both the contravention of section 30(a) of the Rules and the contravention of section 34 of the Rules, I turn to Ms. Bao's submission regarding the total quantum of the administrative penalties imposed. She indicates that the original monetary penalty imposed by the NOAP is equal to approximately 30% of a rental property management licensee's after-tax income. [Licensee 2] puts this figure at 20-30%. That gives a range of $56,000 to $85,000. Neither Ms. Bao nor [Licensee 2] say that this represents such a proportion of Ms. Bao's own after-tax income. Regardless of whether those figures are based on Ms. Bao's own income, I find that the contraventions in this case were significant and a penalty amounting to 11-18% of after-tax income, based on a total of $10,000 in penalties, although substantial, is not so great as to be inappropriate. I note in this regard that I have no evidence of Ms. Baos' assets, liabilities, or expenses from which I could draw a conclusion that the order would be inappropriately burdensome.

78. Considering the above, I find that the $5,000 administrative monetary penalty for Ms. Bao's contravention of section 30(a) of the Rules is appropriate. Although she has paid compensation for the loss she caused, the breach is sufficiently fundamental to warrant regulatory action in this case.

79. Further, the order that Ms. Bao take the Course is warranted in response to the contravention of section 30(a) of the Rules because it will likely serve to educate Ms. Bao regarding her obligations as a rental property management licensee and thus prevent future misconduct of this sort from Ms. Bao. I note in this regard that she states she has learned from the experience, but I consider further education appropriate in this case. I also note that there will be some additional cost to Ms. Bao for the courses, but I do not consider that additional cost to be substantial enough, even when combined with the monetary penalty, to render the penalty inappropriate.

80. Also considering the above, I find that the $5,000 administrative penalty for Ms. Bao's taking of Tenant 1's passport in contravention of section 34 of the Rules is appropriate. I am particularly swayed by the seriousness of the conduct and the degree to which it departs from the standards of conduct expected of real estate licensees. In my view, this conduct could have attracted a greater monetary penalty had the matter proceeded to a discipline hearing, but the $5,000 in no outside the appropriate range. In addition, the degree of departure from the standards of conduct expected of licensees indicates to me that the order that Ms. Bao take the Course is also appropriate as a result of Ms. Bao's breach of section 34 of the Rules.

Conclusion

81. I find that the administrative penalties imposed by the NOAP in relation to the alleged contraventions of sections 29(2)(a) and 29(5)(a) of the Rules were issued without jurisdiction to

issue them in the amount of $1,000. I therefore cancel the two $1,000 administrative penalties issued for those alleged contraventions.

82. I find that Ms. Bao failed to act with reasonable care and skill contrary to section 34 of the Rules by taking and withholding Tenant 1's passport on the instructions of the Landlords in an attempt to secure payment as security or in compensation for damage to the Unit. I find that the two alleged contraventions of the Rules cannot both support a sanction without offending the principle in *Kienapple v R* and I therefore find that only one contravention of section 34 of the Rules occurred. I find that the continued possession of Tenant 1's passport was a part of and a result of Mr. Bao's taking of the passport and, as a result, the second alleged contravention in the NOAP is improperly duplicative of the first. I therefore confirm the first alleged contravention of section 34 in the NOAP and cancel the second alleged contravention of section 34 of the Rules in the NOAP.

83. I find that Ms. Bao's failure to prepare a condition inspection report at the commencement of the Tenants' tenancy constituted a failure to act in the best interest of her clients contrary to section 30(a) of the Rules.

84. I find that the administrative penalties of $5,000 each for the first contravention of section 34 of the Rules set out in the NOAP and the contravention of section 30(a) of the Rules set out in the NOAP are appropriate. I find that the order that Ms. Bao take the Course is appropriate. I confirm those penalties.

85. The confirmed administrative penalties totaling $10,000 are now due and payable to BCFSA. Ms. Bao is required to take the Course by March 31, 2026.

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

"Original signed by Gareth Reeves"

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Hearing Officer