



Manitoba
Financial Services
Agency

THE REAL ESTATE SERVICES ACT)
Section 59(1))

Order No. 2860

October 7, 2024

KYLE RYAN ALFRED SCRIMSHAW

WHEREAS:

- (A) On April 18, 2024, The Manitoba Securities Commission (“Commission”) issued a Notice of Hearing (“Notice”) giving notice of its intention to hold a hearing to consider, inter alia, whether or not it was in the public interest to order, pursuant to section 59(1) of the Real Estate Services Act (“RESA”), that the registration of Kyle Ryan Alfred Scrimshaw (“SCRIMSHAW”) as a real estate salesperson be suspended;
- (B) On October 7, 2024, Staff of the Commission and SCRIMSHAW entered into a Settlement Agreement (the “Settlement Agreement”), which is subject to the approval of the Commission. A copy of the Settlement Agreement is attached as Schedule A;
- (C) SCRIMSHAW has consented to the issuance of this Order and has waived his right to a full hearing;
- (D) On October 7, 2024, the Commission held a hearing (“Settlement Hearing”) to consider whether or not to approve the Settlement Agreement;
- (E) At the Settlement Hearing, the Commission approved the Settlement Agreement and the Commission is of the opinion that it is in the public interest to make this Order.

IT IS ORDERED THAT:

1. The Settlement Agreement as set out in Schedule “A” (the Settlement Agreement), is hereby approved.
2. SCRIMSHAW shall be barred from applying for, or becoming registered, in any capacity under the RESA for a period of twelve (12) months, beginning from the date of this Order.

3. Conditions of registration as determined by the Registrar of the Manitoba Securities Commission be imposed on any future registration of SCRIMSHAW under the RESA, for a period of twelve (12) months, which period will begin when SCRIMSHAW becomes registered in any capacity under the RESA.
4. SCRIMSHAW must successfully complete an educational course or other program, to be determined by the Registrar of Real Estate of the Manitoba Securities Commission, within twelve (12) months of SCRIMSHAW becoming registered in any capacity under the RESA.
5. SCRIMSHAW will make a voluntary payment to the Commission in the amount of \$500.00 (five hundred dollars), which amount must be paid in full, within ninety (90) days from the date of this Order.
6. SCRIMSHAW not be permitted to be registered in any capacity under the RESA until SCRIMSHAW has satisfied, in full, each of the payment obligations indicated at items 5. in this Order, and as they are set out above.

BY ORDER OF THE COMMISSION



Director

Settlement Agreement

KYLE RYAN ALFRED SCRIMSHAW

and

STAFF OF THE MANITOBA SECURITIES COMMISSION

**The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, Manitoba
R3C 4K5**

SETTLEMENT AGREEMENT

A. Introduction

- A1. By way of Notice of Hearing, Statement of Allegations of Staff and Amended Statement of Allegations of Staff of the Manitoba Securities Commission (collectively, the "Pleadings"), notice was given to Scrimshaw, and for the Commission to consider whether:
- (a) Scrimshaw initially lied to Staff investigators in an interview about his knowledge of the extent of renovations done to the basement foundation walls;
 - (b) Scrimshaw's conduct was contrary to the public interest; and
 - (c) Pursuant to s. 59(1) of the RESA, Scrimshaw's registration should be suspended or terms and conditions should be attached to his registration; and
- A2. Discussions have been held between the Respondent and Staff in an effort to settle all issues in connection with the Pleadings. A settlement has been reached based on the terms and conditions set forth in this Settlement Agreement.
- A3. Pursuant to the settlement, Staff agree to recommend to the Commission that the proceedings against the Respondent be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. The Respondent consents to the settlement and to the making of the consent order referred to in Part D below, on the terms and conditions set forth in this Settlement Agreement.

B. Statement of Facts

Background

B1. Kyle Ryan Alfred Scrimshaw ("Scrimshaw") is a resident of the City of Winnipeg, in the Province of Manitoba.

B2. At all material times, Scrimshaw was registered as a real estate salesperson under *The Real Estate Services Act* ("RESA") with Royal LePage Top Producers.

(I) DETAILS

1. On or about March 15, 2019, Mahood Peyawary ("Peyawary"), through his solely owned numbered company, 10032668 Manitoba Ltd. purchased 2 Lavenham Crescent (the "Property") from H.B. with a possession date set for March 20, 2019.
2. Between March 2019 and June 2019 (the "Renovation Period"), Peyawary, with the assistance of Scrimshaw and others hired by Peyawary renovated the

Property. Scrimshaw was hired by Peyawary to do basic labour work on the Property.

3. On June 10, 2019, the Property was listed for sale for \$249,900. Peyawary was the listing salesperson and Royal LePage Top Producers was the listing brokerage.

4. The listing for the Property included several positive statements about the quality of the Property, including *"bring your fussiest buyers!"*, *"Wow! Be prepared to be amazed with this gem..."*, and *"...no disappoints here (sic)"*. The listing also included the statement *"No PDS as Vendors have never lived in the home"*.

5. On June 20, 2019, J.D. and D.T. (the "Purchasers") viewed the Property with their real estate agent. Peyawary made representations to the Purchaser's real estate agent that the Property had been recently renovated by professionals and that everything in the Property was in working order.

6. On June 20, 2019, the Purchasers wrote an offer to purchase for \$249,900, which was accepted the same day. The Purchasers took possession of the Property on July 5, 2019.

7. Following possession, the Purchasers uncovered several defects with the condition of the Property, including but not limited to:

- a) in the spring of 2020, water had seeped into the basement, which led to the discovery of a large crack in the foundation. Upon further inspection, the Purchasers discovered more foundation cracks throughout the basement that were concealed with new wooden studs and drywall. The major cracks were observed to have been recently filled with spray foam;
- b) the electrical wiring throughout the Property was improperly installed without permits;
- c) animal feces were found in the basement ceiling;
- d) the central vacuum, that was represented to be in working order, was not in working order;
- e) the flooring in the dining room began shifting and the tile flooring in the kitchen had cracked shortly after possession;
- f) the wax seal on the bathroom toilet on the second floor was improperly installed, causing a leak from the bathroom and water damage to the kitchen ceiling below;
- g) a window screen in the kitchen, that was included in the offer to purchase, was not included; and
- h) the Property had an unpaid balance on the water utility bill of \$1,400.

8. Peyawary stated in writing and in an interview with Staff investigators that the Property's basement had already been fully finished when he purchased the Property, and that he was not aware of any foundation cracks except for one visible crack in the laundry room;

9. During the investigation, Peyawary was asked to submit receipts for materials used to renovate the Property, and he intentionally withheld some relevant receipts;

10. Staff's investigation uncovered that Peyawary purchased and installed the materials used to conceal the foundation cracks;

11. Scrimshaw initially told Staff investigators that he was not aware of renovations in the basement involving drywall along the foundation walls, but later advised that he witnessed Peyawary gluing drywall directly onto a foundation wall along the basement staircase.

C. Acknowledgements

C1. Scrimshaw acknowledges that:

- (a) He initially lied to Staff investigators in an interview about his knowledge of the extent of renovations done to the basement foundation walls; and
- (b) His conduct was contrary to the public interest.

D. Terms of Settlement

D1. In order to effect a resolution of the issues raised by the Pleadings, Staff and the Respondent have entered into this Settlement Agreement. Upon this basis, Staff seek an order ("Consent Order") from the Commission that:

- a) Scrimshaw shall be barred from applying for, or becoming registered, in any capacity under the RESA for a period of one (1) year, beginning from the date of the Consent Order.
- b) Conditions of registration as determined by the Registrar of the Manitoba Securities Commission be imposed on any future registration of Scrimshaw under the RESA, for a period of twelve (12) months, which period will begin when Scrimshaw becomes registered in any capacity under the RESA.
- c) Scrimshaw must successfully complete an educational course or other program, to be determined by the Registrar of Real Estate of the Manitoba Securities Commission, within twelve (12)

months of Scrimshaw becoming registered in any capacity under the RESA.

- d) Scrimshaw will make a voluntary payment to the Commission in the amount of \$500.00 (five hundred dollars), which amount must be paid in full, within 90 (ninety) days from the date of the Consent Order.
- e) Scrimshaw will not be permitted to be registered in any capacity under the RESA until Scrimshaw has satisfied, in full, each of the payment obligations indicated at item D1 d) in these terms of settlement, and as they are set out above.


E. Procedure for Approval of Settlement

- E1. The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at a public hearing.
- E2. Staff and the Respondents agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Notice of Hearing and the Respondents hereby waive their rights to a full hearing and appeal of this matter.
- E3. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in Part D above is not made by the Commission, Staff will be entitled to proceed with whatever steps it is entitled by law to take, including but not restricted to the commencement of a hearing before the Commission, unaffected by this Settlement Agreement or the settlement discussions. In the event that such steps are taken, the Respondents shall have all the usual rights of an individual subject to such proceedings. If this Settlement Agreement is not approved or the Consent Order set out in Part D above is not made by the Commission, the terms of this Settlement Agreement shall remain confidential and will not be raised in this or any other proceeding and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications and in furtherance of settlement discussions, which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.
- E4. Staff and the Respondents agree that if this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document. The Consent Order and/or approved Settlement Agreement may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may

allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Respondents. Respondents should contact the securities regulator of any other jurisdictions in which the Respondents may intend to engage in any securities related activities, prior to undertaking such activities.

- E5. The Respondents agree that they will not raise in any proceeding this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as a basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other challenge that may be available.
- E6. If this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, the parties hereto will not make any statement inconsistent with this Settlement Agreement.

DATED at Winnipeg, Manitoba, this 7 day of October, 2024



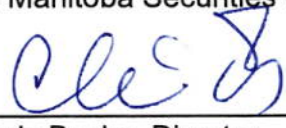
Witness



Kyle Ryan Alfred Scrimshaw

DATED at Winnipeg, Manitoba, this 7th day of October, 2024

Staff of the Manitoba Securities Commission

Per: 

Chris Besko, Director