

Citation: Bakker (Re), 2022 BCSRE 7
File No. INV20.024.53695

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

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

REASONS FOR ORDER IN URGENT CIRCUMSTANCES

[These Reasons have been redacted before publishing.]

Date of Hearing: February 10, 2022, by videoconference
Counsel for BCFSA: Amandeep K. Sandhu
Hearing Officer: Andrew Pendray

Introduction

1. Pursuant to sections 51 and 49 of the *Real Estate Services Act* (“RESA”) a without notice hearing was held on February 10, 2022, to consider an application brought by BC Financial Services Authority (BCFSA) for an order in urgent circumstances relating to what BCFSA says are unlicensed real estate activities on the part of Kathy Alaina Bakker (Bakker).
2. After reviewing the February 2, 2022 affidavit of BCFSA staff, reviewing BCFSA’s written submissions, and hearing submissions from BCFSA counsel by way of videoconference, I found that:
 - there was a prima facie case supporting BCFSA’s allegations that Bakker had been and was engaged in unlicensed real estate service¹ activity, and
 - the evidence supported a conclusion that the length 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.
3. As a result of those findings, I issued a February 10, 2022 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 becomes licensed to do so under RESA.
4. The February 10, 2022 order further required Bakker to provide information to BCFSA regarding properties for which she or her proprietorship, GFI Properties, 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. These are the written reasons for the issuing of the February 10, 2022 Order.

Jurisdiction

6. Pursuant to section 2.1(3) of RESA the Superintendent of Real Estate (Superintendent) may delegate any of its powers. Pursuant to an August 1, 2021

¹ BCFSA Hearing Department decisions do not use honorifics where the party has not specified their preferred honorific, or where a specific honorific has not been used previously to identify that party.

delegation from the Superintendent of Real Estate, 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.

Background

7. The information before me on this application is set out in the affidavit of a BCFSA investigator dated February 2, 2022. Although I have reviewed that information in full, I will refer only to that which is necessary to provide context for my reasons.

Bakker and GFI Properties

8. OSRE staff, on December 17, 2020, conducted a Motor Vehicle Branch search and confirmed Bakker's legal name, birth date, and residential address. OSRE staff also, on that date, conducted a search for GFI Properties on BC Registry Services. Registration information for GFI Properties indicated that it was a sole proprietorship which commenced business on October 1, 2019 and described the nature of the business as property management and maintenance. The previous name of the business was listed as "GIRL FIX IT", with the date of the name change noted as June 9, 2020.

Licensing History

9. On February 25, 2021, the former Real Estate Council of British Columbia² certified that Bakker had never been licensed under RESA or the former *Real Estate Act*. RECBC also certified that GFI Properties had never been licensed under either act.
10. A search by staff in the Office of the Superintendent of Real Estate (OSRE) on January 8, 2021 indicated that although Bakker had registered in the Rental Property Management Course at the Sauder School of Business in both 2015 and 2017, she had not completed those courses.

Information Regarding Bakker's Activities

11. Prior to 2020, Bakker was employed by [Company 1] ([Company 1]). [Company 1] is a licensed brokerage under RESA.

² On August 1, 2021, the Real Estate Council of British Columbia and the Office of the Superintendent of Real Estate and integrated into BCFSA.

12. On January 24, 2020, the president of [Company 1], Mr. B, reported to OSRE that Bakker was renting out and managing residential properties in Kamloops, British Columbia, under the trade name “Girl Fix It”. Mr. B indicated that Bakker was not licensed to provide property management services.
13. Mr. B further provided OSRE with a copy of an advertisement posted under an Instagram account entitled “GIRLFIXIT”. That advertisement was for a rental suite and indicated that “Girl Fix It” provided rental services.
14. On May 18, 2020, Mr. B further contacted OSRE staff by email, and indicated that Bakker had replaced [Company 1] as the property manager in respect of a 40 unit apartment block located at [Property 1] ([Property 1]) in Kamloops. In that email Mr. B indicated that [Property 1] had over \$50,000 in monthly rent, and noted that he felt that Bakker was not licensed to be providing property management services at [Property 1].
15. Mr. B further contacted OSRE by email on December 23, 2020. In that email Mr. B indicated that [Property 1] received notice cancelling property management services from one of its clients, at [Property 2] in Kamloops. Mr. B provided a copy of a December 22, 2020 letter from the [Property 2] client indicating that authorization was being provided for “Kathy Baker of GFI Properties” to obtain copies of property keys and necessary documentation relating to the property and current occupants.
16. On January 7, 2021, Mr. B provided OSRE staff with documentation and correspondence between [Company 1] and Bakker regarding the BC Housing Temporary Rental Supplement Program for tenants at [Property 1]. Mr. B explained, in a January 7, 2021 email, that [Company 1] had applied for the supplement program for some tenants of [Property 1] prior to the change in property manager, and that it had subsequently, at Bakker’s request, forwarded the amount of the supplement (approximately \$3,500) to GFI Properties.
17. Specifically, [Company 1] provided a copy of a June 2, 2020 email from “[Property 1] – GFI Properties <[Email Address 1]>” from “Kat” regarding the rental supplement program. In that email “Kat” indicated that BC Housing had a backlog, and that they would need to send her “all the ‘applications’ to update the landlord information”, and that as a result [Company 1] would continue to receive the rental supplement payments for a period of time.

OSRE and BCFSA Investigation

18. In the course of its investigation, OSRE staff conducted open-source checks by way of Google and, at various times, identified properties listed for rent by Bakker.

19. A Facebook profile for GFI Properties accessed by OSRE staff on May 18, 2020, indicated that GFI Properties provided “Tenant Placement Services”, including advertising and showing rental properties, conducting detailed application checks, completing lease signing, and completing outgoing inspections with current tenants. Screen captures of the GFI Properties Facebook profile further offers to “take the headache out of managing your rental property”. The telephone contact number listed on the GFI Properties Facebook page was the same as that which Bakker had listed in her contact information for her registration for the Rental Property Management Course.
20. A further review of the GFI Properties Facebook page by OSRE staff in December 2020 noted that the page had been updated to provide further information, including the email [Email Address 2], as well as a link to a website, www.gfiproperties.ca. There were posts on the GFI Properties Facebook page at that time advertising a “new rental coming soon” as well as an advertisement for a rental townhouse.
21. OSRE staff accessed the GFI Properties website at www.gfiproperties.ca on December 17, 2020. That website listed Bakker as the Business Owner/Property Manager, and included on its “services” page the following advertisement for property management and rental services:

Want the protection of a professional management company, but also want to be treated as more than just the person paying the owners mortgage? Then rent with us...We manage condo buildings, residential homes and basement suites...
22. OSRE staff accessed www.gfiproperties.ca again on January 7, 2021. At that time the website was noted to have been updated with additional contact information, including the same phone number Bakker had used to register for the Rental Property Management Course, and the same email listed as the contact email on the GFI Properties Facebook page.
23. By way of Google searches conducted from December 17, 2020 to January 6, 2021, OSRE staff were able to identify a number of advertisements for rental properties associated with the email and phone number set out on the GFI Properties Facebook page and the GFI Properties website.
24. On October 6, 2020, OSRE staff viewed the Facebook page for [Property 1]. That page listed contact information for [Property 1] as www.gfiproperties.ca, along with the same telephone number previously used by Bakker.

25. The owners of [Property 2] informed OSRE, by way of a January 6, 2021 email, that Bakker was supposed to commence as the property manager of their rental property at [Property 2] following a transition from their current property manager, [Company 1], effective February 28, 2021. The owners informed OSRE staff that Bakker's remuneration for property management was to be \$100 per month, but that no agreement had been signed and no money had been paid to Bakker.
26. OSRE staff contacted the owners of another property, [Property 3], which was advertised for rent online, with contact information of [Email Address 2] and the phone number set out on the GFI Properties Facebook profile and GFI Properties website.
27. By way of a January 25, 2021 email, the owners of [Property 3] provided OSRE staff with a copy of a "Rental Agent Agreement" between "Kathy Bakker dba Girl Fix It" as the "Agent" and the owners of [Property 3], dated December 1, 2019. That agreement authorized Bakker to rent the property at [Property 3], to collect rents, to sign and give notices of eviction, to advertise the building for rent, and to perform "every other act whatsoever acting reasonably usually performed by a Manager of premises". The Rental Agent Agreement called for Bakker to be paid \$100 per month for general management activities.
28. The owners of [Property 3] also provided OSRE with a copy of a residential tenancy agreement between GFI Properties and a tenant for that property, dated November 15, 2020. That agreement is signed by a "K Bakker" as Landlord.
29. The owners also provided various banking information which showed banking transfers received from "Kathy Alaina Bakker". The owners indicated that those transfers were the monthly rents collected by Bakker for [Property 3], minus her monthly payment, which the owners indicated had started when Bakker had left [Company 1] in 2019 and continued through January 2021.

OSRE and BCFSA Contact with Bakker

30. OSRE staff wrote to Bakker on January 6, 2021 to advise her of the allegations that she was engaged in unlicensed activity under RESA. That letter requested that Bakker provide information to OSRE by January 20, 2021, including a description of GFI Properties' business model, a list of properties she managed, agreements that she had entered into with owners and tenants, as well as fees paid to herself and GFI Properties. The letter was emailed to [Email Address 2] and sent by registered mail.

31. Having received no response, OSRE resent the January 6, 2021 letter to Bakker on January 22, 2021 to both [Email Address 2] and to [Email Address 1].
32. Bakker replied from the [Email Address 2] email address on January 26, 2021. In her reply Bakker indicated that her intention with her business was to provide rental services for owners and tenants, property inspections, cleaning, maintenance and repairs. Bakker noted that she had not been licensed when doing the same work as a property manager for [Company 1] for five years. Bakker acknowledged that GFI stood for Girl Fix It which had been the original name of her business.
33. Bakker further acknowledged in her January 26, 2021 email, that she had been engaged as a property manager subsequent to leaving [Company 1], but indicated that she would end the contracts she had for property management. Bakker suggested that she would like to continue to find people tenants for their properties, but that if that was not possible under RESA she would do what she could to help property owners while being in compliance with the Act.
34. OSRE staff informed Bakker, by email dated January 26, 2021, that it would arrange for a telephone interview with her once she had provided the documentation requested in the January 6, 2021 letter.
35. OSRE staff sent Bakker a further follow up email on February 8, 2021, noting that no documentation had been received.
36. On March 1, 2021, a “Notice to Produce Records” under section 37 of RESA was issued to Bakker and GFI Properties with a response deadline of March 15, 2021. OSRE staff also sent Bakker an Undertaking to Cease Activity under section 53.1 of RESA, to be signed and dated by Bakker by March 5, 2021. Those documents were personally served on Bakker on March 2, 2021.
37. Bakker has not responded to the requests to produce the documents nor has she entered into the undertaking to cease activity.

Bakker's Activities After January 26, 2021

38. 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 4], Kamloops, which referred to Kathy Bakker as the contact and listed the telephone number previously associated with her registration at the

Sauder School of Business and the GFI Properties website and Facebook page.

- On April 15, 2021, an online advertisement for multiple one bedroom units for rent at [Property 1], which listed the telephone number associated with Bakker and the email address she previously used to contact [Company 1] regarding the housing supplement as the contact numbers.
 - On January 10, 2022, an online advertisement for a two bedroom rental in Kamloops, with the contact to set up a viewing identified as “Kathy Bakker”, at the phone number previously associated with her registration at the Sauder School of Business and the GFI Properties website and Facebook page.
39. BCFSA staff noted that as of January 10, 2022, 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.
40. BCFSA staff further found that 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 [Company 1] regarding the housing supplement. A similar review on January 31, 2022 continued to show the same contact information.
41. BCFSA staff further identified 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.

Law

42. Section 1 of RESA defines “real estate services” to mean rental property management services, strata management services, or trading services.
43. 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.

44. 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 the Real Estate Services Regulation (Regulation) from the requirement to be licensed.

45. Section 49(1)(a) of RESA sets out the authority of the Superintendent to issue orders after a hearing under section 48(2) where the person subject to the hearing did not hold a licence under RESA at a time when the person was engaged in any activity for which such a licence was required. Section 49(2) further provides that:

The superintendent may, by order, do one or more of the following with respect to a person referred to in subsection (1):

- (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;
- ...

46. Section 51(2) of RESA provides that the Superintendent may act by making an order contemplated by section 49(2)(a) or (b) where the Superintendent considers that:

- (a) There has been conduct in respect of which the superintendent could make an order under section 49 [*orders respecting unlicensed activity*], and
- (b) The length of time that would be required to complete an investigation or hold a hearing, or both, in order to make such an order would be detrimental to the public interest.

47. Section 51(2.1) specifically contemplate the Superintendent may make an order under section 51(2) without giving notice to the unlicensed person and without providing the unlicensed person an opportunity to be heard.

Analysis

Approach to orders in urgent circumstances

48. The former RECBC, in considering the issuing of orders in urgent circumstances under RESA described its approach (in circumstances involving a licensee in *Brown (Re), Reasons for Order in Urgent Circumstances*, March 28, 2019 (BC REC)) as follows:

42. In assessing evidence, the Committee does not make “final” findings of fact. Investigations are ongoing, and any “final” determinations must occur through a discipline hearing, or through admissions. This Committee engages in a “provisional” assessment of evidence, so that it may consider, among other things, if “there has been conduct in respect of which a discipline committee could make an order under section 43 [discipline orders] against a licensee,” under Section 45(1)(a) of RESA.

49. I agree with this approach and note that it is consistent with that set out by the BC Court of Appeal in *Scott v College of Massage Therapists of British Columbia*, 2016 BCCA 180, where the Court considered the imposition of interim conditions by the College of Massage Therapists of British Columbia under section 35 of the *Health Professions Act*.

50. In *Scott* the Court held that the imposition of interim conditions or suspension under the *Health Professions Act* may be taken where a prima facie case supporting the allegation was met, and where, based on the material before the inquiry committee, the public required immediate protection.

51. I consider the approach set out in *Scott* to have application in determining whether to issue an order under section 51(2) and 49(2)(a) and (b), and am of the view that in determining whether to issue such an order the superintendent must consider two questions.

52. First, in respect of section 51(1)(a), the following question must be considered:

- Is there a prima facie case that supports a conclusion that the person subject to the hearing did not hold a licence at a time when the person was engaged in any activity for which such a licence was required by section 3 of RESA?

53. Second, in respect of section 51(1)(b), the following question must be considered:

- Are the circumstances of the prima facie case urgent, such that the public must be protected by the issuing of an interim order?

Is there a prima facie case that supports a conclusion that the person subject to the hearing did not hold a licence at a time when the person was engaged in any activity for which such a licence was required?

54. I find that there is a prima facie case before me which supports a conclusion that Bakker did not hold a licence at a time when, from December 2019 through January 2022, 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, 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 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 waitlist 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.
60. In reaching this conclusion I acknowledge that this application proceeded on a without notice basis, and that Bakker was therefore not provided the opportunity to give evidence which may have suggested that the allegations brought by BCFSA were manifestly unfounded or exaggerated, as contemplated by the Court in *Scott*.

61. In addition to the fact that section 51(2.1) specifically contemplates the making of orders under section 51 and 49 on a without notice basis, I consider that it was reasonable for BCFSA to proceed without notice to Bakker in the circumstances of this application.
62. I agree with the submissions of BCFSA counsel that Bakker's actions in failing to respond to prior communication from BCFSA support the decision to proceed without notice. Specifically, I consider the fact that Bakker did not respond to BCFSA's March 2, 2021 request for documents or the request that she enter a voluntary undertaking to cease providing unlicensed real estate services, to suggest that she would have been equally unlikely to participate in the hearing of this application, or that she was in fact actively seeking to avoid dealing with the BCFSA on these matters.
63. I note further that in its written submissions and in its submissions at the hearing of this application, BCFSA counsel reviewed the exemptions to the requirement to be licensed not only under section 3(3) of RESA, which do not appear to apply to Bakker, but also under the Regulation, at Division 3, such as for caretakers providing services to different owners at section 2.13 of the Regulation or the exemption provided for persons providing referral services as set out at section 2.11 of the Regulation.
64. In my view, the evidence does not support a conclusion that any of the exemptions under RESA or the Regulation apply to Bakker.

Are the circumstances of the prima facie case urgent, such that the public must be protected by the issuing of an interim order?

65. I find that the evidence supports a conclusion that the circumstances of Bakker's unlicensed real estate services activity requires that the public must be protected by an urgent order.
66. While it is true that Bakker indicated in her January 26, 2021 email that she would cease to provide property management services, and she did subsequently make changes to the online presence of GFI Properties by no longer advertising property management services on the GFI Properties website, the evidence before me indicates that Bakker in fact continued to advertise properties for rent through 2021.
67. In addition to the various advertisements which continued beyond January 26, 2021 through at least July 2021, there is what appears to be Bakker's ongoing engagement in property management and trading services associated with [Property 1]. Her telephone number continues to be listed as the contact for [Property 1] on the [Property 1] Facebook page and she has left comments on that same Facebook page regarding waitlists.
68. Bakker's apparent ongoing intention to provide unlicensed rental property management services, despite having knowledge of the prohibition to do so under section 3 of RESA, despite having been informed of the investigation into her activities, despite having received a request for documents related to those

activities, and despite a request that she enter into a voluntary undertaking not to provide real estate services, represents an ongoing risk to the public.

69. In particular, Mr. B indicated in his email to OSRE staff that the collection of rents from [Property 1] were in the range of \$50,000 per month. I agree with the submission of BCFSA counsel that this amount is substantial. I find that there is a clear risk to the public in relation to Bakker's actions in continuing to provide rental property management services in respect of [Property 1] while unlicensed, with the potential that deposits and rental monies are not being held in trust, nor subject to the audit and reporting requirements under RESA and the Real Estate Services Rules.
70. I accept the evidence provided by BCFSA staff, and the submission of BCFSA counsel, that further investigation into Bakker's activities is required in order to have a greater degree of understanding of those activities and to engage in a consideration of the nature of the penalty that BCFSA may seek at a disciplinary hearing.
71. In my view, given Bakker's continuing unlicensed activity through January 2022, and the length of time that would be required to complete an investigation or hold a hearing, it would be detrimental to the public interest to not issue an interim order at this time.

Conclusion

72. For the above noted reasons and based upon the evidence presented and submissions made by BCFSA counsel, on February 10, 2022 I issued the orders sought by the BCFSA, under sections 51(2) and 49(2)(a) and (b) of RESA.
73. The February 10, 2022 order included that Bakker cease providing, including offering to provide, directly or indirectly, real estate services, including rental property management services, in British Columbia, effective immediately, unless and until Bakker became licensed to do so under RESA. The order further directed Bakker to provide various documents to BCFSA staff within 30 days.

74. A copy of the signed February 10, 2022 order is attached to these reasons.

Issued at Kelowna, British Columbia, this 18 day of February, 2022.

“ANDREW PENDRAY”

Andrew Pendray
Chief Hearing Officer

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

AND

IN THE MATTER OF
KATHY ALAINA BAKKER

ORDER

(Orders under sections 49 and 51 of the *Real Estate Services Act*)

Upon reading the sworn Affidavit of [Investigator] and upon hearing the submission of Amandeep K. Sandhu, counsel for the BC Financial Services Authority ("BCFSA"), I am satisfied that the requirements under section 51(1) of the *Real Estate Services Act*, SBC 2004, c 42 ("RESA") have been met:

1. there has been conduct on the part of Kathy Alaina Bakker in respect of which the Superintendent of Real Estate could make an order under section 49 of the RESA;
2. the length of time required to complete an investigation or hold a disciplinary hearing, or both, would be detrimental to the public interest;
3. it is in the public interest to make an order under sections 49 and 51 of the RESA against Kathy Alaina Bakker; AND

I THEREFORE ORDER pursuant to sections 51(2) and 49(2)(a) and (b) of the RESA as follows:

1. Kathy Alaina Bakker cease providing, including offering to provide, directly or indirectly, real estate services, including rental property management services, in British Columbia, effective immediately, unless and until they become licensed to do so under the RESA.

