

BC FINANCIAL SERVICES AUTHORITY

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

AND

IN THE MATTER OF

JAKE SINGH KANDA

(176470)

DECISION ON LIABILITY

[This Decision has been redacted before publication.]

Date of Hearing: April 23, 2024 with additional written submissions on May 27, 2024

Counsel for BCFSA: Laura Forseille

Hearing Officer: Len Hrycan

Introduction

1. On October 20, 2023 the BC Financial Services Authority ("BCFSA") issued a Notice of Discipline Hearing which alleged that Jake Singh Kanda (the "respondent") had committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* ("RESA").
2. The hearing was conducted pursuant to section 42 of RESA to consider whether the respondent had committed professional misconduct under RESA.
3. BCFSA was represented by in-house legal counsel at the hearing. The respondent did not attend the hearing.
4. The matters at issue in this hearing were initially investigated by the Real Estate Council of British Columbia ("RECBC") which, on August 1, 2021, was integrated into BCFSA.

Notice of Discipline Hearing

5. The Notice of Discipline Hearing alleges that:
 1. The respondent committed professional misconduct within the meaning of section 35(1)(a) of the RESA when he did each of the following:

- a. failed to promptly notify the RECBC in writing after being charged with the following nine (9) offences under the *Criminal Code* (collectively, the “2019 Charges”) on February 26, 2019, contrary to section 2-21(2)(d) of the Real Estate Services Rules (the “Rules”) as they read on and before July 31, 2021:
 - i. [Charge 1] (s. [Redacted]) on or about October 1, 2016;
 - ii. [Charge 2] (s. [Redacted]) on or about October 1, 2016;
 - iii. [Charge 3] (s. [Redacted]) on or about October 1, 2016;
 - iv. [Charge 4] (s. [Redacted]) on or about October 1, 2016;
 - v. [Charge 5] (s. [Redacted]) on or about October 1, 2016;
 - vi. [Charge 6] (s. [Redacted]) on or about October 1, 2016 to October 3, 2016;
 - vii. [Charge 7] (s. [Redacted]) on or about October 1, 2016 to October 3, 2016;
 - viii. [Charge 8] (s. [Redacted]) on or about October 1, 2016; and
 - ix. [Charge 9] (s. [Redacted]) on or about October 3, 2016;

- b. failed to promptly notify the Superintendent of Real Estate (the “Superintendent”) in writing after being charged with the following ten (10) offences under the *Criminal Code* (collectively, the “January 2021 Charges”) on or about January 4, 2021, contrary to section 23(2)(d) of the Rules as they read on and after August 1, 2021:
 - i. [Charge 10] (s. [Redacted]) on or about January 15, 2019;
 - ii. [Charge 10] (s. [Redacted]) on or about March 15, 2019;
 - iii. [Charge 10] (s. [Redacted]) on or about May 15, 2019;
 - iv. [Charge 10] (s. [Redacted]) on or about May 15, 2019;
 - v. [Charge 11] on or about May 15, 2019;
 - vi. [Charge 10] (s. [Redacted]) on or about August 14, 2019;
 - vii. [Charge 12] (s. [Redacted]) on or about August 14, 2019;
 - viii. [Charge 13] (s. [Redacted]) on or about November 15, 2019;
 - ix. [Charge 10] (s. [Redacted]) on or about December 25, 2019; and
 - x. [Charge 14] (s. [Redacted]) on or about January 4, 2021;

- c. failed to promptly notify the RECBC, or the Superintendent, in writing after being charged with the following nine (9) offences under the *Criminal Code* (collectively, the “July 2021 Charges”) on July 12, 2021, contrary to section 2-21(2)(d) as they read on and before July 31, 2021 of the Rules, or section 23(2)(d) of the Rules as they read on and after August 1, 2021:
 - i. [Charge 1] (s. [Redacted]) on or about October 1, 2016;
 - ii. [Charge 2] (s. [Redacted]) on or about October 1, 2016;
 - iii. [Charge 5] (s. [Redacted]) on or about October 1, 2016;
 - iv. [Charge 4] (s. [Redacted]) on or about October 1, 2016;

- v. [Charge 8] (s. [Redacted]) on or about October 1, 2016;
 - vi. [Charge 3] (s. [Redacted]) on or about October 1, 2016;
 - vii. [Charge 6] (s. [Redacted]) on or about October 1, 2016 to October 3, 2016;
 - viii. [Charge 7] (s. [Redacted]) on or about October 1, 2016 to October 3, 2016; and
 - ix. [Charge 9] (s. [Redacted]) on or about October 3, 2016;
- d. on or about May 13, 2021, made, or caused or allowed to be made on his behalf, a false or misleading statement in writing in response to RECBC's investigatory requests made April 7, 2021 under section 37 of the RESA that six (6) *Criminal Code* charges made against him on or about October 2, 2016 (collectively, the "2016 Charges") "were withdrawn, because they were false charges" which meant that the "Court has made the decision to drop the charges permanently, and no longer seek prosecution" when he knew, or reasonably ought to have known that
- i. the 2016 Charges had been stayed by the Crown on October 3, 2016;
 - ii. the alleged conduct and circumstances underlying the 2016 Charges were substantially the same as the 2019 Charges;
 - iii. the 2019 Charges had been stayed by the Provincial Court of British Columbia on or about November 6, 2020 on the basis of delay in the prosecution; and
 - iv. the stay of the 2019 Charges was under appeal by the Crown and the hearing of that appeal was held before the British Columbia Court of Appeal on April 28, 2021
- contrary to section 37(4) of the RESA;
- e. withheld, concealed, or refused to provide each of the following in response to RECBC's investigatory requests made April 7, 2021 under section 37 of the RESA:
- i. the October 2, 2016 information charging him with the 2016 Charges;
 - ii. the February 26, 2019 indictment charging him with the 2019 Charges;
 - iii. the March 24, 2019 Recognizance of Bail; and
 - iv. the November 6, 2020 decision staying the 2019 Charges;
- each contrary to section 37(4) of the RESA; and
- f. failed to promptly notify the Superintendent in writing after being convicted of the following two (2) offences under the *Criminal Code* (collectively, the "2022 Convictions") on or about May 16, 2022, contrary to section 23(2)(d) of the Rules as they read on and after August 1, 2021:
- i. assault (s. 266) on or about October 1, 2016;
 - ii. pointing a firearm at a person (s. 87(1)) on or about October 1, 2016;
- g. failed to provide notice of each and all of the 2019 Charges, the January 2021 Charges, the July 2021 Charges, and the 2022 Convictions to his managing broker of his related brokerage contrary to the section 2-21(4) as they read on and before

July 31, 2021 of the Rules or section 23(4) of the Rules as they read on and after August 1, 2021, as applicable.

2. [The respondent] committed professional misconduct within the meaning of section 35(1)(e) of the RESA when he engaged in the conduct set out in each and both of paragraphs 1(d) and 1(e) above.
3. [The respondent] committed professional misconduct within the meaning of section 35(1)(g) of the RESA when he engaged in the conduct set out paragraph 1(d) above.

Jurisdiction and Procedure

6. Pursuant to section 2.1(3) of RESA the Superintendent may delegate any of its powers. Hearing Officers of BCFSA have been delegated the statutory powers and duties of the Superintendent with respect to sections 42 through 53 of RESA pursuant to a December 22, 2023 delegation instrument.
7. BCFSA must prove its case on the balance of probabilities, that is, it must prove that it is more likely than not that the facts as alleged occurred. In order to make a finding against the respondent, I must find that the evidence is "sufficiently clear, convincing and cogent" to satisfy that test: *FH v McDougall*, 2008 sec 53, [2008] 3 S.C.R. 41.
8. Further, as noted by the BC Court of Appeal in *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119 at para. 38, the fact that the legislation may provide for a formal structure for enforcement proceedings does not preclude hearsay evidence from being admitted at a hearing. Evidence is generally considered a matter of procedure. As an administrative tribunal the Superintendent is not bound by court rules of evidence, and in the absence of any statutory provision to the contrary, may consider any evidence it considers relevant, including hearsay evidence: *Adams v. British Columbia (Superintendent of Motor Vehicles)*, 2019 BCCA 225 (CanLII).
9. There is no provision in RESA which imports civil or criminal rules of evidence into the administrative proceedings held by the Superintendent. Nevertheless, the Superintendent may, draw upon principles underlying court rules of evidence to exclude or assess evidence.
10. The Superintendent must also afford procedural fairness to a respondent where a decision may affect his or her rights, privileges or interests. This right includes a right to be heard. The Superintendent affords every respondent an opportunity to respond to the case against him or her by providing advance notice of the issues and the evidence, and an opportunity to present evidence and argument. The Superintendent must determine facts, and decide issues set out in the Notice of Discipline Hearing, based on evidence. The Superintendent may, however, apply its individual expertise and judgment to how it evaluates or assesses evidence.

Preliminary Issues

11. On April 23, 2024, the scheduled date of the hearing of this matter, the respondent did not attend at the hearing.
12. Section 42(1) of RESA provides that if a notice of discipline hearing has been given in accordance with section 40(3), the Superintendent may proceed with the discipline

hearing, whether or not the licensee appears in person or is represented by legal counsel.

13. Section 40(3) requires that the notice of hearing must be given to the licensee at least 21 days before the time set for the discipline hearing. At the time the Notice of Discipline Hearing was issued, the respondent was a former licensee.
14. At the hearing of this matter, counsel for BCFSA submitted that the Notice of Discipline Hearing had been delivered to the respondent in accordance with section 40(3) of RESA. Further, counsel for BCFSA provided confirmation that there were pre-hearing conferences held on March 22, 2024, where the respondent was represented by legal counsel, and on March 28, 2024 where, as submitted by counsel for BCFSA, the respondent advised that he did not intend to participate in the pre-hearing conference or the discipline hearing and this was officially recorded in the minutes of those proceedings.
15. The respondent's knowledge of the hearing was further confirmed by an email from the respondent dated March 21, 2024 stating that "I will not be attending the hearing set forward". In supplementary submissions from BCFSA, requested by the Hearing Officer on May 15, 2024, BCFSA provided confirmation that service of the Notice of Discipline Hearing had been accepted by the respondent's legal counsel on his behalf on October 26, 2023. Accordingly, service on the respondent was effected in advance of the 21-day notice provisions in section 40(3) of RESA, and the respondent's correspondence underscores that he was well aware of the disciplinary hearing scheduled for April 23-24, 2024.
16. The October 20, 2023 Notice of Discipline Hearing sets out the nature of the matter that was to be the subject of this discipline hearing, specified the time and place for the commencement of this hearing, and advised the respondent that the hearing may proceed in his absence if he did not attend at the scheduled time.
17. Having heard the submissions of counsel for BCFSA on the date of the hearing, I determined that the requirements of section 40(3) were met, in that the respondent was given notice of the hearing as required, and that he had simply elected not to attend at the scheduled hearing. Given those circumstances, the hearing of this matter proceeded in the respondent's absence, as contemplated by section 42(1) of RESA.

Issues

18. The issues are:
 - Did the respondent contravene section 23(2)(d) of the Rules (formerly Rule 2-21(2)(d)) and/or section 23(4) of the Rules (formerly Rule 2-21(4)) as alleged in paragraphs 1(a), (b), (c), (f) and (g) of the Notice of Discipline Hearing?
 - Did the respondent contravene section 37(4) of RESA as alleged in paragraph 1(d) and (e) of the Notice of Discipline Hearing?
 - Did the respondent commit professional misconduct under section 35(1)(g) of RESA, as alleged in paragraph 3 of the Notice of Discipline Hearing?
 - Did the respondent contravene section 35(1)(e) of RESA as alleged in paragraph 2

of the Notice of Discipline Hearing?

Background and Evidence

19. The evidence at the hearing included a Book of Documents with 42 tabs, which was entered as Exhibit 14¹ and a Supplemental Book of Documents with 2 tabs, which was entered as Exhibit 15. Additionally, one witness was called by BCFSa: Investigator [Investigator 1] (“[Investigator 1]”), who is currently employed by BCFSa, but had also previously worked on the investigation related to this matter as an employed Investigator with RECBC.
20. I have reviewed and considered all of the evidence and information before me. The following is not intended to be a recitation of the entirety of that evidence and information. Rather, it is intended to provide context for my reasons.

The Witness

21. [Investigator 1] testified that he was an investigator with RECBC and BCFSa, and that in preparation for the hearing he had reviewed his investigation report, as well as the Book of Documents and Supplementary Book of Documents. [Investigator 1] indicated that he became involved in RECBC’s investigation into the respondent in 2019, when the investigation file was opened and he was assigned to the file. [Investigator 1] completed an investigation report summarizing the outcome of his investigation into the respondent on May 18, 2023. [Investigator 1] gave oral testimony of the investigation process, findings, and his interactions with the respondent during the investigation.

The Complaint

22. The Notice of Discipline Hearing in this matter arose out of an anonymous complaint to RECBC on August 28, 2019. The complaint alleged that the respondent had failed to report criminal charges to RECBC. Investigation file #19-400 was opened after RECBC received the complaint.

Investigation Summary

23. The respondent was first licensed under RESA with City 2 City Real Estate Services Inc. on February 16, 2017. He became unlicensed on February 16, 2023 and has not been licensed under RESA since that date.
24. In March 2008, the respondent was convicted in the United States of one count of [Charge 15] and was sentenced to 20 months of imprisonment. He was convicted under the name Gursharn Singh Kanda.
25. On October 2, 2016, the respondent was charged in Surrey, British Columbia with a number of *Criminal Code* charges (the “2016 Charges”). The charges were for [Charge 1], [Charge 2], [Charge 5], [Charge 4], [Redacted], and [Charge 3]. The charges were later stayed by the Crown on or around October 3, 2016.

¹ Tabs 1-13 of the Book of Documents were initially marked as Exhibits 1-13, before it was decided to mark the entire Book of Documents as Exhibit 14.

26. The respondent submitted a licensing application form to RECBC on February 6, 2017. His application indicated that he had previous legal names: Jim Kanda and Gursharn Kanda. On that application, the respondent indicated that he had not ever been convicted of a crime under a federal or provincial enactment, or under the law of any foreign jurisdiction. Attached to the application form was a criminal record check under his current legal name of Jake Singh Kanda, dated December 28, 2016.
27. On February 26, 2019, the respondent was charged a second time for the same offences in the 2016 Charges (the "2019 Charges"). In reasons for judgment dated November 6, 2020, the court granted a stay of proceedings for the 2019 Charges on the basis of delay in prosecution. The Crown appealed this stay of proceedings for the 2019 Charges. On July 7, 2021, the BC Court of Appeal allowed the appeal, the stay of proceedings was set aside, and a new trial was ordered.
28. The respondent was licensed at the time of the 2019 Charges, but he did not promptly inform RECBC in writing that he had been charged. He advised [Investigator 1] in an interview on March 1, 2023 that he did not do so because he was careless and assumed that his legal counsel would do so.
29. The respondent's managing broker had not been informed of the 2016 Charges when the respondent first applied for licensing, nor was the managing broker informed of the 2019 Charges until the start of BCFSA's investigation.
30. On January 5, 2021 the respondent was charged with the following Criminal Code offences (collectively, the "January 2021 Charges"):
 - One count of [Charge 10] committed on January 15, 2019;
 - One count of [Charge 10] committed on March 15, 2019;
 - Two counts of [Charge 10] and one count of [Charge 11] committed on May 15, 2019;
 - One count of [Charge 10] and one count of [Charge 12] committed on August 14, 2019;
 - One count of [Charge 10] committed on November 15, 2019;
 - One count of [Charge 10] committed on December 25, 2019; and
 - One count of [Charge 14] on January 4, 2021.
31. On January 27, 2021, the respondent applied to renew his real estate licence, and on February 11, 2021 he submitted an application to transfer his licence to a new brokerage. On the day of the transfer application, [Investigator 1] called the respondent to inquire about his criminal charges. The respondent left a voicemail to [Investigator 1] advising that he had been arrested in January 2021, but was released the next day and he believed he had nothing to report to anyone "because all of the charges were dropped".
32. On July 12, 2021, after the BC Court of Appeal had made their decision lifting the stay of proceedings of the 2019 Charges, the respondent was then charged again with substantially the same criminal misconduct as the 2016 Charges and the 2019 Charges (the "July 2021 Charges").
33. On May 16, 2022, the respondent was convicted of one count of assault and one count of pointing a firearm at a person, both offences committed on October 1, 2016 (the "2022

Convictions”). He received a two-year conditional sentence.

34. The respondent’s legal counsel advised [Investigator 1] by email of the 2022 Convictions on January 4, 2023. As [Investigator 1] stated during his testimony, that BCFSA had not been notified of the conviction prior to that date.
35. The respondent’s legal counsel confirmed in an email to BCFSA on January 20, 2023 that the respondent had not informed his managing broker of the 2022 Convictions.

Response to Investigation Requests

36. On April 7, 2021, [Investigator 1] sent an investigation letter to the respondent containing investigatory requests made under section 37 of RESA. Included in that letter was a specific request for “copies of all court documents, findings, transcripts, reasons for judgment, admissions of fact, probation orders, sentencing records, court orders, prohibitions and any other relevant documents related to the subject matter of the investigation”.
37. The respondent’s legal counsel provided a response to the investigation letter on May 13, 2021. In that letter, the respondent’s legal counsel advised RECBC that the 2016 Charges had been “withdrawn, because they were false charges”, and that the “Court has made the decision to drop the charges permanently, and no longer seek prosecution”. With respect to the January 2021 Charges, the respondent’s legal counsel noted that “there was a stay of proceedings ... Consequently, these charges remain pending and no convictions have been made with respect to the above-mentioned charges ...”. The respondent’s legal counsel included a Court Services Online search that showed a stay of proceedings on January 5, 2021.
38. In the May 13, 2021 letter from the respondent’s counsel, he further noted that they were “in the process of procuring the requested certified court documents, findings, etc.” [Investigator 1] sent follow-up emails on July 16, 2021 and September 10, 2021, requesting the supporting documentation for the investigation. The respondent’s counsel responded on January 19, 2022, providing information about the respondent’s 2008 conviction in the United States. However, the response did not provide any information or court documentation about the 2016 Charges, 2019 Charges, January 2021 Charges, or July 2021 Charges.
39. On Feb. 16, 2022, [Investigator 1] sent another email to the respondent’s legal counsel, noting that it had come to his attention that the stay of proceedings of the 2019 Charges had been set aside. [Investigator 1] requested an update and court documentation relating to the 2016 Charges.
40. On August 23, 2022, the respondent’s legal counsel provided a response, enclosing court documentation about the 2016 Charges. The email included the information for the 2016 Charges, the information for the 2019 Charges, the information for the July 2021 Charges, and the March 24, 2019 Recognizance of Bail for the 2019 Charges. As [Investigator 1] testified at the hearing, BCFSA had not been provided any of this information until this date, nor had they been provided the November 2020 reasons for judgment granting the stay of proceedings with respect to the 2019 Charges, despite the request in the April 7, 2021 investigation letter for these records.

Submissions

41. BCFSA submitted that there was clear, convincing, and cogent evidence that

established, on the balance of probabilities, that the respondent had committed professional misconduct contrary to RESA.

42. Specifically, BCFSA submits that the respondent committed professional misconduct within the meaning of section 35(1)(a) when he did each of the following:
- a. Failed to promptly notify RECBC in writing after the 2019 Charges, contrary to section 2-21(2)(d) of the Rules as they read on and before July 31, 2021;
 - b. Failed to promptly notify RECBC in writing after the January 2021 Charges, contrary to section 2-21(2)(d) of the Rules as they read on and before July 31, 2021 (now section 23(2)(d) of the Rules);²
 - c. Failed to promptly notify RECBC, or the Superintendent, in writing after the July 2021 Charges, contrary to section 2-21(2)(d) of the Rules as they read on and before July 31, 2021, or section 23(2)(d) of the Rules as they read on and after August 1, 2021;
 - d. On May 13, 2021, made, or caused or allowed to be made on his behalf, a false or misleading statement in writing in response to the investigation letter, that the 2016 Charges were “withdrawn, because they were false charges” and that the “Court has made the decision to drop the charges permanently, and no longer seek prosecution” when he knew or reasonably ought to have known that this statement was false or misleading, contrary to section 37(4) of RESA;
 - e. Withheld, concealed, or refused to provide each of the following in response to the investigation letter’s investigatory requests made under section 37 of RESA, contrary to section 37(4) of RESA:
 - i. The October 2, 2016 information charging him with the 2016 Charges;
 - ii. The February 26, 2019 indictment charging him with the 2019 Charges;
 - iii. His March 24, 2019 Recognizance of Bail; and
 - iv. The November 6, 2020 decision staying the 2019 Charges;
 - f. Failed to promptly notify the Superintendent in writing after the 2022 Convictions, contrary to section 23(2)(d) of the Rules as they read on and after August 1, 2021; and
 - g. Failed to provide notice to [Managing Broker 1], the managing broker of his related brokerage, of the 2019 Charges, the January 2021 Charges, the July 2021 Charges, and the 2022 Convictions, contrary to section 2-21(4) of the Rules as they read on and before July 31, 2021 and section 23(4) of the Rules as they read on and after August 1, 2021.
43. BCFSA further submitted that it had proven on a balance of probabilities that the respondent committed professional misconduct within the meaning of section 35(1)(e) of RESA when he engaged in the conduct set out in subparagraphs (d) and (e) above, and within the meaning of section 35(1)(g) when he engaged in the conduct set out in subparagraph (d) above.
44. The respondent did not provide any oral or written submissions on his behalf during this hearing or in response to the May 15, 2024 request for supplementary submissions by the

² At the hearing, counsel for BCFSA clarified that at the time of the January 2021 Charges, section 2-21(2)(b) of the Rules was in effect and the obligation was to notify RECBC.

Hearing Officer respecting the service and receipt of the Notice of Discipline Hearing.

Reasons and Decision

45. The Superintendent regulates professionals who provide real estate services. The Superintendent's role is the protection of the public interest and the maintenance of public confidence in the real estate services industry. In exercising this role, the Superintendent relies on the long-established legislation in RESA and the supporting Rules.

Did the respondent contravene section 23(2)(d) of the Rules (formerly Rule 2-21(2)(d)) and/or section 23(4) of the Rules (formerly Rule 2-21(4)) as alleged in paragraphs 1(a), (b), (c), (f) and (g) of the Notice of Discipline Hearing?

46. Section 35(1)(a) of RESA provides that a licensee commits professional misconduct if they contravene a section of RESA or the Rules.
47. Section 2-21(2)(d) of the Rules (now section 23(2)(d)) requires a licensee to promptly notify RECBC (now the Superintendent) in writing if the licensee is charged with or convicted of an offence under a federal or provincial enactment or under a law of any foreign jurisdiction, other than (i) highway traffic offences resulting only in monetary fines or demerit points, or both; or (ii) contraventions in respect of which proceedings were commenced by means of a violation ticket under the *Offence Act* or a ticket under the *Contraventions Act* (Canada). Section 2-21(4) of the Rules (now section 23(4)) requires the licensee to give their managing broker a copy of this notice.
48. As described in the investigation report and in the testimony of [Investigator 1], the respondent failed to provide prompt written notice to RECBC or the Superintendent of his 2019 Charges, January 2021 Charges, July 2021 Charges, and the 2022 Convictions. The respondent's explanation during his investigation interview was that he was "careless" in not reporting the 2019 Charges to RECBC and he thought his legal counsel would notify RECBC of the charges. I do not accept that as an adequate excuse for not complying with the notification requirements under section 2-21(2)(d) (now 23(2)(d)) of the Rules. Furthermore, with respect to both the 2019 Charges and the January 2021 Charges, the fact that the charges had been stayed did not change the fact that the respondent was required, under the Rules, to notify RECBC that he had been charged.
49. Likewise, with respect to the July 2021 Charges and the May 2022 Conviction, the evidence shows that the Superintendent was not notified of these until August 23, 2022 and January 4, 2023, respectively. I find that this was a failure to promptly notify the Superintendent of the charges and conviction, as required by section 23(2)(d) of the Rules.
50. I also find that the respondent failed to provide the required notice respecting the 2019 Charges, the January 2021 Charges, the July 2021 Charges, and the 2022 Convictions to his managing broker, as required by the Rules. Given that the respondent did not provide written notice to RECBC of the 2019 and January 2021 Charges, I find that he could not have provided a copy of that written notice to his managing broker. While the respondent notified BCFSa of the July 2021 Charges (in August 2022), I find that the notice was not provided promptly as required by the Rules, and there is no evidence that the respondent provided a copy of any such notice to his managing broker as required by section 23(4) of the Rules. The respondent has also acknowledged, through his legal counsel's correspondence, that he did not notify his managing broker of the 2022 Convictions.
51. It is my conclusion that based on the evidence before me, the respondent contravened

sections 23(2)(d) of the Rules (formerly section 2-21(2)(d) of the Rules), thereby committing professional misconduct under section 35(1)(a) of RESA, as alleged in paragraphs 1(a), (b), (c) and (f) of the Notice of Discipline Hearing. I further conclude that the respondent contravened section 23(4) of the Rules (formerly section 2-21(4) of the Rules), thereby committing professional misconduct under section 35(1)(a) of RESA, as alleged in paragraph 1(g) of the Notice of Discipline Hearing.

Did the respondent contravene section 37(4) of RESA as alleged in paragraph 1(d) and (e) of the Notice of Discipline Hearing?

52. Section 37(4) of RESA provides that a licensee must not “withhold, destroy, conceal or refuse to provide any information or thing reasonably required for the purposes of an investigation”.
53. BCFSA alleges in paragraph 1(d) of the Notice of Discipline Hearing that the May 13, 2021 letter from the respondent’s counsel in response to RECBC’s investigatory requests made on April 7, 2021 contained a false or misleading statement by stating that the 2016 Charges “were withdrawn, because they were false charges” and that the “Court has made the decision to drop the charges permanently, and no longer seek prosecution”.
54. BCFSA further alleges at paragraph 1(e) of the Notice of Discipline Hearing that the respondent withheld, concealed, or refused to provide (i) the October 2, 2016 information charging him with the 2016 Charges; (ii) the February 26, 2019 indictment charging him with the 2019 Charges; (iii) the March 24, 2019 Recognizance of Bail; and (iv) the November 6, 2020 decision staying the 2019 Charges, in response to RECBC’s investigatory requests made on April 7, 2021.
55. I find that the statements made in the May 13, 2021 letter from the respondent’s counsel were made when the respondent knew, or ought to have known, that the 2016 Charges had not been “withdrawn, because they were false charges” and the matters had not been permanently resolved. The respondent also knew, or ought to have known, that the 2019 Charges were for substantially the same criminal misconduct as alleged in the 2016 Charges. The respondent also knew, or ought to have known, that the stay of proceedings on the 2019 Charges was subject to an appeal that had been heard approximately fifteen days prior to the date their statement was made.
56. I therefore find that the May 13, 2021 correspondence from the respondent’s legal counsel incorrectly described the resolution of the respondent’s criminal proceedings relating to the October 2016 conduct, and omitted any reference to the 2019 Charges for the same conduct, and the appeal of the stay of proceedings. In responding as such to the April 7, 2021 investigation letter, I find that the respondent concealed material facts about his criminal proceedings from RECBC, such that RECBC was left with an inaccurate picture of the respondent’s criminal proceedings.
57. It is my conclusion that the respondent’s May 13, 2021 response to the April 7, 2021 investigation letter misrepresented or omitted facts in a way that obscured the true details of his criminal charges. The respondent knew or ought to have known that the May 13, 2021 response withheld information and concealed information that was directly relevant to RECBC’s requests and as a result intentionally withheld, concealed, or refused to provide material information during the investigation, contrary to section 37(4) of RESA, as alleged in paragraph 1(d) of the Notice of Discipline Hearing.
58. In addition, the May 13, 2021 response enclosed various documents, including Court

Services Online searches, with regard to the respondent's criminal proceedings. However, the response failed to include the information for the 2016 Charges, the indictment for the 2019 Charges, the respondent's bail order from March 2019, and the stay order made on November 6, 2020. All of these documents fell within the confines of the documentary requests made by RECBC in its April 7, 2021 investigation letter. I accept BCFSAs submission that these records would have been either in the respondent's possession directly or in his control by virtue of his or his lawyer's involvement in the criminal proceedings. I note that in the May 13, 2021 letter from the respondent's counsel, he noted that they were "in the process or procuring the requested certified court documents, findings, etc." Notwithstanding this, these records were not provided to BCFSAs until August 2022, with no explanation for the significant delay. I therefore find that the respondent acted in contravention of section 37(4) of RESA, as alleged in paragraph 1(e) of the Notice of Discipline Hearing when he withheld or refused to provide the above-noted records in response to the documentary requests made by RECBC.

Did the respondent commit professional misconduct under section 35(1)(g) of RESA, as alleged in paragraph 3 of the Notice of Discipline Hearing?

59. Paragraph 3 of the Notice of Discipline Hearing alleges that the May 13, 2021 letter sent on behalf of the respondent in response to RECBC's investigatory requests made on April 7, 2021, contravened section 35(1)(g) of RESA. Section 35(1)(g) of RESA provides that it is professional misconduct for a licensee to make or allow "to be made any false or misleading statement in a document that is required or authorized to be produced or submitted under this Act".
60. At paragraph 120 of *Inglis (Re)*, 2018 CanLII 86666 (BC REC), the Discipline Hearing Committee found that an investigator is authorized by section 37 of RESA to require a licensee to answer inquiries relating to its investigation. At paragraph 121, the Committee found that the licensee's response to the request was therefore a document authorized by RESA, and section 35(1)(g) was applicable to it.
61. I find that the May 13, 2021 letter was written in response to RECBC's April 7, 2021 investigation letter, as required as part of an investigation conducted pursuant to section 37(1) of RESA, and therefore was a document required or authorized by RESA. As noted above, at the time that the letter was written, the respondent had been charged in 2019 for the same conduct underlying the 2016 Charges. While both of the 2016 and 2019 charges had been stayed, the appeal of the most recent stay had been heard before the BC Court of Appeal approximately two weeks prior to the May 13, 2021 letter, with the outcome still pending. It was therefore misleading to advise BCFSAs in 2021 that this criminal matter had been permanently resolved. Further, I find that in allowing his legal counsel to advise BCFSAs that the 2016 Charges had been permanently dispensed with, and that the 2016 Charges "were withdrawn, because they were false charges", the respondent allowed a false or misleading written statement to be made to BCFSAs in a document required or authorized under RESA, and the respondent therefor committed professional misconduct under section 35(1)(g), as alleged in paragraph 3 of the Notice of Discipline Hearing.

Did the respondent contravene section 35(1)(e) of RESA as alleged in paragraph 2 of the Notice of Discipline Hearing?

62. Paragraph 2 of the Notice of Discipline Hearing alleges that the May 13, 2021 letter sent on behalf of the respondent, and the respondent's failure to provide the records set out in paragraph 1(e) of the Notice of Discipline Hearing in response to the investigator's April 7, 2021 requests, contravened section 35(1)(e) of RESA.

63. Section 35(1)(e) of RESA provides that it is professional misconduct for a licensee to fail or refuse to cooperate with an investigation under section 37. The duty to cooperate includes the duty to engage with the regulator in good faith and to be “honest, open, and helpful” in their responses: see *Law Society of Ontario v. Diamond*, 2021 ONCA 255 (CanLII), at para. 50.
64. For the same reasons set out above, it is my conclusion that the May 13, 2021 letter sent on behalf of the respondent misrepresented and obscured facts that the respondent knew, or reasonably ought to have known, about his criminal history and proceedings. The response was an obfuscation of known facts which prevented further inquiries into the status of the respondent’s criminal history. I find that the response was not provided in good faith and in a forthright manner, and therefore was not done in compliance with the respondent’s duty to cooperate with an investigation under section 37 of RESA, contrary to section 35(1)(e) of RESA. As a result, I find that the response constituted professional misconduct as alleged in paragraph 2 of the Notice of Discipline Hearing.
65. Furthermore, I find that the failure to provide the documents set out in paragraph 1(e) of the Notice of Discipline Hearing until at least August 2022, despite having been sought since April 2021, was a failure to cooperate with an investigation under section 37 of RESA, and was therefore also conduct contrary to section 35(1)(e) of RESA as alleged in paragraph 2 of the Notice of Discipline Hearing.

Conclusion and Sanctions

66. I have found that the respondent acted contrary to RESA and the Rules on all counts contained in the Notice of Discipline Hearing dated October 26, 2023.
67. I retain jurisdiction to determine issues of penalty and costs, and will hear evidence and submissions from the parties concerning orders under section 43(2) of RESA, and expenses under section 44(1) of RESA.
68. Should either party wish to apply to proceed by way of an oral hearing rather than written submissions in respect of the sanction portion of the hearing, they must advise the Hearing Coordinator by June 28, 2024 of any request for an in-person hearing respecting sanction, and why an in-person hearing is necessary or desirable. If an in-person hearing is directed, the Hearing Coordinator will contact the parties to arrange a suitable hearing date. Unless an in-person hearing is directed, any further evidence will be received through affidavits, and submissions respecting sanction will be received in writing. Subject to further directions, the parties must provide affidavit evidence and written submissions to the Hearing Coordinator and to each other as follows:
 - a. BCFSA must provide any affidavits and written submissions by July 12, 2024;
 - b. the respondent must provide any responding affidavits and written response submissions by August 2, 2024; and
 - c. BCFSA must provide any reply affidavits and written reply submissions by August 9, 2024.
69. Any party may apply to vary these dates, seek leave to cross-examine on an affidavit, or address other procedural matters.

70. Once I have arrived at a decision on sanction issues, I will issue additional reasons (a "Decision on Penalty & Costs") that will form a part of this decision, make an order under section 43(2) of RESA, and make such other orders under RESA as I may deem appropriate.

71. Once an order has been made under Part 4, Division 2 of RESA, the respondent will have a right to appeal to the Financial Services Tribunal under section 54(1)(e) of RESA. The respondent will have 30 days from the date of the sanction decision:
Financial Institutions Act, RSBC 1996, ch 141, section 242.1(7)(d) and
Administrative Tribunals Act, SBC 2004, section 24(1).

Issued at Kamloops, British Columbia, this 18th day of June, 2024.

"Original signed by Len Hrycan"

Len Hrycan
Hearing Officer