

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT***

**S.B.C. 2004, c. 42**

**And In the Matter of**

**KATHARINE VIRTANEN**

**and In the Matter of a Claim against**

**the Real Estate Special Compensation Fund by**

**WILLIAM SCHUT AND MARILYN MACCALLUM**

DATE AND PLACE OF HEARING:	May 25, 2020  Vancouver, B.C.
COMPENSATION HEARING COMMITTEE:	Y. Amlani, Chair M. Chan N. Nicholson
ALSO PRESENT:	Elizabeth Allan – Solicitor for the Real Estate Council Roberta Stinson – Official Reporter
WITNESSES:	William Schut - Complainant Marilyn MacCallum – Complainant
OBSERVERS:	Wendy Royale, Executive Officer of RECFC Patrick Poyner, Legal Counsel of RECBC Kristine Mactaggart Wright, Legal Counsel of RECBC Charlene McLaughlin, Director, Legal Services of RECBC Rosanna Lin, RECBC Staff

**INTRODUCTION**

[1] The hearing was conducted before a Compensation Hearing Committee (“Committee”) pursuant to sections 62 and 63 of the *Real Estate Services Act* (“RESA”), in order to determine whether William Schut (“Mr. Schut”) and Marilyn MacCallum (“Ms. MacCallum”) (collectively the “Complainants”) had suffered a compensable loss within the meaning of Part 5, Division 1 of the RESA resulting from the actions of Katharine Virtanen (“Ms. Virtanen”) and, if so, to assess the amount of that loss.

- [2] In addition to testimony provided by each of Mr. Schut and Ms. MacCallum, the evidence at the hearing consisted of the following:
- a. Notice of Hearing (Exhibit #1);
  - b. License history (Exhibit #2);
  - c. Affidavit of B. Chu (Exhibit #3);
  - d. Affidavit of E. Gordon (Exhibit #4);
  - e. Affidavit of D. Price (Exhibit #5);
  - f. Affidavit of A. Bains (Exhibit #6);
  - g. Email Communications between E. Allan and Ms. Virtanen (Exhibit #7);
  - h. Package of documents related to Mr. Schut (“Schut Documents”) (Exhibit #8); and
  - i. Package of documents related to Ms. MacCallum (“MacCallum Documents”) (Exhibit #9).

### **PROCEEDINGS**

- [3] Mr. Schut and Ms. MacCallum were prospective buyers of a property at XX – XXXXX Chilliwack Mountain Road, Chilliwack, British Columbia (the “Property”). They were represented by Ms. Virtanen, a licensee with Planet Group Realty Inc. Mr. Schut and Ms. MacCallum claim that Ms. Virtanen misappropriated funds by falsely requesting various deposits, which were not applied to the purchase of the Property.
- [4] Mr. Schut and Ms. MacCallum submitted a claim against the compensation fund under Part 5, Division 1 of the RESA as a result of the actions of Ms. Virtanen. Pursuant to section 62 of the RESA, the Real Estate Council for B.C. (the “Council”) must refer a claim to the Compensation Committee “if it considers that there is a reason to believe the person making the claim suffered a compensable loss.” The Council believed Mr. Schut and Ms. MacCallum had suffered a compensable loss, and therefore have made the referral to the Compensation Committee.
- [5] Although RESA does not require service on the licensee who is alleged to have acted improperly, giving rise to the compensable loss, Ms. Allan spent significant time to refer the Committee to various communications as between the Council and Ms. Virtanen, including those between Ms. Allan and Ms. Virtanen, to confirm Ms. Virtanen was aware of the proceedings and was provided an opportunity to attend, in order for Ms. Virtanen to be able to provide testimony on the alleged conduct that gave rise to the claim. Ms. Allan referred to various documents,

including the Notice of Hearing dated April 28, 2020 (Exhibit 1), the Affidavit of Elaine Gordon dated May 20, 2020 (Exhibit 4), portions of the Affidavit of Dean Price dated May 5, 2020 (Exhibit 5), the Affidavit of Avtar Bains dated May 19, 2020 (Exhibit 6), and documents detailing email communications of varying dates (Exhibit 7) to confirm that various attempts and deliveries had been made to, and written communications exchanged with, Ms. Virtanen and her former counsel in relation to the upcoming proceedings. Ms. Virtanen did not attend the proceedings.

- [6] Ms. Allan directed the Committee to the licensee history of Ms. Virtanen (Exhibit 2) confirming that Ms. Virtanen was, indeed, a licensee during the periods in question.
- [7] Ms. Allan further referred the Committee to the Affidavit of Brenda Chu identifying key information including the date of loss and the date of notice of a potential claim against the compensation fund.
- [8] Ms. Allan also noted that, based on the facts of this matter, in the event there is deemed to be a compensable loss, such loss may have been sustained by both Mr. Schut and Ms. MacCallum jointly.
- [9] After considering submissions, the Committee decided to proceed with the hearing to determine if any of Mr. Schut and Ms. MacCallum suffered a compensable loss and, if so, who sustained this loss and to assess the amount of such loss for each party or whether such loss was joint.

## **EVIDENCE**

### **Evidence of William Schut**

- [10] Mr. Schut testified that he and Ms. MacCallum first met Ms. Virtanen when they were viewing properties in the Englewood subdivision. Ms. Virtanen was a licensee involved with selling properties in such subdivision.
- [11] Mr. Schut did not believe they were looking to purchase a home at this time, but that they engaged Ms. Virtanen in or about October 2013 to buy a place in the Chilliwack Mountain area of Chilliwack, British Columbia. He noted that it was his common-law spouse, Ms. MacCallum, who contacted Ms. Virtanen. He also noted that his recollection of the events and timeline was not strong, and that Ms. MacCallum had a better recollection of events as she was the primary person who dealt with Ms. Virtanen.

- [12] Mr. Schut confirmed that one of the properties they viewed, and then decided to purchase, was the Property, a property in which he and Ms. MacCallum continue to reside.
- [13] Mr. Schut identified the Contract for Purchase and Sale dated December 7, 2013 (Tab A of the MacCallum Documents) for the purchase of the Property, and which indicated a deposit of \$10,000 to be payable. He advised that the actual amount provided at the time was a bank draft in the sum of \$10,000 as well as \$5,000 in cash, pursuant to a request made by Ms. Virtanen.
- [14] Mr. Schut then testified that, in or about January 2014, Ms. Virtanen requested additional funds in the sum of \$25,000 which were to be applied towards the purchase of the Property. Mr. Schut noted that he was not present at the time these two sets of deposits were provided to Ms. Virtanen, and that Ms. MacCallum was responsible for dealing with Ms. Virtanen.
- [15] Mr. Schut stated that the purchase transaction was to complete on or about March 27, 2014 with possession to occur on April 1, 2014. He testified that, on or about the completion date, there was a shortfall to complete the purchase as a result of the full amounts of the deposits provided to Ms. Virtanen having not been submitted to the conveyancing lawyers. He stated that, as a result, he and Ms. MacCallum were forced to sell precious metals which they owned, for the sum of \$44,022, on or about March 28, 2014, in order to apply these funds towards the proceeds required to complete the purchase. Mr. Schut identified a sales receipt (Tab B of the Schut Documents) as records of such sale of precious metals.
- [16] Mr. Schut identified the bank receipt confirming deposit into his bank account of the funds from the sale of the precious metals, and further identified the bank receipt the same day for the issuance of a draft to the conveyancing lawyer for closing proceeds (Tab C of the Schut Documents). Mr. Schut further identified the Buyer Statement of Adjustments for the purchase of the Property (Exhibit K of the Affidavit of E. Gordon) which noted closing proceeds of the same amount as those indicated in the receipt (Tab C of the Schut Documents) and the draft (Tab B of the MacCallum Documents).
- [17] Mr. Schut further confirmed that, although the Contract (Tab A of the MacCallum Documents) and closing documents (Exhibit K of the Affidavit of E. Gordon) were solely in his name, that he and Ms. MacCallum are common law spouses. He confirmed that the funds used to provide the various deposits to Ms. Virtanen

were joint funds. He confirmed that any compensation related to this matter should be paid jointly.

Evidence of Marilyn MacCallum

[18] Ms. MacCallum also testified that she and Mr. Schut first met Ms. Virtanen in 2013 when she and Mr. Schut were looking at housing opportunities in the Englewood subdivision in Chilliwack. She clarified that she and Mr. Schut subsequently bought and sold a property in Englewood through Ms. Virtanen.

[19] Ms. MacCallum confirmed that their relationship with Ms. Virtanen was strictly professional, although they had instance to attend the same party upon the invitation of others. She also testified that she did, however, loan money to Ms. Virtanen on one occasion, with these funds then being paid back by Ms. Virtanen as agreed.

[20] Later in 2013, Ms. MacCallum confirmed that she and Mr. Schut looked at the Property a few times, before deciding to make an offer.

[21] Prior to writing up the offer, Ms. MacCallum stated that Ms. Virtanen advised Ms. MacCallum that she would need a deposit of \$10,000, as well as \$5,000 cash, in order to secure the Property. Ms. MacCallum stated that Ms. Virtanen advised that the bank draft should be made out in Ms. Virtanen's personal name.

[22] Ms. MacCallum noted that she initially had reservations about this process. However, she advised that, while she had some experience in buying and selling a property, her previous experience was primarily in Alberta.

[23] Ms. MacCallum testified that when she asked Ms. Virtanen about the deposit process and the need for a cash deposit, Ms. Virtanen advised that the process in British Columbia was different and these sums were required to secure the Property.

[24] Ms. MacCallum testified that, as she had previous experience in dealing with Ms. Virtanen, and as Ms. Virtanen had represented the Englewood development and was a Medallion member, Ms. MacCallum believed that Ms. Virtanen had greater expertise in these matters and could be trusted.

[25] Ms. MacCallum stated that, on November 4, 2020, she arranged to provide a draft in the amount of \$10,000 in Ms. Virtanen's personal name and \$5,000 cash to Ms. Virtanen. Ms. MacCallum identified the banking transaction for the purchase of

the draft in her banking statement ( Tab A of the MacCallum Documents) and for the withdrawal of cash in the banking statement of an account held jointly by Mr. Schut and Ms. MacCallum (Tab C of the MacCallum Documents). She testified that, although these funds were provided in advance of the drafting of the formal Contract of Purchase and Sale, they were for the direct purpose of a deposit against the Property.

- [26] Ms. MacCallum identified the Contract of Purchase and Sale dated December 7, 2013 (Tab A of the Schut Documents), and testified that this Contract was with respect to the Property. Ms. MacCallum noted that the completion date for the property was March 30, 2014. The Contract confirmed a required deposit of \$10,000, matching the amount of the draft provided to Ms. Virtanen.
- [27] Ms. MacCallum testified that, in January of 2014, Ms. Virtanen advised that a further deposit was required towards the Property. Ms. MacCallum advised that, at this time, Ms. Virtanen noted that she would require a draft in her personal name of \$20,000 and cash again in the sum of \$5,000 for this additional deposit.
- [28] Ms. MacCallum stated that, on or about January 9, 2014, she arranged to provide a draft of \$20,000 in the name of Ms. Virtanen as well as \$5,000 in cash. Ms. MacCallum identified these banking transactions in her banking statement (Tab D of the MacCallum Documents ).
- [29] Ms. MacCallum testified that, a few days before completion in late March 2014, she was contacted by the conveyancer of the law firm that she and Mr. Schut had retained to complete the purchase of the Property. The conveyancer advised as to the deposit noted in the documents provided by the real estate company, and that there was a shortfall.
- [30] Ms. MacCallum then recounted a series of text messages and other communications with Ms. Virtanen (Tabs F and G of the MacCallum Documents), as to the shortfall in the deposit amounts. Ms. MacCallum testified and identified texts in which Ms. Virtanen first advised that the money was not required yet. Ms. MacCallum confirmed then having discussions with her conveyancing lawyer, who advised her the funds were required imminently for completion.
- [31] Ms. MacCallum identified further text communications between herself and Ms. Virtanen noting this shortfall of deposit funds and Ms. Virtanen's attempts to obtain funds (Tabs H and I of the MacCallum Documents), and testified that Ms. Virtanen advised she was trying to obtain the money and provide it in time for completion of the purchase.

- [32] Ms. MacCallum confirmed that, as a result of Ms. Virtanen's failure to include the full amount of funds deposited and account for same before closing, she and Mr. Schut had to arrange for the sale of precious metals to arrive at sufficient funds to complete the purchase of the Property and identified the receipt for the sale of precious metals (Tab K of the MacCallum Documents).
- [33] Ms. MacCallum then testified as to discussions and matters that occurred after the completion of the purchase transaction. This included identifying further text messages as between herself (Tab J of the MacCallum Documents) and Ms. Virtanen as well as noting unsuccessful efforts in Ms. Virtanen's bankruptcy proceedings to obtain the return of the deposit monies received by Ms. Virtanen that were not applied towards the purchase.
- [34] Ms. MacCallum also identified the Buyer's Statement of Adjustments (Exhibit K of the Affidavit of E. Gordon) and testified as to the accuracy of the amounts noted therein, including that only \$10,000 of the monies provided to Ms. Virtanen towards the purchase were applied in such documents.

### **SUBMISSIONS**

- [35] Ms. Allan submitted that the Committee's task, pursuant to section 63 of the RESA, is to determine whether the person making a claim suffered a compensable loss and, if so, assess the amount of such loss.
- [36] She noted that there are three components to the definition of compensable loss under section 60 of the RESA, namely that the loss:
- a. was from money held or received by a licensee
  - b. was in relation to real estate services, and
  - c. was either misappropriated/wrongfully converted, intentionally not paid over or accounted for, or taken by fraud.
- [37] She submitted that the three areas of uncertainty were to determine whether the funds provided to Ms. Virtanen were for real estate services, to assess the amount of cash payments made to Ms. Virtanen under this matter, and to determine if the loss should be attributable to Mr. Schut and Ms. MacCallum jointly.
- [38] Ms. Allan submitted that there is evidence showing the sums of \$10,000 and \$20,000 being withdrawn from the account of Ms. MacCallum by way of drafts payable to Ms. Virtanen, and two withdrawals in cash in the amounts of \$5,000,

one from the account of Ms. MacCallum and one from the joint account of Mr. Schut and Ms. MacCallum, on the same days as the purchases of the drafts. She referred the Committee to the evidence noting that \$10,000 was applied towards deposits of the purchase of the Property, which would leave up to \$30,000 outstanding as a potential compensable loss.

[39] She further noted that both Mr. Schut and Ms. MacCallum testified that all funds provided were jointly held monies, and therefore, if the Committee found there to be a compensable loss, the payment from the Compensation Fund should be paid to Mr. Schut and Ms. MacCallum jointly.

### **ANALYSIS**

[40] Although the recollection of Mr. Schut was fairly limited, the Committee found both Mr. Schut and Ms. MacCallum to be forthright and credible witnesses.

[41] Section 63 requires a compensation committee conducting the hearing to first “determine whether the person making a claim suffered a compensable loss and, if applicable, assess the amount of that loss.”

#### **Was there a compensable loss?**

[42] In review of the evidence to determine whether there had been a compensable loss, the Compensation Committee found as follows:

- a. Ms. Virtanen had been a licensee at the time of the events in question;
- b. Funds were provided by Mr. Schut and Ms. MacCallum jointly to Ms. Virtanen, and were to be held by her in relation to real estate services; and
- c. Ms. Virtanen had misappropriated some of these funds and defrauded Mr. Schut and Ms. MacCallum.

[43] As such, there was a compensable loss as defined by the RESA, and that such loss was suffered by Mr. Schut and Ms. MacCallum jointly.

#### **What is the amount of the loss?**

[44] Based on the evidence and testimony provided, the Committee accepted that Mr. Schut and Ms. MacCallum provided various drafts totalling \$30,000 and two cash payments totalling \$10,000 on account of the Property.

[45] The Committee accepted the documentary evidence and testimony of Mr. Schut and Ms. MacCallum with regard to the sums actually applied to the purchase of



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the Property in the sum of \$10,000, and that no other funds were repaid by Ms. Virtanen. As such, the calculation of the compensable loss is as follows:

Payment by draft on or about November 4, 2013:	\$ 10,000
Payment by cash on or about November 4, 2013:	\$ 5,000
Payment by draft on or about January 9, 2014:	\$ 20,000
Payment by cash on or about January 9, 2014:	\$ 5,000
Actual amounts applied to purchase on or about March 30, 2014:	<u>(\$ 10,000)</u>
<b>Compensable Loss</b>	<b>\$ 30,000</b>

### **REASONS FOR DECISION**

- [46] After the conclusion of the hearing, the Compensation Hearing Committee considered the evidence and the submissions of Ms. Allan.
- [47] The Committee found that pursuant to section 63(1) of the RESA, Mr. William Schut and Ms. Marilyn MacCallum had jointly suffered a compensable loss within the meaning of section 60 of the RESA and assessed the compensable loss in the amount of \$30,000.
- [48] The Committee found evidence that Ms. Katherine Virtanen had devised a scheme in order to misappropriate funds from Mr. William Schut and Ms. Marilyn MacCallum.
- [49] The Committee concluded that this money was obtained by Ms. Katherine Virtanen by fraud and was misappropriated by her.

### **DECISION**

- [50] The Committee found that, pursuant to section 63(1) of the RESA, Mr. William Schut and Ms. Marilyn MacCallum suffered a compensable loss as defined by section 60 of the RESA as a result of the conduct of Ms. Katherine Virtanen, and assessed that loss in the amount of \$30,000.
- [51] The Committee directed that, pursuant to section 64 of the RESA, a certificate be issued in that amount.

DATED at VANCOUVER, BRITISH COLUMBIA this 25<sup>th</sup> day of May, 2020.

FOR THE COMPENSATION HEARING COMMITTEE

“Yasin Amlani”

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Y. Amlani, Chair  
Compensation Hearing Committee

File 14-181