

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*

S.B.C. 2004, c. 42 as amended

AND IN THE MATTER OF

JOHNSON CASTANETO SALANGA

DECISION REGARDING LIABILITY

DATE AND PLACE OF HEARING: March 17, 2017
Office of the Real Estate Council
Vancouver

DISCIPLINE HEARING COMMITTEE: Leon Getz, Q.C. (Chair)
Sandra Heath
Sukh Sidhu

Counsel for Real Estate Council Jean Whittow, Q.C.

No one appearing for Mr. Salanga, Respondent

A. INTRODUCTION

This hearing was conducted pursuant to section 42 of the *Real Estate Services Act* (“RESA”) to consider whether, as alleged by the Real Estate Council of British Columbia (the “Council”) in a Notice of Hearing dated November 8, 2016, Johnson Castaneto Salanga committed professional misconduct within the meaning of section 35(1) (a) or (c) or was guilty of conduct unbecoming within the meaning of section 35 (2) of RESA.

For convenience we set out the material parts of the relevant statutory provisions referred to:

35 (1) A licensee commits professional misconduct if the licensee does one or more of the following:

- (a) contravenes this Act, the regulations or the rules;
- (b) breaches a restriction or condition of their licence;
- (c) does anything that constitutes wrongful taking or deceptive dealing;

(2) A licensee commits conduct unbecoming a licensee if the licensee engages in conduct that, in the judgment of a discipline committee,

- (a) is contrary to the best interests of the public,
- (b) undermines public confidence in the real estate industry, or

(c) brings the real estate industry into disrepute.

Section 1 of the RESA defines the expressions “wrongful taking” and “deceptive dealing” as used in section 35 (1) (c), as follows:

"wrongful taking", in relation to a person providing real estate services as a licensee, means any of the following:

(a) a misappropriation or wrongful conversion of money or other property received by the person in relation to the real estate services;

(b) an intentional failure to account for or pay over, within a reasonable time, any money or other property that

(i) was received by the person, and

(ii) belongs to one or more principals in relation to the real estate services.

"deceptive dealing", in relation to a person providing real estate services as a licensee, means any of the following:

(a) an intentional misrepresentation, by word or conduct, or in any other manner, of a material fact in relation to real estate services, or in relation to a trade in real estate to which the real estate services relate, or an intentional omission to disclose such a material fact;

(b) a course of conduct or business that is intended to deceive a principal about the nature of the real estate services, or about the nature of a trade in real estate to which the real estate services relate;

(c) an artifice, agreement, device or scheme to obtain money, profit or property by illegal means;

(d) a promise or representation about the future that is beyond reasonable expectation and not made in good faith;

B. THE NOTICE OF HEARING

The Council’s case is based upon five separate incidents set out in the Notice of Hearing. They are as follows:

1. *The [REDACTED] matter*

On March 9, 2016 in the Supreme Court of British Columbia, Mr. Salanga pleaded guilty to and was convicted of the offence of fraud over \$5,000 under the Criminal Code. He was found to have misappropriated and/or wrongfully converted \$70,000 provided to him by Mr. [REDACTED] in

February 2013 as a deposit on the purchase of a particular property. Among other things the Court made a restitution order in the amount of \$70,000.

2. *The [REDACTED] matter*

The Council alleges that in or about January 2013, while acting as the listing representative on property owned by the [REDACTED], Mr. Salanga (i) engaged in deceptive dealing by representing to them that in order to obtain a loan they were required to pay off property taxes and persuaded them to provide him with funds which he said he would invest on their behalf to pay off that loan, and/or (ii) he misappropriated and wrongfully converted \$16,850 provided to him by them.

3. *The [REDACTED] matter*

On March 9, 2016 in the Supreme Court of British Columbia, Mr. Salanga pleaded guilty to and was convicted of the offence of fraud over \$5,000 under the Criminal Code. He was found to have misappropriated and/or wrongfully converted in excess of \$100,000 provided to him by Mr. and Mrs. [REDACTED] between October 2011 and June 2013 as deposits on the purchase of a particular property. Among other things the Court ordered him to pay restitution of \$173,352.

4. *The [REDACTED] matters*

The Council alleges that:

- (a) between July 2012 and June 2013 Mr. Salanga misappropriated and/or wrongfully converted \$150,000 provided to him by [REDACTED] and intended as deposits on the purchase of a particular property; and
- (b) between March and June 2013 Mr. Salanga misappropriated and/or wrongfully converted \$25,000 provided to him by Mr. [REDACTED] which he falsely represented he would use to make renovations on the property and would be repaid from the commissions earned by Mr. Salanga on the purchase and sale of the property.

C. SERVICE OF THE NOTICE OF HEARING AND ATTENDANCE OF RESPONDENT

Pursuant to an Order made by the Supreme Court of British Columbia and entered on December 14, 2016, a copy of the Notice of Hearing was mailed to Mr. Salanga care of the Pacific Regional Headquarters of the Correctional Service of Canada in Abbotsford, B.C. on December 19, 2016. Under the Order, service on Mr. Salanga became effective seven calendar days thereafter.

The Notice of Hearing advised Mr. Salanga of the date and place of the Hearing and that it would commence at 9.30am. He did not appear on that date or at that place and time and commencement of the Hearing was accordingly delayed until 9.45am. Mr. Salanga not being

then present, either in person or by counsel, the Hearing commenced and we proceeded to receive the evidence and the submissions of counsel for the Council.

D. THE BURDEN OF PROOF AND THE NATURE AND QUALITY OF THE EVIDENCE

The burden of proof

The Council must prove the allegations against Mr. Salanga on a standard described as the “balance of probabilities”. That is, it must satisfy us that it is more likely than not that he committed the conduct alleged (*F.H. v. McDougall*, [2008] 3 SCR 41, 2008 SCC 53 (CanLII)). The fact that he did not appear at the hearing does not affect this proposition.

The nature and quality of the evidence

The evidence tendered by the Council in support of its allegations is almost exclusively documentary. We heard from only one witness – Mr. Paul Gorman, a legal assistant employed by the Council – whose evidence was brief and limited to proving the documents upon which the Council relies.

The documentary evidence consists of the following:

1. In respect of the [REDACTED] and [REDACTED] matters, Certificates of Conviction issued pursuant to section 570 of the Criminal Code of Canada. Section 570 (2) provides, among other things, that such a Certificate is “sufficient evidence in any legal proceedings to prove the conviction”.
2. In respect of each of the matters identified in the Notice of Hearing, the reasons for decision, following hearings, of the four Compensation Committees convened to consider and adjudicate claims for compensation made by Mr. [REDACTED], the [REDACTED], the [REDACTED] and Mr. [REDACTED] against the Special Compensation Fund established under the RESA, together with certain of the more material exhibits considered by those Committees (together, the “Compensation Decisions”).

Reliance upon the Certificates of Conviction and the Compensation Decisions

The question whether, and if so to what extent, a disciplinary panel such as this may rely upon documentary evidence such as the Certificates of Conviction and the Compensation Decisions has been considered in a number of cases. The principles are now well-established.

Rosenbaum v. Law Society of Manitoba, 1983 CanLII 2972 (MB QB) (affirmed 1983 CanLII 3037(MB CA), leave to appeal to S.C.C. refused 27 Man. R. (2d) 159n) (“*Rosenbaum*”), concerned disciplinary charges against a lawyer for perjury. The charges arose from a decision made in a civil case, in which the trial judge found that the lawyer had given false testimony. When the Law Society of Manitoba initiated disciplinary proceedings against the lawyer for perjury, he sought to prevent the charges from proceeding, arguing that the Law Society could

not use the judge's findings. The Court of Queen's Bench rejected the lawyer's application. It reasoned:

[13] ... The committee, like any other professional disciplinary body, is bound to conduct its proceedings fairly, but it is not bound by the whole panoply of procedural and evidentiary constraints which apply to the courts. Subject only to observance of its paramount duty to be fair to the lawyer, the committee is entitled to arrive at its decision on any reliable source of facts of which the lawyer is made aware in advance and can challenge, and it is for the committee to assess the weight or cogency to be accorded to the evidence given in a prior proceeding to which the lawyer was a party and to take proper account of the conclusions of fact arrived at by the judge.

The Court added:

[15]... provided the lawyer is given fair opportunity to adduce further evidence and to submit argument to dispute the accuracy of specific solemn and considered findings, the committee is entitled to exercise its discretion to rely upon the civil proceedings as evidence in support of the charge.

See also *Re Del Core and Ontario College of Pharmacists*, 1985 CanLII 119 (ON CA).

E. THE EVIDENCE

We shall deal separately with each of the matters identified in the Notice of Hearing.

The ██████ Decision

As has been noted, Mr. Salanga was convicted on March 9, 2016 on the charge that between January 15 and May 1, 2013, he defrauded ██████ of monies in excess of \$5,000 pursuant to s. 380(1)(a) of the *Criminal Code*. On June 6, 2016, he was sentenced to six months in jail and a restitution order of \$70,000 in favour of the Real Estate Compensation Fund Corporation was made. Mr. ██████ made a claim against the Fund and, on March 29, 2016, a Compensation Committee issued a decision (the "█████ Decision") assessing his claim at \$70,000.

At the hearing, the Compensation Committee received an affidavit of Mr. ██████ and was provided with copies of cancelled cheques provided by Mr. ██████ and other documentation, plus the records obtained from Mr. Salanga's banks, showing that the cheques had been negotiated. It also heard evidence that showed that the relevant properties were not sold at the relevant time.

In summary, the facts as found by the Compensation Committee were these. Mr. ██████z had known Mr. Salanga since 2005. In 2012 Mr. ██████s son died. Mr. ██████ received \$250,000 in insurance proceeds, and, in January, 2013 contacted Mr. Salanga as he wanted to buy a house. On learning of Mr. ██████ inheritance, Mr. Salanga invited Mr. ██████ to invest with him in

“flipping” houses. He persuaded Mr. [REDACTED] to give him \$20,000 toward a first house, and gave him a contract which reflected his contribution to the deposit. A week later, Mr. Salanga said they had a buyer for the first house and invited him to invest \$50,000 in a second house. Mr. Salanga gave Mr. [REDACTED] cheques which were supposed to be for repayment of principal plus profit, but when Mr. [REDACTED] went to cash them, he was told by the bank they would not be honoured. After some attempts to secure payment, Mr. [REDACTED] went to the police and the Council.

Section 60 of RESA, requires that the loss in respect of which compensation is claimed was from money held or received by a licensee, that it was suffered in relation to real estate services, and that the money lost was either misappropriated, intentionally not paid over or accounted for or taken by fraud.

The Compensation Committee found that Mr. Salanga had committed misappropriation and conversion and that his conduct also met the definition of fraud, saying:

The Committee found on the evidence that Mr. Salanga had devised a scheme in order to misappropriate funds from Mr. [REDACTED] in relation to real estate services when he was approached by the [REDACTED] to find a property to purchase and he persuaded Mr. [REDACTED] to provide him with a series of deposit cheques for two properties that Mr. Salanga and Mr. [REDACTED] would “flip”. He received these cheques and negotiated them through his personal bank accounts. The transactions did not occur and Mr. [REDACTED] did not recover any of the monies he provided to Mr. Salanga.

The Compensation Committee found that Mr. Salanga’s conduct constituted misappropriation and conversion and that that the evidence supported a finding of fraud on the part of Mr. Salanga in that he had concocted the underlying transactions with a view to persuading Mr. [REDACTED] into believing that they were legitimate.

The [REDACTED] Decision

In summary, the [REDACTED] listed their home with Mr. Salanga in 2012. In late 2012, they asked him for advice about what to do about outstanding property taxes of \$3,506.42 and he recommended they get a private loan to pay the taxes, but did not tell them that they could pay the taxes out of the proceeds of sale. He then persuaded them to take out a larger loan than they had wanted and give him a portion of the proceeds so that he could “invest” it for them. When the [REDACTED] became concerned, Mr. Salanga failed to pay back their money.

The [REDACTED] made a claim against the Compensation Fund. At a hearing, the Compensation Committee received both in person and affidavit evidence from Ms. [REDACTED] and documents, including banking documents properly obtained from Mr. Salanga’s bank accounts establishing that the [REDACTED] cheque had been deposited to his account.

In a decision dated October 14, 2015 (the “[REDACTED] Decision”), the Compensation Committee assessed the [REDACTED] claim at \$16,850. It found on the evidence that Mr. Salanga had devised a

scheme in order to misappropriate funds from the ██████ in relation to real estate services when he listed their property for sale. He advised them that they needed to pay off tax arrears and that in order to do so they should obtain a loan, which was unnecessary and overpriced, and they gave him a portion of the loan to invest to earn enough to pay for that loan. The Committee found that this was the deception he used to obtain their money and that Mr. Salanga had engaged in fraud and had misappropriated the ██████ money. It concluded that the ██████ had suffered a compensable loss within the meaning of section 60 of RESA.

The ██████ Decision

As we have noted, Mr. Salanga was convicted on June 6, 2016 on the charge that between October 2011 and June 10, 2013, he defrauded Mr. and Mrs. ██████ of monies in excess of \$5,000 pursuant to s. 380(1)(a) of the *Criminal Code*. He was sentenced to 18 months in jail and a restitution order in favour of the ██████ was issued in the amount of \$173,352.00.

Each of Mr. and Mrs. ██████ made a claim against the Compensation Fund. The Compensation Committee heard and decided (the “█████ Decision”) the claim of Mr. ██████, which it assessed at \$100,000, but because there is a \$100,000 limit on claims to the Compensation Fund Mrs. ██████ claim is presently adjourned. The Committee received and considered affidavit evidence of each of Mr. and Mrs. ██████ and certain properly proved additional documents including certain of Mr. Salanga’s banking records.

The ██████ Decision recites that the ██████ met Mr. Salanga at an open house. Over a period of several years, he on three separate occasions purported to arrange for them to buy a house, and got them to give him cheques and cash for deposits to secure the purchase. Each time, he told them that the deal fell through and then moved on to another property. There was evidence that, except in one instance, deposits to Mr. Salanga’s bank matched the payments made to him by the ██████. Mr. Salanga made some repayments to them, but generally the amounts paid by them continued to increase and accumulate. In June 2013, they went to the door of the house they thought they had purchased but the owner denied selling the house and said that Mr. Salanga had paid her to allow people to come into the home and see her renovations.

The Compensation Committee considered the evidence before it and found that Mr. Salanga had devised a scheme to commit misappropriation and fraud and had misappropriated money from the ██████ by fraud.

The ██████ Decision

In a decision dated October 6, 2014 (the “█████ Decision”) following consideration of the testimony of Mr. ██████ and a review of certain banking records of Mr. Salanga, a Compensation Committee assessed a claim by Mr. ██████ at \$100,000.

In the ██████ Decision the Committee found that Mr. ██████ had given Mr. Salanga four deposits totaling \$150,000 toward the purchase of a particular property in the form of bank drafts made

payable, on Mr. Salanga's instructions, to "Sutton Group – Johnson Salanga" – a form which permitted their deposit into his personal bank account and not turned over to his brokerage. In addition, Mr. Salanga had Mr. [REDACTED] pay him \$25,000 to be used for renovations on the property, which Mr. Salanga said he would repay out of his commission. These funds were deposited directly into Mr. Salanga's personal bank account and not used for their intended purpose.

The [REDACTED] Decision held that Mr. [REDACTED] had suffered a compensable loss within the meaning of section 60 of the RESA and that the loss was a result of the conduct of Mr. Salanga as defined in section 60(a)(i) and (b) (i), (ii) and (iii) of the Act. It assessed the loss at \$175,000 covering both the deposits and the \$25,000 paid for the renovations and issued a certificate of loss of \$100,000.

F. RELiance ON THE CERTIFICATES OF CONVICTION AND THE COMPENSATION DECISIONS

We are satisfied that we may properly rely on the Certificates of Conviction and the Compensation Decisions as evidence of the facts referred to in them.

First, by reason of section 570 (2) of the Criminal Code quoted in Section D above, we can rely on the two Certificates to Conviction as proof that Mr. Salanga defrauded Mr. [REDACTED] and the [REDACTED] and misappropriated and converted their funds.

Second, on the basis of the principles expounded in the *Rosenbaum* decision, referred to Section D above, it is proper for us to accept the facts found and the conclusions reached by each of the four Compensation Committees provided we are satisfied that the proceedings before those Committees were fair and that Mr. Salanga had the opportunity to participate in them, whether or not he chose to do so. As is evident on the face of their decisions, each of the Committees held a hearing at which it considered and weighed the evidence tendered before it and on the basis of that consideration, reached the conclusions that it did concerning whether the claimants had suffered a "compensable loss in relation to real estate services" by reason of "misappropriation", "conversion" or "fraud" as required by section 60 of RESA. Each of the Compensation Committees explained its conclusions in careful written reasons.

We have heard nothing to suggest that any of the Committees misstated any of the evidence tendered before them or that the conclusions reached by them were wrong or unwarranted by the evidence that they heard.

We are satisfied that we may properly rely upon the decisions of the Compensation Committees.

G. DECISION

We have concluded that Mr. Salanga committed professional misconduct within the meaning of section 35(1)(c) of the *Real Estate Services Act*, and was guilty of conduct unbecoming within

the meaning of section 35 (2) of that Act, in each of the respects alleged by the Council in the Notice of Hearing.

H. FURTHER PROCEEDINGS – PENALTY

In view of our Decision, the next stage is to consider the question of an appropriate penalty. After both Mr. Salanga and counsel for the Council have had the opportunity to present, in writing, evidence and submissions addressed to that question, we will consider it. To facilitate this consideration, we direct that:

1. within 3 days of publication of this Decision, a copy thereof be mailed by the Council to Mr. Salanga at the address, referred to in Section C above, authorized by Order of the Supreme Court for service of the Notice of Hearing;
2. evidence and submissions on behalf of the Council be filed with the Council on or before April 14, 2017 and a copy thereof mailed to Mr. Salanga at the address referred to above;
3. evidence and submissions by or on behalf of Mr. Salanga be filed with the Council on or before April 28, 2017 with a copy thereof to be mailed to Ms. Whittow; and
4. evidence and submissions in reply on behalf of the Council be filed with the Council on or before May 5, 2017 and a copy thereof mailed to Mr. Salanga at the address referred to above.

DATED at VANCOUVER, BRITISH COLUMBIA this 5th day of April, 2017.



Leon Getz, Q.C.
Discipline Hearing Committee Chair



Sandra Heath
Discipline Hearing Committee Member



Sukh Sidhu
Discipline Hearing Committee Member

LIST OF EXHIBITS

Exhibit 1	Affidavit of Service of Notice of Hearing
Exhibit 2	Notice of Hearing
Exhibit 3 and 4	Certificates of Conviction
Exhibit 5	Book of Documents