

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*

S.B.C. 2004, c. 42

And In the Matter of

JOHNSON CASTANETO SALANGA

and In The Matter of a Claim against

the Real Estate Special Compensation Fund by

IMELDA BULAQUI

DATE AND PLACE OF HEARING: December 7, 2018
Office of the Real Estate Council
Vancouver, B.C.

COMPENSATION HEARING COMMITTEE: L. Hrycan, Chair
Y. Amlani
E. Mignosa

ALSO PRESENT: Jean Whittow, Q.C. – Solicitor for the Real
Estate Council
Chris Watson – Solicitor for Imelda Bulaqui
Collin Beaton – Official Reporter

WITNESSES: Imelda Bulaqui - Complainant
Oscar Bulaqui – Witness

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 Imelda Bulaqui (“Mrs. Bulaqui”) had suffered a compensable loss within the meaning of Part 5, Division 1 of the RESA resulting from the actions of Johnson Castaneto Salanga (“Mr. Salanga”) and, if so, to assess the amount of that loss.
- [2] In addition to testimony provided by each of Mrs. Bulaqui and Mr. Bulaqui, the evidence at the hearing consisted of a Book of Documents (Exhibit #1).

PROCEEDINGS

- [3] Mr. and Mrs. Bulaqui were prospective buyers of a property at XXXX Spencer Street, Vancouver, B.C. ("Property 1") and, later, at XXXX East 37th Street, Vancouver, B.C. ("Property 2"). They were represented by Mr. Salanga, a licensee with Sutton Group West Coast Realty. Mr. and Mrs. Bulaqui claim that Mr. Salanga misappropriated funds by falsely requesting deposits, which he then repaid only partially. Mr. Salanga was subsequently charged with fraud by the Bulaquis; on March 9, 2016 he was convicted of fraud and sentenced to 24 months incarceration. He was additionally ordered to pay restitution in the sum of \$173,352 to both Oscar and Imelda Bulaqui.
- [4] These proceedings flow from a hearing held on June 15, 2016, at which both Mrs. Bulaqui and her husband, Oscar Bulaqui ("Mr. Bulaqui"), submitted a claim against the Real Estate Special Compensation Fund ("the Compensation Fund") under Part 5, Division 1 of the RESA as a result of the actions of Mr. Salanga. 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 the Bulaquis had suffered a compensable loss, and therefore made the referral to the Compensation Committee.
- [5] At those proceedings, pursuant to section 63(1)(c) of the RESA, Mrs. Bulaqui's claim was adjourned by mutual agreement of the parties, pending a determination by the Supreme Court of British Columbia whether or not the Bulaquis could be considered to be separate claimants, and thereby qualify separately under section 69 of the RESA. Upon hearing the submissions of Mr. Bulaqui's claim, a Certificate of Compensable Loss in the sum of \$100,000.00 was issued by the Compensation Hearing Committee.
- [6] The parties now seek to resolve Mrs. Bulaqui's claim against the Compensation Fund .
- [7] Upon further examination of the facts of this matter, the Council, without the Supreme Court of British Columbia considering the matter, now concurs with the Bulaquis that Mrs. Bulaqui may be considered a separate claimant from that of Mr. Bulaqui for the purposes of section 69 of the RESA.
- [8] Ms. Whittow, however, during her opening remarks, noted some uncertainties in assessing the amounts related to such compensable loss, and submitted that the Committee consider this in their determination and assessment of the matter.

- [9] She noted disparate amounts claimed by Mr. and Mrs. Bulaqui in this matter. She directed the Committee to the original claim by Mr. and Mrs. Bulaqui against the Compensation Fund dated June 20, 2013 for \$177,000 (Tab 1), as well as the amended Claim in the sum of \$198,000 dated June 1, 2015. She then referred to the Certificate of Conviction (Tab 4) noting both the sentence of 24 months to be served by Mr. Salanga for fraud, as well as the order for restitution against him in the sum of \$173,352 payable to Oscar and Imelda Bulaqui.
- [10] Ms. Whittow referred to the Affidavit of Oscar Bulaqui dated June 20, 2018 (Tab 13), which indicated further amounts paid to Mr. Salanga on behalf of Property 1 in the cash sums of \$10,000 on May 14, 2012; \$5,000 on June 12, 2012; and \$13,000 on October 5, 2012, in addition to those amounts which the compensation hearing committee had granted in favour of Mr. Bulaqui on June 15, 2016. She additionally referred to the Affidavit of Sonja Jackovic (Tab 10), compliance officer for the Council, and noted that there was not a corresponding deposit entry in Mr. Salanga's accounts for the \$10,000 and \$5,000 cash withdrawals identified by Mr. Bulaqui as being provided to Mr. Salanga.
- [11] Mr. Watson, on behalf of the Bulaquis, submitted that, whereas the original claim by the Bulaquis against the Compensation Fund was for the sum of \$198,000, this claim be amended to \$228,000 as a result of a calculations error in the original submission. While the Council maintained the revised amount may not necessarily entirely be determined to be a compensable loss, the Council agreed to the revision of the claim to \$228,000, and the claim was so amended.
- [12] After considering the parties' submissions, the Committee decided to proceed with the hearing to determine if Mrs. Bulaqui suffered a compensable loss and, if so, to assess the amount of such loss.

EVIDENCE

Evidence of Imelda Bulaqui

- [13] Mrs. Bulaqui testified that she had moved to Vancouver in 1989 from the Philippines. She has been a care aide with Providence Health Care for the past 17 years, and has been married to Oscar Bulaqui since 1991.
- [14] Mrs. Bulaqui testified that she and Mr. Bulaqui had purchased the home in which they currently live in 1999 and, until the time they interacted with Mr. Salanga, had not been involved with purchasing or selling any other real estate.

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- [15] Mrs. Bulaqui stated that she and her husband met Mr. Salanga when he was hosting an open house for Property 1. The Bulaquis, who were with their agent, had initially attended the open house to look at it for Mr. Bulaqui's sister, but then subsequently wrote an offer for Property 1 themselves. Nothing further came of this offer.
- [16] While they were at the open house, Mr. Salanga gave the Bulaquis his business card. Mr. and Mrs. Bulaqui decided to work with Mr. Salanga because he told them they would get "a better discount" if they dealt directly with him. They researched him in the Filipino directory and noticed he had been a realtor for many years and even received an award. In addition, they noticed a number of his listings when they drove around and, since he was also Filipino and spoke their language, they trusted him.
- [17] Mrs. Bulaqui testified that she and her husband were interested in purchasing Property 1, and were thinking of using it to house students who wanted to learn English. They paid amounts via bank drafts totalling \$35,000 to Mr. Salanga over the next few months.
- [18] Mrs. Bulaqui then mentioned that Mr. Salanga came to their house and said a further deposit was needed. He stated that, since it was near the end of the day, a cash payment would be required since a bank draft would only delay the process. He indicated that this would prove to the Seller that Mr. and Mrs. Bulaqui were still interested in purchasing the property. Mr. Salanga then attended Scotiabank with Mr. and Mrs. Bulaqui and waited in his car while the Bulaquis obtained and delivered the cash to him.
- [19] Mrs. Bulaqui informed the Committee that Mr. Salanga requested cash sums twice more, in the amounts of \$5,000 and \$13,000. She, with assistance of her counsel, directed us to her and husband's bank statements exhibited in the Affidavit of Oscar Bulaqui dated June 20, 2018 (Tab 13), which indicate sums in those amounts, twice with bank administration fees, withdrawn from their account. When asked why there was a discrepancy in the deposit amount listed in the contract and the amounts actually paid, Mrs. Bulaqui testified that Mr. Salanga had repeatedly mentioned he would bring the revised contracts later, but never did.
- [20] Mrs. Bulaqui then advised that Mr. Salanga had confirmed the deal for Property 1 had collapsed. At that time, the Bulaquis were interested in making an offer on Property 2. Mr. Salanga indicated that the sums related to Property 1 were held

up and the Bulaquis would therefore need to pay the deposit amounts for Property 2 while awaiting the refund of monies for Property 1.

- [21] Mrs. Bulaqui testified that the Bulaquis made three deposits in relation to Property 2 totalling \$100,000, as follows: \$15,000 on December 5, 2012; \$40,000 on December 6, 2012; and \$45,000 on December 18, 2012. Mrs. Bulaqui identified in the Affidavit of Oscar Bulaqui dated June 20, 2018 (Tab 13) the bank drafts paid in relation to Property 2 as well as the sums deducted from their bank account. In addition, she identified matching deposits into Mr. Salanga's bank account exhibited in the Affidavit of Sonja Jackovic (Tab 10).
- [22] Mrs. Bulaqui noted that she requested the return of the deposit monies for Property 1. After much delay, Mr. Salanga provided her with cheques which he asked for her to hold off on depositing until he gave a go-ahead. Three days later, when Mr. Salanga gave approval for the cheque deposit, the cheques did not clear. After the Bulaquis followed up, Mr. Salanga came to their house with his T4s to prove he was able to fulfill his repayment.
- [23] Mrs. Bulaqui noted that Mr. Salanga then advised that the deal for Property 2 had also collapsed, since the bank was upset that the property was listed without their knowledge. He later provided bank drafts and \$3,000 cash to Mr. and Mrs. Bulaqui.
- [24] Mrs. Bulaqui told the Committee that she repeatedly sought the return of the balance of deposit monies from Mr. Salanga, particularly since her husband's father was dying in the Philippines and she wanted to be able to send her husband there prior to his father's passing. Mr. Salanga advised that he did not have the money.
- [25] Mrs. Bulaqui testified that, after her father-in-law's passing, Mr. Salanga sent a total of 70,000 Philippine Pesos, approximately \$1,648, to them. She advised that it was culturally normal for one to provide a monetary gift to the family of a deceased and believes that it was for that purpose. However, as she was unsure, she had identified it as being paid by Mr. Salanga to them.
- [26] Mrs. Bulaqui further confirmed, on questioning, that all monies paid to Mr. Salanga came from her and her husband's joint line of credit at Scotiabank, and that they made no other large purchases at that time.
- [27] Mrs. Bulaqui was asked to clarify the difference between her initial claims and the current claim as to the amounts repaid by Mr. Salanga, with a discrepancy of

\$20,000. She noted that she made a mistake, and had double-counted a payment when providing numbers to her lawyer and Crown Counsel.

- [28] Mrs. Bulaqui also confirmed her involvement in viewing and discussing the properties, as well as contract negotiations. She testified that she was present at all meetings related to both Property 1 and Property 2 with Mr. Salanga, and that she was the one who repeatedly contacted him when there were discussions about monies.

Evidence of Oscar Bulaqui

- [29] Mr. Bulaqui testified that he was born in the Philippines and arrived in Canada in 1994. He has a Bachelor of Science in Electronics Engineering from the Philippines and has been employed as a Building Maintenance Engineer at the YWCA for the past 13 years.
- [30] Mr. Bulaqui also testified as to the first meeting as between himself, his wife, and Mr. Salanga. He and his wife attended an open house at Property 1 with their realtor, Ray Cordoba, where they met Mr. Salanga. Mr. Salanga seemed very nice.
- [31] Mr. Bulaqui noted that Mr. Salanga was interested in obtaining their business, and that when Mr. and Mrs. Bulaqui checked Mr. Salanga's background, he seemed to be very popular and was a Medallion realtor, which he understood to be a top seller in houses.
- [32] Mr. Bulaqui testified that he and his wife paid a number of deposits, and that Mr. Salanga had stated that these would all be applied as a down payment towards the purchase of the properties. Mr. Bulaqui believed Mr. Salanga because he spoke the "same dialect" and because of the "way he approached them". He confirmed that he never thought the process or timeline was unusual even though some of his deposits were made in cash and his first house purchase did not involve multiple deposits. Mr. Bulaqui stated that his first house was bought through the bank.
- [33] When asked about the discrepancy of \$20,000 between the original claim to the Compensation Fund and this one, he stated that his wife had made an error in her review of the information and had double-counted one of the repayments.

SUBMISSIONS

- [34] Ms. Whittow 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.
- [35] 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.
- [36] She noted that the Discipline Committee, under its decisions of April 25, 2017 and July 24, 2017 (Tab 11), specifically found that Mr. Salanga committed misappropriation and fraud in the Discipline Committee's determination of professional misconduct.
- [37] As such, she submitted that the two areas of uncertainty were assessing the amount of cash payments made to Mr. Salanga under this matter, as well as the sum of repayments made by Mr. Salanga to Mr. and Mrs. Bulaqui.
- [38] In his submissions, Mr. Watson stated that Mr. and Mrs. Bulaqui should qualify as separate claimants as two separate individuals under section 69 of the RESA or, in the alternative, should be considered as two separate claimants based on the facts of this matter including the fact that there were two different properties and two different sets of deposits involved.
- [39] Mr. Watson submitted that, although it is understandable for the Committee to scrutinise cash payments, there is evidence showing sums being withdrawn from the accounts of the Bulaquis, and no weight should be given to the fact that there are no accompanying deposits into Mr. Salanga's bank account since the amounts were provided in cash.
- [40] Mr. Watson further stated that the investigation into the account of Mr. Salanga per the Affidavit of Sonja Jackovic (Tab 10) showed the repayment amounts of \$20,000 and \$10,000, and that there was no evidence in Mr. Salanga's bank account of any further repayment of \$20,000 made by Mr. Salanga.

ANALYSIS

[41] Although their testimony as to the amounts repaid by Mr. Salanga differed from their previous affidavit and other evidence, and it is always significant when a mistake is made in affidavits and other testimony, the Committee found both Mr. Bulaqui and Mrs. Bulaqui to be forthright and credible witnesses.

[42] The Council took the position that, after further investigation of the particular facts and circumstances of this matter, it was appropriate to treat the Bulaquis as separate claimants. Mr. Watson agreed with this assertion and provided an alternative approach by considering the 2 properties separately.

[43] 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.” As such, it was incumbent for the Committee to still consider whether there had been a compensable loss and, given the wording of section 69 of the RESA, whether Mrs. Bulaqui would be eligible to receive any further amounts given that Mr. Bulaqui had already received \$100,000 from the Compensation Fund .

Was there a compensable loss?

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

- a. Mr. Salanga had been a licensee at the time of the events in question;
- b. The funds provided by Mr. and Mrs. Bulaqui to Mr. Salanga were to be held by him in relation to real estate services; and
- c. Mr. Salanga had misappropriated these funds and defrauded Mr. Bulaqui and Mrs. Bulaqui, as further evidenced by the Disciplinary Decision as well as his incarceration for such fraud.

[45] As such, there was a compensable loss as defined by the RESA.

What is the maximum amount available under Mrs. Bulaqui’s claim?

[46] Prior to then assessing the amount of such compensable loss, the Committee first turned its attention to Section 69 of the RESA to determine if the maximum amount had already been granted pursuant to Mr. Bulaqui’s claim, or whether Mrs. Bulaqui would be considered a separate claimant. In this regard, the Committee noted and accepted:

- a. While only Mr. Bulaqui’s name was specifically mentioned in each of the contracts, the contracts stipulated, “Oscar Bulaqui and/or nominee”, and

such contracts did not restrict an assignee. The Committee accepted Mr. and Mrs. Bulaqui's evidence that the reason for this wording was for ease of transacting business, and that Mrs. Bulaqui's name was to be added at the time of closing in relation to each of the properties;

- b. The bank account from which drafts were provided to Mr. Salanga was in the name of both Mr. Bulaqui and Mrs. Bulaqui;
- c. Mrs. Bulaqui was involved in all matters related to the contract negotiations and claims on both Property 1 and Property 2, and in fact, took the lead on a few occasions; and
- d. Mr. Bulaqui's claim, as granted, was in relation to only Property 1.

[47] Upon review of the evidence, the Committee found that it was unnecessary to make a determination that Mrs. Bulaqui be considered a separate claimant under the totality of the claim. However, the Committee accepted Mrs. Bulaqui's alternative argument that each of Mr. Bulaqui and Mrs. Bulaqui had a claim based on the fact there were a series of 2 transactions with 2 sets of deposits, and that Mrs. Bulaqui had substantial involvement and an equal right to claim pursuant to either of the transactions. As the proceedings hearing Mr. Bulaqui's claim detailed and granted such claim as against Property 1, the Committee determined Mrs. Bulaqui would have a separate claim in the maximum amount of \$100,000 for Property 2.

What is the amount of the loss?

[48] Based on the evidence and testimony provided, the Committee accepted the Bulaquis provided various bank drafts totalling \$100,000 and three cash payments totalling \$28,000 on account of Property 1. Further, the Committee accepted submissions by both counsel that three bank drafts totalling \$100,000 were provided to Mr. Salanga by Mr. and Mrs. Bulaqui on account of Property 2.

[49] The Committee accepted the testimony of Mr. and Mrs. Bulaqui with regard to the sums actually repaid by Mr. Salanga, and that the bank drafts received totalled \$30,000 with a cash repayment of \$3,000, for a total of \$33,000 repaid. The Committee found that the first \$28,000 repaid by Mr. Salanga is to be applied to the deposits made on Property 1, thereby making Mr. Bulaqui whole. The balance of \$5,000 is to be applied against the sums owing under the deposits for Property 2. The Committee accepted that the wire transfers in Philippine Pesos totalling \$1,648 were a gift, and not a partial repayment of funds owed by Mr. Salanga.

As such, they have not been included in the calculations below:

Property 2 Loss:	\$100,000
Balance of Repayments by Mr. Salanga:	<u>\$ 5,000</u>
Compensable Loss	\$ 95,000

REASONS FOR DECISION

- [50] After the conclusion of the hearing the Compensation Hearing Committee considered the evidence and the submissions of Mr. Watson and Ms. Whittow.
- [51] The Committee found that pursuant to section 63(1) of the RESA, Imelda Bulaqui had suffered a compensable loss within the meaning of section 60 of the RESA and assessed the compensable loss in the amount of 95,000.
- [52] The Committee found on the evidence that Mr. Johnson Castaneto Salanga had devised a scheme in order to misappropriate funds from Imelda Bulaqui.
- [53] The Committee concluded that this money was obtained by Mr. Johnson Castaneto Salanga by fraud and was misappropriated by him.

DECISION

- [54] The Committee found that, pursuant to section 63(1) of the RESA, Imelda Bulaqui suffered a compensable loss as defined by section 60 of the RESA as a result of the conduct of Johnson Castaneto Salanga, and assessed that loss in the amount of \$95,000.
- [55] The Committee directed that, pursuant to section 64 of the RESA, a certificate be issued in that amount.

DATED at VANCOUVER, BRITISH COLUMBIA this 29th day of January, 2019.

FOR THE COMPENSATION HEARING COMMITTEE

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

L. Hrycan, Chair
Compensation Hearing Committee

File numbers: 12-438; 12-539

LIST OF EXHIBITS

Exhibit 1 - Book of Documents