



DECISION OF THE DIRECTOR

In the Matter of: *Business Practices and Consumer Protection Act*

Respondent: Lynda Cochrane dba Port Renfrew Vacation Rentals

Licence: 86214

Case Number: 31391

Adjudicator: Tayt Winnitoy

Date of Decision: November 14, 2023

A. INTRODUCTION

1. Under statutory delegation, Consumer Protection BC (dba the Business Practices and Consumer Protection BC Authority) is responsible for the administration of the *Business Practices and Consumer Protection Act* (“BPCPA”) and the Regulations associated with the BPCPA.
2. Lynda Cochrane dba Port Renfrew Vacation Rentals (“The Respondent”) is a sole proprietor operating under a now issued travel wholesaler licence granted by Consumer Protection BC. The issues considered in this decision took place prior to the issuance of the licence.
3. On April 27, 2023, a Consumer Protection BC Inspector (“the Inspector”) issued the Respondent a Report to the Director (“the Report”) that alleged the Respondent violated section 189(5)(b) of the BPCPA by failing to provide information to the inspector as required under the Act. Following the release of the Report, the Director of Compliance and Classification, Tegan Scardillo (“Scardillo”) issued a determination (“the Decision”) and an administrative monetary penalty (“the Penalty”) to the Respondent after confirming the violation. The Respondent, through counsel, sought a reconsideration of the decision in a reconsideration application (“the Application”) dated July 24, 2023, and received on July 26, 2023.
4. The Report also alleged that the Respondent breached Section 143 of the BPCPA by providing travel services without a licence. Scardillo confirmed this violation and issued a Compliance

Order as a result. The Application sought a reconsideration of the Compliance Order which I declined to do. I also note that the Respondent cured this breach by obtaining a licence.

5. The allegation of operating without a licence, and the ensuing Compliance Order, are not the subject of this reconsideration.
6. I am delegated the authority of the Director to hear reconsiderations and to decide if a contravention(s) of the BPCPA has taken place. This delegated authority allows me to exercise the powers of the Director under Part 9 of the BPCPA and Part 10 of the BPCPA.
7. As this is a reconsideration of a previous determination, I am also bound by Division 1 – Reconsiderations of the BPCPA which set out the kinds of determinations that may be reconsidered and the powers of the Director on reconsideration.

Definition

180. *In this Division, "determination" means*
- (a) *a decision, order or ruling in respect of a matter that relates to a compensation fund,*
 - (b) *a decision under section 146 [actions by director respecting licence]*
 - (c) *a compliance order,*
 - (d) *a direct sales prohibition order, or*
 - (e) *a notice imposing an administrative penalty.*

Powers of director on reconsideration

182. (1) *If the director reconsiders a determination, the director*
- (a) *has all the powers and duties the director had with respect to the determination, and*
 - (b) *subject to subsection (2), may confirm, vary or cancel the determination.*
- (2) *The director may vary or cancel a determination referred to in paragraphs (a), (c) and (e) of the definition of "determination", only if the director is satisfied that new evidence has become available or has been discovered that*
- (a) *is substantial and material to the determination, and*
 - (b) *did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.*
- (3) *If the director has delegated powers and duties respecting a determination referred to in paragraphs (b) and (d) of the definition of "determination", the director must not delegate the reconsideration of the determination to the same person.*
- (4) *If the director made a determination referred to in paragraph (b) or (d) of the definition of "determination", the director must delegate the reconsideration to one or more persons who did not participate in the determination.*

- (5) *The director must give written reasons for the director's decision in respect of the reconsideration to the person who made the request under section 181 (2) or a person given notice under section 181 (3).*
- (6) *For certainty, a decision made under this section may not be reconsidered.*

8. A copy of the Report, the Decision, and the Application have been provided to me to perform these delegated reconsideration functions.
9. With a few exceptions, the BPCPA requires the Respondent be given an opportunity to be heard as part of any reconsideration process and in response to any allegation before a determination is confirmed, varied or cancelled.
10. I also note in the Application that the Respondent indicates, in relation to Scardillo's decision, *"The Adjudicator, at paragraphs 5-6, of the Decision of the Director (the "Decision"), dated June 29, 2023, provides that a hearing notice (the "Notice"), dated May 2, 2023, was provided to the Respondent, the Adjudicator does not specify whether the Notice was duly served on the Respondent, only that, at paragraph 6 of the Decision that the Adjudicator was satisfied that the Notice was "provided" to the Respondent. The Notice provided that the Respondent was given until May 23, 2023, to respond in writing to the Notice."*
11. The Application goes on to state that the Respondent was out of the country and did not receive the Notice, and *"...Had the Respondent received actual notice that a hearing of this matter was to proceed the Respondent would have provided a written response to the Director."*
12. Effectively, the Application argues that Scardillo violated the Respondent's right to natural justice by not adequately serving notice and as a result the Respondent did not have an adequate opportunity to be heard.
13. The BPCPA does not require service of a Report or a notice of hearing. It requires the Director to provide the person subject to possible enforcement action the opportunity to be heard. The test therefore, is whether or not the person was afforded an adequate opportunity.
14. While it is not clear in the Decision the actual means providing notice, Scardillo does indicate that it was a letter dated May 2, 2023, and the Respondent states in the Application that they received the Notice as part of their mail delivery but were out of the country and their spouse did not open it or grasp the implication of it, until the deadline had passed. *"The Respondent's spouse failed to provide the Notice to the Respondent and the Respondent had no actual notice of the Notice and was therefore unaware that a hearing was to proceed."*
15. The onus did not lie with Scardillo to provide, as stated in the Application "notice of the Notice." Scardillo simply needed to provide Notice, which was done. The allegation of a procedural breach is unfounded. I have however granted the reconsideration as a means of addressing the

misconception that the Respondent was not provided with Notice or an opportunity to be heard prior to the original hearing.

16. In a letter I transmitted via email dated August 21, 2023, to the Respondent and their counsel, a reconsideration hearing notice (or “opportunity to be heard”) was provided to the Respondent. The hearing notice invited the Respondent to formally respond to the Report and all evidence so far considered, as well as the original Decision, by presenting written submissions on evidence, explanations, interpretations of legislation and policies of Consumer Protection BC.
17. The hearing notice outlined the scope of the reconsideration and the focus on either confirming, amending, or cancelling the administrative monetary penalty issued as part of the previous hearing. The Respondent was given until September 21, 2023, to provide a written response.
18. The Respondent did not provide a written response to the hearing notice. Following a subsequent exchange of emails and a phone call with the Respondent, I received an email on October 18, 2023 that contained a response that was entered into the record. The response indicated that the Respondent talked with many people at the time of the inspection, none of whom had heard of Consumer Protection BC and thus the Respondent chose to ignore the requests from the inspector. The response also provided information related to the requests that were initially made by the inspector in 2022. The response did not question the sufficiency of my notice (i.e., being adequately informed of the specifics of the allegation) and did not request any further disclosure of evidence, clarification, or time to respond.
19. I am satisfied that the Respondent had the opportunity to review, consider and respond to the totality of the evidence on record. Therefore, I will proceed with this reconsideration decision.

B. ALLEGED CONTRAVENTION / LEGISLATION

20. The allegation against the Respondent is stated as:

The Respondent refused or failed to provide information as required under the Act.

21. Section 189 (5)(b) is cited as the basis for the allegation and reproduced as follows:

Offences

189(5)A person must not do any of the following:

...

(b)refuse or fail to provide information as required under this Act;

C. EVIDENCE IN THE REPORT TO DIRECTOR AND ORIGINAL DECISION

22. The original Report and Decision confirmed several interactions between the Respondent and the Inspector regarding the Respondent's business operations and requests for information by the Inspector. None of these are challenged by the Respondent, other than the argument that the Respondent's professional colleagues advised them to ignore the requests because none of them had ever heard of Consumer Protection BC.
23. On February 10th, 2022, the Inspector emailed the Respondent a request for information for the purpose of understanding the Respondent's business model.
24. The February 10, 2022 request was for the following:
 - a. A description of the prices detailing how consumers pay and who receives the money.
 - b. A template of the agreement(s) / documents(s) the Respondent enters into with the homeowners of the rental properties.
 - c. A template of the receipt the Respondent gives to consumers.
25. Several further interactions via email and phone call ensued in which the Respondent provided verbal feedback on the requested information. In the Report, the Inspector noted (where LC is the respondent) *"LC told the Inspector property homeowners enlisted the Respondent's business to market their private properties on websites such as AirBnB for the purposes of providing accommodation. The Respondent would then provide booking confirmation to consumers once the property had been booked and paid for, either through the Respondent's website or through websites such as AirBnB."*
26. On February 28th, 2022 the Inspector issued an Inspection Notification and Demand letter ("the Inspection Letter") under section 150 of the BPCPA seeking further information regarding the Respondent's business. The Inspection Letter required that additional information be submitted to the Inspector by March 9, 2022.
27. The February 28, 2022 Inspection Letter demanded the following:
 - a. *"...The address of each property ("the Properties") for which Port Renfrew Vacation Rentals offered or did facilitate the rental or lease of the Properties to travellers at any time during the period inclusive of June 1, 2019 through the date of this Order ("the Time Period")*
 - b. *Provide copies of all rental management agreements, contracts or other covenants involving Port Renfrew Vacation Rentals with owners of the Properties that called for or allowed Port Renfrew Vacation Rentals to rent, lease or otherwise arrange for the supply of accommodation at the Properties at any time during the period inclusive of June 1, 2019 through September 30, 2020 ("the Time Period")*
 - c. *If not otherwise disclosed in the business records detailed in this Order, provide a list with the name, address and any other contact related information for the owners of the Properties.*

- d. *The name, address, email, and phone number of each consumer for whom Port Renfrew Vacation properties rented, leased, or otherwise arranged for the supply of the accommodation at the Properties during the Time Period.*
 - e. *Identify the financial institutions (including branch address and bank account numbers) that Port Renfrew Vacation Properties received consumer funds related to the supply of accommodation at the Properties during the Time Period."*
28. The Respondent confirmed receipt of the Inspection Letter in an email to the Inspector dated March 8th, 2022, and explained to the Inspector they could not provide answers to the questions by March 9th, 2022. The Respondent stated *"I don't have management agreements with owners as we are friends. I don't have addresses as I just e-transfer their income to their email address along with a monthly income statement less expenses [...] There is no way I can provide information on who rented since June 2019. I don't save those records..."*
29. There are several more interactions between the Inspector and Respondent, but these are related to the submission of licence application documents, as opposed to the documents that had been demanded in the February 10, 2022 email and February 28, 2022 Inspection Letter.
30. In one of these interactions, on April 20, 2022, the Inspector provided an extension for licence application documents, but then made a supplemental demand for records related to the Respondent's business operations, with a deadline of May 2, 2022.
31. The April 20, 2022 request was for the following:
- a. *"Rental Property address (civic address, municipality, province and postal code).*
 - b. *Name of owner, owner's telephone number, owner's email address and owner's contact address.*
 - c. *A copy of the monthly income statement less expenses you speak of in your email on March 8, 2022. Please provide these statements from January 1, 2021 to current.*
 - d. *Identify the financial institutions (including branch address and bank account numbers) that Port Renfrew Vacation Properties received consumer funds related to the supply of accommodation at the Properties during the Time Period."*
32. On May 3, 2022, after not receiving any of the requested records by the May 2, 2022 deadline, the Inspector provided the Respondent a warning related to the failure to provide information as required under the BPCPA, and the possible consequence of an Administrative Penalty.
33. There was no further interaction between the Inspector and the Respondent until December 30, 2022 at which point the Inspector sent an email inquiring into the status of the licence application documents. The Inspector then made a phone call to the Respondent on January 10, 2023, in which the Respondent answered the call and terminated it after the Inspector identified themselves. The Inspector ceased inquiries and proceeded to issue the Report which led to Scardillo's Decision.

D. ANALYSIS

34. In the Decision analysis, Scardillo notes that the Report stated there were two separate requests for information that were not met by the Respondent, when Scardillo found there were three separate requests, dated February 10, February 28, and April 20, 2022.
35. Scardillo sets out each of the different records or information requests in a table which is headed "Records requested in Inspection Notification and Demand Letter" and "Status of Record". The list of records requested includes not just those in the Inspection Letter but also those that were included in the February 10 and April 20, 2002 requests for information, although in some cases the requests were duplicated.
36. Scardillo notes in the table that "The Respondent failed to provide this information to the Inspector" next to all the requested records, with notations of some particulars related to certain records.
37. Despite the notations in the table that the Respondent failed to provide the requested information, Scardillo dismisses any allegations of a breach of Section 189 related to the February 10, 2022 email, and in relation to demands for updates and evidence of licensure by the Respondent.
38. Scardillo confirmed a violation of Section 189 in para. 43 of the Decision:
- a. *"While the Respondent claims some of these records do not exist, it is clear the Respondent failed to provide any records requested by the Inspector. Based on the bank statements obtained directly from the financial institutions, I can conclude that some of the requested records did in fact, exist. In addition, the Respondent did not provide any records resulting from the Inspector's emailed request dated April 20th. I conclude the allegation of a breach to BPCPA 189 is confirmed."*
39. Scardillo correctly concludes in the Decision that the inspector received no records from the Respondent. It is not clear in the Decision what conclusions Scardillo drew about what records did not exist and could not be provided, and what records did or could exist, and were not provided. The Decision simply notes that "*...some of the requested records did in fact, exist.*", and that none of the records requested in the April 20th email were provided – presumably meaning that they did exist, and could have been provided.
40. Based on my assessment of the Report and the Decision, information that did exist and was not provided included:
- a. the financial institutions that Port Renfrew Vacation Properties used to receive consumer funds related to the supply of accommodation.
 - b. banking records from those financial institutions.

- c. rental property addresses.
- d. names of property owners and their email addresses, and
- e. a copy of the Respondent's monthly income statement less expenses from January 1, 2021 to April 20, 2022.

41. In para. eight of the Application, the Respondent states that the demand for rental property addresses was unnecessary because the Adjudicator had all the information in the Report that had been produced by the Inspector for the hearing. There is no logical connection between the Adjudicator having information after the fact that had initially been requested by the inspector. The point of the matter is that the information existed prior to the Inspector asking, and the Respondent did not provide the information to the Inspector when demanded, and certainly prior to the preparation of the Report. This argument has no merit.
42. In para. nine of the Application, the Respondent states that Scardillo concluded that rental management agreements, contracts, or other covenants had not been provided. The Respondent argues that this is an error in fact leading to an incorrect finding of fact.
43. Based on the earlier discussion, it is true that none of the records requested had been provided. However, in this case, the records could not have been provided because they did not exist. The Respondent is correct. However, the Application then incorrectly asserts that the Respondent was penalized for failing to provide something that does not exist. Scardillo did not find that the records in question were subject to a s.189 violation. Scardillo purposefully excludes these records from the potential violation in para. 45 of the Decision. The argument thus has no merit.
44. Paragraphs 10 and 11 of the Application asserts the names, addresses and contact information for the property owners were publicly available, and the names, addresses, emails and phone numbers for consumers with whom the Respondent had dealt with no longer existed as they were not retained by the Respondent.
45. Scardillo did not include the consumer names, addresses, emails and phone numbers in her findings of a violation because of the fact they were not retained by the Respondent. As it relates to the property owner information that may or may not be publicly available, as an Adjudicator, it would not have been appropriate for Scardillo to seek this information. Scardillo was assessing whether the information existed for the Respondent to provide it and whether the Respondent was obligated to provide this information when demanded. The information existed, had been demanded, and was not provided. Both arguments in the Application, including whether the information was publicly available or not, have no merit.
46. Paragraph 12 of the Application correctly states that Scardillo erroneously concluded that certain records existed by way of inference. It is not clear in the Decision which specific records existed, could have been provided, and were not provided. As such, I have reviewed those matters in my findings above and arrived at a clearer conclusion on existence of the records, and the failure of the Respondent to provide them.

47. The Application asserts that Scardillo has made assumptions and drawn negative inferences that have prejudiced the Respondent. *“The Respondent submits that there were no intentional breaches of the Act with respect to disclosure, and that findings of fact arising from requests to prove a negative are not admissible facts with respect to establishing the Respondent's failure to provide documents. The Respondent submits that, on exclusion of the erroneous facts noted with respect to the Respondent's failure to produce documents that do not exist, and that some of the requested documents were possessed by non-parties to this matter outside of the control of the Respondent to provide within a certain timeline, that the Respondent did not breach the provisions of the Act in a manner sufficient to attract a pecuniary penalty and that the \$3,500.00, penalty ought to be set aside.”*
48. I have corrected several incorrect assertions in the Application related to the Decision. Scardillo did not make any findings of a violation where no records existed or had not been retained by the Respondent. The fact that some of the records – bank records and statements – were in possession of a third party but available to the Respondent, does not absolve the Respondent from the obligation to provide them.
49. The Respondent asserts that there were no intentional breaches of the Act with respect to disclosure. The evidence shows numerous interactions, both verbal and written, between the Respondent and the Inspector where the Respondent was provided with clarity about the nature of the records being requested, and extensions to time limits as requested by the Respondent. Despite this, the Respondent did not provide the records that existed and were within their control to obtain, missed two deadlines to supply the documents, and one on occasion, avoided contact with the Inspector by terminating a phone call. I find all these actions purposeful and deliberate.
50. Finally, I note that the Respondent states in the October 18, 2023, email attachment that *“Upon original receipt of the notification last year, I was in contact with many people including Bank Managers, Lawyers, Accountants, Bookkeepers and other professionals asking who had heard of Consumer Protection BC. Nobody I spoke to had heard of the BCCP and I was advised to ignore the “Inspection Notification and Demand” inquiry. The professionals I spoke to were under the strong opinion that it was a FOIPOP matter.”* While it is unfortunate the Respondent chose to respect the ill-conceived advice of various professionals to ignore the Inspector's formal notice and demand for information, a perceived lack of legitimacy of Consumer Protection BC is not a defence or excuse for failing to provide information that the Inspector asked for.

E. DUE DILIGENCE

51. Due diligence can serve as full defence to the contravention if the Respondent can demonstrate that it took all reasonable efforts to prevent the contravention. Scardillo considered this in the Decision and concluded that there was no evidence to demonstrate that the Respondent had taken measures to prevent the violations from occurring. The Application notes that the Respondent was not aware of the hearing taking place, and therefore had no opportunity to

mount a due diligence defence. *“Had the Respondent had the opportunity to make a thorough response to the Notice the issue of due diligence could have been addressed and the Respondent could have avoided the unnecessary Determination, or at the least the Respondent could have mitigated the outcomes of the Determination.”*

52. I have addressed the issue of Notice and “Opportunity to be Heard” in paragraphs 9-13 of this Decision. I have also noted that this reconsideration decision was granted partly to cure the misconception of an opportunity to be heard not being provided.
53. Aside from the Application, and like Scardillo, I have not received any evidence of due diligence – meaning the steps the Respondent took while dealing with the Inspector to avoid the violation of not providing information demanded by the Inspector - from the Respondent as part of this reconsideration hearing. As noted above, I do not regard the choice the Respondent made to ignore the requests from the inspector because of bad advice from other professionals as a legitimate due diligence defence.
54. There is thus no due diligence defence for me to consider as part of this Decision, and prior to either confirming, varying or cancelling Scardillo’s determination.

F. CONCLUSION

55. Having reviewed the evidence on record, and addressing the matters put forward in the Application, I confirm the Decision of June 29, 2023, that the Respondent did commit a contravention of Section 189(5) of the *Business Practices and Consumer Protection Act*, by failing to provide information as required by the Inspector in the period February 10 through April 20, 2022.

G. ENFORCEMENT AND REMEDY

56. As the Director’s delegate, having reviewed the original determination and related evidence in the Application, and having confirmed that a contravention has occurred, I may confirm, vary, or cancel the original determination.
57. I also note that where there is no new evidence that has become available or has been discovered that is substantial or material to the determination and did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered, then I am restricted to confirming the original determination.
58. I have addressed several issues in the Application and in the original determination through this reconsideration process. However, at the core, there is no new evidence that has been brought forward that is substantial or material to the original determination.

59. Given the above, I confirm the Administrative Monetary Penalty Scardillo issued on June 29, 2023. The penalty of \$3,500 remains outstanding and must be paid within 30 days of the date of this decision consistent with Section 167 of the BPCPA.

60. For clarity, an administrative penalty constitutes a debt payable by the person on whom the penalty is imposed. If a person fails to pay an administrative penalty as required under section 167 of the BPCPA, the director may file with the Supreme Court or Provincial Court a certified copy of the notice imposing the administrative penalty and, on being filed, the notice has the same force and effect, and all proceedings may be taken on the notice, as if it were a judgment of that court.

61. This decision is final and may not be reconsidered. Any appeal of this decision must be brought as an action under the *Judicial Review Procedure Act* and filed within 60 days of this Decision with the Supreme Court of BC.

Decided on November 14, 2023, in Victoria, BC.

Tayt Winnitoy
Chief Operating Officer
Consumer Protection BC