

FINAL REPORT

(Article 21 sub 1 Federal Ordinance Ombudsman)

Complainant:

Complaint against: Stichting Kadaster en Hypotheekwezen

Complaint No.: 00044/2012

Date Complaint: September 17, 2012

Synopsis of the Complaint:

On September, 17 2012filed a complaint with the Ombudsman. Complainant claims that the Stichting Kadaster & Hypotheekwezen (hereinafter: '**K&H**') agreed that there is insufficient evidence for the issuance of the certificate of admeasurement with number 472/1995, and that K&H promised to withdraw the pertinent certificate. However, afterwards the Complainant – by letter dated April 28 2011 - was informed by K&H that the certificate of admeasurement cannot be voided. Complainant sent a letter dated May 12 2011 to K&H explaining the situation, and the necessity to void the certificate of admeasurement. According to Complainant to the date of filing the complaint with the Ombudsman no response in regard to the request of withdrawal of the certificate of admeasurement was received, nor did the withdrawal of the certificate of admeasurement took place and Complainant is not informed how to correct the current situation.

The Complainant also requested K&H to carry out a title search on a parcel of land, which Complainant claims belonged in ownership to his great-great grandmother. The conducted pertinent search has been invoiced, but not charged by K&H. However, Complainant was informed by letter dated November 11 2011 that if he approached the K&H again reviving the case, the costs of the title search will be due. As a result the Complainant feels intimidated by the manner of acting by the representatives of K&H.

Findings:

On December 15, 1995 a certificate of admeasurement (in Dutch: '*meetbrief*') with number 472/1995 was issued in name ofbased on a last will of
Aforementioned persons were in the process to claim the parcel of land described in the certificate of admeasurement with number 472/1995 by prescriptive rights. Complainant objected the issuance of the parcel by prescriptive rights with the notary by letter dated September 11, 2002.

Complainant claims that his deceased great-great grandmother,, is the owner of the disputed parcel of land. Complainant has occupied the parcel of land since his youth.

Complainant alleged that during a meeting with K&H, Mr. Roos and Mr. Bruney agreed that the will ofwas not sufficient evidence for the issuance of the certificate of admeasurement with number 472/1995. According to Complainant he was promised by K&H that the certificate of admeasurement will be withdrawn. According to the Complainant he was requested to come to the office of K&H on several occasions, but the withdrawal of the certificate of admeasurement never took place. By letter of April 28, 2011 K&H informed Complainant that the certificate of admeasurement cannot be voided.

Complainant sent a letter to K&H on May 12, 2011 in which he explains the situation from his point of view and the necessity to void the certificate of admeasurement. Complainant



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claims that to date of filing the complaint with the Ombudsman no response in regard to the request of withdrawal of the certificate of admeasurement was received.

Furthermore, Complainant requested K&H to carry out a title search of the disputed land. According to Complainant he was informed in a letter dated February 7, 2007 from Mr. Patrick of K&H that the parcel belongs to the Bisdom Willemstad. Complainant asked Mr. Patrick to reconsider his findings since Complainant discovered that those findings were incorrect. Subsequently, Mr. Chittick, Bruney and Roos concluded in a general statement from K&H dated February 24, 2011, that pertinent parcel of land indeed does not belong in ownership to the Bisdom Willemstad.

By letter from K&H dated November 11, 2011, the Complainant was informed that research did not yield any evidence that his great-great grandmother was the owner of the pertinent parcel. Same letter states that the amount of Naf. 6,720. - in regard to the title search will not be charged. However, if Complainant *“approaches the Kadaster again for ownership proof ofand so reviving this case, we will then recharge you the previous invoice and the therein mentioned costs will form the basis for the costs of further researches. These costs you will then have to pay in advance before continuing with further researches”*.

Complainant filed a complaint with the Ombudsman on September 17, 2012 as he feels intimidated by the way the representatives of K&H acted in regard to the charges for the title search. The Complainant furthermore claims that no response in regard to his request of withdrawal of the certificate of admeasurement has been received.

On November 14, 2012 the Bureau Ombudsman sent a Notification of Complaint (“NOC”) to K&H with the following questions:

1. *Are you familiar with the above mentioned complaint?*
2. *What is your response to the complaint? (notwithstanding your answer to question 1).*
3. *Do you see possibility to resolve this issue on a short term by intervention of the Ombudsman?*
4. *Explain the procedure regarding the issuance of certificate of admeasurement, including a reference to the relevant law and or/policy.*
5. *Can you provide an explanation whether the issued certificate of admeasurement with number 472/1995 is correct or incorrect?*
6. *Explain the procedure to be followed if it occurs that the issued certificate of admeasurement is incorrect, including a reference to the relevant law and or/policy.*
7. *Can you provide a specification of the hours mentioned in the invoice?*
8. *Which tariffs have been applied? Provide a copy of the tariffs of K&H.*
9. *Does the invoice include the hours made in regard to the investigation of the land of the Bisdom Willemstad which turned out to be incorrect? If yes, can you provide an explanation how those hours are in proportion to the position of K&H that the whole invoice need to be paid if Complainant approaches K&H for ownership proof of s.l?.*

K&H did not respond to the NOC in accordance with art. 19 of the National Ordinance



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Ombudsman. In a letter dated December 10, 2012 addressed to the Complainant with a copy to Bureau Ombudsman, K&H alleges that the Ombudsman is not authorized to investigate a complaint against K&H since the law states that the Ombudsman has “*only authority over public bodies that have decisive power*”. A copy of the pertinent letter is “*as a courtesy sent to the Ombudsman as well*”.

Furthermore:

According to K&H the NOC does not make clear what the complaint exactly involves and conclude that the complaint entails that ‘*K&H refuses to register a parcel of land with meetbrief number CDS 472/1995 in complainant his great-great grandmothers name*’. K&H cannot fulfill the allege request of Complainant to register the certificate of admeasurement in name of....., because “*research has not brought up any evidence of a purchase of the said land by*”.

After an outline of the history of the alleged complaint, K&H attempts to respond to questions presented by the Ombudsman in the NOC as follows:

1. *Kadaster by means of the letter of the ombudsman of November 14th,2012 is familiar with the complaint.*
2. *Reference is made to the aforementioned discussion of the complaint.*
3. *Reference is made to the findings of the research that does not provide evidence of ownership.*
4. *This question is not clear to me. Could you please specify your question? If your question refers to drafting a Meetbrief, this is done at the request of interested parties/owners concerning a parcel of land. A copy of a Meetbrief can be obtained at the Kadaster against a payment (Article 6 Kadasterbesluit). Reference is made to the report of the Ombudsman and he response of the Kadaster.*
5. *The Ombudsman will understand that the deed has been drafted by the notary, so the notary must respond this question. The Kadaster registers deeds that have been made by the notary.*
6. *If a person would challenge the contents of a deed a prescriptive rights, he has to initiate a court procedure.*
7. *Yes. However, since the amount was never charged from Mr. Hodge this question is irrelevant.*
8. *The invoice clearly indicated that an amount of ANG 140,- per hour has been charged. All tariffs have been published in local newspapers at May 5, 6, 12 and 13 of 2011.*
9. *Operations by Kadaster are executed at the expense and risk of the requesting party (Article 3 Kadasterverordening). Reference to “bisdom Willemstad” in the statement by Mr. Patrick has not lead to any costs,since that statement was made based on their search.*

As a result of continued misunderstanding of its position and obligation as a private entity charged with public authority, as well as ignorance of the competence and the authority of the Ombudsman in accordance with the Constitution and National Ordinance Ombudsman, the Ombudsman suspended the investigation of all complaints filed against K&H to address the



Minister political responsible for K&H on these matters . The Ombudsman called upon the Minister of VROMI to answer regarding government's responsibility and accountability pertaining to the tasks executed by K & H. By letter dated July 18 2013 K&H was informed accordingly.

Upon receipt of the government's acknowledgement confirming the legal status of K&H as a private entity charged with public authority, and instructions to K&H to cooperate with investigations of the Ombudsman pursuant to the law, a Preliminary Findings Report ("PFR") regarding the findings in the case was sent to K&H on October 23, 2013. The PFR included two recommendations. K&H was requested to respond to the PFR, including the recommendations within four (4) weeks. As a result of appearant continued misunderstanding of its obligation pursuant to the law, including non-response to the PFR in this case, K&H was invited to a meeting on January 27, 2014 at the Bureau Ombudsman. The purpose of the meeting was to discuss the legal provisions regarding investigations by the Ombudsman and to answer questions from K&H regarding the investigation procedures (a brief summary of the meeting is attached to this report as an appendix for reference). K&H, represented by the Director and Members of the Supervisory Board, including the Chairperson, was informed about the importance in general of reacting to the Preliminary Findings. Failure to respond to the PFR will establish the findings stated therein to be considered as fact by the Ombudsman. The legal requirement of formal publication of the tariffs in the National Gazette, notwithstanding the publication in the local newspapers, and the consequences of failure to do so were emphasized. To the date of writing this report, no response to the PFR has been received from K&H.

Standard of proper conduct:

The applicable standards of proper conduct in this case are:

- The standard of *correct treatment*. This standard of proper conduct implies that a public body is required to show respect and treat its citizens with *dignity*. Moreover, a public body should be careful not to increase the dependency of a citizen on the government by giving the citizen a feeling of powerlessness. Professionalism entails that civil servants, as well as staff of private entities charged with public authority, are expected to adhere to higher standards regarding their behavior towards citizens. The basic assumption is that the interests of the citizen are prioritized by the civil servant. Thus a public body in general is always helpful and polite towards the citizen. Being polite and helpful embodies everything from giving directions, to making sure the citizen is able to make use of every option available to them in a procedure.

Furthermore this standard implies that a public body is required to be impartial. This entails that a public body is to handle unbiased and without judgment. To support impartiality the principle of motivation is essential. In its motivation a public body can objectively explain the reason behind a decision. The interest of the citizen should be taken serious.



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- The standard of *fair play* entails that a public body is expected to allow the citizen the opportunity to express and defend their views and opinions, while also being able to object the position and or point of view of a public body. Thus the behavior of the public body has to attest to openness, honesty and loyalty. A public body should be transparent and cannot prepare covert actions against a citizen. On the contrary a public body is required to actively assist the citizen in utilizing its procedural options.
- The standard of *prohibition on the misuse of power*. This standard of proper conduct implies that Government entities and private entities with public authority may not use its power for any purpose other than for which it is intended.

Conclusion:

Notwithstanding the position of the K&H, the Ombudsman is authorized to investigate complaints against the K&H. The Ombudsman is competent to investigate complaints against government entities and private entities with public authority. The public authority of K&H originates inter alia from the ‘*Eilandsverordening verzelfstandiging kadaster- en hypotheekwezen Sint Maarten*’ (AB 1998 no. 39 / AB2013, GT nr. 32).

The complaint filed with the Ombudsman is twofold:

- A) According to complainant to date of filing his complaint with the Ombudsman no response in regard to the request of withdrawal of the certificate of admeasurement was received, nor did the withdrawal of certificate of admeasurement took place, while the complainant is not informed how to correct the pertinent situation.
- B) As a result of the letter dated November 11, 2011 sent by K&H to the complainant pertaining to the above stated matter, Complainant feels intimidated by the approach by K&H in this matter, in particular the position regarding the quoted fees.

The history of the complaint and the involvement of Complainant with K&H dates back to a period before 2010. The Ombudsman however assumes competence to investigate the complaint as of October 10, 2010 and as such limits her conclusion on the behavior of K&H since October 10, 2010 in this matter.

By letter dated April 28 2011 K&H informed Complainant that the “*meetbrief you want to cancel was made on request of someone else and can only be cancelled with a valid reason on that person’s request. The meetbrief was made on the request of the heirs of the original titleholder of the property, which property is now succession land. Regardless of your position to the entitlement in the land to undertake any action with respect to this property, you will need the approval of all entitled heirs.*”



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By letter dated October 11, 2011 K&H informed Complainant that all he requested from K&H is *“a letter stating that the cadastre department has no record of previous ownership to the property bought byLand was purchased in the past, and not documented, which appears to be the case here”*.

With reference to previous research done by K&H, the Complainant was again informed that there is no *“evidence of the ownership of, nor any Kadaster records to the Industry Estate you are claiming to be an heir of”*.

Ad A) Considering the letters dated April 28, 2011 and November 11, 2011 to Complainant, the complaint regarding not having received a response in regard to the request of withdrawal of the certificate of admeasurement and that this was not done, is unfounded. However K&H failed to properly assist the Complainant to acquire all information needed from the Public Registries to further pursue his alleged rights to correct the pertinent situation.

By letter of April 28, 2011 K&H informed Complainant *“to undertake any action with respect to this property, you will need approval of all entitled heirs”*. By letter of November 11, 2011 K&H informed the Complainant that there is no *“evidence of the ownership of, nor any Kadaster records pertaining to the Industry Estate you are claiming to be an heir of”*.

Considering the above statements, as well as the statement that “meetbrief” 472/1995 was made on the request of the heirs of the original titleholder (in letter dated April 28, 2011), complainant could expect more cooperation and professionalism from K&H in identifying the registered owner of the property the Complainant has lived on since his youth and claims to be entitled to, or reveal the original titleholder of the property described in the certificate of admeasurement 472/1995.

Ad B) Complainant complained that he was not informed how to correct the current situation. As such K&H response to the complainant by letter of December 10, 2014 erroneously assumes that the complaint entails that K&H *“refuses to register a parcel of land with meetbrief number 472/1995 in the name of Complainant’s great-great grandmother’s name”*. The Ombudsman concludes that the actions of K&H, being the monopolist for land registry in the country in this respect lacked professionalism, and adequate service, which prevents the Complainant to further undertake action. As such K&H violated the standards of proper conduct pertaining to *correct treatment and fairplay*.

K&H also violated the standard of *prohibition on the misuse of power*. K&H informed Complainant that if he approaches the K&H again about proof of ownership by, they will then recharge Complainant’s previous invoice, and the therein mentioned costs will form the basis of the costs of further researches. This costs Complainant will then have to pay in advance before continuing with further researches. It is improper to first inform the citizen



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that the invoice is not due, and subsequently establish that if the Complainant requests further investigation of K&H the invoice will be due in order to prevent further inquiries. K&H should prevent the assumption that it would use its power in the relationship with a citizen for any purpose other than for which it is intended. In this case K&H uses the invoice as a tool to keep off the Complainant from addressing K&H again.

Judgment:

The complaint regarding not having received a response from K&H pertaining to the request for withdrawal of the certificate of admeasurement is unfounded. The conduct of the “Stichting Kadaster en Hypotheekwezen” is however improper pertaining to intimidation about payments awaiting Complainant; and providing adequate service to enable the complainant to pursue his alleged rights as well as and failing to inform Complainant how to correct the current situation. The standards of proper conduct “*correct treatment*”, “*fairplay*” and “*prohibition on the misuse of power*” have been violated.

Recommendations:

Considering the apparent miscommunication, which lead to the filing of the complaint, in particular the conflicting information in the various reports, including the statement pertaining to the costs of further research stated in the letter dated November 11, 2011, the Ombudsman recommends as follows:

- To invite the Complainant within one month of the date of the Final Report for a meeting to explain his options to remedy his situation.
- To provide Complainant with the latest excerpt of the parcel of land described in the certificate of admeasurement 472/1995, including the name of the original titleholder.
- To provide the complainant an excerpt or statement pertaining to the property of Industry Estate where Complainant resides;
- To withdraw the condition regarding of payment of the “cancelled” invoice, and make clear and appropriate arrangements for further services with the Complainant;
- To formally publish the tariffs of K&H according to the law within one month of the date of this Final Report.

Philipsburg, April 10, 2014

Signature:

Dr. R. (Nilda) J.A. Arduin
Ombudsman



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To: The Supervisory Board K & H, att. : Mrs. S. Mourillon – Sandiford
Management K & H, Mr. C. Roos

As a follow up to the meeting dated January 27, 2014 held at Bureau Ombudsman, I hereby establish the following.

As a result of apparent continued ignorance of the laws of the land regarding the status of the Ombudsman (OBM) and position of “*Kadaster & Openbare Registers*” (K & H) evidenced by the responses from K & H in the investigation regarding the complaint of [REDACTED], Management and the Supervisory Board were invited to a meeting with the OBM to discuss any and all misunderstandings regarding the above stated.

Present were:

Mrs. S. Mourillon – Sandiford, Chairperson Supervisory Board K & H.

Mr. Boetius, member Supervisory Board K & H.

Mr. C. Roos, Director of K & H.

Mr. A. Schoormans - Van Houten, Legal Advisor VROMI

Mr. M. Hart, Legal Advisor Bureau Ombudsman (BOBM)

Ms. P. Hilips, SG BOBM

Dr. Nilda Arduin, Ombudsman

The Ombudsman outlined the purpose of the meeting being to enlighten K & H regarding:

1. The status of the OBM as established by the Constitution and the National Ordinance OBM;
2. The tasks of the OBM, including case handling procedures as established by law;
3. To answer any questions the persons representing K & H may have in order to avoid future misunderstandings.

Upon a remark by Mr. Schoormans – Van Houten regarding the responsibility of the Minister of VROMI versus the Minister of Finance in accordance with the law, the OBM outlined an apparent oversight in the law upon transfer to the new constitutional reality, which transferred the collective responsibility of the Executive Council to the Minister of Finance only. This oversight charges the Minister of Finance erroneously with responsibilities of the Minister of VROMI as established in the National Ordinance Organisation of Country Sint Maarten. The Meeting was informed that this issue was brought to the attention of the Minister of VROMI and discussed with the Council of Ministers in 2013. It was established that the spirit and intention of the law warrant that the Minister VROMI be primarily accountable for the tasks transferred to and executed by K & H.



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After an outline of the agenda points 1 & 2 mentioned above, the OBM gave the Chair of the Supervisory Board the opportunity to ask any questions and or offer any remarks. Upon intervention by the Director the response of the Chair was that the Board had no questions or remarks, but attended the meeting merely as a courtesy to hear what the OBM had to say. In response hereto the Board was directed to article 19 of the National Ordinance OBM.

In answer to an observation by the Director of K & H, Mr. Roos, regarding the status of K & H as a private entity with public authority (“ZBO”), Mr. Schoormans – Van Houten read a passage in a letter from the Minister of VROMI outlining government’s position on the status of K & H. Mr. Schoormans - Van Houten requested the Board if it should be concluded that K & H is still contesting its responsibilities as a ZBO, and if so, whether the Supervisory Board sought a second legal opinion separately from Management. The Board responded that they did, and are in the process to further review this.

The OBM expressed surprise, astonishment as remarked by Mr. Schoormans – Van Houten, that after three (3) years the Supervisory Board had no position on this matter. Mr. Boetius stated that the members of the Supervisory Board are part-timers with full time jobs, and as such their function is limited by time.

In closing the OBM remarked that the outcome of the meeting re-enforces the conclusions established in the Final Report that the K & H is not fully operating according to the laws governing the entity.

The OBM pointed out the Board’s responsibility as Supervisory body pursuant to the Corporate Governance Code. The Legal Advisor of VROMI, Mr. Schoormans – Van Houten, was requested by the OBM to brief the Minister of VROMI about the meeting, in particular the position of the Director and the non-position of the Supervisory Board regarding the legal status of K & H after three years.

The meeting was closed by the OBM thanking Management and the members of the Supervisory Board, as well as the Legal Advisor of VROMI for attending the meeting. Special appreciation was extended to Mr. Schoormans – Van Houten for his contribution to the meeting.

For completeness sake the OBM hereby would like to emphasize the responsibilities of the Supervisory Board pursuant to both the Corporate Governance Code and Book 2 of the Civil Code. Special attention is once more requested for the official publication of tariffs established and applied by K & H since January 2011. The consequences of non-publication were outlined by the OBM during the meeting.

Sincerely,



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Dr. Nilda Arduin,
Ombudsman

Cc: Mr. M. Lake, Minister of V.R.O.M.

Mr. M. Hassink, Ministry of Finance

Mr. L. Brown, S.G. Ministry of V.R.O.M.I.

Mr. A. Schoormans – Van Houten, Legal policy Officer Ministry of V.R.O.M.I.