

Citation: Applicant 19 (Re), 2025 BCSRE 106

Date: 2025-06-16

File No. [Licence Number]

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 19]
([Licence Number])**

**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 May 5, 2025, the BC Financial Services Authority ("BCFSA") issued a Notice of Administrative Penalty (the "NOAP") in the amount of \$1,000 to [Applicant 19] ("[Applicant 19]") 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 19] had contravened section 75 of the *Real Estate Services Rules*, BC Reg 209/2021 (the "Rules") by failing to file its Accountant's Report, Brokerage Activity Report, and financial statements (collectively, the "Section 75 Filing") for the year ending March 31, 2024 by July 29, 2024. The filing was not received until April 4, 2025.
3. [Applicant 19] applied for a reconsideration of the NOAP under section 57(4) of RESA. The application proceeded by written submissions.

Issues

4. The issue is whether the May 5, 2025 NOAP should be cancelled or confirmed.

Jurisdiction and Standard of Proof

5. This 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 administrative penalty approval request prepared by BCFSA Audit & Assurance (“**BCFSA Audit**”), the exhibits thereto, and the information provided by [Applicant 19] 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 the information before me.
10. [Applicant 19] was first licensed as a brokerage in the trading and rental property management categories on March 11, 2016 and has remained so licensed since that date, except for the period from June 10, 2022 to March 10, 2024 during which it was not licensed in the trading category and the period from March 11, 2024 to May 1, 2024 during which its license was inoperative because it did not have a managing broker.
11. [Applicant 19]’s current managing broker is [Managing Broker 2]. She became [Applicant 19]’s managing broker on May 2, 2024. Her predecessor, [Managing Broker 1], ceased being [Applicant 19]’s managing broker as of March 11, 2024.
12. [Applicant 19] has a March 31 fiscal year end. As a result, it is required to file its annual Section 75 Filing by July 29 each year.
13. [Applicant 19] has no discipline history that I am aware of.
14. On each of July 19 and July 22, 2024, BCFSA sent [Managing Broker 2] a reminder that [Applicant 19]’s Section 75 Filing for the year ending March 31, 2024 was due by July 29, 2024.
15. [Applicant 19] did not file its Section 75 Filing for the year ending March 31, 2024 by July 29, 2024.
16. On August 1, 2024, BCFSA Audit sent [Managing Broker 2] a letter advising that [Applicant 19] had failed to file its Section 75 Filing on time and that [Applicant 19] had thereby breached section 75 of the Rules. The letter demanded that [Applicant 19] file its Section 75 Filing by August 31, 2024.
17. On September 9, 2024, [Managing Broker 2] provided [Applicant 19]’s Accountant’s Report and financial statements for the year ending March 31, 2024 to BCFSA Audit by email. She did not provide the required Brokerage Activity Report at this time.
18. BCFSA Audit replied on September 9, 2024 to advise that the Section 75 Filings had to be filed through BCFSA’s secure IRIS portal and that BCFSA no longer accepts email submissions of those filings. BCFSA Audit also noted that the Accountant’s Report had to be signed by the managing broker of [Applicant 19] and an officer or director of [Applicant 19].
19. On September 11, 2024, the Accountant’s Report and financial statements for [Applicant 19]’s year ending March 31, 2024 were uploaded to IRIS.
20. On October 4, 2024, BCFSA Audit emailed [Managing Broker 2] to advise that the Brokerage Activity Report¹ had not been filed and that portions of the Accountant’s Report had been completed but not submitted. BCFSA Audit’s email provided instructions for completing and filing the Brokerage Activity Report.

¹ The form and content of the Accountant’s Report and the Brokerage Activity Report required by subsections 75(1)(b) and (c) of the Rules was, at the time of when [Applicant 19]’s filing was due, set by Regulatory Statement under RESA 23-004, Brokerage Reporting Requirements. That Regulatory Statement was amended on February 14, 2025 under number RESA 25-003, the amendments are not relevant to this proceeding. Part 3 of that Regulatory Statement indicates that the Brokerage Activity Report is named a “Brokerage Financial Information Filing”. The NOAP uses the phrase “Brokerage Activity Report” and so I will use that throughout, even where the correspondence uses “Brokerage Financial Information Filing”.

21. On November 25, 2024, BCFSA Audit followed up with [Managing Broker 2] on the outstanding issues.
22. On November 26, 2024, BCFSA Audit emailed [Managing Broker 2] to advise that the Accountant's Report had been submitted but the Brokerage Activity Report had not been filed.
23. On December 11, 2024, [Applicant 19] filed a Brokerage Activity Report that included blank fields and referred to financial figures from [Applicant 19]'s 2023 filings. BCFSA Audit emailed [Managing Broker 2] to advise that all fields were mandatory and that it appeared the filed Brokerage Activity Report included 2023's figures. BCFSA Audit advised that the filed Brokerage Activity Report was not accepted as filed.
24. On December 16, 2024, [Applicant 19] uploaded a new Brokerage Activity Report but the new filing contained blank fields and incorrect information.
25. On December 19, 2024, BCFSA Audit wrote to [Managing Broker 2] to advise her of the deficiencies in the filed Brokerage Activity Report. BCFSA Audit advised that the filed Brokerage Activity Report was not accepted as filed and [Applicant 19] would need to upload a new, corrected version.
26. On January 30, 2025, BCFSA Audit emailed [Managing Broker 2] to advise that the Brokerage Activity Report remained outstanding.
27. On February 21, 2025, BCFSA Audit spoke to [Managing Broker 2], who advised that she would upload the outstanding Brokerage Activity Report that day.
28. On that day, [Applicant 19] uploaded a Brokerage Activity Report with missing fields.
29. On March 26, 2025, BCFSA Audit emailed [Managing Broker 2] to advise that the Brokerage Activity Report remained deficient and that a Non-Compliance Warning Letter was being prepared, which might result in daily penalties being calculated for [Applicant 19]'s ongoing failure to comply with section 75 of the Rules.
30. On April 4, 2025, [Applicant 19] filed its outstanding Brokerage Activity Report.

Submissions

31. [Applicant 19] admits in its submissions that it filed its section 75 filing late and apologizes for the late filing. [Applicant 19] submits that the late filing happened because of the departure of a designated managing broker and other internal staffing changes, because it was not actively operating in British Columbia at the time. [Applicant 19] also submits that there was an error in the Accountant's Report that their accountants required additional time to resolve, which further delayed the filing.

Reasons and Findings

Applicable Legislation

32. 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.
33. 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.

34. 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 75 of the Rules is placed in Category D. Section 27(4) of the Rules sets out that Category D contraventions may attract an administrative penalty consisting of a base penalty amount of \$1,000 for a first contravention or \$2,000 for a subsequent contravention plus \$250 per day, or part of a day, that the contravention continues.
35. 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.
36. Section 75(1) of the Rules, provides as follows:
 - 75 (1) A brokerage must, within 120 days after the end of each fiscal year of the brokerage, file with the superintendent
 - (a) financial statements for that fiscal year,
 - (b) an accountant's report respecting that fiscal year, completed in accordance with any requirements specified by the superintendent, and
 - (c) a brokerage activity report respecting that fiscal year, completed in accordance with any requirements specified by the superintendent.

Analysis

37. 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.

Contravention

38. I find that [Applicant 19] contravened section 75 of the Rules by filing the materials required under section 75 of the Rules on April 4, 2025 when they were due to be filed on July 29, 2024: a delay of just over eight months. [Applicant 19] does not deny this.
39. The question is therefore whether [Applicant 19] exercised due diligence in attempting to make the filings required under section 75 of the Rules.

Due Diligence

40. In my view, [Applicant 19] has not demonstrated that it exercised due diligence in avoiding the contravention at issue.
41. The departure of [Managing Broker 1] as managing broker occurred in March 2024 and [Managing Broker 2] was appointed on May 2, 2024. This event preceded the July 29, 2024 deadline by approximately three months. In my view, that does not explain why the required filing was late. [Managing Broker 2] took over the role with three months to complete the Section 75 Filing, it should have been filed on time, even accounting for the lapse in [Applicant 19] having a managing broker

and the administrative issues that likely caused. It certainly does not explain why the Brokerage Activity Report was not filed until April 4, 2025, approximately eight months late.

42. [Applicant 19] has not indicated what internal staffing changes were occurring or why these might have disrupted the filing of the Section 75 Filing. In my view, staffing changes cannot explain the significant delay in filing that occurred in this case, given the final portion, the Brokerage Activity Report, was eight months late.
43. [Applicant 19] also argues that there was an error in the reports which required additional time with their accountants to resolve. [Applicant 19] does not identify what this issue was or why it would explain the significant delay in this case. In addition, [Applicant 19] has not identified how the issues that it says needed to be resolved with its accountants allowed it to upload its Accountant's Report and financial statements in September 2024 but precluded it from filing its Brokerage Activity Report until April 2025.
44. In my view, the fact that [Applicant 19] had the Accountant's Report and financial statements prepared on September 9, 2024 but did not properly submit them for more than two months and took repeated reminders to properly complete its Brokerage Activity Report indicates an unacceptable degree of dilatoriness and belies any argument that it exercised due diligence in this case.
45. I therefore find that [Applicant 19] contravened section 75 of the Rules by failing to file its Section 75 Filings for the year ending March 31, 2024 by July 29, 2024.

Penalty Amount

46. The penalty amount imposed in this case was \$1,000 being the base amount for a contravention of a section designated in Category D, which includes section 75 of the Rules. No daily penalty amount was imposed. My authority under section 57(4) of RESA includes the power to cancel or confirm the administrative penalty, I cannot vary it. If I find that a discipline hearing is more appropriate, I can cancel the administrative penalty and issue a notice of discipline hearing.
47. In this case, the Section 75 Filing was significantly late. BCFSA Audit did not choose to issue a Non-Compliance Warning Letter and seek daily penalty amounts. In my view, the \$1,000 administrative penalty for a contravention of this duration is low and could have been much higher had BCFSA Audit sought daily penalty amounts in addition to the base penalty amount or had it issued a notice of discipline hearing. For example, in *OJO Home Canada Ltd (Re)*, 2025 BCSRE 94, the subject brokerage consented to a discipline penalty of \$20,000 for a delay in filing its Section 75 Filing of similar length to [Applicant 19]'s. *OJOHome Canada Ltd (Re)* also indicates that a monetary penalty is within the scope of appropriate remedies for a late filing of a Section 75 Filing, where the filing is eventually made. In my view, the penalty imposed in this case is appropriate.

Conclusion

48. I find that [Applicant 19] contravened section 75 of the Rules by failing to file its Section 75 Filings for the year ending March 31, 2024 by July 29, 2024.
49. I confirm the \$1,000 administrative penalty issued in this case.
50. The \$1,000 administrative penalty 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