



**Manitoba Financial
Services Agency**

October 9, 2024

IN THE MATTER OF: THE REAL ESTATE SERVICES ACT

- and -

IN THE MATTER OF: MAHMOOD PEYAWARY

- and -

IN THE MATTER OF: KYLE RYAN ALFRED SCRIMSHAW

**REASONS FOR DECISION
OF THE SETTLEMENT HEARING PANEL
THE MANITOBA SECURITIES COMMISSION**

Hearing Date: October 7, 2024

Panel:

Panel Chair:	Mr. D. Cheop, K.C.
Member:	Ms. D. Ammeter

Appearances:

K. Sharma)	Counsel for Staff of The Manitoba Securities Commission
R.E. Olschewski)	Counsel for Mahmood Peyawary
C. Tokar)	Counsel for Kyle Ryan Alfred Scrimshaw

Background

On April 18, 2024, Staff ("Staff") of The Manitoba Securities Commission ("Commission") issued a Notice of Hearing and a Statement of Allegations under subsection 59(1) of *The Real Estate Services Act* ("RESA") for a hearing to consider, among other things, whether it is in the public interest to order that conditions be imposed on the registrations of Mahmood Peyawary ("Peyawary") and Kyle Ryan Alfred Scrimshaw ("Scrimshaw") under RESA and/or their registrations as salesmen under RESA be suspended or cancelled.

The allegations relate to a house Peyawary bought in March 2019 through a corporation he owned. He made renovations to the property and then listed it for sale in June 2019 with himself as listing agent.

In the Statement of Allegations Staff essentially allege that Peyawary, in making renovations to the house, discovered significant material defects and covered them up. In addition, Staff allege that he misrepresented in promotional literature both the state of the property and who had done the renovations and that he also lied to Staff in the course of their investigation. In turn, Staff allege that Scrimshaw, who had assisted in the renovations, initially lied to Staff regarding his knowledge of the state of the property.

Settlement Agreement

Subsequent to the beginning of the hearing into the allegations, Staff of the Commission, Peyawary and Scrimshaw negotiated separate Settlement Agreements dated October 7, 2024 in connection with this proceeding. The Settlement Agreements were referred to this panel, which is a different panel than the one that was conducting the hearing. Having read the Settlement Agreements and considered the submissions of counsel for Staff, Peyawary and Scrimshaw, we accepted the Settlement Agreements and indicated that our reasons for doing so would follow. These are those reasons.

Reasons for the Approval of the Settlement:

The Settlement Agreements are the product of negotiations between counsel for Staff of the Commission and counsel for Peyawary and Scrimshaw, all of whom recommended acceptance. When considering a Settlement Agreement, a Commission panel must recognize the negotiation process and give significant weight to the agreement reached by the parties. Our role is to determine if the agreed upon sanctions are within the boundaries of what a reasonable person, aware of the circumstances, would consider to be in a range of reasonable outcomes. There is a high threshold to be met in order for a recommended Settlement Agreement to be rejected.

Peyawary Settlement Agreement

The Peyawary Settlement Agreement sets out a statement of facts and includes the following acknowledgements by Peyawary in connection with the sale of the property:

- he discovered and concealed significant cracks in the basement foundation walls during the renovation of the property, and failed to disclose this fact to the purchasers
- he misrepresented the condition of the Property in the promotional listings for the property

- after completing extensive renovations to the property, he misled the purchasers and other members of the public of his knowledge of the condition of the property by stating in the property listing that a Property Disclosure Statement was not available because he had not lived in it
- he lied to Staff investigators in writing and in an interview with respect to his knowledge of defects in the property and his attempts to conceal them

Peyawary also acknowledges that his conduct was contrary to the public interest.

In the Settlement Agreement Peyawary agrees to the issuance of an order including the following provisions:

- he is barred from applying for, or becoming registered, in any capacity under RESA for 36 months from the date of the order
- should he become registered under RESA in the future, conditions of registration as determined by the Registrar, under that Act, will be imposed on him for a period of 12 months
- he will have to successfully complete an educational course or other program, to be determined by the Registrar, within 12 months of becoming registered under RESA
- he will make a voluntary payment of \$9,900.00 to the purchasers of the property on the date of the order
- he will pay to the Commission \$25,000.00 costs of the investigation and hearing of this matter within 90 days of the date of the order

Scrimshaw Settlement Agreement

The Scrimshaw Settlement Agreement also sets out a statement of facts and acknowledges that he initially lied to Staff investigators in an interview about his knowledge of the extent of renovations done to the basement foundation walls. He also acknowledges that his conduct was contrary to the public interest.

In the Settlement Agreement Scrimshaw agrees to the issuance of an order including the following provisions:

- he is barred from applying for, or becoming registered, in any capacity under RESA for one year from the date of the order
- should he become registered under RESA in the future, conditions of registration as determined by the Registrar, under that act, will be imposed on him for a period of 12 months
- he will have to successfully complete an educational course or other program, to be determined by the Registrar, within 12 months of becoming registered under RESA
- he will make a voluntary payment of \$500.00 to the Commission

The central question that a panel of the Commission must also consider in connection with a proposed Settlement Agreement is whether approving it is in the public interest. In our view, the sanctions imposed on Peyawary and Scrimshaw in their respective Settlement Agreements are appropriate considering the facts of this matter and, in addition, will have the necessary deterrent effect for the industry as well as to prevent future improper conduct.

Registrants under RESA play an important role in helping the public when they buy or sell a home or condominium unit. When they also own the property they are selling, their responsibilities increase significantly. Actively concealing deficiencies in the property, and then lying to investigators afterwards, is a fundamental betrayal of the responsibilities of a registrant under RESA. In our view, these Settlement Agreements address the significance of this conduct.

Approval of a Settlement Agreement resolves a matter quickly, efficiently and with certainty. The settlement avoids the time and costs associated with a contested hearing process. In addition, the Settlement Agreement itself becomes public and can serve as a general deterrent to others in the industry against future improper conduct.

In the panel's view the Settlement Agreement falls within the acceptable parameters in the circumstances, and as a whole the resolution is in the public interest.

For these reasons, the panel concludes it is in the public interest to approve the Settlement Agreements.

"D. Cheop"

David Cheop, K.C.

Panel Chair

"D. Ammeter"

Debra Ammeter

Member