

BC FINANCIAL SERVICES AUTHORITY

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

AND IN THE MATTER OF
SEYEDSALAR TOOSI (SAL TOOSI)
(181342)

AND

SAL TOOSI PERSONAL REAL ESTATE CORPORATION
(181342PC)

REASONS FOR DECISION REGARDING
EXTENSION OF ADMINISTRATIVE PENALTY RECONSIDERATION REQUEST

[These Reasons have been redacted before publication.]

DATE AND PLACE OF HEARING: Via Written Submissions

HEARING OFFICER: Gareth Reeves

Introduction

1. On February 27, 2025, BC Financial Services Authority (“**BCFSA**”) issued a Notice of Administrative Penalty (the “**NOAP**”) in the amount of \$5,000 to Seyedsalar Toossi (Sal Toosi) and Sal Toosi Personal Real Estate Corporation (“**Mr. Toosi**”) pursuant to section 57(1) and 57(3) of the *Real Estate Services Act*, RSBC 2004, c 42 (“**RESA**”).
2. In the NOAP, BCFSA determined that Mr. Toosi had contravened the *Real Estate Services Rules*, BC Reg 209/2021 (the “**Rules**”) as follows and issued a \$1,000 administrative penalty for each contravention:
 - a. Section 41 by identifying a licensee as a member of the [Real Estate Group 1] on his website;
 - b. Section 40(6) by failing to identify [Real Estate Group 1]’s name on his website and LinkedIn account;
 - c. Section 41 by failing to qualify the particulars of the [Real Estate Group 1] being an “Award Winning Team” on one of his Facebook pages;
 - d. Section 40(3)(b) by failing to identify the name of Sal Toosi Personal Real Estate Corporation on his X page, LinkedIn page, Instagram page, one of his Facebook pages and his website; and
 - e. Section 40(2) by failing to display the name of his brokerage on his X, LinkedIn, and two Facebook pages.

3. The NOAP was served on Mr. Toosi on February 28, 2025.
4. Mr. Toosi applied for a reconsideration of the NOAP under section 57(4) of RESA on May 7, 2025, 37 days after the 30-day deadline for his request for an opportunity to be heard under section 57(2)(d) of RESA. This is my decision as to whether Mr. Toosi should be allowed an extension of the time to make his request for an opportunity to be heard.

Issues

5. The issue is whether Mr. Toosi should be granted an extension of time to file his request for an opportunity to be heard.

Jurisdiction and Standard of Proof

6. This application for reconsideration is brought pursuant to section 57(4) of RESA, which requires the Superintendent of Real Estate (the “**superintendent**”) to provide a person who receives an administrative penalty with an opportunity to be heard upon request. Section 57(2)(d) requires a person to submit that application within 30 days of receipt of the notice of administrative penalty unless a longer time is permitted by the superintendent.
7. The superintendent has delegated the statutory powers and duties set out in section 57 to Hearing Officers.

Background and Submissions

8. The NOAP was issued on February 27, 2025.
9. BCFSA effected service of the NOAP on Mr. Toosi on February 28, 2025.
10. The deadline for Mr. Toosi to make a request for an opportunity to be heard regarding the NOAP would have been March 30, 2025. Because that date falls on a Saturday, the deadline was in fact March 31, 2025 by application of section 25(4)(a) of the *Interpretation Act*, RSBC 1996 c 238.
11. Mr. Toosi made his request for an opportunity to be heard on May 7, 2025. That date is 37 days after the March 31, 2025 deadline.
12. In that request to be heard, Mr. Toosi stated that he came into compliance upon becoming aware of the non-compliance issues. He stated that his second Facebook page could not come into compliance because Facebook was unable to verify who he was because of the difference between his profile name “Sal Toosi” and his legal name “Seyedsalar Toossi” and because his account was suspended as a result of being hacked. He stated that there is nothing he could do for six months. He provided documents speaking to this point.
13. Mr. Toosi also acknowledged that the 30-day period to request an opportunity to be heard had passed, but his [family member] was facing a possible [medical] diagnosis requiring [them] to be hospitalized for several months. He submitted that this required his full attention and “impacted [his] ability to respond within the prescribed timeframe.”

Reasons and Findings

Applicable Legislation

14. Section 56 of RESA provides that BCFSA may designate specific provisions of RESA, the Regulations, or the Rules as being subject to administrative penalties, and may establish the amounts or range of amounts of administrative penalty that may be imposed in respect of each

contravention of a specified provision. Pursuant to section 56(2), the maximum amount of an administrative penalty is \$100,000.

15. Section 26(1) of the Rules indicates that for the purposes of section 56(1) of RESA, contraventions of the Rules listed in section 26(2) of the Rules are designated contraventions to which Division 5 (Administrative Penalties) of Part 4 of RESA applies.
16. Section 26(2) of the Rules at the relevant time identified four categories, Category A, B, C, D, E and F, for designated contraventions for the purpose of determining the amount of an administrative penalty. Sections 40 and 41 of the Rules were placed in Category D. Section 27(4) of the Rules provided that the amount of an administrative penalty for a Category D contravention was \$1,000 for a first contravention and \$2,000 for a subsequent contravention plus a \$250 daily penalty for each day that the contravention continues.
17. Sections 40 and 41 of the Rules provides as follows:

Restrictions and requirements

- 40** (1) A licensee must not publish real estate advertising unless the advertising complies with this section.
- (2) In all cases, the licensee name of the brokerage must be displayed in a prominent and easily readable way.
 - (3) Real estate advertising that identifies a managing broker, associate broker or representative must do so,
 - (a) if that person is an individual, by using the licensee name of the individual, or
 - (b) if that person is a personal real estate corporation or a controlling individual of a personal real estate corporation, by using the licensee name of the personal real estate corporation only.
 - ...
 - (6) Subject to subsection (7), if a member of real estate team publishes real estate advertising with respect to trading services, the advertising must identify the team's name.
 - (7) Subsection (6) does not apply to real estate advertising with respect to rental property management services that are trade services in relation to the rental of real estate.

False or misleading advertising prohibited

- 41** A licensee must not publish real estate advertising that the licensee knows, or reasonably ought to know, contains a false or misleading statement or misrepresentation concerning real estate, a trade in real estate or the provision of real estate services.

18. Section 57(1) of RESA sets out that if the superintendent is satisfied that a person has contravened a provision of RESA, the Regulations, or the Rules designated under section 56(1)(a) of RESA, the superintendent may issue a notice imposing an administrative penalty on the person. Section 57(2) requires that a notice of administrative penalty indicate the rule that has been contravened, indicate the administrative penalty that is imposed, and advise the person of the person's right to be heard respecting the matter along with the time limit of "30 days or a longer period allowed by the superintendent" to request a reconsideration. If the person does not apply for reconsideration within

the indicated timeline, including any extensions, the person is deemed to admit the contraventions and the penalty becomes due and payable to BCFSa.

Analysis

19. Sections 57(2) and 57(4) of RESA provide that the superintendent must provide an opportunity to be heard if requested and must confirm the penalty, cancel the penalty, or cancel the penalty and issue a notice of discipline hearing or notice of hearing. Although it could have been more clearly drafted, the intention of the legislation is to provide a deadline of 30 days from the date of service for the recipient of an administrative penalty to apply for an opportunity to be heard which may be extended by the superintendent. This is confirmed by guidance published by BCFSa online entitled "Administrative Penalty Process". Although I am not bound by that guidance, I am guided by it with regard to the process to be followed here and I take it as representing the regulator's interpretation of its home statute and persuasive in that regard.
20. Many courts and regulators have addressed the question of late filing and have considered a variety of factors in regard to those filings in the circumstances of their processes. The BC Court of Appeal has a long-standing test expressed in *Davies v CIBC*, 1987 CanLII 2608 (BC CA) at para 20. This case has been relied on by other regulators in deciding whether to permit time extensions for appeals and reconsiderations: *Applicant v College of Physicians and Surgeons of British Columbia*, 2019 BCHPRB 13 (CanLII) at paras 33-37.
21. In my view, the decision to extend the deadline is discretionary and should be decided on the whole of the context. The applicant has the burden of demonstrating that the extension should be granted. The following, non-exhaustive factors are relevant to the exercise of the discretion to grant or refuse the extension:
 - a. The date(s) of the alleged contravention(s);
 - b. The amount at issue;
 - c. The complexity of the alleged contravention(s);
 - d. The length of the delay between the deadline and the reconsideration request;
 - e. The explanation offered for the delay;
 - f. If any special or extenuating circumstances impacted the applicant's ability to apply within the timeline;
 - g. Whether the application, on the merits, is bound to fail;
 - h. Any prejudice to the applicant in denying or the superintendent in permitting the extension; and
 - i. Whether an extension would advance or stymie the interests of justice or the purposes of RESA as a whole and the administrative penalty provisions in particular, being, efficient regulation of the real estate industry and the protection of the public.
22. Two comments on the above list are appropriate. First, the final factor is the primary factor and, to some extent, encompasses the preceding ones. Second, the question of merit, at the extension stage, is restricted to the question of whether the application is "doomed to fail" or has no merit such that it cannot succeed: see *Clock Holdings Ltd v Braich*, 2009 BCCA 269.
23. The contraventions are indicated to have persisted until early January 2025 in the NOAP. Mr. Toosi does not dispute that he was not in compliance and, for the purposes of these reasons, I will accept that the contraventions are alleged to have occurred in early January 2025. This factor weighs in favour of granting an extension.

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24. Although the penalties imposed by the NOAP are each \$1,000, the amount at issue is reasonably large in terms of administrative penalties, when considered as a whole. This factor weighs in favour of granting an extension.
25. The issues are not likely to be complex. Mr. Toosi does not deny that he contravened the sections alleged in the NOAP, but instead argues that he came into compliance quickly. The simplicity of the issues suggests Mr. Toosi did not require extended time to respond. In my view, considering this factor on its own weighs against granting an extension.
26. The length of the delay in making the application is substantial. Mr. Toosi has taken more than double the time required by statute to apply for an opportunity to be heard. This factor weighs against granting an extension.
27. Mr. Toosi explains the delay in his application by reference to his [family member]'s health issues and hospitalization in January and February 2025. He has not provided any specifics regarding when this hospitalization occurred and from his submissions it appears that the [redacted] diagnosis was possible but not confirmed. I note, however, that the hospitalization and health issue arose in January and February and the NOAP was served on February 28, 2025, meaning the period to apply for an opportunity to be heard ran during March 2025 and did not overlap with the health concerns Mr. Toosi raises. Although health concerns could be a reasonable explanation and could also constitute special or extenuating circumstances in the appropriate case, in this case there is little explanation for why the health concerns, which largely preceded the request period, interfered with Mr. Toosi's ability to make the application. Mr. Toosi does indicate that his [family member] was hospitalized for a length of time, but does not specify how that required such a substantial commitment from him that he could not file a request in time. I therefore find that Mr. Toosi has not established a reasonable basis for the delay nor has he established that special or extenuating circumstances apply here. This factor weighs against granting an extension.
28. Regarding the merits, in my view, Mr. Toosi's reconsideration request is bound to fail. Mr. Toosi has argued that he came into compliance quickly once he became aware of the issues. This defense is commonly raised in response to administrative penalties issued under sections 40 and 41 of the Rules. I am not aware of any instance of that argument being successful and it is exceedingly unlikely to be successful because licensees have the primary responsibility to comply with the Rules, even before being reminded by BCFSa of their obligations: see for example *Applicant 23 (Re)*, 2025 BCSRE 91, *Perreault (Re)*, 2025 BCSRE 85, *Hothi (Re)*, 2025 BCSRE 25, *Ryan (Re)*, 2025 BCSRE 12, and *Veroni (Re)*, 2024 BCSRE 70. This factor weighs strongly against granting an extension.
29. The prejudice to Mr. Toosi in denying the extension will be to deprive him of an opportunity to be heard, making the NOAP payable immediately. The prejudice to the superintendent will be to require the matter to proceed and take 37 days longer than would usually be the case had Mr. Toosi made his request on time. I note in this regard that administrative penalty reviews are intended to be efficient and summary procedures that resolve matters within reasonable timelines. As a result, the lack of merit is also relevant to the question of prejudice to the extent that a request for an opportunity to be heard which lacks merit expends the superintendent's resources, which could be better used elsewhere and to the extent that depriving an applicant of an opportunity to be heard that lacks merit is less prejudicial than depriving them of an opportunity that has some merit. As a result, I find that this factor weighs against granting an extension.
30. Turning to the interests of justice and the balancing of the above factors, I find that the lack of merit in Mr. Toosi's arguments indicates that the extension should not be granted in this case. In my view, it does not comport with the purposes of section 57 of RESA to effectively double the period to apply for an extension where there is no compelling reason for the delay established and the arguments the licensee seeks to raise lack merit.

Conclusion

31. Mr. Toosi is not granted the extension to file his request for an opportunity to be heard.

32. The NOAP is now due and payable to BCFSA.

DATED at North Vancouver, BRITISH COLUMBIA, this 28th day of May, 2025.

“Original signed by Gareth Reeves”

Gareth Reeves
Hearing Officer