

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 31]
([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 August 7, 2025, the BC Financial Services Authority (“**BCFSA**”) issued a Notice of Administrative Penalty (the “**NOAP**”) in the amount of \$2,000 to [Applicant 31] (“**[Applicant 31]**”) 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 31] 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 for the year ended September 30, 2024 (the “**Filings**”) by January 28, 2025. BCFSA alleges that the outstanding filing was not received by BCFSA until June 19, 2025.
3. [Applicant 31] 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 August 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 a memorandum completed by BCFSA, the exhibits to that memorandum, and the information provided by [Applicant 31] 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.

Regulatory Background

10. [Applicant 31] was first licensed as a brokerage in the trading and rental property management services categories on December 11, 2014. It has been licensed in that fashion since that date.
11. [Managing Broker 1] has been licensed under RESA or its predecessor legislation since 1983. He first became licensed as a managing broker in August 1989. He has been licensed as either an associate broker or a managing broker since then. At all relevant times, he was the managing broker of [Applicant 31].
12. On September 23, 2022, BCFSA issued a notice of administrative penalty against [Applicant 31] for failing to file its section 75 filings for the fiscal year ended September 30, 2021 by the deadline of January 28, 2022. On October 13, 2022, [Applicant 31] paid the \$1,000 penalty issued in that case.

The Year Ended September 30, 2024 Filings

13. On September 30, 2024, BCFSA emailed [Managing Broker 1] to notify him that [Applicant 31] was required to submit its Filings by January 28, 2025.
14. On January 21, 2025, BCFSA emailed [Managing Broker 1] to remind him that [Applicant 31] was required to submit its Filings by January 28, 2025.
15. On January 30, 2025, BCFSA emailed a letter to [Managing Broker 1] to advise that [Applicant 31]'s Filings were late. The letter noted that failing to submit the Filings could attract administrative monetary penalties with a base penalty of \$1,000 for a first contravention or \$2,000 for a subsequent contravention with additional daily penalties. The letter required [Applicant 31] to file its Filings by February 28, 2025. [Managing Broker 1] replied that day to say he had the flu and would provide the required forms early the following week.
16. On February 4, 2025, [Applicant 31] uploaded a Trust Account Declaration¹ but did not upload the required financial statements or Brokerage Financial Information Filing.²

¹ As noted below, the Trust Account Declaration is a permitted substitute for the Accountant's Report where a brokerage does not handle public trust money during the fiscal year being reported.

² The Brokerage Financial Information Filing is the name given to the Brokerage Activity Report by BCFSA's Brokerage Reporting Requirements Regulatory Statement RESA 25-003 and its predecessor RESA 23-004.

17. On February 11, 2025, BCFSA emailed [Managing Broker 1] to advise that [Applicant 31] had not uploaded financial statements, the submission was still in draft form, and the Brokerage Financial Information Filing needed to be uploaded.
18. On February 12, 2025, [Managing Broker 1] emailed BCFSA to state that he did not operate a trust account and asserted that he had been given an exemption from filing the required reports.
19. On February 13, 2025, BCFSA emailed [Managing Broker 1] to assert that there was no exemption available for the requirement to submit the Filing. It noted that [Applicant 31] was entitled to submit a Trust Account Declaration if [Applicant 31] does not hold public trust funds but that the financial statements and Brokerage Financial Information Filing were required.
20. Also on February 13, 2025, BCFSA emailed [Managing Broker 1] to remind him that [Applicant 31]'s Brokerage Financial Information Filing was required to be filed.
21. On February 14, 2025, [Managing Broker 1] attempted to upload [Applicant 31]'s Brokerage Financial Information Filing but was unsuccessful and so he emailed it to BCFSA.
22. On February 18, 2025, BCFSA emailed [Managing Broker 1] to advise that it had uploaded the Brokerage Financial Information Filing on his behalf but that [Applicant 31] was still required to provide its financial statements.
23. On February 19, 2025, [Managing Broker 1] emailed to state that he did not need to submit a financial statement because [Applicant 31] does not use its trust account and that he uses a lawyer's trust account instead.
24. On February 25, 2025, BCFSA replied to reiterate that there were no exemptions available from the requirement to file financial statements and he was required to file his financial statements. BCFSA asked for confirmation once [Applicant 31] had hired an accountant to prepare the financial statements. BCFSA also noted that a \$1,000 cheque received from [Applicant 31] would be returned or destroyed because a penalty had not yet been issued.
25. On February 28, 2025, [Managing Broker 1] emailed BCFSA to provide his accountant's phone number and to state that previously he was only required to submit a Trust Account Declaration.
26. On February 28, 2025, [Managing Broker 1] emailed BCFSA again. In that email, he took issue with BCFSA's position that [Applicant 31]'s accountant could not supply the appropriate financial statements. It appears that BCFSA took that position during a phone call it had with [Applicant 31]'s accountant and because the accountant lacked the necessary qualifications to prepare the required report. It is not clear to me when that call happened. [Managing Broker 1] indicated that he was looking for a new accountant who could prepare compilation engagement financial statements.
27. On March 1, 2025, BCFSA replied to [Managing Broker 1] to state that, after discussion with [Applicant 31]'s previous accountant, it became clear that the accountant was no longer qualified to prepare compilation engagement financial statements. BCFSA reiterated that financial statements are required regardless of a brokerage's activity level. BCFSA reiterated its request to be advised once [Applicant 31] had engaged a new accountant.
28. On March 3, 2025, [Managing Broker 1] emailed BCFSA to advise that he had engaged an accountant. [Managing Broker 1] stated that this was the first time financial statements had been required.
29. On March 5, 2025, BCFSA emailed [Managing Broker 1] to state that financial statements had been required since [Applicant 31] had been licensed and that [Applicant 31]'s accountant could contact BCFSA with any questions.

30. On June 5, 2025, BCFSA emailed [Managing Broker 1] a non-compliance warning letter (the “NCWL”) which indicated that BCFSA considered [Applicant 31] to be in contravention of section 75 of the Rules. The NCWL indicated that given this was not [Applicant 31]’s first contravention of section 75 of the Rules it may be liable for a \$2,000 base penalty amount and that a daily penalty of \$250 a day would begin to accrue if [Applicant 31] failed to file its completed Filings by June 19, 2025.
31. On June 19, 2025, [Applicant 31] submitted the required financial statements and completed the Filings.

Submissions

32. [Managing Broker 1] submits that he has been a managing broker since “around 1989” and has submitted his previous filings on time. He submits that he was sick around January 28, 2025 and did not want to make his lawyer sick and that he signed the required Trust Account Declaration on February 4, 2025. He submits that he has not used his trust account for years to avoid contravening section 75 of the Rules.
33. [Managing Broker 1] submits that [Applicant 31]’s accountant changed his licence to not allow him to prepare compilation engagement financial statements but did not advise [Managing Broker 1] until February 28, 2025. He submits that, when he learned this, he advised BCFSA and engaged a new accountant through his lawyer.
34. [Managing Broker 1] submits that he continually advised BCFSA of his progress while pushing the new accountant. He submits that the matter was in the accountant’s hands and there was nothing he could have done to comply sooner.

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. Section 75 of the Rules is placed in Category D. Section 27(4) of the Rules sets out that a contravention of section designated in Category D may attract a base monetary penalty of \$1,000 for a first contravention or \$2,000 for a subsequent contravention plus a daily monetary penalty of \$250 per day, or part day, that the contravention continues.
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. Section 75 of the Rules provides as follows:

Annual financial statements, accountant's report and brokerage activity report

- 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.
- (2) The financial statements referred to in subsection (1) (a) must
- (a) be audited by an accountant, in the case of a brokerage that is a public company as defined in the Business Corporations Act, or
 - (b) in any other case, have been subject, at a minimum, to
 - (i) a review engagement by an accountant, or
 - (ii) if authorized under subsection (3), a compilation engagement report prepared by an accountant.
- (3) The superintendent may authorize a brokerage to file financial statements that have been subject to a compilation engagement report prepared by an accountant if all of the following conditions are met:
- (a) for a minimum of 3 consecutive fiscal years immediately preceding the date of authorization, the brokerage has filed financial statements that comply with subsection (2) (a) or (b) (i) and has satisfied the other requirements of this section;
 - (b) during those 3 fiscal years there have been no significant trust account or general books and records exceptions
 - (i) reported in relation to the brokerage, as required by the superintendent, or
 - (ii) discovered in relation to the brokerage in any review under section 74;
 - (c) the superintendent is satisfied that at the end of each of those 3 fiscal years the brokerage's current assets exceeded its current liabilities.
- (4) An accountant who, under subsection (2), audits or reviews the financial statements or prepares a compilation engagement report in relation to the financial statements, or who completes the accountant's report referred to in subsection (1) (b), must be independent of the brokerage and of any director, officer or partner of the brokerage or a related licensee of the brokerage.
- (5) A brokerage must
- (a) disclose to an accountant referred to in subsection (4) every savings institution account that was opened, closed or maintained by the brokerage during the fiscal year,
 - (b) provide the accountant with access to all financial and other records of the brokerage for the fiscal year, and
 - (c) provide the accountant with any other information the accountant considers necessary to enable the accountant to conduct the audit, review the financial statements, prepare the compilation engagement report or complete the accountant's report, as required by this section.

- (6) The superintendent may withdraw an authorization given to a brokerage under subsection (3) if
 - (a) the brokerage does not file financial statements that comply with this section,
 - (b) a trust account or general books and records exception has been reported or discovered as described in subsection (3) (b) in relation to the brokerage, or
 - (c) the superintendent is not satisfied that the brokerage's current assets exceed its current liabilities at the end of any fiscal year.
- (7) Before withdrawing an authorization given to a brokerage under subsection (3), the superintendent must give the brokerage notice of the superintendent's intention to do so and the reasons.
- (8) As an alternative to filing an accountant's report under subsection (1) (b), a brokerage that did not hold or receive any public trust money during the fiscal year to which the financial statements relate may file with the superintendent a solemn declaration, completed in accordance with any requirements specified by the superintendent, respecting
 - (a) that fiscal year, or
 - (b) if the brokerage carried on business for only part of the fiscal year, that part of the fiscal year for which the brokerage carried on business.

Analysis

40. 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

41. There is no dispute that [Applicant 31] failed to file its completed Filings by the due date of January 28, 2025. The evidence confirms that it did not file the financial statement portion of the Filings until June 19, 2025, more than four months late. I find that [Applicant 31] failed to file its Filings by the January 28, 2025 deadline. The only question in this case is whether [Applicant 31] exercised due diligence or was presented with extenuating circumstances that prevented its compliance with section 75 of the Rules.

Due Diligence and Extenuating Circumstances

42. [Managing Broker 1] submits that he was sick in late January 2025, that he has not used his trust account, that [Applicant 31]'s accountant failed to advise him that the accountant could not prepare the required report until February 28, 2025, and that he did all he could.
43. The primary issue with these submissions is that they all demonstrate that [Managing Broker 1] started acting far too late. By the time [Managing Broker 1] fell ill in late January, 2025 the deadline for [Applicant 31] to file the Filings had nearly expired. By the time [Managing Broker 1] contacted [Applicant 31]'s accountant and learned that the accountant was no longer qualified to produce the

required report, the deadline had already passed. In short, it appears that [Managing Broker 1] only took any action once the deadline was immediately pending or after it had expired. He has provided no evidence of what steps he took to ensure compliance from October, 2024 to early January, 2025. Without that evidence, I cannot conclude that he exercised due diligence on [Applicant 31]'s behalf in attempting to comply with section 75 of the Rules.

44. I therefore find that [Applicant 31] has not established that it exercised due diligence in attempting to comply with section 75 of the Rules.

45. Regarding extenuating circumstances, the nature of extenuating circumstances that might excuse compliance are described in guidance published on BCFSa's website entitled "The Administrative Penalty Process" (the "**AP Process**"), which provides, in part, as follows:

Some examples of extenuating circumstances include, but are not limited to:

- Significant disruption to a brokerage's computer system due to a cyber attack, a fire, or a flood;
- Extraordinary work being undertaken by an external auditor;
- Business disruption caused by industrial action, natural disaster, or state of emergency;
- Significant illness, accident, or injury requiring hospitalization; and
- Absence caused by jury duty.

Examples of situations that are unlikely to be considered as extenuating circumstances include:

- Staff changes or absences;
- Minor computer problems, partial system disruptions, or lack of contingency plans;
- Office closures or statutory holidays;
- Personal or domestic events such as moving or attending a wedding;
- Holidays or travel arrangements;
- Postal delivery delays or strikes; and
- Minor illnesses.

46. To summarize, BCFSa generally considers circumstances that are unavoidable, unforeseeable, and beyond a licensee's control to be extenuating. This should be contrasted with events that a licensee could have reasonably avoided or planned for or that the licensee causes.

47. I am not bound by the AP Process and I must consider this matter in its entire context and in accordance with the relevant legislation; however, the AP Process provides some guidance in regard to the approach generally taken by BCFSa and the superintendent.

48. To establish that extenuating circumstances existed, [Applicant 31] would need to provide sufficient information that demonstrated that the issues it faced were sufficiently unexpected, urgent, and acute that it could not have either planned for it or employed a contingency plan to address it after it arose: *Dhaliwal (Re)*, 2025 BCSRE 34 at paras 30 and 31.

49. There is no evidence that [Managing Broker 1]'s illness at the end of January, 2025 was nearly significant enough to qualify as an extenuating circumstance: it appears to have been a minor illness. The issues with [Applicant 31]'s lawyer are also not extenuating because, in my view, had [Managing Broker 1] started on the process to prepare its Filings in October 2025 he would have discovered that issue sooner and addressed it within time to meet the required deadline.

50. I therefore find that [Applicant 31] has not established that extenuating circumstances prevented its compliance with section 75 of the Rules.

51. In my view, what occurred here is that [Managing Broker 1] mistakenly assumed that all he was required to file was the Trust Account Declaration, because [Applicant 31]'s trust account had not held any public trust funds. In his emails to BCFSa, he states that he was entitled to an exemption

from providing the balance of the Filings as a result; however, it is not clear from the evidence how [Managing Broker 1] arrived at this conclusion. Section 75(8) of the Rules does permit a brokerage to file a Trust Account Declaration instead of the Accountant's Report under section 75(1)(b) of the Rules if the brokerage did not hold or receive public trust money and section 75(3) of the Rules permits authorized brokerages to file a compilation engagement financial statement instead of audited or review engagement financial statements if authorized by the superintendent to do so; however, nothing in section 75 of the Rules, or otherwise in the Rules, permits an exemption from the requirement to file something in regard to all three aspects of the filings required under section 75(1) of the Rules. [Applicant 31] has not presented any evidence that it was, in fact, entitled to an exemption or that it reasonably concluded that it was so entitled. In the absence of that evidence, I conclude that [Managing Broker 1] was mistaken in concluding that such an exemption existed.

Penalty Amount

52. The penalty imposed in the NOAP is the base amount for a subsequent contravention of section 75 of the Rules, which is designated in Category D. No daily penalty amounts were imposed.
53. I cannot change or revise the penalty imposed by the NOAP. Section 57(4) of RESA only empowers me, as delegate of the superintendent, to cancel the penalty, confirm the penalty, or cancel the penalty and order that a notice of discipline hearing be issued if I find that issuing the notice is more appropriate. The assessment before me is not whether the penalty issued is correct, "but whether it falls within the scope of appropriate penalties to issue in response to the misconduct that occurred": *Meng (Re)*, 2025 BCSRE 40, at para 55.
54. This is the second penalty imposed on [Applicant 31] for a contravention of section 75 of the Rules. [Managing Broker 1] is an experienced managing broker and ought to have known what obligations [Applicant 31] had under the Rules. The Filings were submitted more than four months late. In my view, the \$2,000 monetary penalty for a subsequent contravention is appropriate in the circumstances of this case. [Applicant 31] is fortunate that BCFSA did not issue a non-compliance warning letter earlier and seek daily penalties against [Applicant 31] for the outstanding Filings.

Conclusion

55. I find that [Applicant 31] contravened section 75 of the Rules by failing to file all the required elements of the filings required under section 75 of the Rules for the fiscal year ended September 30, 2024 by the deadline of January 28, 2025.
56. I find that [Applicant 31] has not established that it exercised due diligence in attempting to comply with section 75 of the Rules and it has not established that extenuating circumstances prevented its compliance with that section.
57. I find that the \$2,000 administrative penalty issued in the NOAP is appropriate.
58. I confirm the NOAP.
59. The \$2,000 administrative penalty is now due and payable to BCFSA.

DATED at North Vancouver, BRITISH COLUMBIA, this 7th day of October, 2025.

"Original signed by Gareth Reeves"

Gareth Reeves
Hearing Officer