Citation: Scoffield (Re), 2023 BCSRE 56
Date: 2023-12-29
File No. INC-2830

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

AND IN THE MATTER OF

Kirsten Marie Scoffield
(UNLICENSED)

DECISION ON SANCTION

[This Decision has been redacted before publication.]

Date of Hearing:	Written Submissions
Counsel for BCFSA:	Simon Adams
Counsel for Respondent:	Self-Represented
Hearing Officer:	Andrew Pendray

Introduction

1. In a May 2, 2023 decision, *Scoffield (Re)*, 2023 BCSRE 13 (the "liability decision"), I determined that Kirsten Marie Scoffield (the "respondent") had, in respect of three properties, provided rental property management services in British Columbia without being licensed to do so under the provisions of the *Real Estate Services Act* (RESA), and without being otherwise exempt from licensing requirements under RESA, contrary to section 3(1) of RESA, and that she received remuneration in exchange for those services. I further determined that the respondent withheld or concealed information that was reasonably required for the purposes of the investigation, contrary to section 37(4) of RESA when she stated to BCFSA that she had not provided rental property management services, when that statement was not true.

2. This decision relates to the sanctions and orders to be issued in respect of the respondent's conduct.

3. The hearing of the sanctions portion of this matter proceeded by way of written submissions.

4. In its submissions, BCFSA seeks the following orders:

   - Pursuant to section 49(2)(d) of RESA, the respondent pay an administrative penalty of $50,000;

   - Pursuant to section 49(2)(a) of RESA, the respondent cease offering or providing unlicensed rental property management services as that term is defined in RESA until such time as she is licensed to provide rental property management services; and

   - Pursuant to section 49(2)(c) of RESA, the respondent pay investigation and hearing expenses incurred by BCFSA in the amount of $15,107.59.

5. As noted in the liability decision, the liability hearing proceeded in the respondent's absence, despite the respondent having been personally served with the May 27, 2022 Notice of Hearing. Although provided with the opportunity to do so, the respondent also did not make any submissions on the issue of sanctions.

Issues

6. The issue is the appropriate orders to be issued in respect of the respondent's conduct, as provided for by section 49 of RESA.

Jurisdiction

7. Pursuant to section 2.1(3) of RESA the Superintendent of Real Estate (the "Superintendent") may delegate any of its powers. The Chief Hearing Officer and Hearing Officers of the Hearings Department of BCFSA have been delegated the statutory powers and duties of the Superintendent with respect to sections 42 through 53 of RESA.

Background

8. The background to this matter is set out in the liability decision. I will not reproduce the entirety of that background and evidence here. Rather, the following is intended to provide context for my reasons.

9. The Notice of Hearing issued against the respondent on March 29, 2022 alleged that:

> 1. Ms. Scoffield provided rental property management services in British Columbia without being licensed to do so under the provisions of the RESA and without being otherwise exempt from licensing requirements under the RESA, contrary to section 3(1) of the RESA, when she engaged in one or more of the following activities in relation to each of the properties listed in Schedule "A" (the "Properties"):
>
> a. Provided trading services by finding tenants for the Properties and making representations about the real estate;
>
> b. Provided rental property management services by collecting rents or deposits for the use of real estate;
>
> c. Provided rental property management services by managing the real estate on behalf of the owner by:
>
> i. making payments to third parties;
> ii. negotiating or entering into contracts;
> iii. supervising contractors engaged by the owner; and
> iv. managing landlord and tenant matters.
>
> 2. Ms. Scoffield received remuneration in exchange for the services described in paragraph (1) in relation to some or all of the Properties.
>
> 3. Ms. Scoffield withheld, concealed, or refused to provide information that was reasonably required for the purpose of the investigation, contrary to section 37(4) of the RESA, in that she:

a. Stated to the BCFSA that she had not provided rental property management services, when that statement was not true; and

b. Failed to attend an interview despite requests from the BCFSA.

10. The properties identified in Schedule "A" were as follows:

- [Property 1], Vancouver, BC;
- [Property 2], Vancouver, BC; and
- [Property 3], Vancouver, BC

11. Public complaints, first received by the former Financial Institutions Commission (FICOM)[1] in 2013, and subsequently by the former Office of the Superintendent of Real Estate (OSRE)[2] in 2016, brought the respondent to the attention of the regulator, and ultimately led to the issuing of the Notice of Hearing.

12. BCFSA began its investigation into the respondent after receiving the 2016 complaint. It was at that time that the BCFSA investigator determined that FICOM had a historical complaint dating to 2013 in its case management files.

13. The 2013 complaint was made by [Complainant 1] in respect of a property located at [Property 2] in Vancouver. In an August 27, 2013 email to FICOM, [Complainant 1] indicated that he wished to make a compliant regarding "Kristen M. Scofield or Artistic Prime Management". [Complainant 1] indicated that the respondent had collected rent and a damage deposit from one of [Complainant 1]'s tenants, in the amount of $2,475.00, and that she had refused to return that money to [Complainant 1].

14. [Complainant 1] further explained in his August 27, 2013 email that he did not have a written agreement with either the respondent or Artistic Prime Management in respect of property management services. [Complainant 1] indicated that in addition to not providing the collected rent and damage deposit, the respondent had invoiced him with "many unreasonable charges". [Complainant 1] noted that he had contacted the former Real Estate Council of British Columbia (RECBC)[3], which had confirmed that the respondent and Artistic Prime Management were not licensed under RESA, but that RECBC had informed him that as the respondent was not licensed, there was nothing they could do.

15. The 2016 complaint received by OSRE/BCFSA was from [Complainant 2], and related to a property he owned located at [Property 3] in Vancouver (the "[Property 3]"). In that complaint [Complainant 2] alleged that the respondent had been engaged in unlicensed real estate activity, and that she had withheld $1,575 in rent and damage deposit related to his [Property 3] rental property, and that she was invoicing him approximately an additional $4,000 for repairs and for her services.

16. As a result of receiving [Complainant 1]'s complaints, the BCFSA investigator conducted internet searches regarding the respondent, and took screen captures of her LinkedIn profile. The investigator noted that the respondent's profile advertised "Artistic Prime Management" as a

[1] In 2019, FICOM was dissolved and its operations, activities and affairs were transferred to BCFSA and were carried on and continued by BCFSA.

[2] OSRE integrated with BCFSA in August 2021. Prior to its integration with BCFSA, OSRE was responsible for, among other things, investigations into unlicensed activity. While the investigation into the respondent in 2017 was conducted by staff of OSRE, I will simply refer to the investigation and staff as being part of BCFSA.

[3] RECBC integrated with BCFSA in August 2021.

"Condo Management Specialist", which provided services such as marketing, facility, and tenancy liaison for investment property owners.

17. In an interview with BCFSA investigators in April 2017, [Complainant 2] described having met the respondent in the summer of 2015 when she moved into the same building as him. [Complainant 2] described having mentioned, in February 2016, that he was going to interview a prospective tenant for his rental property, and that the respondent had then informed him that she was a property manager, and that she would interview the tenant for him at no charge. [Complainant 2] agreed. [Complainant 2] described the respondent as having interviewed the prospective tenant and having taken a $500 deposit from that individual, but then subsequently told him that the prospective tenant was not on the "up and up". The respondent, according to [Complainant 2], had kept the $500 deposit.

18. [Complainant 2] indicated that he had subsequently agreed to the respondent acting as the property manager for [Property 3], and that he had typed out an agreement indicating that she would be his property manager for a year. [Complainant 2] indicated that subsequently he had difficulty contacting the respondent, and that as he had not received any rent or damage deposit for [Property 3] despite the respondent having placed a tenant in that property, he had written her to inform her that she was no longer his property manager. [Complainant 2] said that when he spoke to the tenant that had been placed at the property, the tenant had provided him a residential tenancy agreement that the respondent had drafted, indicating a rent of $1,250, which was less than what [Complainant 2] had charged at his other suites. [Complainant 2] indicated that his understanding was that the new tenant was a friend of the respondent. [Complainant 2] further noted that the tenant reported having paid both her rent and damage deposit to the respondent.

19. [Complainant 2] provided a number of documents to investigators, including:

- An email exchange between [Complainant 2] and the respondent[4] in which the respondent identified a range hood to replace the one at [Complainant 2]'s property.

- A residential tenancy agreement, which identifies Kirsten M. Scoffield as landlord and agent for [Complainant 2] in respect of [Property 3]. The tenant is identified as [Individual 1]. The agreement is set for one year, commencing March 1, 2016, with a rent of $1,250 per month, and a damage deposit of $625. The agreement was signed by the respondent as landlord.

- A letter from "Kirsten" (who I accept to be the respondent) to [Complainant 2], dated February 12, 2016, with a subject heading of "[Property 3] Management reno and rental update". That letter notes, among other things, that the respondent requires a letter of authorization from [Complainant 2] indicating that the respondent is the "Property Manager and official emergency contact for all rental management issues for your tenants and/or Strata". That letter lists a number of things that require fixing and replacing in [Complainant 2]'s property, and notes that the respondent had ordered a range hood for the property. The letter notes that a copy of the respondent's expenses to date was attached.

- A copy of an invoice from the respondent to [Complainant 2], for the period of January 30 to February 12, 2016. The invoice is titled "Artistic Prime Management Expense Report", and identifies a variety of expenses in respect of items such as "Gas Errands/Proj. Management", "Cleaning & Paint Supplies", and other various items which appear to have been purchased for [Complainant 2]'s property by the respondent.

[4] The emails are addressed to [Email 1], and include a signature line for Kirsten M. Scoffield.

- An email from [Complainant 2] to the respondent requesting that she provide him with the details of the services she provides as an agent, in order that he would be aware of what he was authorizing in the authorization letter the respondent had requested.

- A copy of a February 15, 2016 email from [Complainant 2] to [Email 1] indicating that [Complainant 2] authorizes the respondent to "be my agent in the renting and maintenance of suite [Property 3] from March 1, 2016 to March 1, 2017".

- A copy of a February 16, 2016 cheque from [Complainant 2] to "Artistic Prime Management", in the amount of $709.56.

20. In the course of BCFSA's investigation regarding [Complainant 2]'s complaint, it obtained a number of tenancy applications for [Complainant 2]'s [Property 3]. On one of those applications was an indication that the landlord of the applicant's current address was "[Owner 1]/Kristen Scoffield Manager". The BCFSA investigator indicated that upon reading this application, he considered that the respondent may have rental property management services relationships in addition to the one she had with [Complainant 2], and as a result the investigator contacted [Owner 1].

21. [Owner 1] informed the investigator that:

    - He and his wife owned a property at [Property 1], Vancouver, BC, (the "[Property 1]") since October 2012.

    - The previous owner of the property had been using the respondent to help with the property,and had recommended the respondent to [Owner 1].

    - [Owner 1] had employed the respondent since approximately October 2012. [Owner 1] initially paid the respondent $250 per month, and increased that amount to $300 per month in September 2017. The respondent provided services including record keeping; preparation of residential tenancy agreements which the respondent would sign as agent; showing the unit to prospective tenants; facilitating the move in and out of tenants; collecting damage deposits and rental payments from the tenants and then providing those to [Owner 1]; coordinating, supervising, and making payments in respect of outside contractors used to complete repairs to the property; and some light maintenance to the property.

    - [Owner 1] noted that the respondent had never represented herself as a licensed real estate professional, and that the respondent did not provide any services for any of [Owner 1's] other properties.

22. The investigator indicated that, as [Owner 1] had described the respondent as having worked for the previous owner of [Property 1], the investigator contacted the previous owner of that property, [Owner 2]. The investigator indicated that, in a telephone conversation on November 10, 2017:

    - [Owner 2] indicated that the respondent had helped him with [Property 1], but that the duties she had performed were not of a nature as to require licensing. [Owner 2] indicated that the respondent was employed by him as an assistant, and that her work at [Property 1] was a small part of her duties.

    - [Owner 2], when asked by the investigator to expand on the duties performed by the respondent, indicated that she had prepared residential tenancy agreements, supervised trades who were hired to perform repairs, and dropped off letters to tenants.

- [Owner 2] indicated that rent cheques were made out to him directly and that the respondent did not collect those on his behalf.

- [Owner 2] indicated that the respondent had performed similar duties for another of his properties, located at [Property 4] in Vancouver, and that he had paid her hourly to do so.

23. The investigator also followed up on the 2013 complaint by speaking to [Complainant 1]. The investigator indicated that in a January 5, 2018 telephone conversation:

- [Complainant 1] indicated that he had been referred to the respondent's services for property management for his property in Vancouver.

- [Complainant 1] indicated that the respondent had found the tenant for his property, prepared the residential tenancy agreement, and had signed that agreement as the landlord's agent.

- [Complainant 1] further indicated that the respondent had collected a damage deposit and first month's rent for the tenant in August 2013, in the amount of $2,475, and that the respondent had also demanded an additional fee of $261.75 from [Complainant 1].

- [Complainant 1] indicated that he had refused to make that additional fee payment.

24. OSRE/BCFSA first wrote to the respondent on August 1, 2017. That letter advised that OSRE was investigating whether the respondent had engaged in any activity for which a licence was required under RESA. The letter noted that pursuant to section 37 of RESA, the investigator required the respondent to meet with him to answer his inquiries relating to the investigation.

25. The investigator eventually managed to speak with the respondent by telephone on October 28, 2017. During that conversation the respondent denied providing real estate services without a licence. The investigator noted that the respondent described largely working as an executive assistant or office manager, and that she would assist some of the business people she worked for with their personal properties. The investigator noted that the respondent stated that she had never told anyone that she was a licensed real estate professional, and that she was not.

26. Although further attempts to contact the respondent were unsuccessful, further investigation found documents at the Residential Tenancy Branch which identified the respondent as "property manager" for [Owner 1] in 2014 at [Property 1] in Vancouver.

27. In the liability decision I concluded that the evidence supported the conclusion that the respondent had never been licensed to provide rental property management services in British Columbia, and that she had provided rental property management services in respect of [Property 1] (for both the [Owner 1] and [Owner 2] owners), [Property 2] (for [Complainant 1]), and [Property 3] (for [Complainant 2]), while not licensed to do so, contrary to section 3 of RESA.

28. In reaching that conclusion I relied on the following evidence which I concluded indicated that the respondent was providing rental property management services as contemplated by section 1 of RESA while not licensed to do so contrary to section 3 of RESA:

- Although the respondent was at one time registered for the Real Estate Trading Services course, she did not complete that course, and did not ever obtain a licence to engage in rental property management in British Columbia;

- Evidence from [Owner 1] indicated that he paid the respondent on a monthly basis to provide services for [Property 1] which included: preparation of residential tenancy agreements which

the respondent would sign as agent; tenant move in and move out facilitation; collection of damage deposits and rents; and coordinating, supervising, making payment to outside contractors. Further, documents from the Residential Tenancy Branch indicated that the respondent was engaged in managing landlord and tenant matters for [Property 1];

- Evidence from [Owner 2] established that he paid the respondent an hourly rate to complete activities such as: the preparation of residential tenancy agreements; the supervision of trades who were hired to perform repairs; and the provision of letters to tenants. Furthermore, September 21, 2012 Residential Tenancy Branch documentation was signed by the respondent as the "property manager" for [Owner 2];

- Evidence in the form of the respondent's own invoices to [Complainant 2] in respect of [Property 3] indicated that she provided rental property management services to [Complainant 2], including leasing, documentation, and tenant placement services, and bank drafts provided by [Complainant 2] demonstrated that the respondent had received remuneration for those services;

- Evidence from [Complainant 2] further indicated that the respondent had collected rent from a tenant in March 2016 and had paid herself remuneration out of that money; and

- Evidence from [Complainant 1] indicated that the respondent had found a tenant for his property at [Property 2], and that she had collected a damage deposit and rent from a tenant which she did not forward to [Complainant 1].

29. I further determined in the liability decision that when the respondent stated to BCFSA investigators that she had not provided rental property management services, that statement was untrue and constituted an attempt to conceal information required for the purposes of the section 37(3) investigation, contrary to section 37(4).

Applicable Law and Legal Principles

Applicable Law

30. Section 49 of RESA sets out that if, after a hearing under section 48(2) the Superintendent determines that the person subject to the hearing did not hold a license under RESA at a time when the person was engaged in any activity for which such a license was required, the Superintendent may, by order:

> 49(2)
>
> (a) require the person to cease the activity referred to in subsection (1) (a);
>
> (b) require the person to carry out specified actions that the superintendent considers necessary to remedy the situation;
>
> (c) subject to subsection (2.01), require the person to pay the expenses, or part of the expenses, incurred by the Authority in relation to either or both of the investigation and the hearing to which the order relates;
>
> (d) require the person to pay a penalty in an amount of
>
> (i) not more than $500 000, in the case of a corporation or partnership; or
>
> (ii) not more than $250 000, in the case of an individual;

(e) require the person to pay an additional penalty up to the amount of the remuneration accepted by the person for the real estate services in respect of which the contravention occurred.

(2.01) Amounts required to be paid under subsection (2) (c)

(a) must not exceed the applicable prescribed limit in relation to the type of expenses to which they relate, and

(b) may include the remuneration expenses incurred in relation to employees, officers or agents of the Authority engaged in the investigation or hearing.

31. Section 49(2.1) provides that a penalty imposed under section 49(2)(d) may be imposed for each contravention.

General Principles Regarding Regulatory Sanctions

32. In general terms, the issuing of sanctions in relation to breaches of RESA is done with a view to the overarching goal of protecting the public.

33. I consider that sanctions may serve multiple purposes, including:

- denouncing misconduct, and the harms caused by misconduct;
- preventing future misconduct by rehabilitating specific respondents through corrective measures;
- preventing and discouraging future misconduct by specific respondents through penalizing measures (i.e. specific deterrence);
- preventing and discouraging future misconduct by others (i.e. general deterrence);
- educating registrants, other professionals, and the public about rules and standards; and
- maintaining public confidence in the industry.

34. Administrative tribunals generally consider a variety of mitigating and aggravating factors in determining sanctions, largely based on factors which have been set out in cases such as *Law Society of British Columbia v. Ogilvie*, 1999 LSBC 17, and *Law Society of British Columbia v. Dent*, 2016 LSBC 5. In *Dent*, the panel summarized what it considered to be the four general factors, to be considered in determining appropriate disciplinary action:

(a) **Nature, gravity and consequences of conduct**

[20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

(b) Character and professional conduct record of the respondent

[21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?

(c) Acknowledgement of the misconduct and remedial action

[22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

(d) Public confidence in the legal profession including public confidence in the disciplinary process

[23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

35. While the factors set out above are not binding on me, I find them to be of use in considering the appropriate penalty to be issued.

Discussion

The Misconduct

36. In my view, the misconduct engaged in by the respondent in this case was significant in nature.

37. This is a case in which, in my view, the evidence demonstrates that the respondent was aware of the requirement to be licensed in order to provide rental property management services, and simply chose to disregard that requirement.

38. In reaching that conclusion, I note the fact that the respondent had, in 2013, registered for the Real Estate Trading Services Licensing Course, and in fact completed some of the assignments required of that course. In my view, that the respondent had registered for the licensing course, and completed portions of that course, is a strong indication of the respondent's awareness of the regulatory regime.

39. Despite that awareness, I consider it to be clear that the respondent held herself out as a rental property manager, in direct disregard for the regulatory regime. This can be seen from the respondent's LinkedIn page. Similarly, this defiance of the regulatory regime can be seen from the fact that, as [Complainant 2] reported, when he informed the respondent that he was interviewing a tenant for one of his rental properties, the respondent specifically informed him that she was a property manager.

40. I note further that despite having arranged for the tenant and completed and signed the Residential Tenancy Agreement for [Property 3] in which the respondent identified herself as "landlord", and despite having held herself out to [Complainant 2] as a rental property manager, the respondent, when invoicing [Complainant 2], indicated that although she had provided 40 hours of "Rental Property Management Consultation Services" on [Property 3], she was providing those at "NO CHARGE", with the respondent requesting remuneration from [Complainant 2] only for what she referred to as "Project Management" and "Supervisory Management and labour".

41. In my view, it is more likely than not that the respondent's decision to indicate that there was "no charge" for her "rental property management consultation services" was due to the respondent's awareness of the need to be licensed to provide those services. I agree with the submission of BCFSA that this was nothing more than an attempt on the respondent's part to disguise her

accounts as being something other than property management, and to constitute part of her ongoing lack of cooperation with the regulatory regime.

42. As I indicated in the liability decision, I do not consider the respondent's attempt in her invoicing to obfuscate the nature of the services she was providing to [Complainant 2] to alter the fact that the remuneration the respondent received from [Complainant 2] was only obtained by way of the respondent offering rental property management services to [Complainant 2]. The "project management" work that the respondent purported to bill for, was, in my view, a fee received as a result of the respondent's unlicensed rental property management work.

43. I consider the respondent's actions in disregarding the requirements to be licensed, when she knew of that requirement, to be aggravating factors. I further consider the fact that when contacted by investigators the respondent claimed to not be providing rental property management services, when she knew that statement to be untrue, to be a further aggravating factor.

44. With respect to the specific nature of the respondent's misconduct, the evidence before me at the liability hearing of this matter indicated that the respondent provided a number of unlicensed rental property management services in respect of the three properties, including:

- making payments to third parties in respect of maintenance and repairs;
- negotiating or entering into contracts with tenants;
- obtaining rent payments and damage deposits from tenants; and
- managing landlord and tenant matters, including tenant enquiries, and issuing notices for nonpayment of rent and eviction and managing tenant disputes before the Residential Tenancy Branch.

45. The evidence further indicates that the respondent was providing such unlicensed rental property management services for a period from at least 2012 to 2017. In my view, the nature and duration of the services provided by the respondent are aggravating factors.

46. I note, in particular, the evidence regarding the respondent's taking of rent and damage deposits from tenants (and a prospective tenant in the case of [Property 3]), and paying herself out of those funds. I agree with BCFSA that the respondent's actions in this regard placed both tenants and property owners in a vulnerable position. I note that it would appear that specific harm may well have occurred in this case, in that [Complainant 1] described the respondent as having refused to provide him with rent and damage deposit funds from a tenant, and [Complainant 2] described the respondent as having taken a $500 deposit from a prospective tenant and, upon rejecting that tenant's application, having kept that deposit. I consider both of those situations to constitute potential harm that is appropriately viewed as an aggravating factor.

47. Finally, I consider it to be clear that the respondent obtained remuneration for her unlicensed rental property management services, in amounts equal to approximately $20,000. The majority of that remuneration would have been received in the form of the $250 per month payments she received in respect of the unlicensed services she provided for [Property 1] for the period from October 2012 to October 2017. However, I consider the evidence to demonstrate that the respondent also kept $2,475 from [Complainant 1] in respect of the rent and damage deposit at [Property 2], and that she received payments from [Complainant 2] of $2,719.61 and $709.56.

48. I consider the remuneration earned by the respondent for her unlicensed rental property management services to be an aggravating factor.

Other Relevant Factors

49. There was no evidence before me to indicate that the respondent had a discipline history with BCFSA or its predecessor regulators. Nor was there any evidence to indicate that the respondent had been the subject of any prior cease or desist orders. Rather than being a mitigating factor, I consider this to constitute the lack of a further aggravating factor.

Previous Sanctions Decisions and Consent Orders

50. As set out above, in determining the appropriate sanction, consideration should be given to disciplinary action that has been issued in similar cases. While prior disciplinary decisions and consent orders are not binding on me, they can be of assistance in determining a penalty that the public will have confidence in.

51. BCFSA has referred to a number of previous consent orders. I note, prior to reviewing the decisions and consent orders below, that prior to amendments made to RESA in 2016, the maximum penalty that could be issued in respect of an individual was $10,000, and $20,000 for a corporation or partnership. As set out above, the current statutory regime allows for penalties of up to $250,000 for an unlicensed individual.

52. I note further that a number of the cases cited by BCFSA relate to consent orders. In my view, caution must be taken when comparing an agreed upon penalty from a consent order to a penalty that is imposed subsequent to a discipline hearing, given that there are a myriad of reasons for a respondent to agree to a consent order which may not be apparent from a review of that consent order.

53. With those factors in mind, I turn to a review of the cases cited:

- *Ng (Re)*, 2021 BCSRE 7: In this consent order Mr. Ng agreed to pay a disciplinary penalty of $50,000, disgorgement of remuneration of $50,000, and investigative costs.

  Mr. Ng admitted that he had provided unlicensed property management services through a corporate entity for clients of his chartered accountant and/or notary public businesses between 2000 and 2017, and that the corporate entity had received approximately $50,000 for the sale of its portfolio of rental properties in 2017. Mr. Ng further admitted that he had refused to provide information as required by section 37(4) of RESA when he denied managing any rental properties when that denial was untrue.

- *Huang (Re)*, 2022 BCSRE 30: In this consent order Ms. Huang agreed to pay a penalty of $20,000, as well as enforcement expenses.

  Ms. Huang admitted to having provided unlicensed property management services in respect of at least four properties between 2014 and 2019. Ms. Huang admitted that she had denied providing rental property management services to investigators when she knew that was not true.

- *Boncent Properties Ltd. (Re)*, 2022 BCSRE 19: In this consent order Boncent Properties and its directors agreed to pay a penalty of $16,000, as well as investigative costs.

  Boncent Properties and its directors admitted to providing unlicensed property management services between 2012 and 2015 in respect of at least nine properties on behalf of one property owner. The company had received remuneration of at least $15,975 in respect of the unlicensed services it provided to those properties.

  Of note, this consent order was issued under the former penalty regime.

Decision on Sanction

54. At the outset, it is necessary to point out that penalties must not be imposed purely for the purpose of being retributive or denunciatory. Rather, penalties may be imposed with the intention to encourage compliance with regulations in the future, with a view to specific or general deterrence, and with the intention of protecting the public: See *Thow v. BC (Securities Commission)*, 2009 BCCA 46, at para. 38.

55. As the court noted in *Thow*, however, the fact that a penalty imposes a burden, even a very heavy burden, on an offender, does not mean that penalty is necessarily punitive in nature, as long as the penalty is designed to encourage compliance with regulations in the future.

56. Under section 49(2)(d), the maximum penalty for an individual is $250,000. Here, BCFSA seeks a penalty of $50,000.

57. While such a penalty would be significant, and would undoubtedly impose a heavy burden on the respondent, I consider that the nature of the misconduct in this case warrants a significant penalty. Having considered the circumstances of this case, as well as the prior penalties issued in the consent orders cited by BCFSA, I find that a penalty close to that sought by BCFSA, in the amount of $40,000, is appropriate in the circumstances.

58. As I have set out above, this is a case in which the respondent, despite being aware of the need to be licensed in order to provide rental property management services, advertised herself as being able to provide property management services which included “administration, marketing, facility and tenant liaison for Investment Property Owners” on her LinkedIn page in 2016. In my view, the respondent’s reference to her ability to act as a tenant liaison for investment property owners makes clear that the respondent was advertising rental property management services, when she did not have a license to provide those services, but knew that one was required.

59. This is also a case in which the respondent provided unlicensed rental property management services for a number of properties for a period of at least five years, and received at least $20,000 for doing so. Given that she registered for the trading services course in 2013, I consider that there can be no doubt that, for a significant portion of that five-year period from 2012 through 2017, the respondent was aware of the need to be licensed. I consider, on the evidence before me, that the respondent simply chose to ignore the regulatory requirement that she do so.

60. Finally, when contacted by the regulator, the respondent falsely denied that she was providing unlicensed rental property management services, and then subsequently simply did not respond to further enquiries from the regulator. I agree with BCFSA’s submission that breaches of section 37(4) are significantly aggravating, in that they go directly to the regulator’s ability to maintain regulatory effectiveness.

61. I consider that in such circumstances, where it is clear that the respondent knew of the regulatory requirements imposed by RESA, and simply chose to ignore those requirements in order to profit, all the while creating a risk to the public while doing so, a sanction of significance is required in order not only to ensure specific deterrence on the respondent, but also to ensure that the public is aware that activities which deliberately flaunt the law, and ignore the regulator, will be met with a penalty of significance.

62. Although, as I have noted above, there are some limitations to relying on the penalties agreed to in consent orders as being instructive, the facts set out in the *Huang* consent order do bear some similarities to those in the instant case, with respect to the number of properties and the duration of time in which the unlicensed rental property management activities occurred.

63. In my view, despite the apparent similarities in scale of the unlicensed rental property management activities in the instant case as in *Huang*, a greater penalty is required in order to achieve the aims of specific and general deterrence in this case.

64. I note again that I consider the respondent to have deliberately breached the regulatory regime for a number of years, to have sought to obscure her breaches in that regard from the regulator, to have created potential harm to the public in the course of her actions, and to have profited significantly from those unlicensed activities. While it is true that the respondent in *Huang*, like the respondent in this case failed to comply with the regulator's investigation for a period of time, Ms. Huang did eventually enter into discussions and eventually a consent order with the regulator. The respondent in this case has, in my view, simply ignored the regulatory proceedings against her throughout.

65. Of interest, while more properties were involved in *Boncent*, the amount of remuneration earned in that case was similar to that earned by the respondent here, and the penalty paid in *Boncent* was 80% of the maximum penalty available at that time.

66. While I do not consider this case to warrant a penalty of that level of significance, I reiterate that I consider the respondent to have deliberately ignored the regulatory requirements regarding rental property management, and to have done so for a number of years.

67. Having consideration to all of the factors before me, I find that an administrative penalty of $40,000 will achieve specific and general deterrence, and ensure public confidence in the regulation of the profession. I consider such a penalty to be in line with other recent cases, to reflect the seriousness of the respondent's misconduct, and to be appropriate in the circumstances of this case.

68. I note that I would accede to BCFSA's request for an order that the respondent cease offering or providing unlicensed rental property management services as that term is defined in RESA until such time as she is licensed to provide rental property management services.

69. In determining to issue this order, I note that at the liability hearing of this matter the BCFSA investigator, [Investigator 1] stated that while some of his investigation activities, such as BC Registry searches, completed in 2022 did not indicate that the respondent continued to provide rental property management services (and that it appeared she was in fact operating a sole proprietorship engaged in festival management and events planning), [Investigator 1] [also] indicated that the respondent's LinkedIn page continue to indicate that she provided property management services.

70. Given the fact that the respondent's LinkedIn account appeared to continue to advertise that she provides property management services, and given the respondent's past activities ignoring the regulatory regime, I consider it reasonable to issue the cease order sought by BCFSA.

Enforcement Expenses

71. Section 49(2)(c) provides that the Superintendent may require an unlicensed person to pay the expenses, or part of the expenses, incurred by BCFSA in relation to either or both the investigation and the hearing to which the order relates. Pursuant to section 49(2.01), amounts ordered under section 49(2)(c) must not exceed the applicable prescribed limit in relation to the type of expenses to which they relate, and may include the remuneration expenses incurred in relation to employees, officers or agents of BCFSA engaged in the investigation or hearing.

72. Section 4.4 of the *Real Estate Services Regulation* (the "Regulation") sets out the maximum amounts the Superintendent may order an unlicensed person to pay under section 49(2)(c) in relation to various activities such as investigator costs, legal services costs, disbursements, administrative expenses for days of hearings, witness payments, and other expenses, reasonably incurred, arising out of a hearing or an investigation.

73. BCFSA has submitted an appendix of enforcement expenses, which identifies the hours incurred by the investigator assigned to the respondent's case, the hours incurred by legal counsel in association with the hearing of this matter, and disbursements and other costs arising out of the investigation and hearing of this matter. That schedule sets out that the total amount of the enforcement expenses is $15,107.59.

74. In considering an order regarding enforcement expenses, the panel in *Siemens (Re),* 2020 CanLII 63581 noted that:

> 62. Enforcement expenses are a matter of discretion. A discipline committee will ordinarily order expenses against a licensee who has engaged in professional misconduct or conduct unbecoming a licensee. Orders for enforcement expenses serve to shift the expense of disciplinary proceedings from all licensees to wrongdoing licensees. They also serve to encourage consent agreements, deter frivolous defenses, and discourage steps that prolong investigations or hearings.
>
> 63. … The practice of discipline committees has also been to assess reasonableness of enforcement expenses by examining the total amounts in the context of the duration, nature, and complexity of the hearing and its issues. While a discipline committee may reduce any award of enforcement expenses to account for special circumstances, such as where the Council fails to prove one or more allegations corresponding to a significant and distinct part of a liability hearing, no such special circumstances arise in this case.

75. I agree that an order for enforcement expenses is a matter of discretion. In considering such an order, it is necessary to take into account the context of the duration, nature and complexity of the investigation process and the hearing process. I also consider it to be clear that section 49(2)(c) specifically contemplates that the expenses of an investigation and hearing may be borne not by the regulator, but by the person who engaged in unlicensed real estate activity.

76. The expenses sought by BCFSA are significant. The majority of those expenses relate to legal preparation for and expenses related to the liability hearing. The respondent at no point took accountability or admitted to her misconduct. She failed to respond to any of the correspondence or documents served upon her. I do not consider the costs sought for the preparation and conduct of the liability hearing, which was two days, to have been inordinately long.

77. BCFSA also claims reimbursement, pursuant to section 4.4(e) of the Regulation, in the amount of $2,000 for the sanction hearing, based on one day at a rate of $2,000.

78. I do not consider that the section 4.4(e) of the Regulation specifically contemplates the payment of administrative expenses for the purposes of a written submission process as was completed for the sanctions portion of this hearing.

79. Rather, section 4.4(e) of the Regulation specifically sets out that the Superintendent may order that an unlicensed person pay administrative expenses:

> …for **each full or partial day of hearing**, administrative expenses of $2 000
>
> [emphasis added]

80. In my view, section 4.4(e)'s reference to a "full or partial day of hearing" makes clear that that section is intended to allow the Superintendent to order payment for administrative expenses related to the holding of an oral hearing, whether that be virtually or in person. There is, of course, no "full or partial day" of a hearing that proceeds by way of written submission, and it is

unclear to me what the administrative expenses of holding a hearing by way of written submissions would be.

81. I note, in reaching this conclusion, that BCFSA has claimed reimbursement for legal services related to the preparation for the sanction portion of this hearing, pursuant to section 4.4(c)(i) of the Regulation. I consider that claimed reimbursement to constitute the appropriate claim for expenses related to the sanctions hearing.

82. I therefore would exercise my discretion and reduce the total amount of enforcement expenses claimed by $2,000. In all of the circumstances I am satisfied that the remaining enforcement expenses should be ordered, for a total of $13,107.59.

Orders

83. Having found in *Scoffield (Re)*, 2023 BCSRE 13, that the respondent had provided rental property management services in British Columbia without being licensed to do so under the provisions of RESA, and without being otherwise exempt from licensing requirements under RESA, contrary to section 3(1) of RESA, and that she received remuneration in exchange for those services; and that the respondent withheld or concealed information that was reasonably required for the purposes of the investigation, contrary to section 37(4) of RESA when she stated to BCFSA that she had not provided rental property management services, when that statement was not true, I would now make the following orders:

- Pursuant to section 49(2)(d)(ii) of RESA, I order that Kirsten Marie Scoffield pay a penalty to BCFSA in the amount of $40,000, within 90 days of the date of this Order;

- Pursuant to section 49(2)(a) of RESA, the respondent cease offering or providing unlicensed rental property management services as that term is defined in RESA until such time as she is licensed to provide rental property management services;

- Pursuant to section 49(2)(c) of RESA, I order that Kirsten Marie Scoffield pay enforcement expenses to BCFSA in the amount of $13,107.59, within 90 days of the date of this Order.

84. Pursuant to section 54(1)(e) of RESA, Kirsten Marie Scoffield has a right to appeal the above orders to the Financial Services Tribunal within 30 days from the date of this decision: *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at Kelowna, British Columbia, this 29th day of December, 2023.

“Original signed by Andrew Pendray”

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Andrew Pendray
Chief Hearing Officer