

Citation: Bakker (Re), 2023 BCSRE 12

Date: 2023-04-17

File No. INC-2697

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

AND IN THE MATTER OF  
KATHY ALAINA BAKKER

**Amended Reasons for Decision on Liability and Sanction**

**[This Decision has been redacted before publication.]**

**Date of Hearing:** February 15, 2023 and March 6, 2023

**Counsel for Ms. Bakker  
Respondent:** Self-Represented

**BCFSA Counsel:** Amandeep K. Sandhu

**Hearing Officer:** Andrew Pendray

## Introduction

1. On January 16, 2023, the BC Financial Services Authority (BCFSA) issued a second Amended Notice of Hearing which alleged that Kathy Alaina Bakker (the “Respondent”) had engaged in providing rental property management services for or in expectation of remuneration, without being licensed to do so as required by the *Real Estate Services Act* (“RESA”).
2. Prior to the hearing of this matter, BCFSA and the Respondent entered into an Agreed Statement of Facts and Liability, dated February 5, 2023. In that Agreed Statement of Facts and Liability, the Respondent admitted that between December 1, 2019 and August 31, 2022, she had provided rental property management services in British Columbia for or in expectation of remuneration without being licensed to do so under the provisions of RESA, and without being otherwise exempt from licensing under RESA, contrary to section 3(1) of RESA.
3. Specifically, the Respondent admitted that she provided those unlicensed rental property management services in relation to 10 properties located in Kamloops, BC. The Respondent admitted to having:
  - Provided trading services in relation to those rental properties including advertising that made representations about the rental property, and/or finding a party to acquire a leasehold interest in the property;
  - Collected rents or security deposits for the use of the real estate; and
  - Managed the real estate on behalf of the owners by:
    - Making payments to third parties;
    - Negotiating or entering into tenancy agreements; and/or
    - Managing landlord and tenant matters including arranging repairs to the rental property on behalf of the owner(s); and/or serving notices of eviction on behalf of the owner(s).
4. The Respondent also admitted having received remuneration in exchange for her unlicensed property management services for at least nine of the ten rental properties for which she admitted having provided rental property management services.
5. As a result of the February 5, 2023 Agreed Statement of Facts and Liability, the focus of the hearing of this matter was on the appropriate sanctions for the Respondent’s admitted unlicensed activity.
6. Pursuant to section 49(2)(d) of RESA, BCFSA sought an order that the Respondent pay a penalty of \$125,000, as well an order that the Respondent pay investigation and hearing expenses incurred by BCFSA equal to ~~\$48,344.10~~ \$54,926.26.

7. The Respondent took the position that the orders sought by BCFSA were too severe.
8. The hearing proceeded by way of a virtual hearing on February 15 and March 6, 2023. The respondent was self-represented, and BCFSA was represented by legal counsel.

## Issues

9. Did the Respondent engage in unlicensed rental property management activities as set out in the January 16, 2023 Notice of Hearing?
10. If so, what is the appropriate sanction for that conduct?

## Jurisdiction

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

## Evidence and Admissions

12. As noted above, there was a February 5, 2023 Agreed Statement of Facts and Liability presented. That Agreed Statement of Facts was 15 pages in length, and included the Respondent's admission to the allegations set out in the Notice of Hearing.
13. Additionally, evidence and information before me included a Condensed Book of Documents, containing 57 documents, a February 8, 2023 affidavit from BCFSA Investigator [Investigator 1], and a February 15, 2023 affidavit from BCFSA Paralegal [Individual 1].
14. In addition to the submissions of both BCFSA and the Respondent, BCFSA called one witness to give evidence regarding her experience with the Respondent as a property manager. The Respondent also testified on her own behalf, and provided two letters in support of her property management activities.

## Admissions

15. The Respondent admits that between December 2019 and August 2022, she provided rental property management services in Kamloops, British Columbia in respect of 10 properties located in Kamloops, BC:
  - [Property 1]



- [Property 2]
- [Property 3]
- [Property 4]
- [Property 5]
- [Property 6]
- [Property 7]
- [Property 8]
- [Property 9]
- [Property 10]

16. The Respondent admits that between December 1, 2019 and August 31, 2022, she, doing business as “Girl Fix It” and/or doing business as “GFI Properties”, provided rental property management services in British Columbia for or in expectation of remuneration without being licensed to do so under the provisions of RESA and without being otherwise exempt from licensing under RESA, contrary to section 3(1) of RESA, when in relation to the rental properties listed above, she:

- provided trading services in relation to the properties including advertising that made representations about the rental property, and/or finding a party to acquire a leasehold interest in the properties;
- collected rents or security deposits for the use of the real estate; and/or
- managed the real estate on behalf of the owners by:
  - making payments to third parties;
  - negotiating or entering into tenancy agreements; and/or
  - managing landlord and tenant matters including arranging repairs to the rental property on behalf of the owners and/or servicing notices of eviction on behalf of the owner(s).

17. The Respondent further admits that she, doing business as “Girl Fix It” and/or doing business as “GFI Properties” received remuneration in exchange for her unlicensed property management services for at least nine of the rental properties listed above.

## Facts

### Investigation

18. On January 24, 2020, the president of [Brokerage 1] (“[Brokerage 1]”)<sup>1</sup>, Mr. B, reported to the Office of the Superintendent of Real Estate (“OSRE”) that the Respondent was renting out and managing residential properties in Kamloops, BC, under the trade name “Girl Fix It”.
19. The Respondent had been employed as an assistant residential manager with [Brokerage 1] until around November 2019. While the respondent was employed there, [Brokerage 1] had paid for her enrolment in the Rental Property Management Licensing Course in 2015 and 2017.
20. Although she was enrolled in the Rental Property Management Licensing Course, the Respondent did not, at any point, successfully complete that course.
21. As successful completion of the Rental Property Management Licensing Course is required to obtain a licence under RESA, the Respondent has never been licensed to provide rental property management services under RESA. Further, neither Girl Fix It nor GFI Properties have ever been licensed to provide rental property management services under RESA. The Respondent and GFI/Girl Fix It have never met any criteria set out in RESA which would allow them to be exempted from the licensing requirements under RESA or the *Real Estate Services Regulation* (the “Regulation”).
22. Mr. B contacted OSRE again in May 2020, in relation to the fact that GFI Properties had replaced [Brokerage 1] as the property manager in respect of a 40-unit apartment block located at [Property 11] (“[Property 11]”) in Kamloops, BC. At that time, [Property 11] had monthly rents of more than \$50,000.00 per month.
23. On May 15, 2020 the Respondent updated the BC Housing landlord information for [Property 11] to GFI Properties in order to receive rent subsidy available to certain tenants of [Property 11]. In or around June 2020, the Respondent received at least \$3,500 of rent subsidy from BC Housing, forwarded to GFI Properties.

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<sup>1</sup> [Brokerage 1] is a licensed brokerage under RESA.



24. In December 2020, the Respondent made arrangements to take over property management from [Brokerage 1] of a property located at [Property 8] in Kamloops, BC.
25. The Respondent advertised Girl Fix It/GFI Properties on various social media platforms throughout 2020. Those advertisements indicated that GFI provided property management services, tenant placement services, and cleaning and home improvement services.
26. The Respondent also operated a website, [www.gfiproperties.ca](http://www.gfiproperties.ca) which advertised units for rent, including units at [Property 11], and included a rental application available to the general public to be directly downloaded from the website. The rental application indicated that it was to be completed and returned to the Respondent's email address.
27. In 2020 and 2021 the Respondent advertised at least 10 properties for rent. The Respondent was identified as the contact person for each of those advertised properties.
28. On January 6, 2021 OSRE staff wrote to the Respondent, explaining the allegations made against her, and informing her that she could not provide real estate services for or in the expectation of remuneration without a licence under RESA. OSRE staff requested that the Respondent reply by January 20, 2021.
29. No response was received, and the January 6 letter was re-sent to the Respondent on January 22, 2021. The Respondent replied by email on January 26, 2021. In that letter the Respondent indicated that she was not aware that a licence was required as she had been employed with [Brokerage 1] without a licence. The Respondent indicated in that January 26 email that she would be ending the contracts she had for property management, but that she wished to discuss whether tenant placement services were permitted without a license.
30. OSRE staff replied to the Respondent on January 26, 2021 and indicated that the documentation that had been requested in the January 6, 2021 letter had yet to be provided. Staff indicated that once that documentation had been provided a telephone interview could be arranged.
31. The Respondent did not reply OSRE staff's January 26, 2021 email.
32. On March 1, 2021 OSRE issued a Notice to Produce to the Respondent, requiring her to provide records including a list of properties managed, copies of all agreements entered into with owners regarding property management services, copies of all agreements entered into with tenants, and copies of all financial records relating to GFI Properties.

33. OSRE also sent the Respondent an “Undertaking to Cease Activity”, under section 53.1 of RESA.
34. The Respondent, despite being personally served, did not respond to the Notice to Produce and did not sign the Undertaking. Rather, the Respondent continued to advertise properties for rent online and continued to provide rental property management services.
35. On February 10, 2022, an order pursuant to sections 49 and 51 of RESA was issued, requiring the Respondent to cease providing real estate services immediately, and to provide BCFSA with specified information and documents relating to her rental property management activities (the “Urgent Order”). The Respondent was served with that order on February 10, 2022, and was subsequently interviewed by a local news organization regarding the order on February 12, 2022.
36. On March 2, 2022, the Respondent indicated that she would provide information to BCFSA after seeking legal advice.
37. Despite the issuing of the February 10, 2022 order, the Respondent continued to provide rental property management services at a number of properties ([Property 11], [Property 1], [Property 2], [Property 4], [Property 3], and [Property 6]). In the case of [Property 11], she collected rent directly from tenants in March and April 2022.
38. In addition to her continued activities, the Respondent commenced new rental property management activities in May 2022, taking on a new client at [Property 5].
39. As of August 18, 2022, the Respondent continued to provide rental property management services, contrary to the Urgent Order, and as of the date of the hearing the Respondent had still not produced the documents and information specified in the February 10, 2022 Urgent Order.

#### Rental Property Management and Remuneration

40. In December 2020, the Respondent came to an arrangement with the owners of [Property 8] to provide rental property management services for that property. That arrangement called for the Respondent to commence as the rental property manager on February 28, 2021, and to engage in activities including collection of monthly rents from tenants, manage tenant enquiries, and arrange for repairs and maintenance. The Respondent was to be remunerated \$100 per month for the management of [Property 8], however, the arrangement was cancelled when the owners of the property learned that the Respondent was not licensed as a rental property manager.



41. The owners of [Property 8] were also the owners of [Property 7]. Also in December 2020, the owners had reached an agreement for the Respondent to provide tenant placement services for [Property 7], which would include activities such as advertising the property for rent, arranging showings for prospective tenants, placing new tenants in property, and collecting deposit payments. The Respondent was also to engage in ongoing rental property management, including collection of rents, and was to be remunerated \$100 per month for those ongoing rental property management activities.
42. The Respondent in fact took steps to advertise [Property 7] for rent in December 2020 and January 2021. The agreement between the owners and the Respondent was cancelled prior to the Respondent receiving any remuneration for tenant placement or rental property management services.
43. In December 2019 the Respondent entered into an agreement to provide rental property management services for a property located at [Property 1]. The owners of [Property 1] were not aware that the Respondent was not a licensed rental property manager. The Respondent managed [Property 1] from December 2019 until March 2022, and was remunerated \$2,800 for rental property management services and at least \$600 for tenant placement services during that time period.
44. In 2020 the Respondent was retained to provide move out and tenant placement services at [Property 9]. The Respondent collected a deposit from new tenants that she placed in the rental suite at the property and deducted her fee of \$997.50 prior to sending the funds to the owner.
45. In April 2020 the Respondent entered into an arrangement to provide rental property management services for [Property 11]. The Respondent did not inform the sole shareholder and director of the incorporated company which owned [Property 11] that she was not licensed to provide rental property management services.
46. The Respondent provided ongoing rental property management services to [Property 11] from May 15, 2020 through mid-April 2022, including collecting rents and responding to tenant enquiries. Between September 2020 and April 2022 the Respondent was compensated \$60,720 for her rental property management services at [Property 11]. The Respondent earned at least an additional \$7,710.00 for those services between May 15, 2020 and August 31, 2020.
47. The Respondent entered into an agreement to manage two suites at [Property 2], commencing in July 2021. That agreement called for the Respondent to be remunerated \$100 per month for each unit. The Respondent in fact received remuneration of \$1,200 for the period from July 2021 through December 2021.



48. The Respondent entered into an agreement to provide rental property management services for [Property 10] from October 2021 until the property was sold in May 2022. Although the precise amount of remuneration the Respondent earned during that period of time for her rental property management services was unknown, it was estimated to be \$100 per month from October 2021 until at least April 2022. The Respondent also invoiced \$315 for tenant placement services at [Property 10] during that time period.
49. In January 2022 the Respondent was hired to manage two properties, located at [Property 4] and [Property 3], in Kamloops, BC. The Respondent managed both of those properties from January 2022 to April 2022, and was remunerated \$800 for her services, as well as an additional \$300 for the removal of a tenant.
50. In May and June 2022 the Respondent provided rental property management services at [Property 5], in Kamloops BC. The Respondent's duties included collecting rents, finding new tenants and advertising the property for rent. The Respondent was paid \$1,000 for her services, including \$300 for tenant placement services, \$200 for rental property management in each of May and June 2022, and a further \$300 for subsequent tenant placement services. The owner of [Property 5] terminated the agreement with the Respondent due to the fact that the Respondent found new tenants without advising the owner that the previous tenants (who had been placed by the Respondent) had moved out, and when the owner learned that the new tenants had sent their rent payment to the Respondent rather than to the owner.
51. Commencing in December 2021, and continuing throughout 2022, the Respondent provided rental property management services to the owners of a property located at [Property 6] in Kamloops, BC. The Respondent was remunerated \$150 per month for her rental property management services, and earned \$1,350 between December 2021 and August 2022 for those services. The Respondent also earned an additional \$300 for tenant placement services during that period of time.
52. Of note, the Respondent has also agreed, in the Agreed Statement of Facts and Liability, that she provided rental property management services to at least two additional properties not listed above.

## Hearing Evidence

53. BCFSA called one witness at the hearing of this matter, [Individual 2].
54. [Individual 2] indicated that she was the registered owner of [Property 9]. [Individual 2] stated that she resided at the property, but that the property also had a rental unit. She indicated that in 2020 she had hired the Respondent to manage the rental unit due to

- the fact that she was having difficulties with her tenant, and she wanted a professional to assist in having the tenant leave, and then placing a new tenant.
55. [Individual 2] noted that she had been friends with the Respondent for a long time, and that she knew that the Respondent had worked for a property management company, and that she had then gone out on her own as a property manager.
  56. [Individual 2] specifically stated that she believed the Respondent to be a licensed property manager.
  57. With respect to the Respondent's activities at [Property 9], [Individual 2] indicated that the Respondent conducted the exit interview with the initial tenant, placed the advertisements for rent, did showings of the rental unit, conducted reference reports, collected security deposits and signed the tenancy agreement.
  58. [Individual 2] indicated that the Respondent had charged her a fee both for the move out of the tenant, and the placement of the new tenant. [Individual 2] explained that the Respondent had collected the security and pet deposits from the new tenant, deducted her fee from that amount, and then sent the remainder to [Individual 2]. [Individual 2] noted that although the Respondent had sent her a property management contract, [Individual 2] had never signed the same.
  59. [Individual 2] explained that she had made a complaint regarding the Respondent on February 16, 2022 when she had seen a local media article regarding the February 10, 2022 Urgent Order and the Respondent. [Individual 2] indicated that she had been dissatisfied with the service that she had received from the Respondent, and stated that she had felt that once the Respondent had placed the new tenant and extracted her fee, she had moved to essentially represent the tenant in a disagreement [Individual 2] had with that new tenant. [Individual 2] noted that she had asked the Respondent to have the new tenant removed, but that the Respondent had done a poor job in ensuring that the move out was done properly.

## Respondent's Evidence

60. The Respondent testified on her own behalf.
61. She explained that when she left [Brokerage 1] her intention had been to start a painting, cleaning, and small repairs company, which she called Girl Fix It. She indicated, however, that despite that intention, when she had left [Brokerage 1], she had several owners ask her if she could continue to manage their properties.
62. As an example, the Respondent explained that the builders of [Property 11] had hired [Brokerage 1] to manage that property and that it was around the same time that the



- construction of [Property 11] was to complete that she had decided to leave [Brokerage 1]. The Respondent indicated that the owners of [Property 11] had asked her if she could still manage the building. The Respondent indicated that there was some discussion as to whether she would be a caretaker employee of [Property 11], but stated that she had not become an employee of [Property 11], as she had felt that “for the purposes of write-offs” it would be better to not be an employee. The Respondent agreed that she was at all times an independent contractor.
63. In respect of [Individual 2]’s evidence, the Respondent indicated that her view at the time had been that [Individual 2] was not acting appropriately as a landlord in the manner in which she was attempting to have her tenants leave. Specifically, the Respondent indicated that [Individual 2] had been attempting to obtain the full year’s payment from the tenants despite having been the one pushing for the tenants to leave.
  64. When asked why she had never provided the information she had been ordered to in relation to this matter, the Respondent indicated that she had been told by a lawyer that she ought to simply ignore the letters and order from BCFSA, as they, the BCFSA had “bigger fish to fry”.
  65. The Respondent acknowledge that she knew that a license was required for rental property management but indicated that she felt like she was simply continuing to do the work she had done at [Brokerage 1]. When it was put to her that she was not, in fact, able to sign lease agreements at [Brokerage 1], she agreed that was the case. She also acknowledged that rents collected at [Brokerage 1] went into a trust account.
  66. Finally, the Respondent admitted that even though she had informed OSRE in January 2021 that she would end her rental property management contracts, she had not done so, and in fact had likely posted a new rental advertisement the following day.
  67. The Respondent further admitted that she had taken down the GFI Properties website in order to avoid detection from the OSRE/BCFSA investigation, as well as having ceased to refer to GFI Properties as a landlord for the same reason. While the Respondent claimed to have been moving her focus to the maintenance type services activity, she acknowledged that she continued to enter into new rental property management agreements even while she was aware of the OSRE/BCFSA investigation. The Respondent further acknowledged that she had continued to act on behalf of an owner in a Residential Tenancy Branch hearing subsequent to the issuing of the February 10, 2022 Urgent Order, but that she had ultimately not attended that hearing when the owner had expected her to.
  68. Of interest, the Respondent admitted that over a 12-month period she was collecting more than \$600,000 in rents for [Property 11].

69. The Respondent admitted that her view was that she had not done anything wrong, and that she did not understand why she needed to be licensed.
70. Finally, the Respondent denied having engaged in rental property management services for any properties other than those that had been identified by BCFSA.
71. The Respondent also provided a copy of an email which she indicated was from the tenant (Ms. M) she had placed at [Individual 2]'s apartment, who [Individual 2] had subsequently wished to have removed. In that email the tenant indicated that the dispute with [Individual 2] had commenced over smoking, and smoking of marijuana. The tenant described her dealings with [Individual 2] as having been distressing and humiliating, and that she sought out the Respondent's assistance in dealing with the issue. The tenant indicated that the Respondent was helpful in assisting in the process to move out of [Individual 2]'s rental suite. She described the Respondent as having gone "above and beyond as the property manager."
72. The Respondent also provided a letter from a resident of [Property 11], TG. In that letter TG indicated that the Respondent had assisted her by allowing her to repay missed rent over a period of time. TG further indicated that she felt that the Respondent had communicated well with the residents of [Property 11]. TG indicated that she believed that the Respondent had demonstrated herself to be well suited to the job of property manager.

## Reasons and Decision

*Did the Respondent engage in unlicensed rental property management activities as set out in the January 16, 2023 notice of hearing?*

73. Section 1 of RESA defines "real estate services" to mean rental property management services, strata management services, or trading services.
74. Rental property management services are further defined by section 1 of RESA as meaning any of the following services provided to or on behalf of an owner of rental real estate:
  - trading services in relation to the rental of real estate;
  - collecting rents or security deposits for the use of real estate; and
  - managing the real estate on behalf of the owner by making payments to third parties, negotiating or entering into contracts, supervising employees or contractors hired or engaged by the owner, or managing landlord and tenant matters.
75. Section 3 of RESA sets out that a person must not provide real estate services to or on behalf of another, for or in expectation of remuneration unless the person is licensed to



provide those real estate services or exempted by section 3(3) or Regulation from the requirement to be licensed.

76. I accept the admissions of the Respondent as set out in the February 5, 2023 Agreed Statement of Facts and Liability, and as set out above. Although the Respondent at times in her testimony attempted to downplay some of her actions, nothing she stated in her evidence called into question the admissions set out in the Agreed Statement of Facts and Liability.
77. Even without the specific admissions, I consider that the agreed facts set out in the February 5, 2023 Agreed Statement of Facts and Liability demonstrate that the Respondent was engaged in rental property management activities in respect of at least 10 properties while she was not licensed to do so.
78. Specifically, I consider it to be clear from the Agreed Statement of Facts and Liability that the Respondent engaged in rental property management activities including collecting of rents and security deposits, managing real estate on behalf of owners and managing landlord and tenant matters, and advertising and placing tenants constituting trading services in relation to the rental of real estate. I consider the evidence to further make clear that the Respondent was in receipt of remuneration for the provision of those services.
79. As the Respondent has never been licensed under RESA, and as there are not exemptions under section 3(3) of RESA or the Regulation that apply to the Respondent, I find that she was in breach of section 3 of RESA when she engaged in rental property management activities throughout the period of December 2019 through August 2022.
80. As a result of the above, I find that between December 1, 2019 and August 31, 2022, the Respondent, doing business as "Girl Fix It" and/or doing business as "GFI Properties" provided rental property management services in British Columbia for or in expectation of remuneration without being licensed to do so under the provisions of RESA and without being otherwise exempt from licensing under RESA, contrary to section 3(1) of RESA, when in relation to the rental properties listed above, she:
  - provided trading services in relation to the properties including advertising that made representations about the rental properties, and/or finding a party to acquire a leasehold interest in the properties;
  - collected rents or security deposits for the use of the real estate; and/or
  - managed the real estate on behalf of the owners by:
    - making payments to third parties;

- negotiating or entering into tenancy agreements; and/or
- managing landlord and tenant matters including arranging repairs to the rental property on behalf of the owners and/or servicing notices of eviction on behalf of the owner(s).

81. I further find that the Respondent, doing business as “Girl Fix It” and/or doing business as “GFI Properties”, received remuneration in exchange for her unlicensed rental property management services for at least nine rental properties.

82. Given those findings on the issue of liability, I turn to the question of the appropriate sanction for the Respondent’s breach of RESA.

*If so, what is the appropriate sanction for that conduct?*

83. I find that the appropriate sanction for the Respondent's breach of RESA is an order, pursuant to section 49(2)(d) of RESA, that she pay a penalty in the amount of \$125,000.

84. My reasons for having reached this conclusion follow.

#### Applicable Law

85. 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.

86. 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

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

88. Sanctions 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 punitive measures (i.e. specific deterrence);
- preventing and discouraging future misconduct by other respondents (i.e. general deterrence);
- educating licensees and the public about rules and standards; and
- maintaining public confidence in the real estate industry.

89. 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. Those mitigating and aggravating factors may include the following:

- the respondent's experience;
- the respondent's discipline history;
  - the nature and gravity of the misconduct including:
  - if the conduct was unethical or involved fraud, dishonesty, or deception;
  - the vulnerability of affected persons, or the general public, e.g. due to lower sophistication, or to a relationship of trust;
  - if the respondent engaged in misconduct while knowing of, willfully blind to, or reckless of, rules or standards or risks to others, including where the respondent received warnings from BCFSA or others;
  - if the respondent demonstrably and reasonably relied on competent advice (e.g. legal advice); and
  - the duration, number of instances, or any pattern of misconduct, e.g. isolated, or repeated, pervasive or systemic;
- the respondent's experience;
- if and to what extent the respondent obtained or attempted to obtain a financial benefit, or other advantage, from the misconduct;
- the extent of harm or consequences to clients, other persons, or the general public;
- if the respondent has, prior to or during investigation:
  - acknowledged and accepted responsibility for misconduct; or
  - voluntarily taken measures to compensate or mitigate impacts on others, or to avoid recurrence of the misconduct;
- if the respondent concealed or attempted to conceal misconduct from, or mislead, affected persons or other persons;
- if the respondent has acted to frustrate, delay or undermine investigations by BCFSA;
- the impact that different forms of corrective, preventative or punitive sanctions might have on a respondent, and how those impacts might achieve specific purposes; and
- the impact of criminal or other sanctions or penalties, if any, relating to the same conduct.



## Discussion of Aggravating and Mitigating Factors

90. Both parties made oral submissions as to the appropriate sanction for the Respondent's breach of RESA. BCFSA also provided references to various previous cases, and a written submission.
91. I have reviewed all of the cases referenced, as well as considered the submissions and evidence of the parties.
92. In my view, the circumstances of this case are of the type which call for a significant penalty. The appropriate sanction must provide specific deterrence in respect of the Respondent, an individual who continued to engage in unlicensed property management activities for more than a year after having been told that she was under investigation for such activities. The appropriate sanction must also provide general deterrence, in order to serve as a deterrent to others who may believe that they are able to simply flaunt the law and the efforts of the regulator to enforce that law.
93. I turn to a consideration of the aggravating and mitigating factors.
94. First, I consider that there can be no doubt that the Respondent was aware of the fact that she was required to be licensed under RESA if she were to engage in rental property management activities, and that she simply determined that such a requirement ought to not apply to her, or perhaps more accurately, ought not to exist generally.
95. In reaching this conclusion, I note in particular, the fact that she worked for a licensed rental property management brokerage for a number of years prior to leaving and starting "Girl Fix It" in or around November 2019. In her evidence at the hearing of this matter the Respondent specifically acknowledged that while working at [Brokerage 1] she had worked with licensed rental property managers, and she further acknowledged having been aware that the licensed rental property managers could do things like sign off on lease agreements, but that she, as an unlicensed assistant, could not.
96. I note further that the Respondent had previously been enrolled, on two occasions, in the rental property management licensing course, but that she had not succeeded in completing it, on either occasion.
97. Although, in her evidence, the Respondent denied having intended to start Girl Fix It as a competitor to [Brokerage 1], I did not find that evidence to be credible. I note in particular that the Respondent's website advertised rental units, and included rental applications available to the general public to be directly downloaded from the website. I note further the fact that the Respondent advertised Girl Fix It/GFI Properties on various social medial platforms as providing not only cleaning and home improvement

activities, but also property management services and tenant placement services. I consider the fact that the Respondent was specifically advertising her business as providing property management and tenant placement services to be an indication that she in fact did intend to compete with [Brokerage 1].

98. That the Respondent did not, as she indicated in her testimony, specifically advertise herself as being a licensed property manager, is of no moment. The Respondent was acutely aware when she started Girl Fix It in late 2019 that she was required to be licensed in order to engage in rental property management activities. That the Respondent was of the personal opinion, as she stated in her evidence, that she was able to handle the various properties identified in the Agreed Statement of Facts and Liability “professionally”, does not change the fact that a license was required.
99. In my view, the fact that the Respondent was, when she started Girl Fix It in late 2019, acutely aware of the fact that she was required to be licensed to engage in rental property management activities as contemplated under RESA, but simply elected to take on rental property management contracts in the absence of holding such a license, is an aggravating factor.
100. I agree with the submission of BCFSA that the Respondent engaged in a “flagrant disregard of the regulatory regime”. In this respect I note in particular that:
- the Respondent informed the regulator, on January 26, 2021, that she would “end” her property management contracts, but then promptly issued further advertisements for properties to rent;
  - the Respondent ignored a section 37 notice to produce records requiring her to produce information and documents;
  - the Respondent refused to enter into a voluntary undertaking to cease her unlicensed activity in March 2021;
  - the Respondent admitted in her evidence that she had removed the online presence of GFI, and ceased listing GFI as the landlord on lease agreements, in order to attempt to avoid being noticed by investigators for the regulator;
  - the Respondent did not comply with the February 10, 2022 Urgent Order requiring her to cease unlicensed real estate activities and to produce records and information; rather she continued to provide rental property management services for various parties;



- the Respondent, in an attempt to stay “under the radar” of the regulator, indicated to a media outlet that her business had closed in April 2021, when in fact she continued to provide rental property management services on an ongoing basis;
- the Respondent, in an email to one of her clients (JC), which was sent after the issuance of the February 10, 2022 Urgent Order, indicated that she intended to continue providing rental property management services;
- the Respondent, following the issuing of an April 13, 2022 order freezing her bank accounts<sup>2</sup>, informed one of her rental property management clients, JC, that she hoped to continue providing rental property management services under the radar;
- the Respondent, one day after indicating to the regulator that she would seek legal advice regarding the Urgent Order, signed a 10-day notice to evict on behalf of one of her rental property management clients;
- the Respondent, after the issuance of the Freeze Order in May 2022, commenced new rental property management activities for a homeowner.

101. In my view, all of the above are aggravating factors. The evidence shows that the Respondent simply did not consider that she had to comply with any of the requirements of RESA, or with orders issued by BCFSA.

102. That the Respondent obtained a financial benefit from her misconduct is clear. Based on the information set out in the Agreed Statement of Facts and Liability, the Respondent received remuneration of not less than \$78,477.00 for property management services in respect of eight of the properties<sup>3</sup>. This is an aggravating factor.

103. I do not consider the fact that the Respondent entered into an Agreed Statement of Facts and Liability, on the eve of the hearing of this matter, to be a significant mitigating factor. The Respondent has at no point complied with the section 37 notice to produce, or the order to provide documents set out in the Urgent Order. Further, while it is true that the Respondent indicated in her evidence that there were no additional properties to which she had provided rental property management services other than those that had been identified by BCFSA as of the date of the hearing, I do not place much weight

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<sup>2</sup> Bakker (Re), 2022 BCSRE 11

<sup>3</sup> It is unclear whether the Respondent received remuneration for two of the properties she managed, though I consider it to be likely, given her general practice, that she was not providing her services in respect of those properties for no fee.

on that evidence, again in light of the fact that the Respondent has refused to provide any of the documentation she has been ordered to provide.

104. In general terms, I do not consider the evidence to support a conclusion that the Respondent can be said to have taken any real responsibility for her misconduct.
105. In summary, I consider that the circumstances of this case, in particular the Respondent's knowledge that she was engaging in misconduct, her ongoing efforts to avoid notice by the regulator in respect of that misconduct, the significant financial benefit that she obtained as a result of that misconduct, and her ongoing efforts to frustrate investigation efforts of the regulator, are all significant aggravating factors.
106. While the evidence does not support a conclusion that any members of the public experienced a significant loss related to the Respondent's conduct, the mitigating aspect of that fact is lessened by the fact that the Respondent was collecting significant amounts of rent and not placing them in trust. While the evidence does not support a conclusion that members of the public experienced any actual harm of significance, the risk of such harm was clear.

## Previous Sanctions Decisions

107. In its closing submissions BCFSA reviewed a number of prior sanctions decisions and consent orders.
108. In *Roberts (Re)*, 2022 BCSRE 14, Roberts was a former licensee who had continued to provide unlicensed property management services in respect of 27 properties during a period from 2019 to 2021. Roberts ultimately entered into a consent order with sanctions of a \$100,000 penalty, a 10 year ban from licensure, and investigative costs of \$21,097.28
109. I agree with counsel for BCFSA that the circumstances in Roberts are similar to those in the present case, given that like the Respondent, Roberts was acutely aware of the need to be licensed to provide rental property management services, and he simply determined to ignore that requirement. Further, as in the present case, Roberts had failed to comply with the regulator's investigation, failed to comply with a cease order, and did not hold deposits in trust.
110. A distinguishing factor was that Roberts was alleged to have misused some of the funds he was given in respect of his property management services, where no such allegation exists in respect of the Respondent. On the other hand, Roberts did ultimately comply with the regulator's investigation, and provided financial information regarding the properties for which he provided services.



111. In *Pao (Re)*, 2022 BCSRE 38, the respondent, Pao, was an unlicensed person who admitted to having failed to comply with a consent order in 2014 that he cease conducting real estate services until he was licensed to do so. Despite entering into that consent order, Pao continued to provide rental property management services, and the regulator received two further complaints regarding Pao in 2015 and 2017. Pao ceased providing rental property management services in December 2017, and admitted that between 2000 and December 2017 he had provided unlicensed rental property management services in relation to approximately 35 units, and that he had received remuneration in respect of those activities. Pao ultimately entered into a consent order, agreeing to pay a discipline penalty in the amount of \$75,000, an additional penalty of \$30,000 to reflect disgorgement of remuneration he received for unlicensed property management from November 2016 to December 2017, and investigation expenses of \$2,690.
112. Counsel for BCFSA noted that the majority of Pao's conduct fell under the disciplinary regime that previously existed, with only three months of his conduct having occurred during the time in which the current penalties of up to \$250,000 apply. Counsel for BCFSA also submitted that although Pao had, like the Respondent, initially failed to comply with a cease order, Pao had ultimately cooperated with the regulator's investigation, whereas the Respondent had yet to do so. In BCFSA's submission, the current case required a higher sanction than that delivered in Pao's case.
113. In *Ng (Re)*, 2021 BCSRE 7, the respondent, Ng, had provided rental property management services for clients for a period from 2000 to 2017. Ng and his corporate entity entered into a consent order which included a penalty of \$50,000, disgorgement of remuneration in the amount of \$50,000, and investigative costs of \$3,440. Although Ng initially denied that he managed any rental properties, he eventually admitted to providing unlicensed rental property management services and provided the regulator with details regarding his activities and remuneration.
114. In *Huang (Re)*, 2022 BCSRE 30, the respondent, Huang, provided unlicensed rental property management services in respect of at least four properties between 2014 and 2019. The regulator received a complaint that Huang had not turned over rents and deposits. Huang did not comply with the investigation of the regulator, and had been the subject of a prior complaint regarding a company that advertised trading and rental property management services. Huang consented to a penalty of \$20,000, enforcement expenses of \$5,000, and a cease order.
115. Counsel for BCFSA submitted that the extent of unlicensed activity in *Huang* was significantly less than that of the Respondent in the present case. Further, counsel noted that the *Huang* decision was decided under the prior disciplinary regime, which had been in effect until September 2016, and in which the maximum penalty under



section 49(2)(d) for an individual was \$10,000 and \$20,000 for a corporation, with no authority to order an additional penalty for disgorgement.

116. Counsel for BCFSA also referenced three decisions which were decided under the prior disciplinary regime, which had been in effect until September 2016, and in which the maximum penalty under section 49(2)(d) for an individual was \$10,000 and \$20,000 for a corporation, with no authority to order an additional penalty for disgorgement. While I have reviewed those cases, I do not intend to restate them in detail in my reasons, given the significant difference in the penalty regimes at question.

## Discussion

117. As I have indicated above, I consider that there are significant aggravating factors present in this case, such that a penalty of significance is warranted.
118. While it is true that there was not significant harm to the public as a result of the Respondent's unlicensed activities, the facts of this case are that the Respondent flaunted the law and the efforts of the regulator to enforce the law, and that she did so in order to obtain a financial benefit of significance. Further, although she did ultimately admit her misconduct, the Respondent has not, at any point, complied with the orders to produce documents and information to the regulator.
119. While I acknowledge the submissions of the Respondent, in which she indicated that she did not "fully understand the severity of this situation" until the pre-hearing conference held in advance of the hearing of this matter, I do not consider that submission to be entitled to significant weight, or to describe a mitigating circumstance of significance. The Respondent, by the date of the pre-hearing conference, had been provided with repeated correspondence from the regulator, including a notice to produce, a request to enter into an undertaking, an urgent order requiring her to cease her activities, and finally an order freezing her bank accounts. Quite simply, it is difficult to understand how the Respondent could, in the face of all of those activities, not have been aware that she was engaged in significant and serious misconduct.
120. I further acknowledge the Respondent's submission that she had sought legal advice, and that she had been told that she did not have to comply with the orders from BCFSA. I give little weight to this statement. First, the Respondent did not indicate when and from whom she was provided that legal advice, and, of more importance, she did not, at any time prior to the hearing of this matter, indicate to the regulator that she had been provided with that advice. Rather, she simply chose to ignore the regulator outright. I find the Respondent's submission that she was told to simply ignore the regulator to be incredible.



121. In my view, the Respondent ought to have been well aware, dating to the outset of the investigation in 2021, that there were potential severe consequences to her activities. The fact that the Respondent chose to simply continue to engage in her unlicensed property management activities throughout that time, once again, is an aggravating factor.
122. Under section 49(2)(d), the maximum penalty for an individual is \$250,000. Here counsel for BCFSA seeks a penalty of half of that amount, \$125,000.
123. Having considered the prior consent orders and discipline decisions cited by counsel, I accept that the penalty being sought is appropriate in the circumstances. The Respondent engaged in deliberate misconduct, for a significant period of time, and attempted to evade the investigation of the regulator in respect of that misconduct. She further was able to obtain a significant financial benefit, certainly more than \$70,000, as a result of that misconduct.
124. In my view, in addition to the specific deterrence that a significant penalty will have on the Respondent, an individual who has consistently ignored the law as set out in RESA to date, both in engaging in unlicensed activities and ignoring orders from the regulator, a penalty of significance will have an important general deterrent effect. It is important, for the protection of the public, that the public is made aware of the fact that activities which deliberately flaunt the law, and ignore the regulator, will be met with a penalty of significance.
125. If there had been significant harm to the public as a result of the Respondent's misconduct, I consider that a greater penalty would have been warranted.

## Enforcement Expenses

126. 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.
127. Section 4.4 of 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.

128. BCFSA has submitted a schedule of enforcement expenses, which identifies the hours incurred by the investigator assigned to the Respondent's case, the hours of legal counsel in association with the hearing as well as the Urgent Order, disbursements and other costs arising out the investigation and hearing of this matter. That schedule sets out that the total amount of the enforcement expenses is \$54,926.26.
129. 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.
130. I agree that an order respecting enforcement expenses is a matter of discretion. I consider that 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.
131. The amount of expenses set out in the schedule provided by BCFSA is significant. I consider, however, that the evidence before me supports a conclusion that the significance of those expenses is largely due to the Respondent's activities throughout the investigative and hearing process.
132. Again, the Respondent essentially ignored the regulator's investigative process, ignored demands for documents, ignored orders, and did not reach an agreement on facts until February 5, 2023, just two days prior to the scheduled commencement of the hearing.



133. I accept that the significant time claimed for the BCFSA investigator in this case is reasonable, and consider that that time likely resulted largely as a result of the Respondent's failure to respond and provide the documentation requested.
134. Similarly, although the amount of time claimed for BCFSA legal counsel is significant, I again consider that this amount of time reflects the activities of the Respondent in this case. BCFSA legal counsel would likely have had to engage in the submission process for the obtaining of each of the urgent and freeze orders, as well as would have had to prepare for what was scheduled to be a 10-day hearing until just two days prior to the scheduled date of hearing.
135. Similarly, many of the disbursements incurred by the regulator were as a result of having to issue summons to witnesses, due to the fact that the Respondent did not reach an agreement on facts until just days prior to the scheduled hearing date.
136. I do, however, note that the length of the hearing of this matter was ultimately significantly abridged by the fact of the Respondent entering into the Agreed Statement of Facts and Liability.
137. In all of the circumstances, I am satisfied the enforcement expenses requested should be ordered, with a reduction of \$2,000 to reflect the reduced hearing time on both days of hearing, for a total of \$52,926.26.

## Conclusion

138. I find that the Respondent engaged in unlicensed rental property management activities by providing trading services in relation to the rental of real estate, collecting rents, and managing rental real estate, and that the Respondent received remuneration in exchange for her unlicensed rental property management services.
139. In light of that finding, I order that:
- a. The Respondent pay a penalty to BCFSA in the amount of \$125,000 within 90 days of this Order, pursuant to section 49(2)(d)(ii) of RESA;
  - b. The Respondent pay enforcement expenses to BCFSA in the amount of \$52,926.26, within 90 days of this Order, pursuant to section 49(2)(c) of RESA.

## Right of Appeal

140. The Respondent has a right to appeal to the Financial Services Tribunal under RESA section 54(1)(e). The Respondent will have 30 days from the date of this

sanction decision to do so: see *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at ~~Vancouver~~ Kelowna, British Columbia, this ~~14~~ 17 day of April, 2023.

“ANDREW PENDRAY”

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Andrew Pendray  
Chief Hearing Officer