Citation: Applicant 88 (Re), 2026 BCSRE 91
Date: 2026-03-13
File No. 25-6031

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 88]
([Licence Number Redacted])

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 November 17, 2025, the BC Financial Service Authority ("**BCFSA**") issued a Notice of Administrative Penalty (the "**NOAP**") in which it determined that [Applicant 88] contravened section 34 of the *Real Estate Services Rules*, BC Reg 209/2021 (the "**Rules**") and imposed an administrative penalty in the amount of $5,000. [Applicant 88] applied for an opportunity to be heard regarding the NOAP and on March 6, 2026, I issued a decision cancelling the NOAP: *Applicant 88 (Re)*, 2026 BCSRE 82 (the "**Decision**").

2. [Applicant 88] has requested that the decision be anonymized. As indicated below, [Applicant 88] raises issue with the publication of identifiable information regarding third parties involved in the matter underlying the NOAP and the Decision. I note that BCFSA's usual publication process would entail the redaction of third-party personal information in the NOAP and the Decision. The process guiding such publication is published on BCFSA's website and titled "Publication of Regulatory Actions" (the "**Publication Process**"): see Appendix A, II. I therefore will only address the issue of the redaction of [Applicant 88]'s name and identifying information in the NOAP and the Decision. Any decision I make to redact [Applicant 88]'s information in those documents will also apply to this decision.

Issues

3. The issue before me is whether [Applicant 88]'s name and identifying information should be redacted from the NOAP.

Jurisdiction and Standard of Proof

4. [Applicant 88]'s anonymization request is made in relation to the Superintendent of Real Estate's (the "**superintendent**") authority to make decisions to cancel or confirm administrative penalties under section 57(4) of *Real Estate Services Act,* SBC 2004, c 42 ("**RESA**").

5. The superintendent has delegated the statutory powers and duties set out in section 57(4) to Hearing Officers.

Background

6. The background to this matter is largely set out in the Decision. I will not repeat that background here in detail. In short, BCFSA issued the NOAP alleging that [Applicant 88] failed to issue a new Disclosure of Representation in Trading Services ("**DORTS**") form to a client when changing brokerages in July 2022, prepared a new DORTS form in January 2023, had it executed by the client with the wrong dates on the form in February 2023, and delivered the newly executed DORTS form to BCFSA Investigations during its investigation. I cancelled the NOAP in the Decision.

7. During his opportunity to be heard and after I rendered the Decision, [Applicant 88] requested that the NOAP and the Decision be anonymized and made submissions in that regard.

Submissions

8. [Applicant 88] submits that the Publication Process "expressly recognizes that technical, administrative, and low-risk matters may be anonymized to avoid unnecessary reputational harm" [emphasis removed]. [Applicant 88] has not identified where in the Publication Process it states this.

9. [Applicant 88] also submits that the test enunciated in *Sherman Estate v Donovan*, 2021 SCC 25 ("***Sherman Estate***") applies and supports anonymization. He submits that publishing his name would create "serious and disproportionate reputational impact" [emphasis removed] where there was no harm, the parties to the underlying transaction were satisfied, no complaint was filed, and no risk was created.

10. [Applicant 88] submits that given the NOAP was cancelled and that publication of his name "may cause disproportionate reputational and professional harm that outweighs any incremental public benefit in identifying the parties." [Applicant 88] submits that he relies on his reputation for his livelihood and that BCFSA's "investigation had a substantial impact on [his] ability to conduct business and maintain client confidence. He does not provide any evidence that the investigation impacted his business or reputation.

11. [Applicant 88] submits that publishing his name might create a risk that consumers would be encouraged to reopen old, completed transactions over administrative issues, because his matter involved a completed transaction. [Applicant 88] submits this would destabilize transactions for thousands of licensees, diminish trust in real estate contracts, incentivize threats against licensees, create an impression of wrongdoing where none occurred, and undermine confidence in the proportionality of BCFSA's enforcement processes.

12. [Applicant 88] submits that anonymization would not undermine transparency or the public interest and no ongoing public protection concerns militate in favour of publication.

13. [Applicant 88] submits that the absence of harm, the technical contravention, the completed transaction with satisfied consumers, and the permanent reputational harm that publication would cause weigh in favour of anonymization.

14. [Applicant 88] also submits that identification of third parties would adversely impact their privacy rights and create confusion regarding the transaction. As indicated above, BCFSA's Publication Process would usually redact third parties' personal information. I therefore will not address this argument.

Reasons and Findings

Legislation and Authority

15. RESA provides in relevant part as follows:

> **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.
>
> …
>
> (4) The superintendent must provide the person with an opportunity to be heard if this is requested and, following the opportunity, may
>
> (a) cancel the administrative penalty,
>
> (a.1) cancel the administrative penalty and issue a notice to the person under section 40 (1) [discipline hearing] or 48 (2) [hearing relating to unlicensed person] if the superintendent is satisfied that issuing the notice is more appropriate than imposing the administrative penalty, or
>
> (b) confirm the administrative penalty, in which case it becomes due and payable to the Authority.

Analysis

16. In general, the superintendent operates according to an open court principle. The leading case on the conflict between privacy interests and the open court principle in civil cases is *Sherman Estate*. In that case, the Court set out a three-element test that an applicant must meet to prove that the open court principle should be restricted. The applicant must show the following:

    a. Allowing an open process creates a serious risk to an important public interest;

    b. The restriction proposed is necessary to prevent this risk because other measures will not suffice; and

    c. The benefits of the restriction outweigh its detriments: *Sherman Estate*, para 38.

17. The list of important public interests is not closed. Prior cases have identified trial fairness, the administration of justice, and certain commercial interests provided these rise to the level of a public interest, like the interest in preserving confidential business information: *Sherman Estate*, para 41.

18. The Court recognized that “privacy is a fundamental value necessary to the preservation of a free and democratic society”; however, inconvenience, upset, embarrassment, and personal discomfort arising from a loss of privacy is a necessary result of open and public proceedings: *Sherman Estate*, para 31. In the balancing of these two considerations, the Court found that the

need for open proceedings should give way where disclosure or publication would result in an "affront to a person's dignity" in a way that impacts upon an individual's "core identity": *Sherman Estate*, paras 33, 34, and 73. The onus is on the applicant to show that disclosure will create a serious risk of an affront to their dignity by way of disclosure of information at their "biographical core": *Sherman Estate*, para 35.

19. When determining the seriousness of the risk, the extent of the likely dissemination, the extent to which the information is already in the public domain, and the probability of dissemination must be considered: *Sherman Estate*, paras 80-82. I note that the presence or absence of a serious risk is irrelevant to the preceding question of identifying an important public interest, on the approach in *Sherman Estate*: see paras 93-94.

20. The guidance offered by *Sherman Estate*, although not directly concerning regulatory proceedings, has been found to apply to regulatory enforcement proceedings under other legislation in British Columbia: see *Applicant 20 (Re)*, 2024 LSBC 36 (CanLII), paras 66-68; *Applicant 18 (Re)*, 2024 LSBC 12 (CanLII), at para 62. It has also been applied when considering redacting court files on matters that arose from judicial reviews of regulatory enforcement processes: *A Lawyer v The Law Society of British Columbia*, 2021 BCCA 284 ("***A Lawyer***").

21. I have previously found that *Sherman Estate* applies to administrative penalties and reconsideration decisions under RESA with the modification that the second element of the test should include an assessment of whether the usual redactions set out in the Publication Process and applied by the superintendent are adequate to protect the risk: *Sra (Re)*, 2024 BCSRE 90 at paras 52-55.

22. Turning to the application of the *Sherman Estate* test, [Applicant 88] identifies several possible public interests in his submissions: the interest of members of regulated industries in their reputations, the interest in the stability of contracts, the interest in avoiding the use of regulatory proceedings to threaten licensees, and the interest in confidence in the regulator's enforcement processes.

23. For the purposes of these reasons, I accept that these are important public interests. I do not think these require substantial analysis because, for the reasons that follow, [Applicant 88] has not identified a serious risk to those interests.

24. It is not sufficient that an application identify a public interest, they must also identify a serious risk to that interest. In my view, [Applicant 88] has not identified such a serious risk to the identified interests.

25. [Applicant 88] has not identified how public confidence in BCFSA's regulatory processes will be undermined by publication of his name. He has submitted that the publication of his name would be disproportionate to the regulatory, transparency, and accountability goals of publication, but he has not identified any facts that would indicate this. The facts before me are that [Applicant 88] faced a regulatory proceeding, some issues were identified in the delivery and dating of forms, the regulator took the position that [Applicant 88] had acted without reasonable care and skill, the regulator attempted to impose a penalty, and on reconsideration, after [Applicant 88]'s request, cancelled the penalty. I do not see how identification of [Applicant 88]'s identity during that process could pose a serious risk to confidence in the regulator.

26. Similarly, [Applicant 88] has provided no evidence that supports his contention that publication of his name could, let alone would, cause any harm to the public interest in the stability of contracts or would lead to a rash of consumers using the threat of regulatory processes to threaten licensees. In short, there is just no evidence or line of reasoning that would support those conclusions.

27. Regarding the risk to [Applicant 88]'s reputation, I find that this risk is nothing more than speculative. [Applicant 88] has not identified how it would be that publication of a process in which he was vindicated would negatively impact his reputation. Without either some evidence that publication will result in actual harm to [Applicant 88]'s reputation or a basis on which to infer that such a risk is real, I cannot conclude that there is a serious risk to [Applicant 88]'s reputation: *Sherman Estate*, at paras 96-98. This is not to say that no member of the public will read the NOAP and the Decision and come away with a diminished view of [Applicant 88]; instead, it is to say that the risk to [Applicant 88]'s reputation presented by such a possibility as a whole is not established before me to be serious. In my view, most consumers would view the matter wholistically and realize that the allegations were technical in nature and the result of this process was to find that [Applicant 88] did not contravene RESA or the Rules. Further, those who did not come to such a realization would likely only have a minimally diminished view of [Applicant 88] given the conduct described was not serious.

28. In short, the risk that [Applicant 88] has identified is small, if it exists at all, and does not justify a departure from the interests in transparency and accountability that underpin the open court principle under which the superintendent generally operates.

Conclusion

29. I find that [Applicant 88] has not established that there is a serious risk to any identified public interest.

30. I therefore decline to direct that [Applicant 88]'s name be redacted from the NOAP and the Decision. Those documents will be redacted in accordance with the Publication Process.

DATED at North Vancouver, BRITISH COLUMBIA, this 13th day of March, 2026.

"Original signed by Gareth Reeves"

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Gareth Reeves
Hearing Officer