

BC FINANCIAL SERVICES AUTHORITY

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*

SBC 2004, c 42 as amended

IN THE MATTER OF

**Jake Singh Kanda
(176470)**

DECISION ON SANCTION

[This Decision has been redacted before publication.]

Date of Hearing: Written Submissions
Counsel for BCFSA: Laura Forseille
Counsel for the Respondent: Self Represented
Hearing Officer: Len Hrycan

Introduction

1. In a June 18, 2024 decision, *Kanda (Re)*, 2024 BCSRE 40 (the “Liability Decision”), I determined that the respondent, Jake Singh Kanda, had committed professional misconduct, as contemplated by section 35(1) of the *Real Estate Services Act* (“RESA”). Specifically, I found that:
 - Mr. Kanda committed professional misconduct within the meaning of section 35(1)(a) of RESA when he:
 - failed to promptly notify the Real Estate Council of British Columbia (“RECBC”) in writing after being charged with nine offences under the *Criminal Code* on February 26, 2019 (the “2019 Charges”)¹, contrary to section 2-21(2)(d) of the Real Estate Services Rules (the “Rules”) as they read on and before July 31, 2021;
 - failed to promptly notify RECBC in writing after being charged with ten offences under the *Criminal Code* on January 4, 2021 (the “January 2021 Charges”), contrary to section 2-21(2)(d) of the Rules as they read on and before July 31, 2021;

¹ For the purposes of this decision, I adopt the definitions as set out in the Liability Decision.

- failed to promptly notify RECBC, or the Superintendent of Real Estate (the “Superintendent”), in writing after being charged with nine offences under the *Criminal Code* on July 12, 2021 (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;
 - failed to promptly notify the Superintendent in writing after being convicted of two offences under the *Criminal Code* on or about May 16, 2022 (the “2022 Convictions”), contrary to section 23(2)(d) of the Rules as they read on and after August 1, 2021; and
 - failed to provide notice of each of the 2019 Charges, the January 2021 Charges, the July 2021 Charges, and the 2022 Convictions to the managing broker of his related brokerage, contrary to section 2-21(4) of the Rules as they read on and before July 31, 2021, and contrary to section 23(4) of the Rules as they read on and after August 1, 2021.
- Mr. Kanda contravened sections 37(4) and 35(1)(g) of RESA when his May 13, 2021 letter to RECBC, in response to investigatory requests, withheld information and concealed material facts, and contained false or misleading statements about his criminal proceedings; and he withheld or refused to provide documents relating to his criminal proceedings in response to documentary requests made by RECBC. Contrary to section 35(1)(e) of RESA, his actions were a failure to cooperate with an investigation under RESA.
2. This decision relates to the sanctions and orders to be issued in respect of Mr. Kanda’s conduct.
 3. The hearing of the sanctions portion of this matter proceeded by way of written submissions.
 4. BCFSA seeks an order that Mr. Kanda’s licence under RESA be cancelled, an order that Mr. Kanda pay a discipline penalty in the amount of \$15,000, and an order that Mr. Kanda pay investigation and hearing expenses in the amount of \$17,431.30.
 5. Although provided with the opportunity to do so, Mr. Kanda did not provide any submissions, nor did he indicate that he wished to have the opportunity to have the issue of penalty heard by way of an oral hearing.

Issue

6. The issue is the appropriate orders to be issued in respect of Mr. Kanda’s conduct, as provided for by section 43 of RESA.
7. Additionally, there is the question of whether Mr. Kanda should be required to pay enforcement expenses pursuant to section 43(2)(h) of RESA and, if so, the appropriate quantum of those expenses.

Jurisdiction

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

Background and Evidence

9. The background to this matter is set out in the Liability Decision. I will not reproduce the entirety of that background and evidence here. The following summary is intended to provide context for my reasons.
10. Mr. Kanda was first licensed under RESA on February 16, 2017. He became unlicensed on February 16, 2023 and has not been licensed under RESA since that date.
11. In the Liability Decision I found as follows in respect of Mr. Kanda's charges and convictions:
 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.
 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.

(...)
 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.

12. I found that Mr. Kanda failed to promptly disclose each of these charges to RECBC/the Superintendent and to his managing broker. In particular, I found as follows in the Liability Decision:

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.

13. On April 7, 2021, RECBC's investigator wrote to Mr. Kanda, requesting information and making 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". Mr. Kanda responded to the investigation letter on May 13, 2021 by way of a letter from his counsel. In that response, Mr. Kanda's legal counsel advised, among other things, 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 Mr. Kanda's May 13, 2021 letter to RECBC, I made the following the findings in the Liability Decision:

- the statements made in the May 13, 2021 letter from Mr. Kanda's counsel were made when Mr. Kanda 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. Mr. Kanda also knew, or ought to have known, that the 2019 Charges were for substantially the same criminal misconduct as alleged in the 2016 Charges, and 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 the statement was made (para. 55).
- Mr. Kanda 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 (para. 57).

- The May 13, 2021 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. While Mr. Kanda's counsel provided court documents to BCFSA in August 2022, there was no explanation for this delay (para. 58).

In light of my findings, I found that Mr. Kanda allowed a false or misleading statement to be made in a document required under RESA, and failed to cooperate with an investigation under section 37 of RESA.

Applicable Law and Legal Principles

14. Section 43(2) of RESA provides that if, after a discipline hearing, the Superintendent determines that the licensee has committed professional misconduct, the Superintendent must, by order, do one or more of the following:

- (a) reprimand the licensee;
- (b) suspend the licensee's licence for the period of time the Superintendent considers appropriate or until specified conditions are fulfilled;
- (c) cancel the licensee's licence;
- (d) impose restrictions or conditions on the licensee's licence or vary any restrictions or conditions applicable to the licence;
- (e) require the licensee to cease or to carry out any specified activity related to the licensee's real estate business;
- (f) require the licensee to enrol in and complete a course of studies or training specified in the order;
- (g) prohibit the licensee from applying for a licence for a specified period of time or until specified conditions are fulfilled;
- (h) require the licensee to pay amounts in accordance with section 44(1) and (2) [*recovery of enforcement expenses*];
- (i) require the licensee to pay a discipline penalty in an amount of
 - (i) not more than \$500,000, in the case of a brokerage or former brokerage, or
 - (ii) not more than \$250,000, in any other case;
- (j) require the licensee to pay an additional penalty up to the amount of the remuneration accepted by the licensee for the real estate services in respect of which the contravention occurred.

15. In general terms, sanctions in relation to breaches of RESA are issued with a view to the overarching goal of protecting the public.

16. 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.
17. 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?
18. 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

19. BCFSa submits that Mr. Kanda's professional misconduct should be characterized as severe because it involved ongoing dishonesty and deception towards his professional regulator about charges and a conviction under the *Criminal Code*. BCFSa submits that the misconduct was done with a view to obtaining the benefits of licensure under RESA, while depriving the Superintendent

(and previously RECBC) of the ability to effectively scrutinize his suitability for licensure. In BCFSA' submissions, by obstructing the Superintendent's ability to perform this vital regulatory function, Mr. Kanda's conduct posed a risk to the public's confidence in the industry.

20. I agree with BCFSA's submissions that Mr. Kanda's misconduct involved repeated misconduct that obstructed RECBC's (and later the Superintendent's) ability to perform its regulatory function through scrutinizing his suitability for licensure in light of the charges and conviction. I further find that Mr. Kanda's conduct, in allowing false and misleading statements to be made to his regulator during an investigation, is an aggravating factor as his conduct served to "frustrate, delay or undermine investigations by BCFSA".²

Other Relevant Factors

21. BCFSA submits that because Mr. Kanda failed to inform his regulator of three separate sets of criminal charges, and one conviction, his conduct was not an isolated lapse in judgment. I agree. I further note that even while Mr. Kanda was aware that he was under investigation by RECBC (and later BCFSA) in relation to his failure to disclose the 2016 Charges, the 2019 Charges, and the January 2021 Charges, he nevertheless failed to promptly disclose the 2022 Convictions to BCFSA. I find that Mr. Kanda's conduct in this matter indicated a pattern of misconduct and ongoing disregard for his requirements under RESA's regulatory regime, and that this is an aggravating factor that must be considered.
22. Mr. Kanda has no prior disciplinary history with BCFSA (or its predecessor RECBC). I find that this lack of a prior disciplinary record is a neutral factor.
23. Mr. Kanda did not participate in this hearing and has made no submissions. There is no evidence before me of Mr. Kanda's acknowledgement of the misconduct, remorse, rehabilitation, or any other mitigating factors.

Previous Sanctions Decisions and Consent Orders

24. 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.
25. BCFSA has referred to a number of previous disciplinary decisions and consent orders. I note, prior to reviewing those decisions and consent orders below, that I am of the view that 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.
26. Moreover, many of the cases referred to by BCFSA were decided prior to amendments to RESA in 2016, after which the maximum penalty amount in the case of an individual licensee was increased from \$10,000 to \$250,000.

² *Bakker (Re)*, 2023 BCSRE 12 (CanLII) at para. 89.

27. With those comments in mind, I turn to a review of the cases cited.
28. BCFSA referred to the following matters that involved misconduct that occurred prior to the 2016 amendments to RESA:
- In *Kyung Kim (Re)*, 2012 CanLII 5993 (BC REC), the licensee failed to promptly notify RECBC or her managing broker of two criminal charges. She also made a false statement on her licence transfer application by indicating that she was not facing criminal charges. By way of a consent order, Ms. Kim agreed to a one-month suspension of her licence, and a discipline penalty of \$2,000.
 - In *O'Neill (Re)*, 2018 CanLII 129781 (BC REC) ("**O'Neill**"), the licensee failed to promptly notify RECBC or his managing broker of three criminal charges and one criminal conviction. He also admitted to making a false or misleading statement in his licence renewal application by denying that he faced criminal charges. By way of a consent order, Mr. O'Neill agreed to a one-month suspension of his licence, and a discipline penalty of \$2,000.
 - In *Sandher (Re)*, 2014 CanLII 90377 (BC REC), the licensee admitted to making a false or misleading statement on four applications for licence renewal and reinstatement by failing to disclose on those applications that he had two criminal convictions. Mr. Sandher also failed to promptly notify RECBC and his managing broker of the convictions. Mr. Sandher agreed to a 14-day suspension and agreed to pay enforcement expenses.
 - In *Gray (Re)*, 2017 CanLII 47697 (BC REC), the licensee provided unlicensed real estate services and failed to keep her managing broker informed of those services. She also made misleading statements to RECBC on her licence renewal application by indicating that she had completed the Relicensing Education Program requirements, when she had not. By way of a consent order, the licensee agreed to a reprimand and a discipline penalty of \$5,000.
 - In *Moore (Re)*, 2018 CanLII 122716 (BC REC), the licensee submitted an application for licence renewal in which she advised that she completed the Relicensing Education Program requirements, when in fact she had not. By way of a consent order, the licensee agreed to a reprimand and a discipline penalty of \$1,000.
29. BCFSA also referred to *Sood (Re)*, 2019 CanLII 37499 (BC REC) ("**Sood**"), which involved conduct that occurred after the 2016 amendments to RESA. In that matter, which was also a consent order, Ms. Sood had failed to promptly notify RECBC or her managing broker that she faced two disciplinary proceedings by the Society of Notaries of British Columbia. She made false or misleading statements on her licence renewal application in 2017 when she failed to provide particulars of those proceedings. She also advised RECBC in an email that there were no findings arising from those proceedings, which was a false or misleading statement. By way of a consent order, Ms. Sood agreed to a suspension of fourteen days, and a discipline penalty of \$3,000.
30. BCFSA submits that Mr. Sood's misconduct is comparable to that of Mr. Kanda, in that it involved multiple instances of contravening the Rules by failing to promptly notify the Superintendent or their managing broker of regulatory proceedings, and it also involved making false or misleading statements to the regulator. However, BCFSA submits that Mr. Kanda's misconduct was far more serious in that it involved a greater number of contraventions of the Rules and RESA, and the gravity of the information that Mr. Kanda was attempting to conceal from his regulator was more serious.

Decision on Sanction

31. Penalties are imposed for the purposes of achieving general or specific deterrence, and protection of the public. Penalties must not be imposed for the purpose of being purely retributive or denunciatory, however, penalties may place burdens (even very heavy burdens) on offenders, as long as the penalties are designed to encourage compliance with regulations in the future.³
32. In BCFSA's submission, the appropriate sanction must be of significance to achieve the goal of general deterrence, and indicate to other licensees and industry participants that dishonesty and non-cooperation with their professional regulator is a serious breach of the rules and standards that govern the real estate industry in British Columbia.
33. BCFSA seeks both a disciplinary penalty of \$15,000 and, recognizing that Mr. Kanda is no longer licensed, a notional cancellation of his licence.
34. Mr. Kanda's misconduct was serious, and I agree the appropriate sanction must send a message to both Mr. Kanda and other licensees (or prospective applicants) that they must be entirely forthright in promptly disclosing charges and convictions, as well as in their communications with the Superintendent during investigations. The charges that Mr. Kanda failed to promptly disclose were extremely serious, involving allegations of pointing a firearm at a person, [Charge 5], [Charge 12], [Charge 14], [Charge 13], [Charge 1], [Charge 2], and various charges in relation to firearms. Mr. Kanda was ultimately convicted of assault and pointing a firearm at a person. Mr. Kanda's misconduct was mired by a persistent failure to candidly and promptly disclose these very serious criminal charges to his regulator as required by the Rules.
35. When RECBC investigated the matter, Mr. Kanda allowed statements to be made on his behalf that he knew, or ought to have known, were false and misleading and which served to obstruct and delay the investigation. Having regard to the serious and repeated nature of Mr. Kanda's misconduct, I find that a significant sanction is warranted in order to achieve the purposes of specific and general deterrence, as well as to uphold public confidence in the Superintendent's ability to effectively scrutinize the suitability of licensees under RESA.
36. With respect to a disciplinary penalty, recognizing that the use of the prior decisions is limited where they are consent orders, I agree with BCFSA that Mr. Kanda's conduct is more serious than the conduct in the *Sood* and *O'Neill* consent orders, where disciplinary penalties of \$3,000 (with a 14-day suspension) and \$2,000 (with a one-month suspension) were imposed, respectively. I find that in the circumstances of this matter, a disciplinary penalty of \$10,000, coupled with a lengthy suspension will serve to adequately deter Mr. Kanda and others from engaging in similar misconduct.
37. The Superintendent has continuing jurisdiction over former licensees pursuant to section 35 of RESA, including jurisdiction under section 43(2) to order the cancellation or suspension of a former licensee's licence, even if they are no longer licensed. I agree that, as was noted in *Rohani (Re)*, 2024 BCSRE 31, "if the Superintendent did not have that ongoing jurisdiction to make discipline orders, a licensee who had engaged in conduct warranting a suspension or cancellation could avoid that disciplinary outcome simply by relinquishing their license, with the licensee then

³ *Thow v. B.C. (Securities Commission)*, 2009 BCCA 46 at para. 38.

being in a position to reapply for a license having no record of having been subjected to any suspension or cancellation.”⁴

38. BCFSA seeks a cancellation of Mr. Kanda’s licence because they say that the conduct underlying the 2022 Convictions was criminal and violent in nature and it shows that he is unsuitable for licensure, although BCFSA acknowledges that the October 2016 conduct underlying the 2022 Convictions is not the professional misconduct before me.
39. BCFSA further submits that Mr. Kanda’s conduct throughout the investigation showed a lack of recognition of the requirements of its licensees under RESA. I note in this respect that Mr. Kanda failed to promptly disclose the July 2021 Charges to the Superintendent or his managing broker, notwithstanding that by that point he had recently been made aware that he was under investigation for his failure to promptly disclose the 2019 Charges. His May 13, 2021 response to investigation requests further withheld information and concealed information that was directly relevant to the information requests. Then, after he was convicted in May 2022, he did not disclose the convictions to the Superintendent until almost eight months later. Mr. Kanda had many opportunities to show that he understood the importance of complying with the Rules, and yet failed to do so.
40. I find that Mr. Kanda’s misconduct showed a clear lack of recognition of the expectations of licensees under RESA. The appropriate sanction in the circumstances of this matter must send a clear message to Mr. Kanda and other licensees that the Superintendent will not tolerate the failure to promptly disclose charges and convictions, or the failure to be forthcoming and honest during investigations. While Mr. Kanda is not currently licensed, I believe that, in addition to the disciplinary penalty, a suspension of a significant period is required to adequately achieve the objectives of specific and general deterrence, public protection and public confidence in the integrity of the licensing regime under RESA.
41. In the circumstances of this matter, and recognizing that Mr. Kanda has not been licensed since February 2023, I find that in addition to the \$10,000 disciplinary penalty, Mr. Kanda’s licence should be notionally suspended for a period of one year from the date of this decision, during which period Mr. Kanda is prohibited from applying for licensure under RESA. The determination of Mr. Kanda’s suitability, good reputation and fitness for licensure under RESA is left to be determined at the time of any future licensure applications, should that occur.

Enforcement Expenses

42. Sections 43(2)(h) and 44(1) and (2) of RESA provides that the Superintendent may, after determining a licensee has committed professional misconduct, require the licensee 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 44(2)(a), amounts ordered under section 43(2)(h) 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.
43. Section 4.4 of the *Real Estate Services Regulation* (the “Regulation”) sets out the maximum amounts the Superintendent may order a licensee to pay under section 43(2)(h) or 49(2)(c) in relation to various activities such as investigator costs, legal services costs, disbursements,

⁴ *Kim (Re)*, 2020 CanLII 36927 at paras. 50-55; *Rohani (Re)*, 2024 BCSRE 31 at para. 98.

administrative expenses for days of hearings, witness payments, and other expenses, reasonably incurred, arising out of a hearing or an investigation.

44. BCFSA has submitted an appendix of enforcement expenses which identifies the hours incurred by [Investigator 1], the investigator assigned to Mr. Kanda's case, the hours incurred by BCFSA's legal counsel in association with the hearing of this matter, and disbursements and other costs arising out of the hearing of this matter. That appendix sets out that the total amount of the enforcement expenses claimed is \$17,431.30.
45. BCFSA was successful in respect of all of the allegations set out in the Notice of Hearing. I see no reason why BCFSA should be deprived of its reasonable enforcement expenses in this matter.
46. The liability phase of this hearing took only one day. Of the expenses claimed, \$11,000 are in relation to investigation costs pursuant to s. 4.4(a) of the Regulation, supported by a certificate of costs from the investigator certifying that the investigation involved 110 hours. The expenses for reasonable legal services claimed pursuant to s. 4.4(c)(i) of the Regulation are \$3,150. A variety of other expenses are claimed for disbursements, witness attendance, and other general expenses arising from the hearing, bringing the total expenses claimed to \$17,431.30.
47. Where misconduct is proven against a licensee, enforcement expense orders serve to shift the expense of the proceeding to the wrongdoer, in part to encourage consent agreements, deter frivolous defences, and discourage steps that prolong investigations or hearings. In that respect, 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.
48. I find that the investigation and legal expenses claimed in this matter are reasonable in relation to the duration, nature and complexity of the investigation, the hearing, and the matters at issue. As I have also found, in this matter, Mr. Kanda's misconduct during the investigation served to frustrate and undermine the investigation. Having regard to the discretionary nature of expense awards, I am satisfied that an order for enforcement expenses in the amount of \$17,431.30 is appropriate in the circumstances of this matter.

Orders

49. I make the following orders:
 - Pursuant to sections 43(2)(b) of RESA, I order that Jake Singh Kanda's licence is suspended for one year from the date of this order;

- Pursuant to section 43(2)(i) of RESA, I order that Jake Singh Kanda pay a discipline penalty to BCFSA in the amount of \$10,000 within 30 days of the date of this order; and
 - Pursuant to section 44(1) of RESA, I order that Jake Singh Kanda pay enforcement expenses to BCFSA in the amount of \$17,431.30 within 30 days of the date of this order.
50. Pursuant to section 54(1)(e) of RESA, Jake Singh Kanda 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*, section 242.1(7)(d), and *Administrative Tribunals Act*, section 24(1).

Issued at Kamloops British Columbia, this 13th day of September, 2024.

“Original signed by Len Hrycan”

Len Hrycan
Hearing Officer