

BC FINANCIAL SERVICES AUTHORITY

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

IN THE MATTER OF

**FREYJA PRIT
(159189)**

DECISION ON SANCTION

[This Decision has been redacted before publication.]

Date of Hearing: Written Submissions
Counsel for BCFSa: Laura Forseille
Counsel for the Respondent: Self-Represented
Hearing Officer: Andrew Pendray

Introduction

1. In a December 8, 2023 decision, *Prit (Re)*, 2023 BCSRE 51 (the “liability decision”), I determined that the respondent, Freyja Prit, had breached section 3 of the *Real Estate Services Act* (“RESA”) when she provided trading services without being licensed to do so in respect of a number real estate transactions during the period from July 5, 2018 through September 20, 2018.
2. I further determined, in the liability decision, that Ms. Prit had committed professional misconduct within the meaning of section 35(1)(a) of RESA by contravening sections 5-10 and 3-2(2) of the *Real Estate Services Rules* (the “Rules”), as a result of her failure to properly disclose in writing to a client whether she would represent them, and her failure to keep her managing broker apprised of real estate services and other activities she was performing.
3. Finally, I determined that Ms. Prit had committed professional misconduct within the meaning of sections 35(1)(a) and 35(1)(d) of RESA when she failed to act with reasonable care and skill, contrary to section 3-4 of the Rules by failing to comply with the requirements of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17.
4. This decision relates to the sanctions and orders to be issued in respect of Ms. Prit’s conduct.
5. The hearing of the sanctions portion of this matter proceeded by way of written submissions.
6. BCFSa seeks orders that Ms. Prit pay a discipline penalty of \$35,000 pursuant to section 43(2) of RESA, an additional penalty of \$23,500 pursuant to section 49(2) of RESA in respect of her unlicensed activities, and investigative and hearing expenses in the amount of \$12,724.

7. Despite being provided with the opportunity to do so, Ms. Prit did not provide any written submissions in response to BCFSA's position.

Issue

8. The issue is the appropriate orders to be issued in respect of Ms. Prit's conduct, as provided for by sections 43(2) and 49(2) of RESA.
9. Additionally, there is the question of whether Ms. Prit should be required to pay enforcement expenses pursuant to section 43(2)(h) of RESA and, if so, the appropriate quantum of those expenses.

Jurisdiction

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

Background and Evidence

11. The background to this matter is set out in the liability decision. I will not reproduce the entirety of that background and evidence here. The following summary is intended to provide context for my reasons.
12. Ms. Prit was first licensed as a trading representative in June 2010. She was licensed as a trading representative with Cathay Pacific Realty Ltd. (the "Brokerage" or "Cathay Pacific") from June 2016 to May 2017. Effective from May 30, 2017 to July 4, 2018, and again from September 21, 2018 to September 20, 2020, Ms. Prit was licensed as an associate broker at Cathay Pacific. She was subsequently licensed from September 21, 2020 to November 2, 2021 as an associate broker for a commercial leasing company.
13. Ms. Prit was unlicensed from July 5, 2018 to September 20, 2018 inclusive.
14. On September 17, 2018, the former Real Estate Council of British Columbia ("RECBC") received a complaint from [Complainant 1], the managing broker of a real estate brokerage in Vernon, BC. In a September 17, 2018 complaint form [Complainant 1] indicated that:

An unlicensed person (Freyja Prit) drafted an offer on August 20, 2018 on a listing we had in Salmon Arm. The fact that she was unlicensed came to light when we attempted to obtain a form from her regarding the deposit. I did a Licensee search on the RECBC site.

I spoke to Freyja Prit's Managing Broker on September 6th and it came up during the conversation that Ms. Prit had delivered a number of deposit cheques to the office in the previous 2 weeks but she had not spoken to her for a few days. She didn't recall the deposit cheques for this transaction when we spoke.

I advised her of the issue of her unlicensed representative drafting Contracts and she stated that she hadn't been licensed for some time.

15. That complaint led to an investigation into Ms. Prit's activities. Ms. Prit was first informed of the investigation on January 30, 2019.

16. That investigation identified a number of transactions in respect of the purchase or lease of properties in various communities in the interior of British Columbia, in which Ms. Prit appeared to be acting as a licensee under RESA during the period of time from July 4, 2018 through September 20, 2018, when she was in fact unlicensed.
17. The investigation into Ms. Prit's activities during that period of time further indicated that Ms. Prit may have failed to comply with a number of duties she had as a licensee, including the disclosure of representation, keeping her managing broker informed of her activities, and complying with the requirements imposed on licensees by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (the "PCMLTF").
18. The Notice of Hearing issued in this matter set out the allegations against Ms. Prit as follows:
 1. Freyja Prit breached section 3 of the RESA in that, she, without being licensed to do so or otherwise being exempt from licensing under RESA:
 - a. Between on or about July 5, 2018 to on or about September 20, 2018, inclusive, provided real estate services to [Individual 1] ("[Individual 1]"), [Company 1] ("[Company 1]"), or both of them for or in expectation of remuneration in relation to the purchase and sale of real property of up to ten (10) properties, including but not limited to five (5) with civic addresses at:
 - i. [Property 1], Grand Forks, British Columbia;
 - ii. [Property 2], Creston, British Columbia;
 - iii. [Property 3], Salmon Arm, British Columbia;
 - iv. [Property 4], Grand Forks, British Columbia; and
 - v. [Property 5], Keremeos, British Columbia; and
(collectively, the "Purchase Deals")
 - b. Between on or about July 5, 2018 to on or about September 1, 2018, inclusive, provided real estate services to [Company 2] ("[Company 2]"), [Individual 2], or both of them for or in expectation of remuneration in relation to the lease of real property with a civic address at [Property 6], Terrace (the "Lease Deal").
 2. Freyja Prit committed professional misconduct within the meaning of sections 35(1)(a) and (d) of the RESA in that, while licensed as an associate broker in relation to Cathay Pacific Realty Ltd. in the trading and rental property management categories, she:
 - a. In or about May 2018, failed to disclose in writing and in the form approved by the Real Estate Council of British Columbia at the time (the "Council") to [Individual 1], [Company 1], or both of them whether or not she would represent [Individual 1], [Company 1], or both of them, respectively, as a client in relation to the Purchase Deals contrary to the Rules, sections 5-8 [*Disclosures*] and 5-10 [*Disclosure of representation in trading services*];
 - b. In or about May 2018, failed to disclose in writing and in the form approved by the Council to [Company 2], [Individual 2], or both of them whether or not she would represent [Company 2], [Individual 2], or both

of them, respectively, as a client in relation to the Lease Deal contrary to the Rules, sections 5-8 [*Disclosures*] and 5-10 [*Disclosure of representation in trading services*];

c. In or about May to July 2018, failed to keep her managing broker, Adelina Yin Ko, informed of the real estate services and other activities being performed by her on behalf of Cathay Pacific Realty Ltd. for [Individual 1], [Company 1], [Company 2], [Individual 2], or any of them contrary to the Rules, section 3-2(2) [*Keeping managing broker informed*];

d. Between on or about September 21, 2018 to on or about October 4, 2018, failed to verify the existence of [Company 3] (“[Company 3]”) within 30 days of the date of her receipt on or about September 4, 2018 of three deposits paid by [Company 3] as required by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 and the regulations enacted thereunder at the relevant time (collectively “*PCMLTFA*”);

e. Between in or about May 1, 2018 to on or about October 31, 2018, failed to take reasonable measures to determine if [Individual 1] was acting on behalf of a third party or, in the alternative, to record those reasonable measures and the identifying information of the third party obtained as a result of those measures as required by *PCMLTFA*; and

f. Failed to make a suspicious transaction report to the Financial Transaction and Reports Analysis Centre of Canada before November 30, 2018 regarding the Purchase Deals where she had, within her knowledge at the time, grounds for reasonable suspicion that the Purchase Deals were related to the commission or the attempted commission of money laundering, including, but not limited to:

- i. The Purchase Deals constituted several transactions occurring close together in time;
- ii. [Individual 1] had a well publicized criminal record;
- iii. Some or all of the deposit funds were being paid by [Company 3], who was not a party to the underlying contracts;
- iv. [Company 3] name explicitly references marijuana; and
- v. Some or all of the Purchase Deals closed in favour of a numbered company who was not a party to the original contract

where such a report was required by *PCMLTFA*;

each and all contrary to the Rules, section 3-4 [*Duty to act honestly and with reasonable care and skill*].

19. At the liability hearing of this matter, Ms. Prit admitted that she had been unlicensed during the period of time from July 4 to September 21, 2018, and that she had provided real estate services to her clients, [Individual 1] and [Individual 2], and to their company [Company 3], during that period of time.
20. Ms. Prit explained, in a letter to investigators on February 5, 2019, that she had just returned to full time work in real estate in the spring of 2018 after having been off work to recover from health issues for approximately two and a half years. She noted further in that letter that her relationship

with [Individual 1] dated back to 2013, and that she had a close relationship with him in respect of “the work and effort into the legalization of medical cannabis”.

21. In her evidence at the liability hearing of this matter, Ms. Prit explained that around the time period in question in 2018 there were new rules that were going to be coming into place in respect of legalized sale of marijuana, which would have impacted [Individual 1]’s business. She noted that she and [Individual 1] had a lengthy relationship, and that he had relied on her to assist him in keeping ahead of the curve in respect of being able to build his business in light of the anticipated changes to the sale of marijuana.
22. The evidence in the liability hearing indicated that Ms. Prit had received remuneration equal to \$37,903.41 from the purchase deals and the lease transaction, in the following amounts:
 - \$6,978.32 in relation of the purchase of [Property 1], Grand Forks, British Columbia
 - \$4,918.73 in relation of the purchase of [Property 2], Creston, British Columbia
 - \$7,300.13 in relation of the purchase of [Property 3], Salmon Arm, British Columbia
 - \$7,855.31 in relation of the purchase of [Property 4], Grand Forks, British Columbia
 - \$8,351.91 in relation of the purchase of [Property 5], Keremeos, British Columbia
 - \$2,799.01 in relation of the purchase of [Property 6], Terrace
23. The evidence in the liability hearing further indicated that Ms. Prit had failed to comply with the Rules in respect of her work on the Purchase Deals and the Lease Transaction in that:
 - Ms. Prit had failed to comply with Rule 5-10 as she did not provide her clients with written disclosure indicating that she would represent them as a client prior to providing trading services on their behalf;
24. In the liability decision, I made the following findings:

183. I find that Ms. Prit breached section 3 of RESA when she provided trading services without being licensed to do so, when she:

- Between on or about July 5, 2018 to on or about September 20, 2018, inclusive, provided real estate services to [Individual 1], for or in expectation of remuneration in relation to the purchase and sale of real property identified as the Purchase Deals;
- Between on or about July 5, 2018 to on or about September 1, 2018, inclusive, provided real estate services to [Company 2] (“[Company 2]”), [Individual 2], or both of them for or in expectation of remuneration in relation to the lease of real property with a civic address at [Property 6], Terrace (the “**Lease Deal**”).:

I further find that Ms. Prit committed professional misconduct within the meaning of section 35(1)(a) RESA when she:

- contravened Rule 5-10, as set out at allegation 2(a) of the notice of hearing;
- contravened Rule 5-10, as set out at allegation 2(b) of the notice of hearing; and
- contravened Rule 3-2(2), as set out at allegation 2(c) of the notice of hearing.

184. I further find that Ms. Prit committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(d) of RESA when she failed to act with reasonable care and skill, contrary to section 3-4, by:

- Failing to verify the existence of a corporation within 30 days as required by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 and the regulations enacted thereunder at the relevant time (collectively “PCMLTFA”), as set out at item 2(d) of the notice of hearing;
- Failing to take reasonable measures to determine if her client was acting on behalf of a third party, or to record such reasonable measures, as required as required by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 and the regulations enacted thereunder at the relevant time, as described at item 2(e) of the notice of hearing.

25. I further concluded that the evidence did not support a conclusion that a reasonable person, with Ms. Prit’s knowledge of [Individual 1]’s plans to open stores as permitted by new cannabis regulations, and previous experience working with [Individual 1], would have concluded that there were reasonable grounds to suspect that the purchase deals were related to the commission or the attempted commission of a money laundering offence. As a result, I determined that the allegation set out at item 2(f) of the notice of hearing has not been proven on a balance of probabilities.

Applicable Law and Legal Principles

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

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

- (j) require the licensee to pay an additional penalty up to the amount of the remuneration accepted by the licensee for the real estate services in respect of which the contravention occurred.
27. 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.
28. In general terms, sanctions in relation to breaches of RESA are issued with a view to the overarching goal of protecting the public.
29. I consider that sanctions may serve multiple purposes, including:
- denouncing misconduct, and the harms caused by misconduct;
 - preventing future misconduct by rehabilitating specific respondents through corrective measures;
 - preventing and discouraging future misconduct by specific respondents through penalizing measures (i.e. specific deterrence);
 - preventing and discouraging future misconduct by others (i.e. general deterrence);
 - educating registrants, other professionals, and the public about rules and standards; and
 - maintaining public confidence in the industry.
30. Administrative tribunals generally consider a variety of mitigating and aggravating factors in determining sanctions, largely based on factors which have been set out in cases such as *Law Society of British Columbia v. Ogilvie*, 1999 LSBC 17, and *Law Society of British Columbia v. Dent*, 2016 LSBC 5. In *Dent*, the panel summarized what it considered to be the four general factors, to be considered in determining appropriate disciplinary action:

(a) **Nature, gravity and consequences of conduct**

[20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

(b) Character and professional conduct record of the respondent

[21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?

(c) Acknowledgement of the misconduct and remedial action

[22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

(d) Public confidence in the legal profession including public confidence in the disciplinary process

[23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

31. While the factors set out above are not binding on me, I find them to be of use in considering the appropriate penalty to be issued.

Discussion

The Misconduct

32. BCFSa submits that Ms. Prit's unlicensed real estate activity demonstrated an ongoing and intentional disregard for the regulatory scheme, as opposed to an unavoidable accident or momentary lapse of judgment. In BCFSa's submission, given that Ms. Prit's unlicensed real estate activity also involved professional misconduct, some of which involved disregard for federal anti-money laundering legislation, Ms. Prit's misconduct must be considered to be severe.
33. Based on the evidence before me at the liability hearing, I am satisfied that Ms. Prit was aware of the need to be licensed in respect of her work for the [Individuals] and their numbered company in the period of time from July 4, 2018 through September 20, 2018. Ms. Prit admitted as much during the liability hearing.
34. I am further satisfied that despite having that awareness, Ms. Prit simply elected to proceed with providing real estate services to her clients while not being licensed to do so. In my view, this decision shows a clear disregard for the regulatory scheme.
35. I acknowledge, in reaching that conclusion, that Ms. Prit indicated that she was unable to make the payments required to renew her licence in July of 2018. While I accept that Ms. Prit was struggling financially during the time period in question in 2018, I do not consider that fact to excuse her decision to knowingly continue to provide real estate services while unlicensed to do so.

36. Further, while I understand, from Ms. Prit's evidence, that time was of the essence for her clients in terms of finding locations to purchase or lease for their prospective marijuana sales business, Ms. Prit did not provide any explanation as to why she could not have referred the clients to another licensee during the period of time which she was unlicensed. Nor did she provide any evidence indicating any efforts she may have made in that regard.
37. Simply put, Ms. Prit made a decision to continue to provide real estate services to a client when she knew she was no longer licensed to do so. While Ms. Prit had what amounted to, in her view, reasons for having done so, I consider that those reasons simply indicate that Ms. Prit did not consider the regulatory scheme to be of importance.
38. I note that Ms. Prit obtained financial gain of more than \$37,000 in commissions in respect of the Purchase Deals and the Lease Deal. In my view, this is an aggravating factor in a consideration of the nature of the conduct.
39. I agree with BCFSA's submission that it is a further aggravating factor that Ms. Prit, in addition to disregarding the requirement to be licensed, also failed to comply with the Rules as well as the regulations of the PCMLTF.
40. Specifically, as I found in the liability decision, Ms. Prit committed professional misconduct when she contravened Rule 5-10, Rule 3-2(2), and Rule 3-4. Ms. Prit's breach of those rules included:
 - The failure to disclose the nature of the trading services relationship to her clients;
 - The failure to keep her managing broker informed as to the real estate services she was providing;
 - The failure to confirm the existence of a corporation from whom she received deposit monies and to ascertain the names of that corporations directors;
 - The failure to take reasonable measures to determine if her client was acting on behalf of a third party in respect of the purchase deals.
41. Each of the issues identified above relates to an action that a licensee is expected to take with a view to ensuring the protection of the public.
42. Rule 5-10, for example, is intended specifically to inform members of the public of the nature of the relationship between a licensee and the client.
43. I note, as I did in the liability decision, that I accept that Ms. Prit had a longstanding relationship with [Individual 1]. The mere fact of that relationship does not, however, take away from the need for Ms. Prit to follow the Rules required of a licensee. In this case, the Rules required that Ms. Prit provide, in writing, disclosure to [Individual 1], [Individual 2], and [Company 3], as to the nature of the representation she would be providing to them before she provided trading services to them or on their behalf.
44. Similarly, the fact that Ms. Prit felt that she understood the nature of [Individual 1]'s businesses, did not obviate the requirements placed upon her that she ascertain the existence of his corporations, the directors of the corporations, and whether [Individual 1] was acting on behalf of a third party in respect of any of the transactions in question. These regulations are in place to protect the public, and Ms. Prit was required to comply with them. The fact that she simply elected not to do so based on what she described as her personal understanding of these companies is not sufficient and creates a potential risk to the public.
45. I note that at the time these transactions occurred in 2018, Ms. Prit had previously been licensed for approximately eight years. I agree with BCFSA's submission that Ms. Prit ought to have had

knowledge of the importance of being licensed while providing real estate services, and of the importance of complying with the Rules.

46. After considering all of the evidence, I consider that Mr. Prit's actions in respect of her provision of unlicensed real estate services, and her failure to comply with the Rules, all demonstrated a disregard for the regulatory scheme. This type of misconduct, in my view, is appropriately considered to be severe.

Other Relevant Factors

47. Ms. Prit has no prior discipline history with BCFSA or its predecessor regulators. I consider this to be a neutral factor.
48. There was no evidence that Ms. Prit's unlicensed activity and misconduct caused any specific harm to the clients involved in the Purchase Deals and the Lease Deal. However, as set out above, I consider that Ms. Prit's activities were of a type that specifically ignored legislation and rules that are intended to protect the public, and thereby created a risk of harm. I consider that, rather than being mitigating, the lack of actual harm constitutes the absence of a further aggravating factor.
49. While Ms. Prit did admit that she had provided unlicensed real estate services to the clients in the Purchase Deals and the Lease Deal, she did so only in her evidence at the hearing, after having heard BCFSA's case. As is her right, at the liability hearing Ms. Prit continued to dispute that she had breached the Rules in respect of the services she had provided to the clients in respect of the Purchase Deals and the Lease Deal.
50. Finally, I acknowledge that Ms. Prit indicated that in the spring of 2018 she had only recently returned to full time real estate work after having been off work due to personal health reasons for an extended period of time. I further acknowledge Ms. Prit's evidence that she had failed to renew her licence in July 2018 due only to personal financial issues. Ms. Prit did not provide significant detail as to the nature of her financial issues, nor did she provide any details as to what steps she may have taken to attempt to obtain funds in order to ensure that she remained licensed given her clear intention to continue to provide trading services to her clients. Absent such information, I consider Ms. Prit's personal financial situation during the period she was unlicensed from July to September 2018 to be a mitigating factor of minimal significance.

Previous Sanctions Decisions and Consent Orders.

51. As set out above, in determining the appropriate sanction, consideration should be given to disciplinary action that has been issued in similar cases. While prior disciplinary decisions and consent orders are not binding on me, they can be of assistance in determining a penalty that the public will have confidence in.
52. BCFSA has referred, in its submissions, to a number of previous disciplinary decisions and consent orders. I note, prior to reviewing those decisions and consent orders below, that I am of the view that caution must be taken when comparing an agreed upon penalty from a consent order to a penalty that is imposed subsequent to a discipline hearing, given that there are a myriad of reasons for a respondent to agree to a consent order which may not be apparent from a review of that consent order.
53. With that comment in mind, I turn to a review of the cases cited.
 - In *Chai (Re)*, 2022 BCSRE 25, a consent order, Ms. Chai and the respondent real estate corporation, Tempo, admitted to providing unlicensed real estate services in respect of one

property transaction that occurred 2016 and 2017. Ms. Chai had previously been licensed to provide real estate trading services in British Columbia from 2010 to 2015, and was licensed in Alberta. Tempo was licensed as a real estate broker in Alberta. The purchasers in the transaction were personal friends of Ms. Chai but they had not had any prior business dealings. While Ms. Chai and Tempo received a commission for the transaction, that transaction was repaid to the purchasers after the purchasers submitted a complaint to the regulator.

Ms. Chai and Tempo each agreed to pay a penalty in the amount of \$7,500, along with investigation costs.

- In *Seo (Re)*, 2021 CanLII 520, a consent order, Mr. Seo and his personal real estate corporation admitted to having committed professional misconduct in relation to the purchase and sale of the business assets of a commercial property when he entered into separate relationships with the sellers of the property without fully explaining the nature of the representation being provided contrary to Rule 5-10 and failed to properly document the relationship contrary to Rule 3-4. Mr. Seo also admitted to having entered into a relationship with the buyer without fully disclosing the nature of the representation being provided, and failed to properly document that relationship. Mr. Seo further admitted to: making representations to the buyer regarding the property which he knew or ought to have known were inaccurate, a breach of Rule 3-3; failing to keep his managing broker informed, a breach of Rule 3-2(2); and acting in a conflict of interest, a breach of Rule 3-3.

Mr. Seo and his personal real estate corporation agreed to a suspension of their licenses for a period of 4 months, and to pay a discipline penalty of \$20,000, as well as undergoing enhanced supervision for a period of two years and the payment of enforcement expenses.

- In *Wen (Re)*, 2019 CanLII 45456 (BC REC), a consent order, the respondent admitted to having committed professional misconduct by failing to act with reasonable care and skill when she signed parts of a contract on behalf of a buyer without first receiving authorization in writing to do so. The licensee admitted to having received money to her personal account instead of through her brokerage and to acting to help her client avoid the application of the rules and requirements established by the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC"). The respondent consented to a suspension of 270 days, and a discipline penalty of \$7,500, the payment of enforcement expenses, as well as educational requirements and enhanced supervision¹.
- In *Chonn (Re)*, 2021 CanLII 89769 (BC REC), the respondent was found to have committed professional misconduct and conduct unbecoming by acting outside of his brokerage, accepting remuneration from persons other than his brokerage, failing to provide trading records to his managing broker and failing to keep his managing broker aware of the real estate services he was providing, failing to meet duties to his clients including failing to act in the best interests of his clients, and failing to act honestly and with reasonable care and skill. The respondent had an extensive history in the real estate industry, and did not have a disciplinary history.

Although the respondent had surrendered his licence, the discipline hearing committee cancelled his licence. The committee further ordered that the respondent pay a discipline penalty of \$23,250 (which represented a "disgorgement" fine of \$13,250, and an additional fine of \$10,000), as well as enforcement expenses and educational requirements.

¹ Of note, the conduct in this case took place prior to amendments to RESA in 2016. At that time the maximum penalty amount in the case of an individual was \$10,000.

- *Ko (Re)*, 2023 BCSRE 50, was the discipline hearing held in respect of Ms. Prit's managing broker and brokerage. Ms. Ko admitted that she had committed professional misconduct as contemplated by section 35 of RESA by failing to provide adequate supervision to Ms. Prit to ensure that Ms. Prit did not provide real estate services while unlicensed. Ms. Ko also admitted that she had failed to ensure that the brokerage made a suspicious transaction report to FINTRAC before November 30, 2018 regarding the transactions where she had, within her knowledge at the time, grounds for reasonable suspicion that the transactions were related to the commission or the attempted commission of money laundering. The Brokerage made the same admission regarding supervision of Ms. Prit, and further admitted that it had committed professional misconduct when it had paid Ms. Prit commissions for real estate services she had provided while not licensed.

Ms. Ko and the brokerage were ordered to pay a discipline penalty of \$20,000, and to disgorge \$4,244.89 the brokerage had received for services provided by Ms. Prit while unlicensed. Further orders including educational requirements and the payment of enforcement expenses were ordered.

Decision on Sanction

54. At the outset, it is necessary to point out that penalties must not be imposed purely for the purpose of being retributive or denunciatory. Rather, penalties may be imposed with the intention to encourage compliance with regulations in the future, with a view to specific or general deterrence, and with the intention of protecting the public: See *Thow v. BC (Securities Commission)*, 2009 BCCA 46, at para. 38.
55. Having reviewed the previous decisions and consent orders, I accept BCFSA's submission that a total penalty of \$58,500 is necessary to provide sufficient specific and general deterrence in the circumstances of this case, and to uphold public confidence in the profession and the disciplinary process. My reasons for having reached this conclusion follow.
56. As I have set out above, this is a case in which Ms. Prit, despite being acutely aware of the need to be licensed in order to provide trading services to the clients in the Purchase Deals and the Lease Deal, simply elected to provide those trading services when her license was expired.
57. It is of note that this is not a situation in which Ms. Prit chose to provide unlicensed trading services in respect of a single transaction as was the case in *Chai*. Rather, Ms. Prit was engaged in an ongoing effort to assist her client in finding properties that were suitable for their business purposes throughout the period of time in which she was unlicensed, and she in fact managed to present offers and receive deposit monies in respect of five purchases and one lease over that period of time. I note that Ms. Prit described at the liability hearing that the transactions at issue were not simple deals, and that she had been required to travel to various locations around the province as part of her work on the transactions. In sum, Ms. Prit was not engaged in a "one-off" unlicensed activity. Rather, she was engaged in ongoing unlicensed activity over a period of time. Such activity requires both specific deterrence, and general deterrence in order to ensure compliance with the regulatory regime.
58. In addition to deliberately engaging in unlicensed activity, Ms. Prit failed to ensure that she provided services in a manner required of a licensee (which she became again in September 2018). She failed to properly disclose the nature of the client relationship to her clients, and she failed to keep her managing broker apprised of her activities. Finally, she failed to properly follow the regulations relating to the PCMLTF.
59. I consider that this level of professional misconduct requires a degree of both specific and general deterrence. I acknowledge, in setting out the above, that no specific harm appears to have been incurred as a result of Ms. Prit's misconduct, and that Ms. Prit is no longer licensed. That said,

there remains the possibility that Ms. Prit may wish to become licensed again in the future. Misconduct of the nature she engaged must be prevented and discouraged through a penalizing measure.

60. Further, the importance of general deterrence in this case is clear. While it is true that I determined that Ms. Prit's failure to make a suspicious transactions report did not constitute professional misconduct in the particular circumstances of her case, that fact does not, in my view, lessen the importance of communicating to other licensees that actions such as the failure to comply with the regulations of the PCMLTF, the failure to properly disclose relationships with clients, and the failure to keep managing brokers apprised, will be met with a sanction of significance.
61. I would attribute the \$58,500 penalty I have determined to be appropriate in this case as follows: a \$20,000 discipline penalty pursuant to section 43(2)(i) of RESA for the professional misconduct issues; a \$15,000 discipline penalty pursuant to section 49(2)(d) in respect of the approximately two month period of unlicensed activity; and \$23,500 pursuant to section 49(2)(e) in respect of the remuneration received by Ms. Prit in relation to that unlicensed activity.
62. I note, in setting out the above, that I consider it appropriate that Ms. Prit's discipline penalty pursuant to section 43(2)(i) in respect of the professional misconduct issues match those of Ms. Ko and the brokerage in *Ko*.
63. Ms. Prit was found to have engaged in more instances of professional misconduct when compared with the misconduct found in respect of Ms. Ko and the Brokerage, however, Ms. Ko admitted to having failed to make a suspicious transaction report.
64. I did not find that Ms. Prit engaged in the same type of misconduct as Ms. Ko in respect of failing to make a suspicious transaction report as required by the PCMLTF, due to the fact that Ms. Prit's personal knowledge of her clients and their plan for establishing legal marijuana sales businesses, would not have given her reasonable grounds to suspect that the purchase deals were transactions related to the commission or the attempted commission of a money laundering offence².
65. I consider the fact that Ms. Prit was not found to have failed to make a suspicious transaction report to provide some balance to her increased instances of professional misconduct compared to the misconduct admitted to by Ms. Ko and the Brokerage. As a result, I have concluded that a penalty of \$20,000 pursuant to section 43(2)(i) is appropriate.
66. I turn to Ms. Prit's unlicensed activities. As set out above, Ms. Prit earned more than \$37,000 in commissions in relation to the transactions that came about during her brief period of unlicensed activity.
67. I have indicated above that I consider that Ms. Prit flagrantly chose to disregard the requirement that she be licensed to provide trading services when she did so for the period of July 4, 2018 through September 20, 2018. I note that recent decisions regarding unlicensed real estate activity have issued penalties of \$40,000 (*Scofield (Re)*, 2023 BCSRE 56) and \$100,000 (*Campbell (Re)*, 2023 BCSRE 54). While those cases involved unlicensed activity of a far greater duration than that engaged in by Ms. Prit (more than 5 years and more than 9 years, respectively), I consider that those cases demonstrate that significant sanctions may be applied for cases of unlicensed activity.

² Liability decision, paragraphs 174-181.

68. I am satisfied, given that the period of time in which Ms. Prit was providing unlicensed services was brief, that there was no actual harm caused to her clients or the public, and that she was having personal financial issues at that time, that a penalty at a lower level than that issued in *Scofield* is appropriate. Having regard to all of the circumstances specific to Ms. Prit's activities, as well as the need for specific and general deterrence, I am satisfied that a penalty of \$15,000 is appropriate in respect of Ms. Prit's two-month period of unlicensed activity.
69. Finally, I accept BCFSA's submission that this is a case in which it is appropriate for an order to be made for an additional penalty as provided for by section 49(2)(e). That section allows for additional penalties up to the amount of remuneration accepted by the person for the real estate services in respect of which the contravention occurred. In my view, in a case such as this, where the unlicensed person received a significant amount of remuneration for the real estate services provided, the issuing of the additional penalty pursuant to section 49(2)(e) addresses the need both for specific and general deterrence.
70. In the circumstances of this case, were I not to issue the additional penalty, the penalty issued to Ms. Prit would be less than the amount she earned in providing her unlicensed services. I do not consider a penalty that is less than the amount earned by intentionally flouting the regulatory regime to provide the type of specific or general deterrence that is required to ensure that the requirement to be licensed is followed. Rather, Ms. Prit and others must understand that where they intentionally flout the regulatory regime, they will not profit from their actions, and they will in fact face additional significant sanctions.
71. I accept BCFSA's submission that the amount of \$23,500 would be appropriate, as an additional penalty of that amount would reflect the fact that there were taxes payable on the commissions received by Ms. Prit, as well as reflect the fact that Ms. Prit did provide some of the services on the Purchase Deals and the Lease Deal when she was in fact licensed again in September 2018.

Enforcement Expenses

72. Sections 43(2)(h) and 44(1) and (2) of RESA provides that the Superintendent may, after determining a licensee has committed professional misconduct, require the licensee to pay the expenses, or part of the expenses, incurred by BCFSA in relation to either or both the investigation and the hearing to which the order relates. Pursuant to section 44(2)(a), amounts ordered under section 43(2)(h) must not exceed the applicable prescribed limit in relation to the type of expenses to which they relate, and may include the remuneration expenses incurred in relation to employees, officers or agents of BCFSA engaged in the investigation or hearing.
73. Section 49(2)(c) further 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.
74. Section 4.4 of the Regulation sets out the maximum amounts the Superintendent may order a licensee to pay under section 43(2)(h) or 49(2)(c) in relation to various activities such as investigator costs, legal services costs, disbursements, administrative expenses for days of hearings, witness payments, and other expenses, reasonably incurred, arising out of a hearing or an investigation.
75. BCFSA has submitted an appendix of enforcement expenses which identifies the hours incurred by the investigator assigned to the respondent's case, the hours incurred by legal counsel in association with the hearing of this matter, witness expenses, and disbursements and other costs arising out of the hearing of this matter. That schedule sets out that the total amount of the enforcement expenses claimed is \$12,724.

76. In setting out that schedule, BCFSA sought payment for only half of the 60 investigative hours incurred by the investigator, on the basis that Mr. Prit was largely cooperative with the investigation.
77. BCFSA sought full costs of the hearing due to the fact that Ms. Prit did not provide any response to a pre-hearing draft agreed statement of facts, as she had been directed to do at a pre-hearing conference, and due to the fact that Ms. Prit only made admissions later in the hearing. I accept that full costs of the hearing are warranted. I do not consider the duration of the hearing, which was two days, to have been inordinately long or to have been unnecessarily lengthened by any activity on the part of BCFSA which would warrant a reduction in hearing expenses.
78. Rather, if anything, the length of the hearing was slightly increased due to the fact that Ms. Prit disregarded pre-hearing directions issued by the Hearings Division of BCFSA, including that she provide documents on which she intended to rely in advance of the hearing. I note that Ms. Prit in fact provided new documents at the hearing, and that the hearing had to be stood down for a period of time in order to allow her to obtain and provide those documents at the hearing.
79. Finally, BCFSA submitted that the attendance of its staff witness, [Investigator 1] was a recoverable expense, as the attendance of [Investigator 1] was necessary for the hearing, in order to explain how the evidence found in her investigation confirmed the compliant regarding Ms. Prit's unlicensed activity and led to findings of professional misconduct.
80. 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.
81. BCFSA was substantially successful in proving the allegations set out in the notice of hearing. Recognizing the discretionary nature of an award of enforcement expenses, I am satisfied that the total enforcement expenses sought by BCFSA, of \$12,724, which reflects the reduction of the actual investigative expenses by half, is appropriate in the circumstances. In my view, that amount of enforcement expenses appropriately reflects the duration, nature, and complexity of both the investigation and hearing process as described above.

Orders

82. Having found in *Prit (Re)*, 2023 BCSRE 51 that the respondent, Freyja Prit, had breached section 3 of the *Real Estate Services Act* ("RESA") when she provided trading services without being licensed to do so; had committed professional misconduct within the meaning of section 35(1)(a) of RESA by contravening sections 5-10 and 3-2(2) of the *Real Estate Services Rules* (the "Rules") as a result of her failure to properly disclose in writing to a client whether she would represent them, and her failure to keep her managing broker apprised of real estate services and other

activities she was performing; and had committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(d) of RESA when she failed to act with reasonable care and skill, contrary to section 3-4 of the Rules by failing to comply with the requirements of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, I would now make the following orders:

- Pursuant to section 43(2)(i) of RESA, I order that Freyja Prit pay a penalty to BCFSA in the amount of \$20,000, within 90 days of the date of this Order;
- Pursuant to section 49(2)(d) of RESA, I order that Freyja Prit pay a penalty to BCFSA in the amount of \$15,000, within 90 days of the date of this order;
- Pursuant to section 49(2)(e) of RESA, I order that Freyja Prit pay a penalty to BCFSA in the amount of \$23,500, within 90 days of the date of this order.
- Pursuant to sections 43(2)(h) and 49(2)(c) of RESA, I order that Freyja Prit pay enforcement expenses to BCFSA in the amount of \$12,724, within 90 days of the date of this Order.

83. Pursuant to section 54(1)(e) of RESA, Freyja Prit has a right to appeal the above orders to the Financial Services Tribunal within 30 days from the date of this decision: *Financial Institutions Act*, section 242.1(7)(d), and *Administrative Tribunals Act*, section 24(1).

Issued at Kelowna British Columbia, this 14th day of March, 2024.

“Original signed by Andrew Pendray”

Andrew Pendray
Chief Hearing Officer