

**DECISION OF
THE SASKATCHEWAN REAL ESTATE COMMISSION
AND CONSENT ORDER**

Pylychaty (Re), 2016 SKREC 1

Date: April 13, 2016
Commission File: 2013-07

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF LORNA PYLYCHATY**

Before: A Saskatchewan Real Estate Commission Hearing Committee
comprised of the following:

Jeffrey P. Reimer - Chairperson

Paul Jaspar

Jeff Markewich

CHARGE and ADMISSION OF MISCONDUCT:

[1] The registrant is charged with and is admitting to professional misconduct as follows:

Count 1:

That, contrary to section 39(1)(c) of *The Real Estate Act*, Ms. Lorna Pylychaty breached Saskatchewan Real Estate Commission Bylaw 727, by advertising a property for sale without written authorization from both the owners.

Count 2:

That, contrary to section 39(1)(c) of *The Real Estate Act*, Ms. Lorna Pylychaty breached section 58(4) of the Act, by failing to have both sellers sign the counter-offer and amendment.

LEGISLATION:

- [2] Section 39(1)(c) of *The Real Estate Act* states: “Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act, if...it is a breach of this Act, the regulations or the bylaws or any terms or restrictions to which the registration is subject.”
- [3] Bylaw 727 states: “A registrant shall only advertise properties for sale or lease, or properties sold or leased when written authorization has been obtained from the owner or the owner’s lawful representative. The advertisement shall be in accordance with the lawful instructions of the owner or his or her lawful representative.”
- [4] Section 58(4) of *The Real Estate Act* states: “Where a registrant presents an offer mentioned in subsection (1) to a seller and the seller does not accept the offer, subsections (2) and (3) apply with respect to any amendment to the offer or counter offer, with any necessary modification.”

FACTS:

- [5] In accordance with subsection 9(4) of *The Real Estate Regulations* (“the Regulations”), the Hearing Committee accepts Lorna Pylychaty’s Statement of Facts and Admissions, which includes the following relevant points:
- [6] Ms. Pylychaty has been continuously registered under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission as a salesperson from October 8, 1999 until May 21, 2007, as an associate broker from May 21, 2007 until June 5, 2008, as a broker from June 5, 2008 until January 31, 2014, and as a branch manager since February 1, 2014.
- [7] Ms. Pylychaty has taken the following real estate courses:
- Fundamentals of Real Estate;
 - Principles of Real Estate Appraisal;
 - Principles of Real Property Law;
 - Principles of Mortgage Financing; and
 - Real Estate Office Management and Brokerage.
- [8] Ms. Pylychaty has completed the continuing professional development seminars each registration year since 2001-2002.
- [9] Ms. Pylychaty is presently registered under the provisions of *The Real Estate Act* as a branch manager with Yorkton Realty Inc. O/A Re/Max Blue Chip Realty.

- [10] At the time of the subject transaction, Ms. Pylychaty was registered under the provisions of *The Real Estate Act* as a broker with Dennis Moe Realty Ltd. O/A Re/Max Progressive Realty.
- [11] On October 14, 2010, Seller A and Seller B entered into an MLS® System Exclusive Seller's Brokerage Contract with Re/Max Progressive Realty listing the Property for sale. Seller A did not sign the Brokerage Contract or the attached MLS® Data Input Form.
- [12] Ms. Pylychaty conducted a title search for the Property and both Seller A and Seller B were registered as owners of the Property. Ms. Pylychaty did not print a copy of her title search.
- [13] Ms. Pylychaty's failure to have Seller A sign the Brokerage Contract and the Data Input Form was an oversight, and was not intentional.
- [14] Ms. Pylychaty advertised the Property on the Saskatchewan MLS® System.
- [15] On November 28, 2010, the Buyers wrote an offer to purchase the Property.
- [16] On November 30, 2010, Seller A and Seller B wrote a Counter Offer to Residential Contract of Purchase and Sale. Seller A did not sign the Counter Offer.
- [17] On November 30, 2010, an Amendment to Residential Contract of Purchase and Sale moving the possession date to December 20, 2010 was completed. Seller A did not sign the Amendment.
- [18] Seller A did not sign the Counter Offer or the Amendment because he was out in the field working at the time. Ms. Pylychaty reviewed the documents with him over the phone, and they proceeded without his signature to expedite the paperwork.
- [19] The Property was transferred to the Buyers.

REASONS:

- [20] The Investigation Committee and Ms. Pylychaty considered the following as relevant in agreeing to the within consent order:

Mitigating Factors

- [21] Ms. Pylychaty has no previous sanction history.
- [22] Ms. Pylychaty has been a registrant since 1999.
- [23] Ms. Pylychaty has been co-operative with the Commission's investigation.

- [24] Ms. Pylychaty admitted her misconduct and signed a Statement of Facts and Admissions.
- [25] The lack of signatures was an oversight rather than an intentional omission.
- [26] Ms. Pylychaty did discuss all the forms with Seller A, so he was aware of the contents of the documents and verbally consented to the documents.

Aggravating Factors

- [27] At the time of the alleged breaches, Ms. Pylychaty was a broker.
- [28] One of the documents that was not signed by Seller A was integral to the agency relationship between the sellers and the brokerage.
- [29] The other documents that were not signed by Seller A were integral to the purchase and sale of the subject property.

Prior Decisions

Bylaw 727

- [30] There are several decisions dealing with breaches of Bylaw 727, but many of them relate to registrants who prepared advertisements that contained a list of all properties listed for sale in an area including properties that were not listed with that registrant's brokerage. Other decisions deal with registrants signing listing agreements with individuals who had obtained an interest in a property, but who were not yet legal owners of the properties. The bulk of decisions involving Bylaw 727 involve registrants advertising properties without written authorization from any legal owner of the property and do not seem to offer any principles relevant to the present case.
- [31] The decision that is most similar to the case at hand is *Thiessen (Re)*, [2015 SKREC 5](#) in which the registrant only obtained the signature of one of two executors. Although Seller A had signed a document granting Seller B authority to sign documents on his behalf, Mr. Thiessen only obtained Seller A's signature on the listing agreement. Although she did not sign the document, Seller B did not object to Mr. Thiessen listing the property for sale.
- [32] Mr. Thiessen had no prior sanction history and was co-operative with the investigation. Mr. Thiessen had been a registrant for approximately eleven years at the time of the transaction. There was no evidence of consumer harm.
- [33] Mr. Thiessen received an order of reprimand and was ordered to pay a \$1,000 fine.

- [34] Ms. Pylychaty's conduct was similar to that of Mr. Thiessen. Ms. Pylychaty does not have a previous sanction history and she has been co-operative with the investigation process. She is a long-time registrant. As in *Thiessen (Re)*, the seller who did not sign the documents was aware of them and did not object to the listing of the property. Both Ms. Pylychaty and Mr. Thiessen admitted their errors and signed Statements of Facts and Admissions.
- [35] In the present case and in *Thiessen (Re)*, the registrant failed to obtain the signatures of both sellers on several documents.
- [36] Mr. Thiessen's actions are more serious in that he was personally involved in the transaction as a buyer, so it was even more important that all documents be completed properly. Ms. Pylychaty's breach of Bylaw 727 is more serious in that she was a broker at the time of the transaction and, as the person responsible for ensuring all personnel at the brokerage are in compliance with the legislation, should have known better than to proceed without the signature of one of the sellers. In the instant case, neither seller had authority to sign on the other's behalf.
- [37] A letter of reprimand and a \$1,000 fine are appropriate sanctions for Ms. Pylychaty's breach of Bylaw 727.

Section 58(4)

- [38] There are only three prior decisions involving a breach of section 58(4).
- [39] In 2004-49 *In the Matter of Judy Karle ("Karle")*, Ms. Karle was issued an order of reprimand and ordered to pay a \$500 fine for presenting an Amendment to her seller clients that had not been signed by the buyer. Ms. Karle acknowledged that she had erred by not requiring the registrant representing the buyer to prepare a properly completed form and by presenting the improperly completed form to her clients. The facts in *Karle* differ quite significantly from those in the present case.
- [40] In 1999-69A *In the Matter of Grant Mollberg ("Mollberg")*, Mr. Mollberg was issued an order of reprimand and ordered to pay a \$750 fine for failing to obtain the signatures of all buyers on the counter offer and the signatures of all sellers on an amendment to the contract of purchase and sale.
- [41] In 1997-50 *In the Matter of Del Peters ("Peters")*, Mr. Peters received an order of reprimand for not ensuring that the signatures of the buyers were witnessed on an accepted counter offer and by not physically presenting the seller's counter offer to the buyer. In *Peters*, the registrant was found to have breached other provisions and was ordered to pay \$10,000 into his brokerage's trust account to replace the deposit he had failed to collect. As a result, Mr. Peters was not required to pay any fines. As such, the decision in *Peters* is of little value as a precedent.

- [42] The facts at hand are most similar to the situation in *Mollberg*. Both Mr. Mollberg and Ms. Pylychaty got at least one signature on all documents, but failed to ensure that all parties were signing the necessary documents. In the case at hand, the seller who did not sign all the documents was aware of and did not object to the contents of all the documents, while the Hearing Committee in *Mollberg* noted that the buyer was not co-operative.
- [43] Neither Mr. Mollberg nor Ms. Pylychaty had/has a previous sanction history and both were co-operative with the investigation.
- [44] In *Mollberg*, the Hearing Committee noted the relationship and direct contact between the buyer and seller was an extenuating circumstance.
- [45] The Hearing Committee stated that Mr. Mollberg's violation of section 58(4) was a serious issue that put the buyer and seller at risk. While there was no evidence of consumer harm, the potential for harm could be significant.
- [46] The decision in *Mollberg* was issued in 2000, so the sanction must be considered in light of inflation and the sharp rise of property values in the intervening years.
- [47] An order of reprimand and a \$1,500 fine are appropriate sanctions for Ms. Pylychaty's breach of section 58(4).
- [48] As Ms. Pylychaty has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [49] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, the Hearing Committee, with the consent of the Branch Manager, Lorna Pylychaty, and the Investigation Committee of the Saskatchewan Real Estate Commission, hereby orders:
- [50] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Saskatchewan Real Estate Commission Bylaw 727:
- a. Lorna Pylychaty shall receive an order of reprimand for the violation of Bylaw 727;
 - b. Lorna Pylychaty shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$1,000.00 fine for the said violation of the *Act*; and
 - c. Lorna Pylychaty's registration shall be suspended if she fails to make payment as set out above.

- [51] With respect to Count 2, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of section 58(4) of the Act:
- d. Lorna Pylychaty shall receive an order of reprimand for the violation of section 58(4);
 - e. Lorna Pylychaty shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$1,500.00 fine for the said violation of the *Act*, and
 - f. Lorna Pylychaty's registration shall be suspended if she fails to make payment as set out above.

[52] There shall be no order as to costs.

Dated at Saskatoon, Saskatchewan this 13th day of April, 2016.

“Jeffrey P. Reimer”,
Hearing Committee Chairperson