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Chandra v. Schulte, 135 Nev. Adv. Op. 66 (December 26, 2019)¹

PROPERTY LAW: RECOVERY FROM THE NEVADA REAL ESTATE EDUCATION,
RESEARCH AND RECOVERY FUND

Summary

The Court determined that (1) the spousal exception bars recovery from the Nevada Real Estate Education, Research and Recovery Fund (“Fund”) for fraud incurred during the period of the marriage and (2) where a spouse co-owned the defrauded property, the surviving spouse may not recover from the Fund.

Background

William and Melani Schulte, respondents, acquired numerous properties in Nevada throughout their marriage as part of a real estate business. William and Melani operated the properties individually and through LLCs. In 2013, the Nevada Real Estate Commission determined that William was engaged in real estate fraud.

Subsequently, in 2013, William and Melani divorced. As part of the divorce decree, the district court awarded Melani twenty-one (21) separate judgements. Some of the judgements satisfied payments she made to third parties regarding William’s fraud. Other judgements awarded funds to her separate LLCs responsible for managing the properties to compensate for Williams’s failure to remit rent and other payments during the length of his fraud.

After the divorce, Melani failed to collect the judgements from William. As a result, Melani filed nine petitions to collect payment from the Nevada Real Estate Education, Research and Recovery Fund (“fund”). The Fund was created to compensate victims of real estate fraud. Importantly, the Fund only serves to compensate those defrauded through the actions of licensed real estate professionals. The district court, Cheryl B. Moss, granted the nine (9) petitions. Sharath Chandra, in her capacity as administrator of the Fund, appealed.

Discussion

Pursuant to the “Spousal Exception,” a Spouse May Not Recover From the Fund.

Nevada follows the “spousal exception” rule where a spouse may not recover from the Fund where the fraud was perpetuated by their spouse. The spousal exception stems from *Powers v. Fox*, wherein the California Court of Appeals disallowed a spouse’s recovery from California’s real estate fraud fund for fraud committed during the marriage.² In that case, the court determined that the public policy behind the Fund is designed to protect the public’s faith in licensed real estate professionals.³ To the contrary, the defrauded spouse fell victim to the fraud not because of her reliance upon a licensed real estate professional, but because she was married to the perpetrator.

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² 158 Cal. Rptr. 92, 95 (Ct. App. 1979).

³ *Id.*

Thus, the Fund is designed to encourage public reliance upon licensed real estate professionals. Where, as is here, reliance enabling fraud is not proximately caused by the individual's licensure, recovery from the Fund is barred.

An LLC May Not Recover Where the Fraudulent Transaction Does Not Require a Real Estate License.

In Nevada, an owner of real estate is permitted to conduct real estate transactions concerning their own property without a license.⁴ What is more, to recover from the Fund, the putative recoveree must show that the fraudulent transaction required a license. Here, William co-owned the properties with Melani when he was engaged in the fraud. Thus, as in individual William defrauded the community of William and Melani. As the fraudulent transactions did not require a real estate license, the Court held Melani could not recover from the Fund.

Conclusion:

In Nevada, a party that incurs loss through real estate fraud may recover the Nevada Real Estate Education, Research and Recovery Fund. A putative recoveree may not be married to the perpetrator at the time of the fraud. Further, the fraudulent transaction must require a real estate license. As such, the Nevada Supreme Court (1) reversed the District Court's order directing payment from the Fund.

⁴ Davis v. Beling, 128 Nev. 301, 321 (2012).