

S.B.C. 2004, c. 42

AND in the matter of a possible contravention of the *Real Estate Services Act*, Regulations and Council Rules thereunder by the Respondents:

Kenneth Joseph Cameron Davreux, Managing Broker, 494888 B.C. Ltd. dba
Strata Pro Property Management Services
494888 B.C. Ltd. dba Strata Pro Property Management Services, Brokerage

DATE AND PLACE OF HEARING: December 3, 2007
2:00 p.m. to 2:32 p.m.
Office of the Real Estate Council
Vancouver

DISCIPLINE HEARING COMMITTEE: R. Barnes
G. Martin (Chair)
J. Whyte

ALSO PRESENT: Shelley J. Russell– Solicitor for the Real Estate Council
Sharon Leeburn– Official reporter
Jessica S. Gossen – Real Estate Council staff

WITNESSES: Debbie Lee Morreau, Assistant Manager,
Audit and Investigations for the Real
Estate Council

INTRODUCTION

The hearing was conducted pursuant to section 42 of the *Real Estate Services Act* to consider whether the respondents indicated above have been guilty of professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act*.

ISSUES

The issues before the Discipline Hearing Committee were whether Kenneth Joseph Cameron Davreux and 494888 B.C. Ltd. dba Strata Pro Property Management Services contravened section 7-7(1) of the Council Rules (filing of Accountant's Report) and/or section 35 of the *Real Estate Services Act* (professional misconduct) in that the brokerage failed to file an Accountant's Report with the Real Estate Council for the year ending April 30, 2007 on or before August 31, 2007.

The further issues before the Discipline Hearing Committee were whether Kenneth Joseph Cameron Davreux, as managing broker for the brokerage:

- (a) committed professional misconduct within the meaning of section 35(1)(a) and/or section 35(1)(d) of the *Real Estate Services Act*;
- (b) fulfilled his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act*; and
- (c) contravened sections 3-1(1)(a) and (b) and/or 3-1(3) of the Council Rules (managing broker responsibilities) in that he failed to ensure that the said Accountant's Report was filed with the Real Estate Council on or before August 31, 2007.

The evidence in the hearing consisted of four (4) exhibits, which included one Book of Documents (Exhibits 1), as well as three (3) miscellaneous documents. The evidence also included the oral testimony of Debbie Lee Morreau, Assistant Manager, Audit and Investigations for the Real Estate Council.

PROCEEDINGS

Ms. Russell noted the absence of the Respondent, Mr. Davreux and advised the Discipline Hearing Committee that Mr. Davreux had contacted Ms. Russell at approximately 12:45 p.m. prior to the commencement of the hearing and indicated to Ms. Russell that he would not be appearing for the hearing. She further advised the Committee that at 1:45 p.m. the Council had received a fax from Mr. Davreux which he requested to be treated as his evidence in the proceedings. Ms. Russell directed the Discipline Hearing Committee to section 42(1) of the *Real Estate Services Act* which provided that:

42. Discipline Hearings (1) *If notice of a discipline hearing has been given in accordance with section 40 (3) [notice], a discipline committee may proceed with the discipline hearing, whether or not the licensee appears in person and whether or not the licensee is represented by legal counsel at the hearing.*

Ms. Russell submitted that this section of the Act provided that a Discipline Hearing Committee has jurisdiction to proceed with a hearing so long as appropriate notice of the hearing had been given to the Respondent. She pointed out the notice provisions in section 40(3)(a) of the *Real Estate Services Act* which provided that in the case of a current licensee notice of the hearing had to be given at least 21 days prior to the hearing by personal service or in accordance with the Council Rules. Section 2-18 of the Council Rules provided that all notices required by the Act were effective if mailed to the latest mailing address for delivery that had been provided by the licensee.

Ms. Russell tendered a Book of Documents (Exhibit 1) in the proceedings and directed the Committee to the Notice of Discipline Hearing dated October 19, 2007 (Exhibit 1, Tab 1) which set out that December 3, 2007 at 2:00 p.m. was the date and time of the hearing and this letter was acknowledged in writing by Mr. Davreux on November 16, 2007. Further, Ms. Russell provided to the Committee a letter dated November 30, 2007 (Exhibit 2) which she caused to be faxed to Mr. Davreux advising Mr. Davreux that she would be asking the Committee to proceed in his absence on that date if he chose not to appear. Mr. Davreux acknowledged receipt of this fax at 4:28 p.m. on the same date.

The Discipline Hearing Committee determined that notice had been given as required by the Act and the Committee decided to proceed with the hearing in the absence of Mr. Davreux.

As previously indicated, Ms. Russell tendered a letter received from Mr. Davreux at 1:45 p.m. (Exhibit 4) which Ms. Russell read into the record. In this letter, Mr. Davreux stated:

“I am writing to say that I will not be able to attend the hearing scheduled today at 2:00 p.m. due to road and weather conditions. As a result, I ask that this letter be read into the committee hearing.

I am aware that my accountant’s report is due and that it is late. In my defence, I did contact my accountant shortly after receiving the Accountant’s Report Form from the Real Estate Council, but at that time my year end had not yet been finalized. My accountant then failed to setup a starting date to begin the audit of the trust accounts and the review engagement for the company. I noticed this error too late, and had my accountant start the process, which they are now telling me will be completed by mid December.

I apologize for my lack of attention to this matter, however, I have been actively trying to comply with all the regulations required of a strata management company that was previously not required to be licensed. Over the past year I have completed the Strata Management Grandparented Exam, the Brokers Licencing Exam, and the Rental Property Management Exam (which I had to retake because when I took it before, I had no brokerage to attach the licence to).

I ask the committee allow my company to file my accountant’s report by the end of December 2007.

My intentions are to both change accountants and to be personally on top of the timing of the Accountant’s Report with the accountant, so that this does not happen again.

If you have any questions, please call me on my cell at (250) 498 – 9002

Sincerely.

Strata Pro Property Management Services

“Ken Davreux”

Debbie Morreau, Assistant Manager, Audit and Investigations with the Real Estate Council testified that her duties included monitoring books and records of brokerages, as well as the filing of Accountant's Reports with the Real Estate Council and she had been employed in this capacity for 15 months.

Ms. Morreau acknowledged a letter sent to the brokerage dated May 4, 2007 (Exhibit 1, Tab 2) which she described as a courtesy letter from Council informing the brokerage of its obligations to file an Accountant's Report 120 days from the brokerage's year end which was April 30, 2007. Accordingly, the Accountant's Report was due on August 30, 2007.

Ms. Morreau testified that the brokerage's Accountant's Report was not received by the Council by the due date and a letter was sent to Mr. Davreux dated September 5, 2007 (Exhibit 1, Tab 3) noting that the Accountant's Report had not been received. Mr. Davreux did not respond to this letter and on October 9, 2007 another letter (Exhibit 1, Tab 4) was sent from Ms. Morreau to Mr. Davreux indicating that the matter had been referred to the Council's legal department.

Ms. Morreau referred the Committee to a letter sent to the Council from Mr. Davreux dated October 12, 2007 in which Mr. Davreux asked for an extension of the time in which to file an Accountant's Report as he wrote that his “accountant had forgotten to note and set up the audit in the required time”. (Exhibit 1, Tab 5)

Ms. Morreau testified that once a matter is referred to the legal department, audit does not consider these requests. Mr. Davreux was informed of this on October 16, 2007 by Sherri Guernsey, the administrative assistant in Audit and a note of this conversation was recorded on file. (Exhibit 1, Tab 6)

Ms. Morreau acknowledged Mr. Davreux's licensing history with the Council which indicated that Mr. Davreux was first licensed on January 27, 2006. Ms. Morreau testified that for the April 30, 2006 year end the brokerage had been 29 days late in filing its Accountant's Report and had been assessed an administrative penalty.

Ms. Russell indicated to the Committee that Mr. Davreux's accountant had called her and advised that the Accountant's Report was in process and would be ready in two or three weeks.

Submissions

Ms. Russell referred the Discipline Hearing Committee to section 35 (1) (a) of the Real Estate Services Act which provided that a licensee committed professional misconduct if the licensee contravened the Act or Rules. She submitted that section 7-7 of the Council Rules required that an Accountant's Report be filed within 120 of the brokerage's year end. Further section 6(1) of the Act in conjunction with section 3-1(3) of the Council Rules makes it the managing broker's responsibility to carry out this requirement.

Accordingly, Ms. Russell submitted that the evidence clearly showed that the brokerage and Mr. Davreux contravened the provisions of the Act and Council Rules and committed professional misconduct in doing so. She submitted that the Committee could regard this as a first offence because the Council generally did not regard administrative penalties to form part of a licensee's discipline record.

Ms. Russell provided the Discipline Hearing Committee with two recent cases which she submitted illustrated the general approach previous Committees had taken in similar circumstances. The first case of that of *Stephen David Sawyer*, a 2006 Decision of the Council where the Committee, dealing with a first contravention, modified an approach first used in the *Hamilton Pacific Realty Ltd.* case and decided as follow:

- “(a) to suspend the licence of Sussex Group – Steve Sawyer Realty Ltd. doing business as Prudential Sussex Realty – Steve Sawyer for sixty (60) days from August 16, 2006 to October 14, 2006, inclusive, but that the suspension would be terminated if and when Sussex Group – Steve Sawyer Realty Ltd. doing business as Prudential Sussex Realty – Steve Sawyer files an Accountant's Report acceptable to the Council; and
- (b) if the Accountant's Report as referred to above is received before August 15, 2006, then Sussex Group – Steve Sawyer Realty Ltd. doing business as Prudential Sussex Realty – Steve Sawyer shall be reprimanded; and
- (c) if the Accountant's Report as referred to in (a) above is not received by October 14, 2006 then the licence shall be cancelled, effective October 15, 2006.”

This approach was also followed in the more recently in the case of *Steven Donald Cormack and White Star Lodging Company Ltd. dba Sun Valley Strata Management*, a 2007 Decision of the Council. In that case, as well as reprimanding Mr. Cormack, the Discipline Hearing Committee decided:

- (a) to suspend the licence of White Star Lodging Company Ltd. dba Sun Valley Strata Management for sixty (60) days from September 27, 2007 to November 26, 2007 inclusive, but that the suspension would be terminated if and when White Star Lodging Company Ltd. dba Sun Valley Strata Management filed an Accountant's Report acceptable to the Council; and

- (b) if the Accountant's Report referred to above was received before September 27, 2007, then White Star Lodging Company Ltd. dba Sun Valley Strata Management would be reprimanded; and
- (c) if the Accountant's Report referred to in (a) above was not received by November 26, 2007 then the licence would be cancelled, effective November 27, 2007.

The Discipline Hearing Committee felt that one month from the hearing date was a long enough period of time to allow the brokerage to file its Accountant's Report failing which the licence of the brokerage would be suspended for sixty (60) days and then thereafter cancelled. As in *Prudential Sussex Realty - Steve Sawyer*, the Committee did not follow the penalty structure as set out in *Hamilton Pacific Realty Ltd.* as it did not feel that it was necessary to suspend the licence of the brokerage for 180 days before cancelling its licence if it failed to file the Accountant's Report after that period of time. The Committee felt that sixty (60) days was a long enough period of time.

Ms. Russell submitted that this approach used in the *Sawyer* and *Cormack* cases was an appropriate approach to take in the matter concerning Mr. Davreux and Strata Pro.

Mr. Russell submitted enforcement expenses in the amount of \$ 1,288.60. (Exhibit 3)

REASONS FOR DECISION

After the conclusion of the hearing, the Discipline Hearing Committee deliberated. It referred to the submissions of Ms. Russell regarding notice to the licensee in question and it was satisfied that the licensee was properly notified of this hearing, including notice that this Committee was entitled to proceed with the hearing in his absence.

In regard to the allegations set out in the Notice of Hearing, the Committee found based on the evidence and submissions that the brokerage, Strata Pro had contravened section 7-7(1) of the Council Rules in that it failed to file an Accountant's Report with the Real Estate Council for the year ending April 30, 2007 on or before August 31, 2007. In this regard the evidence was settled that the Accountant's Report had not been filed within one hundred and twenty days of the brokerage's year end and as of the date of this hearing had still not been filed. The Committee further found that Mr. Davreux failed to fulfil his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence in that he failed to ensure that the Accountant's Report was filed with the Real Estate Council on or before August 31, 2007.

The Discipline Hearing Committee was of the view that the approach to penalty used in the *Sawyer* case was also appropriate in this instance, namely that the brokerage's license would be suspended if an Accountant's Report in acceptable form was not received within 30 days of the hearing date and it would be cancelled if it was still not received within a further sixty days (60) thereafter.

The Committee accepted the enforcement expenses as tendered and ordered that Mr. Davreux and Strata Pro, as a condition of continued licensing, be jointly and severally liable to pay the enforcement expenses to the Council in the sum of \$1,288.60 within sixty (60) days of the date of this decision.

DECISION

The Discipline Hearing Committee decided that 494888 B.C. Ltd. dba Strata Pro Property Management Services:

- (a) committed professional misconduct pursuant to section 35(1)(a) of the *Real Estate Services Act* when it contravened section 7-7(1) of the Council Rules in that it failed to file an Accountant's Report with the Real Estate Council for the year ended April 30, 2007 on or before August 31, 2007.

The Discipline Hearing Committee further decided that Kenneth Joseph Cameron Davreux, as managing broker for the brokerage committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*; in that he:

- (a) failed to fulfill his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act*; and
- (b) contravened sections 3-1(1)(a) and (b) and/or 3-1(3) of the Council Rules in that he failed to ensure that the said Accountant's Report was filed with the Council on or before August 31, 2007.

The Discipline Hearing Committee decided:

- (a) to suspend the licence of 494888 B.C. Ltd. dba Strata Pro Property Management Ltd. for sixty (60) days from January 4, 2008 to March 4, 2008, inclusive, but that the suspension would be terminated if and when 494888 B.C. Ltd. dba Strata Pro Property Management Ltd. filed an Accountant's Report acceptable to the Council; and
- (b) if the Accountant's Report referred to above was received prior to January 4, 2008, then 494888 B.C. Ltd. dba Strata Pro Management Services shall be reprimanded; and
- (c) if the Accountant's Report referred to in (a) above was not received within that sixty (60) day suspension period then, immediately upon the conclusion of that period, the licence shall be cancelled.

The Discipline Hearing Committee decided to reprimand Kenneth Joseph Cameron Davreux.

The Committee ordered that Kenneth Joseph Cameron Davreux and 494888 B.C. Ltd. dba Strata Pro Management Services, be jointly and severally liable to pay the enforcement expenses of the Council in the amount of \$1,288.60 within sixty (60) days of the date of this decision.

If Kenneth Joseph Cameron Davreux and 494888 B.C. Ltd. dba Strata Pro Management Services fail to comply with any of the orders set out above the Council may suspend or cancel their license without further notice to them pursuant to section 43(3) and (4) of the *Real Estate Services Act*.

DATED at VANCOUVER, BRITISH COLUMBIA this 17th day of December, 2007.

FOR THE DISCIPLINE HEARING COMMITTEE

"Gerry Martin"

Gerry Martin
Discipline Hearing Committee Chair

GM/g/klk
File 07-148

LIST OF EXHIBITS

- Exhibit 1 - Book of Documents
- Exhibit 2 - Letter of Council of November 30, 2007
- Exhibit 3 - Enforcement Expenses
- Exhibit 4 - Letter of Strata Pro Property Management Services dated December 3, 2007

**In The Matter of the *Real Estate Services Act*
S.B.C. 2004 c. 42
Real Estate Council of B.C.
494888 B.C. Ltd. dba
Strata Pro Property Management Services
And
Kenneth Joseph Cameron Davreux**

ENFORCEMENT EXPENSES REGULATION 4.2

<u>Regulation Tariff Item</u>	<u>Tariff Amount</u>
(e)(ii) Hearing Panel Members: Two (2) x \$350.00 x 1/2 day= \$350.00 Chair (1) x \$400.00 x 1/2 day = \$200.00	\$ 550.00
(c)(i) Legal Services: Up to hearing 2 hrs x \$150.00 = \$300.00 Hearing 2 hrs x \$150.00 = <u>\$300.00</u> \$600.00	\$ 600.00
(d) Photocopies	\$ 25.00
(f) Witness expenses (1 x \$50.00)	\$ 50.00
(i) Other Costs: Court Reporter 2 hrs x \$30.00 = \$ 60.00 GST 6% <u>\$ 3.60</u> \$ 63.60	<u>\$ 63.60</u>
TOTAL	<u>\$1,288.60</u>

These Enforcement Expenses in the amount of \$1,288.60 ordered this 17th day of December, 2007.

“Gerry Martin”
Discipline Hearing Committee Chair