

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

**AND IN THE MATTER OF
KATHY ALAINA BAKKER**

Corrected Decision: The date in the signature line was corrected on page 16 on April 28, 2023

Application to Vary April 6, 2022 Order to Freeze

[This Decision has been redacted before publication.]

Date of Hearing:	By Written Submissions
Counsel for Applicant: [Applicant 1]	Michael Drouillard
BCFSA Counsel:	Amandeep K. Sandhu
Hearing Officer:	Andrew Pendray

Introduction

1. Pursuant to sections 46 and 48 of the *Real Estate Services Act* ("RESA") a without notice hearing was held on April 6, 2022 to consider an application brought by the BC Financial Services Authority ("BCFSA") for an order to freeze property which it says is related to unlicensed real estate activity conducted by Kathy Alaina Bakker ("Bakker").
2. After reading the affidavits of BCFSA staff members, the written submissions of counsel for BCFSA, and upon hearing the submissions of counsel for BCFSA, I concluded that there were reasonable grounds to believe that Bakker had contravened RESA, the RESA regulations, or the RESA rules, in a way that was contrary to the public interest.
3. As a result of that finding, I issued an April 6, 2022 order¹, pursuant to section 46(3) and 48(4)(f) of RESA, which prohibited Bakker from withdrawing any funds out of two bank

¹ *Bakker (Re)*, 2022 BCSRE 10

accounts, [Bank 1] account number [redacted] (the “GFI Account”) and [Bank 1] account number [redacted] (the “[Property 1] Account”)².

4. That April 6, 2022 order also, pursuant to section 46(3) and 48(4)(f) or RESA, required [Bank 1] to freeze and hold those two bank accounts, and to provide balances forthwith to BCFSA, whether held jointly or solely. The reasons for that decision were issued in *Bakker (Re)*, 2022 BCSRE 11 (“*Bakker 2*”), dated April 13, 2022.
5. [Applicant 1] (“[Applicant 1]”) applies for an order that the superintendent of real estate (the “superintendent”) rescind the order relating to the [Property 1] Account³.
6. In its application [Applicant 1] takes the position that Bakker has no personal claim to any of the funds in the [Property 1] Account, that the funds in the [Property 1] Account belong solely to [Applicant 1], and that there was no evidence before BCFSA which would indicated that the freezing order accounts contain comingled funds from other properties which had been managed by Bakker in the course of her unlicensed property management activities.

Jurisdiction

7. Pursuant to section 2.1(3) of RESA, the superintendent may delegate any of its powers. Pursuant to an March 18, 2022 delegation from the superintendent, the Chief Hearing Officer and Hearing Officers of the Hearing Department of BCFSA have been delegated the statutory powers and duties of the superintendent with respect to sections 42 through 53 of RESA.

Background

1. As set out above, the reasons for the freezing order are contained in *Bakker (Re)*, 2022 BCSRE 11 (“*Bakker 2*”). I will not reiterate all of those reasons here. The following is intended to provide context for my reasons.
2. The circumstances of this application relate to Bakker’s alleged unlicensed real estate activities.
3. After a February 2, 2022 ex parte hearing, I concluded that there was a *prima facie* case supporting BCFSA’s allegations that Bakker had been, and was, engaged in unlicensed real estate service activity, and that the evidence supported a conclusion that the length

² I will refer to the accounts collectively as the “Frozen Accounts”.

³ In its initial application, [Property 1] indicated that it was seeking an that the order to freeze property be rescinded on both the GFI Account and the [Property 1] Account. [Applicant 1] amended its application to indicate it was seeking only a rescission of the order in respect of the [Property 1] Account.

of time that would be required to complete an investigation or hold a hearing, or both, in order to make an order after a hearing held pursuant to section 48 of RESA, would be detrimental to the public interest and warranted the issuing of an order in urgent circumstances as contemplated by section 51 of RESA.

4. I therefore issued an order under sections 49 and 51 of RESA requiring that:
 - Bakker cease providing real estate services, including rental property management services, effective immediately unless and until she became licensed to provide such services under RESA; and
 - Bakker provide information to BCFSA, within 30 days of notice of the order, regarding properties for which she or her proprietorship had provided real estate services, copies of agreements she had entered into regarding the provision of real estate services, and copies of financial records relating to the provision of real estate services.
5. The reasons for that February 10, 2022 order were issued on February 18, 2022, and are available at *Bakker (Re)*, 2022 BCSRE 7 (“*Bakker 1*”).
6. The allegations against Bakker are largely that she has been renting out and managing rental properties in Kamloops, British Columbia. Bakker had previously worked for a property management company (“[Brokerage 1]”), and then, according to the president of that property management company, commenced working on her own.
7. In general terms, the president of [Brokerage 1] reported that Bakker was engaged in property management services with a number of former clients of [Brokerage 1]’s, including property management of individual homes as well as of a large apartment building at [Property 1] (“[Property 1]”) in Kamloops.
8. Investigation conducted by staff of the former Office of the Superintendent of Real Estate (“OSRE”), and subsequently BCFSA staff, through 2020, 2021, and into 2022 identified websites and Facebook profiles associated with Bakker, operating under the trade name GFI Properties. OSRE staff also found a Facebook page for [Property 1], which listed contact information for [Property 1] as being either at the GFI Properties website or at a phone number that was associated with Bakker.
9. OSRE (and subsequently BCFSA) staff conducted further internet searches on Bakker’s activity subsequent to January 26, 2021. Those searches included the following findings:
 - On January 27, 2021 an online advertisement for a home rental at [Property 2], Kamloops, which referred to Kathy Bakker as the contact and listed the telephone number previously associated with Bakker.

- On April 15, 2021 an online advertisement for multiple one bedroom units for rent at [Property 1] ([Property 1]), which listed the telephone number associated with Bakker and the email address she previously used to contact [Brokerage 1] regarding the housing supplement as the contact numbers.
 - On January 10, 2022 an online advertisement for a two bedroom rental in Kamloops BC, with the contact to set up a viewing identified as Kathy Bakker, at the phone number previously associated with Bakker.
 - As of January 10, 2022 Kathy Bakker's Facebook profile indicated that she was self-employed at "GFI Services", and that the Facebook profile for GFI Properties had changed to GFI Services, with the updated page indicating that it provided cleaning services and minor maintenance.
 - A review of the [Property 1] Facebook page on January 10, 2022 continued to list the phone number previously associated with Bakker as the contact number for [Property 1], as well as the email address Bakker had previously used to contact [Brokerage 1] regarding the housing supplement⁴. A similar review on January 31, 2022 continued to show the same contact information.
 - A comment on the [Property 1] Facebook page, dated December 16, 2021, from a "Kathy Bakker" which responded to an enquiry and indicated that [Property 1] did not have a waitlist available.
10. In *Bakker 1 I* found that a *prima facie* case had been made out which supported a conclusion that Bakker did not hold a licence at a time when, from December 2019 through January 2002, she was engaged in the provision of real estate services for which such a licence was required by section 3 of RESA:

55. Specifically, I consider the evidence relating to [Property 3] to show that Bakker provided both rental property management and trading services on behalf of the owners of that property. In particular it appears that Bakker advertised the property for rent, found tenants, entered into a residential tenancy agreement and collected rent from the tenant and then provided rental payments to the owners. The evidence further indicates that Bakker received monthly remuneration for those services from the period of December 2019 to February 2021.

56. I further consider the evidence relating to [Property 1] to indicate that Bakker provided rental property management and trading services on

⁴ [Property 1] – GFI Properties <[Property 1]@gmail.com>"

behalf of the owner of that multi-unit building by engaging in activities such as advertising units for rent, finding tenants, and collecting payments, through GFI properties, from BC Housing regarding temporary rental supplement programs for tenants.

57. In reaching the above conclusions, I note that I consider the evidence to show that Bakker was the operator of Girl Fix It and GFI Properties. The consistent use of the same telephone number across those various enterprises, the same number which Bakker had used to register at the Sauder School of Business, is, in my view, telling on this point.
58. Similarly, while there is no reference to GFI Properties on the [Property 1] Facebook page, I note again the use of the same telephone number elsewhere associated with Bakker, as well as the fact that Bakker had as recently as December 2021 replied to an enquiry regarding a rental wait list on the [Property 1] Facebook page.
59. In sum, I consider the evidence to support a conclusion that a prima facie case has been demonstrated that Bakker has been performing, and was continuing to perform, as of January 2022, activities for which a licence was required under section 3 of RESA.

Post Urgent Order

11. On March 2, 2022, BCFSA staff obtained information from a tenant (“Tenant A”) at [Property 1]. According to the affidavit from BCFSA staff, the tenant indicated that they were a current resident of [Property 1], and had resided there throughout 2020 and 2021. The tenant further indicated that during that time they had provided all rental payments to Bakker by way of e-transfer to the email address [Property 1]@gmail.com, and that subsequent to the issuing of the February 10, 2022 urgent order Bakker had indicated that residents should continue to send her their rent payments.
12. Tenant A indicated to BCFSA staff that Bakker had posted a notice titled “Management of [Property 1]” in the lobby of [Property 1], which addressed the urgent order. Tenant A provided BCFSA staff a photograph of that notice. The notice, which is signed by “Kat Bakker”, acknowledges that Bakker was under investigation for not being a licensed property manager. The notice further sets out that:

This investigation is not something that just came up. I have been dealing with it for a year, it has only just now been released to the public as I await a hearing date. The owner of this building and all my other clients are standing by me. The owner of [Property 1] reached out to me this past Saturday, and as he has stated when this began last

year, will continue to uphold our arrangement no matter what the outcome of the hearing is.

I will be closing GFI Properties in the coming weeks but that does not change anything regarding the building – rent is still payable to the same account, and I am still your contact person. I am now an independent caretaker of the building hired by the Owner’s Company instead of a contracted company.

13. Tenant A provided BCFSA staff with copies of INTERAC e-transfer confirmation, showing that Tenant A had made a February 2022 rent payment to “[PROPERTY 1] (KATHY ALAINA BAKKER).
14. On March 7, 2022 BCFSA staff obtained information from another tenant (“Tenant B”) at [Property 2] who provided copies of monthly cheque rent payments provided to Bakker. The Tenant’s cheques were made out to GFI Properties or [Property 1].
15. The January 2022 rent cheque, made out to [Property 1], shows that it was deposited to [Bank 1] account no. [redacted] on January 5, 2022.
16. The March 2022 rent cheque is made out to GFI Properties, and shows that it was deposited to [Bank 1] account no. [redacted] on March 1, 2022.
17. On March 30, 2022, BCFSA legal counsel filed a Notice of Application for an Order to Freeze Property with the BCFSA hearings department. That application sought the following orders, to take immediate effect:
 1. under section 46(2)(a) and 48(4)(f) of the RESA, that Kathy Alaina Bakker is prohibited from withdrawing any funds out of the bank accounts currently held on deposit by and for Kathy Alaina Bakker dba “GFI Properties” or “[Property 1]”, whether held solely or jointly, including the following bank accounts:
 - a. [Bank 1] account number [redacted]; and
 - b. [Bank 1] account number [redacted].
 2. under section 46(3) and 48(4)(f) of the RESA, that [Bank 1] freeze and hold the following accounts held on deposit for or in the name of Kathy Alaina Bakker (dba “GFI Properties” or “[Property 1]”), and provide the balances forthwith to BCFSA, whether held solely or jointly:
 - c. [Bank 1] account number [redacted] held at [Address 1], Kamloops BC, [redacted] (Branch # [redacted]); and

- d. [Bank 1] account number [redacted] held at [Address 2], Kamloops BC, [redacted] (Branch # [redacted]).
18. In *Bakker 2* I found that there were reasonable grounds to conclude that Bakker has contravened RESA. Specifically, at paragraph 29 of *Bakker 2*, I noted that I relied on the information provided by two tenants of [Property 1] regarding their rental payments, as well as the notice posted by Bakker at [Property 1], indicating that nothing would change regarding the management of that building.
19. In finding that it was in the public interest to issue the freeze order, I set out the following in *Bakker 2*:
 45. Bakker has, since January 2021, been aware of BCFSA's investigation into her property management and real estates [sic] services. Despite that awareness, and rather than cooperating with the investigation, Bakker has ignored BCFSA requests for information and refused to sign an undertaking to not provide real estate services for which a licence is required.
 46. I accept that BCFSA has now received complaints regarding Bakker's unlicensed activities from licensees, owners, and tenants. I agree with the submission of counsel for BCFSA that Bakker's continued provision of real estate services without a licence has a negative effect on the integrity of the regulatory regime and puts the public at risk. Specifically, the fact that Bakker continues to collect rental monies from tenants on behalf of owners, despite being unqualified to act in those circumstances places the public at risk.
 47. Having consideration of the fact that Bakker has not cooperated with BCFSA's investigation, has refused to abide by the February 10, 2022 urgent order, and has continues [sic] to collect rents while unlicensed, I consider that it is in the public interest to halt Bakker's ongoing activities by issuing an order to freeze the bank accounts used by Bakker to collect and deposit monies in connection to her unlicensed property management activities.

The Current Application

Position of [Applicant 1]

20. [Applicant 1] submitted that it is the registered and beneficial owner of [Property 1], Kamloops, BC, [redacted] ([Property 1]), and had been since about May 2020. [Applicant 1] indicated that Bakker was already providing property management

services to [Property 1] and had developed relationships with the tenants when [Applicant 1] became the owner. [Applicant 1] further indicated that it had allowed Bakker to continue in that property management role, and that the topic of licensing had not come up. [Applicant 1] maintains that it was not aware of Bakker's unlicensed status under RESA when it did so.

21. [Applicant 1] submitted that as [Applicant 1]'s property manager for [Property 1], Bakker opened two accounts with the [Bank 1], numbered [redacted] and [redacted]. [Applicant 1] submitted that Bakker had managed those accounts solely for [Applicant 1].

Affidavit of [Director 1]

22. In an affidavit dated June 1, 2022, [Director 1] indicated that he is the sole director of [Applicant 1]. In his affidavit, [Director 1] stated that [Applicant 1] purchased [Property 1] in May 2020, at which time Bakker was already providing property management services for [Property 1]. [Director 1] further indicates that they agreed that Bakker could continue to manage [Property 1] for [Applicant 1] after the purchase was completed.
23. [Director 1] indicated that he was not aware of whether Bakker was licensed under RESA, as that matter had never been discussed. [Director 1] noted that he was not specifically aware that Bakker was unlicensed, and that he had assumed Bakker was properly licensed to provide the services she did provide to [Applicant 1] at [Property 1].
24. [Director 1] stated in his affidavit that Bakker had set up two bank accounts for [Property 1], and that Bakker had done so with [Director 1]'s consent. Those bank accounts are identified by [Director 1] as [Bank 1] accounts [redacted]⁵ and [redacted]. [Director 1] indicated that they regularly reviewed Bakker's activities with respect to the bank accounts Bakker had opened for [Property 1], and that he had corresponded with Bakker in respect of those accounts. [Director 1] noted that although he did not have signing authority on the [Property 1] bank accounts opened by Bakker, he did have access to the accounts, and regularly reviewed the associated bank statements. [Director 1] provided copies of statements for the [Property 1] bank accounts from September 2021 to April 2022 and May 2021 to June 2021.
25. [Director 1] further indicated that he was unaware of the bank accounts ever being used for any property other than [Property 1], or for any purpose other than to collect and disburse rents, pay trade creditors, and make monthly mortgage payments for a

⁵ In subsequent submissions, [Applicant 1] has acknowledged that this was the incorrect account number, that it intended to refer to another [Property 1] Account, account [redacted] ("[Property 1] 2 Account"), and that it was not seeking any variation to the order relating to [redacted].

mortgage all related to [Property 1]. [Director 1] indicated he had not seen any indication of any activity not related to [Property 1] in his review of the statements from the bank accounts.

26. [Director 1] indicated that he was not aware of the potential that the bank accounts may be frozen in advance of that action having occurred, and that the decision to freeze the accounts had caused their company financial loss and hardship in the form of legal fees and expenses.

Affidavit of Bakker

27. [Applicant 1] also provided, as part of its application, an affidavit signed by Bakker on June 1, 2022. In that affidavit Bakker indicated that she had “assisted” [Applicant 1] in managing [Property 1] since January 30, 2020. Bakker noted that she had never discussed her licence status under RESA with [Applicant 1]. She further acknowledged in her affidavit that she had managed other properties while providing management services to [Applicant 1].
28. Bakker indicated that she had opened accounts [redacted]⁶ and [redacted] with the [Bank 1] (the “Frozen Accounts”), and stated that she was the sole account holder and signing authority on the bank accounts. Bakker acknowledged having managed other properties at the same time as managing [Property 1] for [Applicant 1], but indicated that she had never deposited any monies in relation to any of those other properties into the Frozen Accounts. Rather, Bakker stated that the Frozen Accounts consisted solely of funds belonging to [Applicant 1].
29. In support of that claim, Bakker provided a copy of a general ledger for [Property 1], dated from January 1 through May 2022, as well as bank statements for the [Property 1] Account from May 1, 2021 to August 31, 2021, and December 31, 2021 to March 31, 2022.
30. Bakker stated that she had no personal claim to any of the funds in the Frozen Accounts, and that all of the funds in those accounts belonged to [Applicant 1]. She stated that she knew this for a fact:

...those funds consist entirely of payments made by tenants of the Property which I deposited and do not consist of any other funds.

⁶ As I have explained below, I consider this bank account reference to have been in error, and to have intended to refer to the [Property 1] 2 Account.

31. Bakker stated that if account [redacted] was unfrozen, she would immediately wire the funds in that account to [Applicant 1] through its legal counsel, as those funds did not belong to her or to anyone else.

[Applicant 1] Submissions

32. [Applicant 1] submitted that Bakker opened the Frozen Accounts “only for the applicant’s property”, there were not competing claims to the funds in the Frozen Accounts and given the information provided from Bakker in her affidavit, the funds obviously belonged to [Applicant 1]. [Applicant 1] submitted that the freeze order ought to be rescinded in order that Bakker could release the funds back to [Applicant 1].

BCFSA Response

33. In the BCFSA’s submission, [Applicant 1] had not provided sufficient evidence to substantiate its broad and general statements that all the funds in the Frozen Accounts belonged to it.
34. BCFSA submits that in order for the freeze order to be lifted, the superintendent must be satisfied that the funds in the Frozen Accounts all belong to [Applicant 1], and do not include any amounts belonging to other persons or amounts which may be returned to Bakker as remuneration for her unlicensed real estate services. In making the second portion of that submission, BCFSA notes that unlicensed persons are prohibited by RESA from providing real estate services in the expectation of remuneration.
35. BCFSA acknowledged that amounts captured by the Freeze Order may contain rental monies and deposits collected from tenants of [Property 1] which would belong to [Applicant 1]. However, BCFSA submitted that it was unclear if all of the monies in the Frozen Accounts rightfully belonged to [Applicant 1], as those funds may include, on BCFSA’s submission, amounts owing to other homeowners and tenants as well as remuneration earned by Bakker in relation to her unlicensed activities. BCFSA submitted that:

40. To ensure that amounts in the [Property 1] Account are not commingled, the information and documentation sought under the Urgent Order (which Ms. Bakker has yet to produce) is required to determine whether the funds in the GFI Account and the [Property 1] 1 Account are attributable to [Applicant 1] and no other person. The required information includes:

- a. a full list of properties for which Ms. Bakker is providing rental property management services (the “Properties”),

whether it be under Ms. Bakker's own name, GFI Properties or any other name;

b. copies of all written agreements (or details of verbal agreements where no written agreements exist) entered into with the owners of the Properties regarding Ms. Bakker's real estate services;

c. copies of all written agreements (or details of verbal agreements) entered into with current tenants with respect to the Properties; and

d. copies of financial records relating to Ms. Bakker's provision of property management services for the 12-month period preceding April 6, 2022 with respect to the Properties, including as e-transfers, deposits, and any amounts or fees paid out.

36. In BCFSA's submission, the above noted records would permit the source of funds to be identified and enable a determination of whether the funds in the Frozen Accounts were attributable solely to [Applicant 1] or were co-mingled with funds belonging to other persons. BCFSA submitted that the general ledger for [Property 1] was insufficient to support that all amounts in the Frozen Accounts belonged to [Applicant 1] alone.
37. In this respect, BCFSA pointed to the fact that the [Property 1] general ledger did not make reference the GFI account, and the significant lump sum deposits totalling \$42,955.00 between January 5, 2022 and April 6, 2022 were difficult to reconcile under the general ledger.
38. BCFSA further noted that although Bakker's affidavit indicated that the funds in both of the Frozen Accounts belonged solely to [Applicant 1], she provided only bank statements for the [Property 1] 1 Account and only references the [Property 1] 1 Account.
39. Of note, BCFSA indicated that when the Freeze Order was served on [Bank 1], [Bank 1] advised BCFSA that it had placed holds on three accounts held by Bakker. Those accounts were the GFI account, the [Property 1] account, and another account held by "Kathy Alaina Bakker/[Property 1]", account [redacted] ("[Property 1] 2"). BCFSA indicated that [Bank 1] subsequently advised that the hold on the [Property 1] 2 Account had been removed, as it was not subject to the freeze order.
40. BCFSA further indicated in its submission that on April 13, 2022, Bakker advised BCFSA staff that she had closed the [Property 1] 2 account and had wired the funds in that account to [Firm 1] in trust for the owner of [Property 1].

41. In the BCFSA's submission, there was insufficient evidence to support a rescission of the Freeze Order solely on the contention of [Applicant 1] that all of the funds in the Frozen Accounts belonged to [Applicant 1]. BCFSA pointed to the fact that Bakker had not produced the documentation required of her under the Urgent Order which would have enabled a determination of the nature of the funds in the Frozen Accounts. BCFSA further submitted that there were additional potential claims to the funds in the Frozen Accounts, and noted specifically that there was potential for disgorgement of remuneration received for unlicensed real estate services in breach of RESA. In BCFSA's submission, this fact militated against releasing the funds in the Frozen Accounts until the superintendent was satisfied that none of the funds constituted remuneration for Bakker's unlicensed real estate services.

[Applicant 1] Reply

42. [Applicant 1] indicated in its reply submissions that its initial notice of application had incorrectly sought to lift the freeze order in relation to both the GFI Account and the [Property 1] Account. In its reply submission, [Property 1] explained that it had intended to seek a rescission of the order only as it related to the [Property 1] Account.
43. In making that clarification, [Applicant 1] submitted that although BCFSA had provided evidence to indicate that Bakker may have placed funds for other properties she managed in the GFI account, there was no such evidence relating to the [Property 1] Account.
44. [Applicant 1] submitted that all of the additional information requested by BCFSA, as set out above, was not necessary to establish that the funds in the [Property 1] Account belonged entirely to [Applicant 1]. [Applicant 1] submitted that although BCFSA had suggested in its submissions that Bakker may have a claim to some of the funds within the [Property 1] Account, that suggestion was meritless on the face of Bakker's affidavit evidence.
45. As part of its reply, [Applicant 1] provided further banking information, as well as general ledger information for [Property 1] for a longer time period, as requested by BCFSA in its submissions.
46. [Applicant 1] submitted that there was no further public interest in maintaining the freeze order in respect of the [Property 1] Account. It submitted that even according to BCFSA's submissions, there were no known competing claims to the funds in the [Property 1] Account. While [Applicant 1] acknowledged BCFSA's submission that Bakker may have a claim to a sum of those funds in relation to compensation, [Applicant 1] submitted that BCFSA's submission in this regard was meritless in the face of Bakker's sworn testimony, which was that she would return the funds to [Applicant 1].

47. [Applicant 1] further submitted that BCFSA's submission essentially amounted to nothing more than speculation and conjecture to the effect that there might be other claimants, but that it could provide no evidence whatsoever of any such claimants.

Reasons and Decision

48. Having reviewed all of the evidence and information before me, I find that I am unable to allow the application on the grounds sought by [Applicant 1].
49. My reasons for not allowing the application follow.
50. While I acknowledge that [Applicant 1] amended its application, and does not now seek to have the freeze order on the GFI Account rescinded, I consider it necessary to first review the circumstances of that account, in order to provide context for my reasons in not allowing the application. This is particularly necessary in light of BCFSA's submissions.
51. Bakker has admitted, in both the course of her discipline hearing and at paragraph 5 of her June 1, 2022 affidavit that was provided in the course of this application, that she managed a number of properties other than [Property 1]. Further, as noted above, BCFSA has provided evidence that Bakker, in undertaking those property management activities, required parties to make out rent cheques to GFI Properties. Having regard to that information, it strikes me as more likely than not that Bakker was using the GFI Account to deposit funds related to her unlicensed property management activities.
52. With that finding in mind, I am satisfied that Bakker's statement, at paragraph 6, of her June 1, 2022 affidavit, that she did not deposit any monies in relation to "any of these other properties into the Freezing Order Accounts" is not accurate. In my view, it simply belies belief that Bakker had established the GFI Account, which of course was one of the Freeze Order accounts, was requiring parties subject to her property management services to make out cheques GFI properties, but was not depositing any of those rental monies into the GFI account.
53. However, I consider it to be more likely than not that Bakker's statement at paragraph 6 of her affidavit was simply an error, rather than an intentional falsehood. I consider, in light of the fact that the same apparent error was made in [Director 1]'s affidavit, that, as [Applicant 1] has submitted in its reply submissions in this application, [Applicant 1] simply mistakenly entered the account number for the GFI Account, where it intended to reference the [Property 1] 2 Account. I consider it to be more likely than not both Bakker, and [Director 1], intended to refer in their affidavits, to the [Property 1] Account and the [Property 1] 2 Account.

54. In sum, I do not consider that Bakker (or [Director 1]), intended to be deceptive about the purpose of the GFI Account. I accept that this was simply an error.
55. I turn then, to the [Property 1] Account.
56. Having had the opportunity to review a significant number of banking statements provided by [Applicant 1] in relation to the [Property 1] 1 Account, as well as the general ledger associated with [Property 1], and having had the opportunity to consider Bakker's evidence, I am satisfied that it is more likely than not that Bakker used the [Property 1] Account solely for her property management activities related to [Property 1].
57. That finding does not, however, necessarily mean that the funds contained within that account belong exclusively to [Applicant 1].
58. I agree with the submission of BCFSA that there is evidence before me which would indicate that remuneration earned by Bakker in the course of her unlicensed activity is held in the [Property 1] Account.
59. A review of the [Property 1] Account general ledger show regular payments of \$2,310.00 to GFI Properties (Bakker) in respect of what are at times referred to as "management fees", and at times rereferred to as "Accounts Payable". Payments in a corresponding amount are shown on the [Property 1] Account bank statements. No such payment was made in April 2022, prior to the freezing of the [Property 1] Account.
60. I am satisfied, based on the above, that Bakker, doing business as GFI Properties, was being paid a regular sum of \$2,310.00 per month for her unlicensed property management activities.
61. There are also less regular payments made from the [Property 1] Account to GFI Properties for items generally described as "Accounts Payable". For example, in the month of December 2021, in addition to the regular payment of \$2,310.00, there was a payment made to GFI Properties of \$500, identified as a "Promotional" payment related to a "Turnover/Break lease fees". In the month of January 2022, in addition to the regular payment of \$2,310.00, there were additional Accounts Payable payments made to GFI Properties in the amount of \$2,310.00, \$2,149.88, and \$630.00. In February 2022, in addition to the regular \$2,310.00 payment, there was additional "Accounts Payable" payments to GFI properties of \$837.90, as well as a payment of \$108.63 in relation to "Office expenses".
62. At the time the [Property 1] Account was frozen on April 6, 2022, there had not been any payments made to Bakker in the month of April 2022.

63. In light of the above information, while I acknowledge [Property 1]'s submission that BCFSA's submission that Bakker may have a claim to some of the funds held in the [Property 1] Account is "meritless", I am unable to agree.
64. In addition to the fact that Bakker had not yet received her regular payment for unlicensed property management services in April 2022, I note that in her affidavit, which was dated June 1, 2022, Bakker indicated that "Since January 30, 2020 I have assisted [[Applicant 1]]...with managing [[Property 1]]." This statement could well be taken to mean that Bakker was continuing to undertake unlicensed property management activities for [Applicant 1] even as of June 1, 2022. I note further that subsequent to the close of submissions in this application, further evidence has been obtained which makes clear that Bakker continued to provide property management services subsequent to the April 2022. Specifically relevant to this application, Bakker admitted, at her enforcement hearing, that she had continued to provide rental property management services for [Property 1] to "mid-April 2022".
65. Regardless of whether Bakker continued to provide unlicensed property management services to [Applicant 1] through the date of her June 1, 2022 affidavit, or through "mid-April 2022", I consider it to be more likely than not that Bakker was, consistent with her previous payments from [Applicant 1], expecting to be paid for the provision of those services.
66. In the circumstances, where Bakker had consistently received regular monthly payment for her property management services from the [Property 1] Account, as well as irregular payments in addition to those monthly payments, and where no such payment was received by Bakker from the [Property 1] Account for April 2022 prior to the freezing of that account, I consider, based on the information currently before me, that there is a likelihood that Bakker does in fact have a claim to funds held in the [Property 1] Account.
67. I agree with the submission from BCFSA therefore, that the evidence supports a conclusion that the monies in the [Property 1] Account may contain remuneration for unlicensed services provided by Bakker, and that those monies may be subject to disgorgement as a result of Bakker's enforcement proceeding. I therefore consider that it would be prejudicial to the public interest, at this time, to rescind the freeze order and thereby permit Bakker to deal with the funds in the [Property 1] Account.
68. While I acknowledge that Bakker has indicated in her affidavit that she would pay over the entire amount found in the [Property 1] Account to [Applicant 1], there is sufficient evidence in my view to reach a conclusion that such a claim is a self-serving one. In her affidavit Bakker makes no reference to the fact that she was regularly paid out of the [Property 1] Account for her unlicensed property management services, and provides no

explanation of why she would pay over the entire proceeds of that account without being paid for the provision of her ongoing unlicensed property management service through at least mid-April 2022. In my view, those facts suggest that Bakker's indication that the funds in the [Property 1] Account belong solely to [Applicant 1] should be given little weight.

69. As a result, I decline to rescind the freeze order on the [Property 1] Account.
70. As I have set out above, in its submissions on this application BCFSA suggested that [Applicant 1] provide a copy of financial records relating to Bakker's provision of property management services for the 12-month period preceding April 6, 2022 with respect to [Property 1], including e-transfers, deposits, and any amounts or fees paid out.
71. [Applicant 1] declined to provide any of that information.
72. In my view, it would not likely be particularly cumbersome for [Applicant 1] to provide information as to the amount of funds in the [Property 1] Account it would expect Ms. Bakker to have claim to in relation to her unlicensed property management activities. If such information were provided, it may be that a variation or rescission of the order would be warranted. [Applicant 1] is welcome to provide further submissions in that regard.

Conclusion

73. For the above noted reasons, I decline to vary or rescind the April 6, 2022 freeze order on [Bank 1] account number [redacted]. I find that it would not be in the public interest to do so at this time.
74. If [Applicant 1] wishes to provide further information to the Hearings Division regarding the funds contained within the [Property 1] Account, an application in that regard can be heard within 30 days.

Issued at Kelowna, British Columbia, this 13 day of April, 2023

"ANDREW PENDRAY"

Andrew Pendray
Chief Hearing Officer