

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF s. 39(1)(b) and s. 41 of the *Real Estate Act*, R.S.A. 2000, c. R-5, as amended

AND IN THE MATTER OF a Hearing concerning the conduct of SIMONE ROUSSEAU currently registered as a real estate associate with 4th Street Holdings Ltd. o/a Re/Max Real Estate (Central)

Hearing Panel Members: Andrew Huntley, Chair
Cindy Dubray
Trent Gelmici

Appearing: Drew Saly on behalf of the Executive Director
Ross Kaplan QC, on behalf of Simone
Rousseau
Simone Rousseau

Hearing Date: June 30, 2010

DECISION OF A HEARING PANEL OF THE REAL ESTATE COUNCIL OF ALBERTA

I) INTRODUCTION

The Real Estate Council of Alberta held a hearing into the conduct of Simone Rousseau, currently registered as a real estate associate with 4th Street Holdings Ltd. o/a Re/Max Real Estate (Central). The Hearing Panel members were Andrew Huntley, Cindy Dubray and Trent Gelmici.

The Hearing took place on June 30, 2010. In attendance at the hearing were Drew Saly, legal counsel on behalf of the Executive Director of the Real Estate Council of Alberta, Ross Kaplan, legal counsel on behalf of Simone Rousseau and Simone Rousseau.

II) ALLEGATIONS

Ms Rousseau was called before the Hearing Panel to answer to the following allegations set out in a Notice of Hearing:

1. Signature Capital Inc. ("SGI") is a company incorporated pursuant to the laws of the Province of Alberta and was registered on March 23, 2006. At all material times, you were a Director and shareholder of SGI.
2. On November 13, 2009, SGI along with some 37 other related companies ("the Applicants") filed a petition in the Court of Queen's Bench in Calgary for the

- appointment of a receiver on the basis that “the Applicants are insolvent”. This petition was stated to be a matter pursuant to the *Bankruptcy and Insolvency Act*.
3. In support of the petition for appointment of a receiver you swore an affidavit dated November 12, 2009, as Director of SGI. In this Affidavit you stated that the “there is no cash to allow the Applicants to continue to operate on a day to day basis” and further “... it is clear that the Applicants are insolvent”. This Affidavit was also identified on the face of it to be in the matter of the *Bankruptcy and Insolvency Act*.
 4. On November 13, 2009, the Court issued a Receivership Order.
 5. On November 25, 2009, the court appointed receiver issued a first report.
 6. On January 3, 2010, you completed a Real Estate Agent / Associate Broker Registration Application. The form instructs as follows:

Please read each of the following questions carefully and answer truthfully.
 7. You answered Question 19 as follows:

Have you or has any business you owned or participated in as a director, officer, or manager ever been in bankruptcy or ever been the subject of any bankruptcy or receivership proceedings? **No**
 8. You then completed the Affidavit attached to this application form. The Affidavit instructs as follows:

All questions must be answered completely and truthfully. Making a false statement on this affidavit constitutes a criminal offence and is punishable by law. Any affidavit containing false or misleading information may result in the refusal of the application and suspension or cancellation of any authorization issued thereupon.
 9. In the Affidavit you swore as follows:

I, Simone Rousseau, of the City of Calgary in the Province of Alberta, Do Solemnly Swear I have read and understand all questions and statements. All information on this application is true.
 10. In reliance on the contents of your application and affidavit you were issued a Registration Certificate by the Real Estate Council of Alberta on January 3, 2010, thereby allowing you to trade in real estate in Alberta as an industry member.
 11. By reason of the matters described herein your conduct is deserving of sanction as follows:
 - (a) Obtained registration by fraud and/or contrary to **section 41(a) of the Rules and/or section 42(a) and (b) of the Rules made pursuant to the *Real Estate Act*** as follows:
 - Pursuant to s.17 of the *Real Estate Act* and section 6(4) of the Rules in force September 7, 2007 made pursuant to the *Real Estate Act*, no person may trade in real estate or hold himself out as a real estate associate without authorization;
 - You provided a false answer concerning a company you were director and shareholder of in your application for authorization;
 - You then swore falsely in your Affidavit that your answer concerning you're the company was true.
 - RECA relied on this answer and attestation of its truth to issue authorization to you.

III) EVIDENCE

The Panel received an Admission of Conduct Deserving of Sanction pursuant to s. 46 of the *Real Estate Act* from Ms Rousseau. In the document, signed by Ms Rousseau, she admitted to the allegations of fact and a breach of provisions of the *Real Estate Act Rules* as contained in the Notice of Hearing and admitted that her conduct in this regard was conduct deserving of sanction. Two documents were entered as evidence: The Affidavit of Service containing the Notice of Hearing, Exhibit 1 and the signed s.46 Admission of Conduct Deserving of Sanction, Exhibit 2;

IV) SUBMISSIONS

Counsel on behalf of the Executive Director submitted a joint submission on sanction and costs signed by both the Executive Director and Ms Rousseau. The sanction submitted was a fine of \$2,500; a suspension of authorization for 1 month and the completion of Ethical Practices in Real Estate within 6 months. It was further submitted that Ms Rousseau pay costs of the investigation and hearing in the amount of \$1,500.

The authorization application forms are important documents and state clearly on them that they are to be read carefully and answered truthfully. The Affidavit is meant to be solemn and reliable. The review of applications relies on this. It is not suggested that had Ms Rousseau answered correctly that she would have been refused authorization. However, RECA was prevented from performing a review of the circumstances concerning the receivership at the time of the application.

Ms Rousseau did cooperate with the investigation into her inaccurate answer. She provided all records requested and did express remorse for her conduct. In this particular case, the information obtained concerning the receivership was not such that it would have lead RECA to reject Ms Rousseau's application. An aggravating factor is that Ms Rousseau is new to the industry and has failed to appreciate the serious nature of her disclosure obligations owed to RECA.

Counsel submitted the sanction was being proposed as a minimum sanction for matters of this kind. A fine with suspension and costs would address the serious nature of failing to ensure application forms are filled in correctly and the serious and solemn act of swearing an affidavit.

Mr. Kaplan, counsel on behalf of Ms Rousseau, submitted that Ms Rousseau made the s.46 admission of conduct in her breach of s. 42(a) of the Rules and admitted her error. Mr. Kaplan submitted that the recklessness shown in this case was Ms Rousseau's carelessness and inattention. In agreeing to the sanction, Ms Rousseau acknowledges a high duty of care to the public and to the importance of paying attention to detail. Mr. Kaplan also submitted that bankruptcy and receivership have differing meanings in law and should not be included in the same section of the RECA application form.

V) FINDINGS AND ORDERS

On the basis of the returned Admission and section 47(2) of the *Real Estate Act*, the Hearing Panel finds that the conduct of Simone Rousseau is conduct deserving of sanction. Industry members must be vigilant when filling in the application forms for authorization to ensure they are correct.

As the sanction is agreed upon by both the executive director and Ms Rousseau, the Panel accepts the joint submission on sanction as reasonable and appropriate and hereby orders that Simone Rousseau:

1. be suspended for a period of 1 month beginning July 2.
2. pay a fine of \$2,500
2. pay costs of \$1,500
- 3 complete *Ethical Practices in Real Estate* within 6 months, or a similar course at the discretion of the Executive Director if that course is not available.

This Decision was made on the 2nd of July 2010

Andrew Huntley, Chair

Cindy Dubray

Trent Gelmici

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF s. 39(1)(b) and s. 41 of the *Real Estate Act*, R.S.A. 2000, c. R-5, as amended

AND IN THE MATTER OF a Hearing concerning the conduct of Simone Marie Rousseau, currently registered as a real estate associate with 4th Street Holdings Ltd. o/a Re/Max Real Estate (Central)

ADMISSION OF CONDUCT DESERVING OF SANCTION

1. I, Simone Marie Rousseau, of the City of Calgary in the Province of Alberta, hereby acknowledge that I have been given an opportunity to seek the advice of legal counsel. I hereby agree to the execution of this Admission of Conduct Deserving of Sanction voluntarily and of my own free will.
2. I admit to the allegations of fact and breach of provisions of the *Real Estate Act*, Rules and Code of Conduct as set out in Schedule "A" attached hereto and admit that my conduct in this regard is conduct deserving of sanction.

DATED this 29 day of June 2010.

Signed in the presence of

R.K.
Witness

Simone Marie Rousseau

SCHEDULE "A"

12. Signature Capital Inc. ("SGI") is a company incorporated pursuant to the laws of the Province of Alberta and was registered on March 23, 2006. At all material times, Simone Marie Rousseau ("Ms. Rousseau") were a Director and shareholder of SGI.
13. On November 13, 2009, SGI along with some 37 other related companies ("the Applicants") filed a petition in the Court of Queen's Bench in Calgary for the appointment of a receiver on the basis that "the Applicants are insolvent". This petition was stated to be a matter pursuant to the *Bankruptcy and Insolvency Act*.
14. In support of the petition for appointment of a receiver Ms. Rousseau swore an affidavit dated November 12, 2009, as Director of SGI. In this Affidavit she stated that "there is no cash to allow the Applicants to continue to operate on a day to day basis" and further "... it is clear that the Applicants are insolvent". This Affidavit was also identified on the face of it to be in the matter of the *Bankruptcy and Insolvency Act*.
15. On November 13, 2009, the Court issued a Receivership Order.
16. On November 25, 2009, the court appointed receiver issued a first report.
17. Pursuant to s.17 of the *Real Estate Act* and section 6(4) of the Rules in force September 7, 2007 made pursuant to the *Real Estate Act*, no person may trade in real estate or hold himself out as a real estate associate without authorization
18. On January 3, 2010, Ms. Rousseau completed a Real Estate Agent / Associate Broker Registration Application. The form instructs as follows:

Please read each of the following questions carefully and answer truthfully.

19. Ms. Rousseau answered Question 19 as follows:

Have you or has any business you owned or participated in as a director, officer, or manager ever been in bankruptcy or ever been the subject of any bankruptcy or receivership proceedings? No

20. Ms. Rousseau then completed the Affidavit attached to this application form. The Affidavit instructs as follows:

All questions must be answered completely and truthfully. Making a false statement on this affidavit constitutes a criminal offence and is punishable by law. Any affidavit containing false or misleading information may result in the refusal of the application and suspension or cancellation of any authorization issued thereupon.

21. In the Affidavit Ms. Rousseau swore as follows:

I, Simone Rousseau, of the City of Calgary in the Province of Alberta, Do Solemnly Swear I have read and understand all questions and statements. All information on this application is true.

22. In reliance on the contents of your application and affidavit Ms. Rousseau was issued a Registration Certificate by the Real Estate Council of Alberta on January 3, 2010, thereby allowing her to trade in real estate in Alberta as an industry member.
23. The answer given by Ms. Rousseau to Question 19 and sworn to be true was an inaccurate answer given the receivership proceedings for SGI.
24. In response to RECA investigation into the inaccurate answer given, Ms. Rousseau stated as follows:

On January 3, 2010 I recorded my answer as “No” to Question #19 on my Associate / Associate Broker Application for License & Registration. Admittedly, the answer I provided was unintentionally incorrect and should have been recorded as “Yes”. This error in my response was a result of my not completely reading the question and subsequently [sic], interpreting the question as referring only to bankruptcy and not “bankruptcy or receivership proceedings.” In my excitement to become a REALTOR, I did not read the question through to the end and provided my answer in haste.

25. This conduct is contrary to **section 42(a) of the Rules** made pursuant to the *Real Estate Act* to wit Ms. Rousseau acted recklessly in making a representation which was inaccurate and which misled a person at RECA.

AFFIDAVIT OF EXECUTION

CANADA)	I, R.K. of
)	(name of Witness)
PROVINCE OF ALBERTA)	the city/town of Calgary,
)	
TO WIT:)	in the Province of Alberta,
)	
)	MAKE OATH AND SAY THAT:

1. I was personally present and did see Simone Marie Rousseau, named in the attached instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
2. The same was executed at the City of Calgary, in the Province of Alberta, and that I am the subscribing witness thereto.
3. I know the said party and she is in my belief of the full age of eighteen years.

Sworn before me at the City of)	
)	
Calgary,)	
)	
in the Province of Alberta,)	
)	
this 29 th day of June, 2010.)	<u>R.K.</u>
)	_____
)	(signature of witness)
)	
<u>S.A.</u>)	
A Commissioner for Oaths in and		
for the Province of Alberta.		