

THE REAL ESTATE COUNCIL OF BRITISH COLUMBIA
IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended

AND

IN THE MATTER OF

MARIA FERNANDA ARCILA BARAHONA

CONSENT ORDER

RESPONDENT: Maria Fernanda Arcila Barahona,
currently unlicensed, while licensed with
West Coast Realty Ltd. dba Sutton
Group-West Coast Realty

DATE OF REVIEW MEETING: September 14, 2018

DATE OF CONSENT ORDER: September 14, 2018

CONSENT ORDER REVIEW COMMITTEE: R. Holmes, Q.C.
E. Mignosa
J. Lynch

ALSO PRESENT: D. Avren, Director, Legal Services
G. Thiele, Acting Manager, Legal Services
L. Fong, Independent Legal Counsel
J. Whittow, QC, Legal Counsel for the
Real Estate Council

PROCEEDINGS:

On September 14, 2018, the Consent Order Review Committee (the "Committee") resolved to accept the Consent Order Proposal ("COP") submitted by Maria Fernanda Arcila Barahona.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Maria Fernanda Arcila Barahona.

NOW THEREFORE, the Committee having made the findings proposed in the attached COP, and in particular having found that Maria Fernanda Arcila Barahona committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Maria Fernanda Arcila Barahona be prohibited from applying for a licence for three (3) years from the date of this Order;
2. Maria Fernanda Arcila Barahona pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

Dated this 14th day of September 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“R. Holmes, QC”

R. Holmes, QC, Chair
Consent Order Review Committee

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**IN THE MATTER OF THE REAL ESTATE SERVICES ACT
S.B.C. 2004, c. 42 as amended**

**AND
IN THE MATTER OF
MARIA FERNANDA ARCILA BARAHONA**

CONSENT ORDER PROPOSAL

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Maria Fernanda Arcila, whose name at the time of licensing was Maria Fernanda Arcila Barahona, ("Ms. Arcila") to the Consent Order Review Committee ("CORC") of the Real Estate Council of British Columbia (the "Council") pursuant to section 41 of the *Real Estate Service Act* ("RESA").

For the purposes of the Proposal, Ms. Arcila and the Council have agreed upon the following facts:

1. At all material times, Ms. Arcila was licensed as representative with West Coast Realty Ltd. Dba Sutton Group-West Coast Realty. Her licence lapsed on May 10, 2015.
2. In or about April, 2015, the Council received complaints from the owner of a residence located in Vancouver (the "Property") that he had discovered that his home had been sold to Ms. Arcila without his knowledge or consent and that Ms. Arcila had purported to assign the contract to a third person (the "Assignee"). The Assignee made a parallel complaint that she had paid \$65,000 on the assignment which had been fraudulently disbursed. The Owner and the Assignee both complained to the police. The Assignee also filed a claim to the Real Estate Compensation Fund.
3. At the request of the Council, Ms. Arcila attended for an interview on May 11, 2015. She provided her banking records and cooperated in the Council's investigation.
4. Ms. Arcila was a single mother and a student and a part-time representative. In that capacity she had some dealings with a MXXX RXXXX ("Mr. X").
5. In about March, 2015, Mr. X told her that he had a friend that wanted to sell his house, and Mr. X wanted to buy it and assign it immediately to another person, but he couldn't make the purchase in his own name because he didn't have a good relationship with the seller at the time. He told Ms. Arcila that if she would act as the buyer in the transaction, he would pay her \$6,000 out of the assignment.

6. Ms. Arcila agreed. She prepared a contract of purchase and sale on an SRS Westside Realty form (the "Contract") and a Notice of Disclosure of Interest in Trade Form. The Contract provided for a price of \$970,000, with a deposit of \$40,000 to complete on August 31, 2015. The offer was unconditional. The Contract indicated that the seller had no agency and Ms. Arcila had an agency relationship with herself. The Contract provided that the deposit was directly payable to the seller.
7. Ms. Arcila prepared a Disclosure of Interest in Trade Form dated March 28, 2015, which was incomplete in that it did not indicate to whom notice was to be provided.
8. Mr. X took Ms. Arcila to his bank and got a cheque payable to the "seller". Ms. Arcila did not fund this cheque. She did not have the money to complete the sale. Ms. Arcila entered this transaction with no intention of completing the sale and for the purposes of deceiving the seller as to the true identity of the buyer, Mr. X.
9. Mr. X left Ms. Arcila and returned a short time later, giving her the signed Contract. Mr. X also said that the seller had wanted a cash deposit, which he had given to the seller from funds in his possession, so he had not needed the deposit cheque.
10. A short time later, Mr. X then brought Ms. Arcila an agreement for the assignment of the Contract, which she signed (the "Assignment"). Ms. Arcila did not prepare the Assignment. The Assignment stated that the deposit would be "delivered in trust to direct to the assignor...and held in trust in accordance with the provisions of the [RESA]". There was no election made on the Assignment as to release of the assignment amount. The Assignment provided for repayment of the \$40,000 deposit plus an additional \$25,000.
11. The Assignee provided two bank drafts, for \$40,000 and \$25,000 to Mr. X, who again met with Ms. Arcila. Ms. Arcila then took the Assignee's bank drafts to her bank with Mr. X, deposited both, and disbursed the funds on his instructions. The entire proceeds were disbursed as follows:
 - (a) a \$9,000 payment made toward a Visa account of Mr. X's;
 - (b) a \$13,725.15 payment made toward another Visa account of Mr. X's;
 - (c) a \$10,000 credit transfer made to the bank account of "08XXXXXX B.C. Ltd.", which Mr. X said was his company;
 - (d) a \$21,206 credit transfer made to a bank account of Mr. X's and
 - (e) a \$5,000 cash withdrawal, which was given to Mr. X.

The balance amounting to just over \$6,000 remained in Ms. Arcila's account as the amount that Mr. X agreed for her to receive.

12. Ms. Arcila later learned that the Assignees had put up a sign in front of the Property indicating they would "build to suit" and the Owner said he had never sold the Property. Ms. Arcila spoke with all parties. She eventually realized she had been

duped. Ms. Arcila denied knowledge of the fraud and said she was tricked by Mr. X.

13. Ms. Arcila did not provide the Contract or the Assignment to her managing broker or otherwise inform the managing broker of this transaction.
14. Ms. Arcila has no prior disciplinary history with the Council.
15. The Assignee's claim to the Special Compensation Fund was paid in 2017.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Ms. Arcila proposes the following findings of misconduct be made by the CORC:

1. Ms. Arcila committed professional misconduct within the meaning of section 35(1)(a) (breach of RESA or the Rules), 35(1)(c) (deceptive dealing) and conduct unbecoming within the meaning of section 35(2) of RESA in that, between on or about March 28, 2015 and April 9, 2015, in relation to the Property, she:
 - a. represented herself as the buyer in a Contract, when she did not intend to complete the transaction, and in order to conceal the identity of the intended buyer ("Mr. X");
 - b. represented herself as the buyer on the Contract in order to induce a party (the "Assignee") to enter an Assignment dated March 28, 2015 (the "Assignment") and to mislead the Assignee as to the involvement of Mr. X in the transaction.
2. Ms. Arcila committed professional misconduct within the meaning of section 35(1)(a) (breach of RESA or the Rules) and conduct unbecoming under section 35(2) of RESA by failing to promptly deliver the funds received from the Assignee under the Assignment (the "Assignment Amount") to the brokerage in relation to which she was licensed contrary to section 27(1)(a) and/or 27(1)(b) of RESA.
3. Ms. Arcila committed professional misconduct within the meaning of section 35(1)(c) (wrongful taking) and conduct unbecoming under section 35(2) of RESA by misappropriating and/or wrongfully converting all or a portion of the Assignment Amount, when she deposited it into her personal bank account and disbursed the funds upon the instructions of Mr. X.
4. Ms. Arcila committed professional misconduct within the meaning of section 35(1)(a) (breach of RESA or the Rules) and conduct unbecoming under section 35(2) of RESA by accepting remuneration for real estate services from a person other than the brokerage in relation to which she was licensed, contrary to section 3-4 of the Rules and section 7(3)(a) of RESA.

5. Ms. Arcila committed professional misconduct within the meaning of section 35(1)(a) (breach of RESA or the Rules) and (d) (incompetence) and conduct unbecoming under section 35(2) of RESA by failing to promptly provide the managing broker with the records in relation to real estate services, contrary to section 3-2(1)(b) and/or section 3-4 of the Council Rules.
6. Ms. Arcila committed professional misconduct within the meaning of section 35(1)(a) (breach of RESA or the Rules) and (d) (incompetence) and conduct unbecoming under section 35(2) of RESA by failing to keep the managing broker informed of the real estate services being provided and other activities performed, contrary to section 3-2(2)(a) and/or section 3-4 of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Ms. Arcila proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

1. Ms. Arcila be prohibited from applying for licensing for three (3) years from the date of this Order; and
2. Ms. Arcila pay enforcement expenses in the amount of \$1,500 within 60 days of the date of this Order.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Arcila acknowledges and understands that the Council may refer or decline to refer the Proposal to the CORC. If the Proposal is referred to the CORC, it may be accepted or rejected by the CORC. If the Proposal is rejected by the CORC, the matter may be referred to a disciplinary hearing.
2. Ms. Arcila acknowledges that she has been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of the Proposal to the CORC; and that she has obtained independent legal advice or has chosen not to do so, and that she is making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Ms. Arcila acknowledges and is aware that the Council will publish the Proposal and the Consent Order or summaries thereof in its Report from Council newsletter, on the Council's website, on CanLII, a website for legal research and in such other places and by such other means as the Council in its sole discretion deems appropriate.

4. Ms. Arcila acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the RESA, to appeal any decision of the Council, including any Consent Order made by the Council in relation to this matter.
5. Ms. Arcila hereby waives her right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Ms. Arcila for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of Ms. Arcila in any civil proceeding with respect to the matter.

“Maria Fernanda Arcila”

**Maria Fernanda Arcila, formerly Maria
Fernanda Arcila Barahona**

Dated 31st day of July, 2018

Signature of Maria Fernanda Arcila
witnessed on the above date by

“Krystal Boulet”

Witness Name (*Please Print*)

“Krystal Boulet”

Witness Signature