

BC FINANCIAL SERVICES AUTHORITY

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

**AND IN THE MATTER OF
HERBERT WELLES FISCHER
(077099)**

**REASONS FOR DECISION REGARDING
REQUEST TO RESTRICT PUBLICATION**

[These Reasons have been redacted before publication.]

DATE AND PLACE OF HEARING: Via Written Submissions

HEARING OFFICER: Gareth Reeves

Introduction

1. On January 13, 2025, I issued a decision in *Fischer (Re)*, 2025 BCSRE 5 (the “**Decision**”) in which I confirmed administrative penalties totaling \$3,000 and cancelled a \$1,000 administrative penalty issued pursuant to sections 57(1) and 57(3) of the *Real Estate Services Act*, RSBC 2004, c 42 (“**RESA**”) against Herbert Welles Fischer by way of a Notice of Administrative Penalty dated October 16, 2024 (the “**NOAP**”).
2. On February 28, 2025, Mr. Fischer requested in writing that his name be removed from the NOAP and the Decision, among other things. This decision addresses only the issue of removing or redacting Mr. Fischer’s name from the NOAP and the Decision. As indicated below, I do not have the power to grant any other relief claimed by Mr. Fischer or to reconsider the Decision.

Issues

3. The issue before me is whether Mr. Fischer’s name should be redacted from the NOAP and the Decision.

Jurisdiction and Standard of Proof

4. The request for redaction is made in relation to the Superintendent of Real Estate’s (the “**superintendent**”) authority to publish notices of administrative penalty and decisions to cancel or confirm administrative penalties under section 57.1(1) of RESA.
5. The superintendent has delegated the statutory powers and duties set out in section 57.1 to Hearing Officers.

6. The standard of proof is the balance of probabilities. BCFSA has the onus of meeting that standard.

Background

7. On September 19, 2023, the BC Financial Services Authority (“**BCFSA**”) issued a Notice of Administrative Penalty in the amount of \$1,000 against Mr. Fischer in file number 23-4607 on the basis that Mr. Fischer had contravened section 21 of the Rules by failing to respond to an inquiry from BCFSA Investigations on March 9, 2023 promptly or within the timelines specified by BCFSA. On November 21, 2023, Chief Hearing Officer Pendray issued a decision confirming the administrative penalty issued in that matter: *Fischer (Re)*, 2023 BCSRE 45. I refer to the September 19, 2023 notice and the November 2021, 2023 decision herein collectively as the “**First Penalty Proceeding**”).¹
8. On October 16, 2024, BCFSA issued the NOAP in file number 22-4169 in the amount of \$4,000 seeking to impose the following administrative penalties against Mr. Fischer:
 - a. A \$1,000 administrative penalty for an alleged contravention of section 87 of the Rules;
 - b. A \$2,000 administrative penalty for a subsequent contravention of section 21 of the Rules; and
 - c. A \$1,000 administrative penalty for a contravention of section 37(4) of the Rules.
9. Mr. Fischer applied for an opportunity to be heard regarding the NOAP and on January 13, 2025 I issued the Decision cancelling the administrative penalty for the alleged contravention of section 87 of the Rules and confirming the others.
10. In the Decision, I cancelled the administrative penalty in relation to the alleged contravention of section 87 of the Rules because that section of the Rules imposes an obligation on brokerages and not on other kinds of licensees. Mr. Fischer is not a brokerage, but is licensed as a managing broker. I also found that Mr. Fischer had contravened section 21 of the Rules and section 37(4) of the Rules as alleged in the NOAP. I found that Mr. Fischer’s contravention of section 21 of the Rules occurred after the First Penalty Proceeding and therefore constituted a subsequent contravention within the meaning of the Rules and was therefore eligible for a \$2,000 base penalty amount.

Submissions

11. On February 28, 2025, Mr. Fischer made a request to have his name redacted from the NOAP and the Decision.
12. Mr. Fischer submits that the First Penalty Proceeding occurred as a result of an error by a conveyancer at the Coquitlam branch of his brokerage and the NOAP was issued in regard to conduct that occurred at his brokerage’s Surrey branch. He argues that the branches are treated as distinct offices under RESA and that he was improperly held accountable for failures on the part of the branch offices.
13. Mr. Fischer also submits that managing brokers are not treated by the regulator with the degree of respect and professionalism that their position within the regulatory regime warrants.
14. Mr. Fischer also made several arguments to the effect that the Decision was wrongly decided, arose from a breach of natural justice, or was procedurally unfair. I am not empowered to

¹ I note that *Fischer.(Re)*, 2024 BCSRE 45 was not published in accordance with BCFSA’s publication policy at the time.

reconsider the Decision, which addressed several of Mr. Fischer's submissions on those points. The Decision is final and not reviewable by BCFSA or the superintendent, which is made clear by section 57(7)(a), which precludes any further proceeding under Part 4 of RESA once an administrative penalty is imposed. Therefore, I confine these reasons to those arguments Mr. Fischer raises that touch on the redaction issue.

Reasons and Findings

Legislation and Authority

15. RESA provides in relevant part as follows:

Definitions

1 In this Act:

"associate broker" means a person licensed as an associate broker;

"brokerage" means a person licensed as a brokerage;

"licence" means a licence issued under Part 2 [*Licensing*];

"managing broker" means a person licensed as a managing broker;

"representative" means a person licensed as a representative;

Licence levels and categories

5 (1) The following levels of licences are established for the purposes of this Act:

- (a) a brokerage licence, which authorizes a brokerage to provide real estate services through a managing broker, associate broker or representative;
- (b) a managing brokerage licence, which authorizes a managing broker to act for a brokerage for all purposes under this Act and to carry out the responsibilities referred to in section 6 (2) [brokerage must have a managing broker];
- (c) an associate broker licence, which authorizes an associate broker to provide real estate services under the supervision of a managing broker;
- (d) a representative licence, which authorizes a representative to provide real estate services under the supervision of a managing broker.

(2) An individual may be licensed at any licence level.

...

(4) Subject to the rules, a brokerage must have a brokerage licence for each branch office from which it operates.

(5) Within the licence levels under subsection (1), a person may be licensed within a category that is established by the rules on the basis of the real estate services permitted to be provided under the licence.

Brokerage must have a managing broker

6 (1) Subject to the rules, a brokerage

- (a) must have one or more managing brokers licensed in relation to the brokerage, and

- (b) may only provide real estate services that are permitted by the licence of a managing broker who is licensed in relation to the brokerage.
- (2) A managing broker licensed in relation to a brokerage acts for the brokerage for all purposes under this Act, and is responsible for
 - (a) the exercise of the rights conferred on the brokerage by its licence,
 - (b) the performance of the duties imposed on the brokerage by its licence, and
 - (c) the control and conduct of the brokerage's real estate business, including supervision of the associate brokers and representatives who are licensed in relation to the brokerage.

Relationships between brokerages and other licensees

- 7 (1) Subject to subsection (2), a managing broker, associate broker or representative must be
- (a) licensed in relation to a single brokerage, and
 - (b) engaged by that brokerage.
- (2) If permitted by the rules, a managing broker may be licensed in relation to more than one brokerage if the brokerages are affiliated within the meaning of the rules.
- (3) A managing broker, associate broker or representative
- (a) must not provide real estate services other than on behalf of the brokerage in relation to which they are licensed, and
 - (b) is not entitled to and must not accept remuneration in relation to real estate services from any person other than the brokerage in relation to which they are licensed.
- ...
- (5) A brokerage
- (a) must not provide real estate services unless the services are provided on behalf of the brokerage by a managing broker, associate broker or representative who is licensed in relation to and engaged by the brokerage, and
 - (b) must not engage or allow a licensee who is licensed in relation to another brokerage to provide real estate services on behalf of the first brokerage unless the licensee is a managing broker licensed under subsection (2) in relation to both brokerages and engaged by both brokerages.

Superintendent may impose administrative penalties

- 57** (1) If the superintendent is satisfied that a person has contravened a provision of this Act, the regulations or the rules that has been designated under section 56 (1) (a) [designated contraventions], the superintendent may issue a notice imposing on the person an administrative penalty that consists of one or more of the following:
- (a) an amount permitted by the rules;
 - (b) a requirement to complete a specified course of studies or training;
 - (c) if the person is a licensee, restrictions or conditions on the licence.

...

Publication

- 57.1 (1) Subject to the regulations, the superintendent may publish a copy of
- (a) each notice of administrative penalty issued under section 57 (1), and
 - (b) each decision made under section 57 (4) to confirm or cancel an administrative penalty.
- (2) The superintendent must provide a copy of a notice or a decision published under subsection (1) to any person requesting the copy, on payment of the prescribed fee.

16. The Rules provide in relevant part as follows:

Managing broker may be licensed in relation to a maximum of 4 affiliated brokerages

- 4** (1) For the purposes of section 7 (2) [*relationships between brokerages and other licensees*] of the Act, a managing broker may, subject to subsection (2) of this section,
- (a) be licensed in relation to a maximum of 4 brokerages that are affiliated within the meaning of the *Business Corporations Act*, and
 - (b) provide real estate services in relation to the licence of each of those brokerages.
- (2) The total of all brokerage licences in relation to which a managing broker is licensed under this section and section 5 must not exceed 4.
- (3) For certainty, section 7 (4) of the Act applies to the managing broker in relation to the specific brokerage licence in relation to which the managing broker is acting at any particular time.

Related licensees of brokerages with branch offices

- 5** (1) If a brokerage holds one or more branch licences in addition to its head office licence, a managing broker, associate broker or representative who is a related licensee of the brokerage must be licensed in relation to a single licence of the brokerage.
- (2) Despite subsection (1), a managing broker may, subject to section 4 (2),

- (a) be licensed in relation to a maximum of 4 licences of a brokerage, and
- (b) provide real estate services in relation to each of those brokerage licences.

17. The word “licensee” is not defined in RESA. *Black’s Law Dictionary* (12 th ed. 2024) provides the following definition of “licensee”:

licensee (1864)

1. One to whom a license is granted; someone who has official permission to do something.
2. Someone who has permission to enter or use another's premises, but only for one's own purposes and not for the occupier's benefit. • The occupier has a duty to warn the licensee of any dangerous conditions known to the occupier but unknown to the licensee. An example of a licensee is a social guest. Cf. INVITEE; TRESPASSER.

Analysis

18. Mr. Fischer seeks to have his name redacted on the basis that the contraventions that occurred were the relevant branch office’s contraventions. This is incorrect: they were Mr. Fischer’s contraventions.
19. The First Penalty Proceeding involved an allegation that Mr. Fischer, the person licensed as a managing broker, failed to promptly respond to investigatory requests made by the superintendent contrary to section 21 of the Rules. It did not allege that his brokerage contravened the section, but that Mr. Fischer personally did.
20. The NOAP and the Decision also involved allegations that Mr. Fischer personally failed to promptly respond to investigatory requests contrary to section 21 of the Rules and withheld, concealed or refused to provide information required in relation to an investigation under section 37 of RESA contrary to section 37(4) of RESA. In that process, BCFSA did not allege that his brokerage contravened the indicated sections.
21. I note that the NOAP did allege that Mr. Fischer contravened section 87 of the Rules and that the Decision did find that section 87 of the Rules imposed obligations on Mr. Fischer’s brokerage and not on Mr. Fischer directly. As a result, I cancelled the administrative penalty for section 87 of the Rules because Mr. Fischer, who is not licensed as a brokerage, could not have contravened that section.
22. In my view, the error in Mr. Fischer’s submissions could be attributed to two misunderstandings of the licensing structure created under RESA and the Rules. The first misunderstanding is that different branch offices are separate entities under RESA or the Rules. The second is that Mr. Fischer’s separate licenses at the branch offices of his brokerage somehow differentiates between his liability for the two contraventions.
23. RESA provides that persons must not provide real estate services to or on behalf of another person in the expectation of remuneration unless they are licensed or exempted from the requirement to be licensed: see section 3 of RESA.
24. Section 5 of RESA provides for four levels of licence: brokerage, managing broker, associate broker, and representative. It further provides that individuals, being natural persons, may be licensed at any level.

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25. Section 5(4) of RESA requires, subject to the Rules, that a brokerage hold a licence for each branch office from which it operates.
 26. Section 6 of RESA requires a brokerage to have a managing broker, subject to the Rules, and makes the managing brokers licensed in relation to the brokerage responsible for the exercise of the brokerage's rights, performance of the brokerage's duties, control of the brokerage's real estate business, and supervision of the other licensees at the brokerage.
 27. Section 7 then requires that all licensees be licensed in relation to a single brokerage, except where the rules permit managing brokers to be licensed in relation to more than one and those brokerages are affiliated within the meaning of the *Business Corporations Act*, SBC 2002, c 57: see section 4(1)(a) of the Rules. Sections 4 and 5 of the Rules then permit individuals licensed as managing brokers to hold up to four licenses issued in relation to a combination of different affiliated brokerages and different branches of the same brokerage.
 28. Notably, "brokerage", "managing broker", "associate broker", and "representative" are all defined to be the person licensed at that named level. Therefore, the references using those terms within the legislation are to the persons who hold those licences, not the license itself. Thus, both brokerages and managing brokers can hold multiple licences, despite being singular persons.
 29. In addition, the word "licensee" is used throughout RESA and its subordinate enactments. As noted above, that word is not defined and it therefore takes on its ordinary meaning. Thus, it means the person who holds the license and not the license itself. The necessary result of this, given there are only four levels of license issued, is that any reference to "licensee" includes those persons who hold brokerage, managing broker, associate broker, or representative licences.
 30. Thus, the obligations imposed by section 21 of the Rules on licensees to respond promptly and by the deadlines set by the superintendent are obligations imposed on the persons who hold licenses and the persons to whom the superintendent's inquiries are directed.
 31. Section 57 empowers the superintendent to issue administrative penalties where it is "satisfied that a person has contravened a provision of [RESA], the regulations or the rules". That administrative penalty is imposed "on the person" not the licence.
 32. In my view, Mr. Fischer's argument rests on a reading of the above noted sections that erroneously concludes that the branch offices of a brokerage are separate legal entities, that his own licences for his brokerage's branch offices are separate legal entities, that his obligations to discharge the obligations of the brokerage mean his own actions as managing broker are the brokerages and not his, or some combination of those conclusions.
 33. Although it is possible that Mr. Fischer's failures to respond promptly were also failures on the part of his brokerage to do so, that matter was not raised in either proceeding and I do not opine on that here. Further, the inquiries were directed to Mr. Fischer and he, as a licensee, had an obligation to respond. They were not directed to his individual licences, but the person who holds those licences.
 34. The result of the above is that the administrative penalties in the First Penalty Proceeding, the NOAP, and the Decision were imposed on Mr. Fischer and he is properly named in those proceedings for the contraventions that he committed.
 35. In the usual course, licensees are named in notices of administrative penalties and decisions under section 57(4) of RESA. Those notices and decisions are published in accordance with BCFSA's publication policy and generally include the name of the person against whom the notice was issued unless there is an important public interest put at risk by such publication such that

the risk to that interest outweighs the need for transparency and openness regarding the superintendent's activities: see for example *Eliassi (Re)*, 2025 BCSRE 37, paras 120-134. The First Penalty Proceeding was not published in accordance with BCFSA's publication policy because, at that time, administrative penalties below a \$2,500 threshold, and reconsideration decisions regarding those penalties, were only published in aggregate. The NOAP and the Decision, exceeding that limit, are publishable under BCFSA's policy.

36. Mr. Fischer has not raised any argument that such an important public interest may be put at risk by publication. He does submit that managing brokers are not treated by the regulator with the respect that their important position with the regulatory regime warrants. He cites no specific examples of this, aside from his own dealings with the regulator in regard to the First Penalty Proceeding and this proceeding. Mr. Fischer's argument in this regard could be read as suggesting that there is an important public interest in preserving the role and reputation of managing brokers.
37. I agree that managing brokers have significant regulatory responsibilities and obligations and should be treated with respect commensurate with the importance of those obligations. However, those important regulatory responsibilities and obligations come with an increased expectation of compliance in the discharge of those responsibilities and obligations. As a result, any increase in the harm to the reputation of a managing broker that flows from publication of their contraventions is offset by the increased need to achieve specific and general deterrence, to maintain public confidence in the industry and the regulator, and to maintain transparency. This is essentially the same rationale provided in *Eliassi (Re)*, at para 132 regarding licensees in general: the more serious the contravention the greater the need for transparency and openness.
38. As a result, Mr. Fischer's argument that his name should be redacted fails and I decline to direct that his name be redacted.

Conclusion

39. I find that Mr. Fischer has not established a reason why his name should be redacted on the NOAP or the Decision. Mr. Fischer contravened RESA and the Rules. He is properly named as the person who committed those contraventions.
40. Mr. Fischer has not identified an important public interest that would require his name to be redacted.
41. I therefore decline to direct that Mr. Fischer's name be redacted from the NOAP and the Decision.

DATED at North Vancouver, BRITISH COLUMBIA, this 13th day of March, 2025.

"Original signed by Gareth Reeves"

Gareth Reeves
Hearing Officer