

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 126]
([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 June 3, 2026, the BC Financial Services Authority (“**BCFSA**”) issued a Notice of Administrative Penalty (the “**NOAP**”) in the amount of \$5,000 to [Applicant 126] pursuant to section 57(1) and 57(3) of the *Real Estate Services Act*, SBC 2004, c 42 (“**RESA**”).
2. In the NOAP, BCFSA determined that [Applicant 126] had contravened section 34 of the *Real Estate Services Rules*, BC Reg 209/2021 (the “**Rules**”) by failing to exercise reasonable care and skill when he permitted his seller clients to accept an offer on their property which included a \$99,000 renovation credit set out in a separate addendum and failing to adequately assess the structure and substance of the transaction. As a result, BCFSA determined, [Applicant 126] contributed to a transaction structure that obscured the true purchase price for the property and exposed his clients to risks.
3. [Applicant 126] 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 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, the tabs thereto, and the information provided by [Applicant 126] 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 126] was first licensed as a representative in the trading services category on May 25, 2004. He has been continuously licensed in that fashion at various brokerages since then. His personal real estate corporation, [Applicant 126] Personal Real Estate Corporation, was first licensed on January 1, 2009 and has been licensed in the same fashion as [Applicant 126] at all times since then.
11. [Applicant 126] has no disciplinary background of which I am aware.

The Credit Addendum

12. In the Summer of 2025, [Applicant 126] was engaged as the listing agent for a property located at [Property 1], Abbotsford, BC (the "**Property**") by the owners of that property (the "**Sellers**"). He originally listed the Property in July 2025. I have not been provided with those listing documents, but I am advised that that listing was cancelled and [Applicant 126] and the Sellers relisted the Property as described below.
13. On October 1, 2025, the Sellers signed a disclosure of representation form and other documents necessary for [Applicant 126] to relist and market the Property at \$1,449,900 from October 2, 2025 to March 31, 2026. This included a multiple listing contract which set the commissions, where there was a cooperating brokerage, at 3.22% on the first \$100,000 plus 1.15% on the balance of the final sale price for the cooperating brokerage and 3.78% of the first \$100,000 plus 1.85% of the balance of the final sale price for the listing brokerage.
14. On October 2, 2025, the Sellers signed a property disclosure statement (the "**PDS**") and the Property was listed on the Multiple Listing Service with a listing price of \$1,449,900.
15. On October 22, 2025, a licensee, [Licensee 1], prepared an offer to purchase the Property (the "**First Offer**") on behalf of [Buyer 1] and [Buyer 2] (the "**Buyers**"). The First Offer included a draft contract of purchase and sale in which the Buyers offered to purchase the property for \$1,479,000 and to pay a deposit of \$50,000 within 24 hours of subject removal with completion on November 18, 2025 and possession and adjustment dates on November 19, 2025. The offer contained six subjects with a subject removal date of October 31, 2025. The First Offer also included an addendum that provided that the Sellers would provide a \$99,000 credit to the Buyers "as a renovation allowance" (the "**Renovation Credit Addendum**") to be credited to the Buyers at closing in the Buyers' statement of adjustments. The addendum also provided that the commissions for the

transaction were to be paid on the price of the Property net of the renovation credit. The contract of purchase and sale portion of the First Offer made no direct reference to the Renovation Credit Addendum.

16. [Licensee 1] emailed both the First Offer and the Renovation Credit Addendum to [Applicant 126] on October 22, 2025.
17. After receiving the First Offer from [Licensee 1], [Applicant 126] sent her a text message clarifying the structure of the transaction including the credit. The following exchange occurred:

[Applicant 126]: "... Do you think your clients lender will be ok with the above asking price on the main CPS?"

[Licensee 1]: "Hi yes exactly, I ran it by the lender and mentioned the renovations etc. She is okay with it as long as the appraisal value comes in."

[Applicant 126]: "I just have my doubts, thar you'll be able to get an appraisal above asking price?"

[Licensee 1]: "Well she told them that you dropped the price to expect higher than list. I did pull out some comps as well"

[Applicant 126]: "Ok cool. Sounds like you're on top of it :-)"

[Licensee 1]: "Yess! Hoping we can get something done here"

[sic]
18. On October 23, 2025, [Applicant 126] provided the First Offer to the Sellers by email. In that email, [Applicant 126] specifically describes to the Sellers the effect of the \$99,000 credit on the sale price.
19. Between October 23 and October 26, 2025, [Applicant 126] and [Licensee 1] exchanged text messages regarding the transaction and various counteroffers. It appears that the Sellers first provided a counteroffer revising the gross purchase price to \$1,524,00, the Buyers then countered with an offer with a gross purchase price of \$1,500,000, though it is not clear to me if this was reflected on the draft offers being exchanged. After discussions regarding the amount of financing the Buyers could arrange and possible amendments to reduce the credit amount, the Sellers made a final offer with a gross purchase price of \$1,510,000. In addition, through these negotiations the completion date was moved to January 15, 2026 and the possession and adjustment dates were moved to January 17, 2026.
20. During the negotiations, [Licensee 1] disclosed to [Applicant 126] that the Buyers were approved for financing at a maximum purchase price of \$1,500,000 and that the Buyers required the full \$99,000 credit to conduct repairs and renovations. In the discussions to arrive at the final purchase price of \$1,510,000, [Licensee 1] indicated to [Applicant 126] that she would speak to the mortgage broker to see if the additional \$10,000 was acceptable.
21. On October 27, 2025, the Buyers and Sellers entered into a contract of purchase and sale for the property with a stated purchase price of \$1,510,000 subject to six subjects, with the completion date set at January 15, 2026 and possession and adjustment dates set at January 17, 2026 (the "CPS"). The CPS included, as a separate page, the Renovation Credit Addendum.
22. I note that, during the negotiations, [Applicant 126] prepared and signed a disclosure of remuneration form disclosing his expected commission from the transaction and provided it to the Sellers. In that disclosure he listed the purchase price as \$1,411,000.
23. Between October 30, 2025 and November 27, 2025, the Buyers and Sellers executed four addendums that extended the subject removal, completion, possession, and adjustment dates in the CPS. During that period, the Buyers first removed five of the six subjects on November 24,

2025 and the final subject on November 27, 2025. It appears from the record, the subject removal document concerning the existing tenancy for the Property was signed on November 24, 2025 and only delivered in December 2025. That does not appear to have caused any problem with the transaction.

24. As a result of these addendums, the closing date was moved to January 29, 2026.
25. During this period, the Buyers appear to have been working with at least two mortgage brokers or bank representatives to secure the necessary financing to allow them to remove subjects and close on the CPS. I have not been provided a copy of the appraisals but the text messages between [Applicant 126] and [Licensee 1] indicate that the Buyers obtained an initial appraisal in early November but it was not sufficient to obtain the financing they required. Those text messages indicate that the first appraisal came back too low and that, after [Licensee 1] and the broker sent the appraiser more comparables, the appraiser revised their assessment to approximately \$40,000 over the Property's listing price, which would be approximately \$1,489,900.
26. Then, in late November, the Buyers were able to arrange a separate appraisal that, I find was sufficient to obtain financing to close the transaction, given they removed subjects and closed on the transaction.
27. Notably, several of [Licensee 1]'s text messages between [Applicant 126] and [Licensee 1] in late October and November 2025 indicate that [Licensee 1] was in contact with the mortgage broker or bank representative. For example, the following text messages were sent on the following dates:
 - a. On October 30, 2025:

[Licensee 1]: "... Appraiser hasn't reached out yet hey? I spoke to the broker this morning and it's been ordered since Wednesday."

[sic]
 - b. On October 31, 2025:

[Licensee 1]: "... I followed up with the bank – they canceled and booked with a new company so they should be reaching out now."

[sic]
 - c. On November 7, 2025:

[Licensee 1]: "Hi [Applicant 126], so I just got in touch with the broker and it seems like the appraisal came back a little bit shorter so she did send them back some comparables as I did as well and they might do a second appraisal. We're just waiting on that we will need to extend so I will send you that extension right away, Sorry I'm just in a very bad area. My calls have been breaking through. I can give you a call on WhatsApp and try if that works it just goes to voicemail."

[sic]
 - d. On November 14, 2025:

[Licensee 1]: "Hi [Applicant 126], they're going to be doing a second appraisal. The underwriter was away Monday Tuesday. They reviewed the comps and ordered from another company."

[sic]
 - e. On November 18, 2025:

[Licensee 1]: "I've emailed [the broker]¹ again this morning to rush an appraisal and get it done within the day. She's sent the request on her end and told me she'd follow up. If I can get the company name, I'd call them myself."

[sic]

f. On November 19, 2025:

[Licensee 1]: "I'm sorry this bank broker is a nightmare to deal with"²

[sic]

g. On November 21, 2025:

[Licensee 1]: "No call?? Omg. I don't know how this broker operates. Rushed appraisals happen right away. I'll call them for an update."

[sic]

h. November 24, 2025:

[Licensee 1]: "Hi [Applicant 126], I've just been calling the bank myself as well hoping that the appraiser would call so we can have some sort of timeline in place. He told me that he should be calling soon. We certainly need the extension, we are in no position to remove at this time."

[Applicant 126]: "Sorry, who said that they should be calling soon? Did you speak to the Appraiser?"

[Licensee 1]: "The TD broker. I have not received any call from an appraiser. They told me they should be reaching out to the listing agent."

[sic]

28. Four further points are notable regarding the text messages in the record before me during the above period.
29. First, it is clear from the text messages in mid to late November, 2025 that [Licensee 1] was in fact not involved in all the financing discussions with the brokers or bank representatives because she indicates on November 22, 2025 that the Buyers had changed brokers from the one that obtained the first appraisal and that her clients insisted on using their own brokers.
30. Second, the Sellers initiated discussions about the extension of the closing dates in the CPS to allow them more time to find a new home.
31. Third, [Licensee 1] offered to give the Sellers both 24-hour and 48-hour cancellation clauses to get out of the CPS before subjects were removed if they received a better offer, given the delays caused by the repeated extensions. The Sellers did not insist on such a provision.
32. Fourth, the text messages [Applicant 126] provided to BCFSA Investigations between October 27 and December 16, 2025, from which the above excerpts are pulled, were not organized in chronological order. I have found that the above messages were likely sent on the above dates

¹ The November 18, 2025 text message is in response to a text message in which [Applicant 126] requests asks, "Can we not light a fire under this bank broker?"

² I note that [Licensee 1] sent this message directly after a message regarding her contact with the appraiser. She may have meant to refer to the appraiser in this message, but I note it here because it refers to the broker as drafted and received by [Applicant 126].

based on my own inferences connecting the text messages chronologically and cross-referencing [Licensee 1]'s and [Applicant 126]'s messages with [Applicant 126]'s messages with the Sellers. The messages can be most easily put into a chronology in October and most of November, but I was unable to piece together the exact chronology after November 24, 2025. For example, the October 31, 2025 message quoted above is not clearly dated but it appears to have been sent on October 31, 2025 based on the order of the messages and could not have been sent any later than November 4, 2025. Similarly, the above-mentioned text messages from [Licensee 1] on November 22, 2025 are not dated, but were likely sent on November 22, 2025 given the order of the messages that preceded it and followed it.

33. On November 22, 2025, [Licensee 1] began copying [Applicant 126] on her emails with the bank representative regarding arranging an appraisal. [Applicant 126] also began sending emails to the bank representative to encourage them to arrange an appraisal expeditiously.
34. On November 26, 2025, the Buyers delivered a \$50,000 deposit to [Licensee 1]'s brokerage.
35. On November 27, 2025, the Buyers removed the final subject.
36. On December 8, 2025, [Licensee 1] uploaded the CPS to her brokerage. She did not upload the Renovation Credit Addendum at that time.
37. Between December 9 and 17, 2025, [Licensee 1] uploaded the various addenda extending the subject removal, completion, and adjustment dates.
38. On December 17, 2025, [Applicant 126]'s brokerage prepared a Conveyance Instruction Report indicating that the sale price for the Property was \$1,510,000 but calculated the commissions based on the net sale price of \$1,411,000.
39. On December 18, 2025, [Applicant 126]'s managing broker reported the transaction to BCFSA.
40. At some point in December 2025, [Licensee 1]'s brokerage prepared its Conveyancer's Instruction Report. The document is undated, but given the upload dates indicated by the record before me, the document was likely prepared in December 2025. That report calculated [Licensee 1]'s commission based on the \$1,510,000 contract price.
41. On January 21, 2025, [Licensee 1]'s managing broker, [Managing Broker 1], became aware of the transaction as a result of a telephone call and email from BCFSA Investigations requesting the deal file in relation to the sale of the Property. As a result, [Managing Broker 1] reached out to [Licensee 1] to discuss the file. [Managing Broker 1] spoke with [Licensee 1] who stated to him that the credit was put in place to address substantial repairs and renovations that the Buyers wanted to perform after acquiring the Property. She advised that she was not involved in negotiating the cost of the repairs and renovations and was not involved in arranging financing. She advised that the Buyers arranged their own financing and worked with their own broker without her knowledge. I pause to note that there is no evidence that [Applicant 126] was aware of this conversation.
42. On January 22, 2025, [Licensee 1] uploaded the Renovation Credit Addendum to her brokerage after checking to ensure that all the transaction documents had been uploaded. Her brokerage then updated its Conveyancer's Instruction Report. Although I have not been provided that document, [Managing Broker 1] advises that he instructed the brokerage's conveyancer to revise it and send it to the Buyers' lawyer. Given there are no reported issues with the closing of this transaction and the below described trade record sheet from [Licensee 1]'s brokerage, I conclude that a corrected report was prepared.
43. The trade record sheet maintained by [Applicant 126]'s brokerage recorded the sale price as \$1,510,000, but calculated the commissions on the \$1,411,000 net sale price for the Property;

specifically the brokerage's deal sheet for the transaction listed the sale prices as "\$1,411,000 [1,510,000 less 99,000 renovation credit]" [sic] and calculated the commission based on the net sale price.

44. The trade record sheet maintained by [Licensee 1]'s brokerage recorded the sale prices as \$1,510,000, but calculated the commissions on the \$1,411,000 net sale price for the Property.
45. The sale price recorded in the Multiple Listing Service for the sale was \$1,510,000.
46. On January 29, 2026, the sale of the Property completed in accordance with the CPS.
47. It appears, although that evidence is not before me, that the Sellers had found a new home and entered into a contract of purchase and sale to acquire that home by the end of January 2026.
48. In February 2026, [Licensee 1]'s managing broker met with her and advised her that she ought to have reduced the purchase price instead of including such a substantial credit in the CPS or spoken to him for advice, that she ought to have submitted documents in a timely manner, and that she ought to have recommended the Buyers obtain independent legal advice before drafting the Renovation Credit Addendum.

Submissions

49. [Applicant 126] submits that the Renovation Credit Addendum was not undisclosed or concealed. He submits that it was documented and would be disclosed in the statement of adjustments for the transaction on closing. He submits that the Sellers were informed regarding the structure of the transaction and decided to accept the deal.
50. [Applicant 126] submits that he inquired about disclosure of the credit to the lender and [Licensee 1] assured him that the disclosure had been made. He submits that he relied on [Licensee 1]'s assurance.
51. [Applicant 126] submits that there was no harm, no allegation of fraud, or any complaint by a party to the transaction. He notes that the matter was brought to BCFSA because he brought the matter to his managing broker's attention, who then brought the matter to BCFSA's attention. He submits that he cooperated with the investigation and provided the information BCFSA Investigations requested from him.
52. [Applicant 126] submits that he has had a long career without any regulatory issues and "would never knowingly or purposefully break any rule, law or deal in an unacceptable manner." He submits that he has not himself used cash back clauses similar to the Renovation Credit Addendum before and would always question other realtors if they proposed such a clause to ensure they were disclosed to the lender.
53. [Applicant 126] submits that the CPS was formed prior to BCFSA publishing its November 24, 2025 Advisory 25-048 entitled "Cash Back Clauses" and the January 27, 2026 dated guidance entitled "Cash Back Clauses" both published on BCFSA's website (collectively, the "**Cash Back Guidance**"): online: <https://www.bcfsa.ca/industry-resources/real-estate-professional-resources/knowledge-base/advisory/cash-back-clauses> (accessed October 5, 2026); and online: <https://www.bcfsa.ca/about-us/news/blog/cash-back-clauses> (accessed October 5, 2026).
54. [Applicant 126] also provides a June 24, 2026 dated letter from an owner of his brokerage. That letter reiterates the fact that the matter was raised with BCFSA as a result of [Applicant 126]'s discussions with his managing broker and argues that punishing licensees who bring matters forward voluntarily may decrease the likelihood that licensees report conduct. The letter also speaks positively of [Applicant 126]'s professionalism and character generally.

Reasons and Findings

Applicable Legislation

55. Section 56 of RESA provides that BCFSA may designate specific provisions of RESA, the *Real Estate Regulation*, BC Reg 506/2004 (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.
56. 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.
57. 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 34 of the Rules is placed in Category C. Section 27(3) of the Rules provides that contraventions of sections designated in Category C may attract a monetary penalty of \$5,000 for a first contravention or \$10,000 for a subsequent contravention.
58. 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.
59. Section 34 of the Rules provides as follows:

Duty to act with reasonable care and skill

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

Analysis

Contravention

60. The decision to impose an administrative penalty under section 57 of RESA is discretionary. A request to reconsider the imposition of an administrative penalty often 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 or extenuating circumstances prevented compliance with the indicated section; however, where BCFSA alleges that a licensee failed to act with reasonable care and skill contrary to section 34 of the Rules, BCFSA has the onus of proving that the licensee failed to act with reasonable care and skill and the concept of due diligence is therefore subsumed within the determination of whether a contravention occurred: *Zeng (Re)*, 2026 BCSRE 116, at para 42.
61. The standard applied when considering if a licensee exercised reasonable care and skill is whether a reasonably prudent licensee in the applicant’s position would have acted differently. The standard is not perfection. BCFSA must therefore demonstrate that a licensee did not act in the way that a reasonably prudent licensee would in the circumstances.
62. In this case, I am not convinced that BCFSA has proven that a reasonably prudent licensee in [Applicant 126]’s situation would have acted differently than he did.

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63. The NOAP suggests that [Applicant 126] ought to have advised that the gross purchase price be reduced from \$1,510,000 to \$1,411,000 to accurately reflect the net purchase price. However, there is no evidence before me that indicates it was unreasonable for [Applicant 126] to instead rely on the following facts: the credit transaction was documented, the transaction required the credit to be reflected in the statement of adjustments on closing, [Licensee 1] represented that she had advised the lender of the structure of the transaction, and the fact that [Licensee 1] appeared to be in consistent contact with the lenders involved in this matter.
64. In my view, it is notable not only that [Applicant 126] sought assurances from [Licensee 1] that the lender was advised of the nature of the transaction but also that the transaction itself could not have proceeded to closing without disclosure of the credit in the closing documents.
65. The investigation report in this matter suggests that [Applicant 126] exposed his clients to potential risks, including a risk that his clients could have entered into a firm contract to purchase a new property and been left holding two properties if the CPS failed to close, which would require the Sellers to sue on the CPS to recover any losses associated with the failed closing. What this ignores is that [Applicant 126] was actively in discussions with [Licensee 1] over the course of November 2025 to ensure that the Buyers were in a position to obtain financing to close the transaction before the Buyers removed subjects. Again, I note that this was after [Applicant 126] had received assurances from [Licensee 1] that the lender was advised of the structure of the transaction and received repeated messages indicating that [Licensee 1] was in contact with the lenders involved. In my view, there was little about that arrangement, from [Applicant 126]'s perspective, that presented a greater risk of default on the CPS than most other transactions in which buyers have some difficulty securing financing to complete a contract with a high purchase price. I note in this regard, that [Applicant 126] was aware of possible issues with the purchase price and the Buyers getting financing, raised that issue with [Licensee 1], received her assurances that the issue could be resolved with the mortgage lender or broker, and the CPS included a subject to allow the Buyers time to arrange the necessary financing and to not proceed with the CPS if they could not arrange it.
66. The investigation report and the NOAP both also alleged that [Applicant 126]'s actions contributed to a transaction that obscured the true purchase price; however, there is no actual evidence that the structure of the transaction was used to obscure anything from anyone. The Buyers and the Sellers were both aware of the structure of the transaction. [Applicant 126]'s brokerage was aware of the structure of the transaction. [Licensee 1]'s brokerage was, eventually, made aware of the structure of the transaction, though [Applicant 126] had no reason to think [Licensee 1] had not delivered all the contract documents to her brokerage as she was required to. There is no evidence that indicates that the lender in this transaction was unaware of the structure of the transaction and, from [Applicant 126]'s perspective, [Licensee 1] had told him the broker had been advised of the contract structure. BCFSA has supplied no evidence that [Applicant 126] ought to have pressed [Licensee 1] on that point either as a matter of course or because the structure of the transaction raised additional suspicions that would require [Applicant 126] to dig deeper.
67. Regarding the structure of the transaction itself, I accept that it is unusual and that the structure presents an obvious potential for the documents to be used in a misleading fashion. In particular, the fact that the credit is contained in an addendum means that the Buyers could present the CPS without the Renovation Credit Addendum to their lender to attempt to obtain more financing than they otherwise ought to have qualified for in respect of the Property or purchase financing at a lower rate than usually granted for construction or renovation financing. However, that does not mean that a reasonably prudent licensee, in response to the unusual structure, would have either insisted on a different structure instead of seeking and relying on assurances from a buyer's agent that the transaction's structure would be disclosed to the lender.
68. I note in this regard that the transaction at issue in this matter was not, strictly speaking, a cash back transaction as described in the Cash Back Guidance. That guidance describes a cash back

transaction as being one in which the purchaser agrees to pay an inflated amount for a property, and the seller agrees to pay the purchaser back a portion of the sale price after closing. The Cash Back Guidance indicates that such an arrangement might be documented in a separate document.

69. In this case, the credit was to be applied as part of the adjustments on closing in the Buyer's statement of adjustments and did not involve a payment from the Sellers to the Buyers after closing. This ensured that the structure of the transaction had to be disclosed, at least on closing, to the parties involved. In that regard, the credit could not be applied entirely discretely. It may have been possible, depending on the lender's approval requirements, for the Buyers to have used the documents to mislead the lender as described above and obtained more financing than the lender would have otherwise given for the purchase; however, [Applicant 126] had the explicit confirmation from [Licensee 1], before presenting the First Offer to his clients, that this was not the case.
70. I also note that there is little evidence that the structure of the CPS in this case was categorically objectionable within the industry at the time of the CPS. The Cash Back Guidance, which is somewhat applicable to the circumstances here, does not outright prohibit transactions with structures similar to the CPS. It does strongly recommend against them, but it does not categorically prohibit them.
71. [Applicant 126] notes in his submissions that the Cash Back Guidance was published after the CPS was formed; however, there is pre-existing guidance from the Real Estate Council of British Columbia's Professional Standards Manual, online: <https://web.archive.org/web/20191117060446/https://www.recbc.ca/licensee/psm-all-content.html> (accessed October 5, 2026) (the "PSM"). The PSM available in November 2019 states the following, in relevant part:

Real estate transactions **must not** be structured to mislead mortgage lenders as to the amount of equity (if any) being provided by buyers. **This is fraud. Licensees who participate are subject to a wide range of penalties.**

Fraud includes contracts that state that some amount of money is to be paid directly to the seller to finish a basement when the basement is already finished and the seller never receives these funds; gift letters from family members where no gift funds are ever paid over; or a separate addendum to the contract crediting back funds to the buyer. The implications of a licensee participating in these types of deceptions are serious.

Do not confuse acting in the best interest of clients with facilitating fraudulent mortgage applications.

Listing agents must ensure that the Contract of Purchase and Sale spells out the proposed equity and financing being sought, in order to protect the interests of the seller. This may involve rewriting the financing section of the contract. All applicable financial information must be contained within the same contract. "Altered" Contracts of Purchase and Sale, which seek to mislead a lender and a seller, are fraudulent and can be deemed criminal."

[emphasis original]

72. I note that the phrasing in the PSM also does not categorically prohibit the structure used here, though it does strongly discourage it. The PSM does specifically recommend rewriting a contract of purchase and sale's financing section to include the information all in the agreement.
73. I conclude from that fact that there is some degree of diligence that licensees involved in a transaction can undertake, when faced with such a structure, to ensure they are not becoming dupes to fraud or facilitating money laundering. In this case, [Applicant 126] obtained [Licensee 1]'s direct confirmation that the structure would be disclosed to the lender and was in active discussions with [Licensee 1] which confirmed the Buyers were seeking a sufficient appraisal of the Property

and indicated to [Applicant 126] that [Licensee 1] was in direct contact with the lender. I note that some of the later text messages between [Applicant 126] and [Licensee 1] indicate she may not have been in direct contact with the lender, but at that point, the CPS has been signed.

74. It is not clear to me what more [Applicant 126] ought to have done if the structure itself was not strictly prohibited, as reflected by the Cash Back Guidance and the PSM, and he had the licensee representing the Buyers' direct confirmation that the details of the transaction were disclosed to the lender. He could have, as BCFSa suggests, insisted that the contract not be structured with a credit or required the inclusion of the credit in the contract itself, but that amounts to the conclusion that the structure is prohibited, which does not appear to be the standard. He also could have directly contacted the lender; however, he had [Licensee 1]'s direct confirmation that disclosure had occurred and [Licensee 1], as a licensee, was bound by duties of honesty and obligations to not engage in misrepresentation. There is no evidence that [Applicant 126] had reason to doubt [Licensee 1]'s direct assertion that she had disclosed the structure to the lender.
75. There is some further evidence of the relevant standard in that both [Applicant 126]'s managing broker and [Licensee 1]'s managing broker identified that the structure of the CPS required caution. The fact that both managing brokers were concerned about the transaction does indicate that the licensees involved in the transaction ought to have been cautious, but it does not indicate that a reasonably prudent licensee in [Applicant 126]'s position ought to have acted differently. I note in this regard that [Licensee 1]'s managing broker's concerns appear to be based in part on his understanding that [Licensee 1] had not been involved in the negotiations regarding the price of the renovation clause or the discussions with the mortgage broker; whereas, [Applicant 126] negotiated the credit amount with [Licensee 1] and had been directly advised by [Licensee 1] that she had advised the lender of the structure and was in consistent communication with both the new and the original lender.
76. In my view, the evidence is not strong enough for me to conclude that the applicable standard required [Applicant 126] to do more than he did in this case. This is not a case where the [Applicant 126]'s conduct is of the sort that obviously falls short of the standard such that I can conclude that [Applicant 126] failed to act as a reasonably prudent licensee would have, even considering the superintendent's individualized expertise and judgment regarding the real estate industry: I consider this a modification of Professor Fridman's expression of the applicable standard in negligence expressed in *Canadian Agency Law*, 3d ed. (Markham, Ontario: LexisNexis, 2017), at §4.22 as quoted by Funt J in *Zedah v Moadebi*, 2017 BCSC 2164, at para 33 adapted to the context of section 34 of the Rules.
77. I find that a reasonably prudent licensee in [Applicant 126]'s situation could have, in deciding to allow the transaction to proceed on the basis of the CPS and the Renovation Credit Addendum, relied on the following facts:
 - a. the Renovation Credit Addendum was documented,
 - b. the transaction required the credit to be reflected in the statement of adjustments on closing,
 - c. [Licensee 1] represented that she had advised the lender of the structure of the transaction, and
 - d. [Licensee 1] appeared to be in consistent contact with the lenders involved in this matter.
78. I find that [Applicant 126] could have insisted that the credit be incorporated into the body of the CPS, as opposed to being included in the Renovation Credit Addendum, but that he could reasonably have relied on [Licensee 1]'s professional responsibilities to make the necessary disclosures.

79. I find that BCFSA has not proven that [Applicant 126] failed to act with reasonable care and skill as alleged in the NOAP.

Penalty Amount

80. Given I have found that BCFSA has not established the allegations in the NOAP, I decline to substantively address the appropriateness of the penalty amount.

Conclusion

81. I find that a reasonably prudent licensee in [Applicant 126]'s situation could have, in deciding to allow the transaction to proceed on the basis of the CPS and the Renovation Credit Addendum, relied on the fact that the Renovation Credit Addendum was documented, the fact that the transaction required the credit to be reflected in the statement of adjustments on closing, the fact that [Licensee 1] represented that she had advised the lender of the structure of the transaction, and the fact that [Licensee 1] appeared to be in consistent contact with the lenders involved in this matter.

82. I find that BCFSA has not proven that [Applicant 126] failed to act with reasonable care and skill as alleged in the NOAP.

83. I cancel the NOAP.

DATED at North Vancouver, BRITISH COLUMBIA, this 5th day of October, 2026.

"Original signed by Gareth Reeves"

Gareth Reeves
Hearing Officer