

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

Anderson (Re), 2019 SKREC 28

Date: June 12, 2019
Commission File: 2015-12A

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF DALE ANDERSON**

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

Jeffrey P. Reimer- Chairperson
Doreen Heinbigner
Lori Patrick

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*, Mr. Anderson breached s. 66(2) of the *Act* by creating an agreement that failed to express the commission payable to the brokerage as a lump sum or as a percentage of the sale price.

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] Section 66(2) of the Act states:

“Any commission or other remuneration payable to a brokerage with respect to a trade in real estate is to be expressed as a lump sum or as a percentage of the sale price.”

FACTS:

- [4] In accordance with subsection 9(4) of The Real Estate Regulations (“the Regulations”), the Hearing Committee accepts Mr. Anderson’s Statement of Facts and Admissions, which includes the following relevant points:
- [5] Mr. Anderson has been continuously registered as a salesperson under the provisions of *The Real Estate Brokers Act, The Real Estate Brokers Act, 1987*, and *The Real Estate Act* in the Province of Saskatchewan with the Superintendent of Insurance Records and the Saskatchewan Real Estate Commission from January 18, 1983 through November 28, 1983; June 4, 1984 through June 1, 1988; November 29, 1989 through April 12, 1990; and since July 15, 1991.
- [6] Mr. Anderson has taken the following real estate courses:
- Real Estate 100; and
 - Fundamentals of Real Estate Upgrade Course.
- [7] Mr. Anderson has completed the continuing professional development seminars each registration year since 2001-2002.
- [8] Mr. Anderson is presently registered under the provisions of *The Real Estate Act* as a salesperson with Select Realty Saskatoon Ltd.
- [9] At all times relevant to these charges, Mr. Anderson was registered under the provisions of *The Real Estate Act* as a salesperson with 100% Realty Associates Ltd. O/A Re/Max Saskatoon.
- [10] In the winter of 2014, Mr. Anderson and Registrant A were representing a Developer who was looking to purchase several adjacent residential properties with the intention of constructing a large condominium complex.

- [11] In early November of 2014, Mr. Anderson and Registrant A contacted the Sellers to discuss the possibility of selling the Property to the Developer. At this time, the Sellers indicated that they were not interested in selling the Property, but they did ask how much the Developer was prepared to offer.
- [12] On November 25, 2014, the Developer wrote an offer to purchase the Property.
- [13] The offer to purchase initially named Re/Max Saskatoon and Mr. Anderson as the seller's brokerage and salesperson, respectively, and only included Seller A as an owner.
- [14] The inclusion of a Seller's Brokerage and salesperson was an error. A Limited Dual Agency Acknowledgement form was provided to the Sellers alongside the original offer. Mr. Anderson and Registrant A were advised by their broker to delete that information, as they were not representing the Sellers in an agency relationship. This information was deleted from the offer and the Sellers initialled the change.
- [15] The offer was delivered to the Sellers on November 26, 2014. The offer was originally open for acceptance until 5:00 p.m. November 28, 2014.
- [16] The Sellers did not accept the offer at that time and allowed it to lapse.
- [17] Registrant A contacted the Sellers on or about November 30, 2014 to ask why they had let the offer lapse. He was advised they were not planning on selling, that they liked the neighbourhood and that they did not think the offer of \$400,000 was enough money to ensure they could find another home in the same neighbourhood and maintain the same standard of living.
- [18] The following week, Mr. Anderson and Registrant A met with the Sellers to discuss the Property. Mr. Anderson and Registrant A explained the Developer's plan to create a condominium complex spanning five residential lots on the street. The Sellers were asked if they wanted to write a Counter Offer to the November 25 offer to purchase, but they declined.
- [19] On December 18, 2014, Seller B contacted Registrant A by email to apologize if she had been rude or confrontational when discussing selling the Property.
- [20] On December 21, 2014, Registrant A responded, stating it was no problem, as he understood this was an emotional decision. In this email, Registrant A advised Seller B that the buyer was moving forward with the houses to the west of the Property.
- [21] On December 23, 2014, Seller B sent an email to Registrant A requesting that he meet with the Sellers in January.

- [22] On or about January 12, 2015, Mr. Anderson and Registrant A met with the Sellers to discuss the matter again and potentially write a counter offer. Seller B was upset about their decision to sell the house. The Sellers advised Mr. Anderson and Registrant A that they wanted to write a counter offer increasing the purchase price so that they would receive \$448,000 net after commissions and establishing an agreement with the Developer whereby they would rent the Property.
- [23] On January 12, 2015, the Sellers signed a document to pay commissions (the "Commission Agreement") which, at their instruction, contained the notation "\$448,000 net to the seller." They did not allow Mr. Anderson or Registrant A to retain a copy of this document as they did not want it to come into effect until they had first reviewed and approved the Counter Offer that Mr. Anderson and Registrant A were to prepare.
- [24] The Residential Contract of Purchase and Sale was amended to include Seller B as a seller and to extend the deadline for acceptance of the offer from November 25, 2014 to January 15, 2015.
- [25] On January 13, 2015, the Sellers wrote a Counter Offer to the Developer that increased the purchase price to \$479,000, extended the dates for removal of conditions and possession, and set out the basics of a tenancy agreement between the Developer and the Sellers.
- [26] At the same time the Sellers wrote the Counter Offer, Mr. Anderson and Registrant A, in their presence and with their approval, added a notation to show the commission as 7% including any taxes.
- [27] The Developer signed acceptance of the Counter Offer on January 14, 2015.
- [28] On January 30, 2015, the Developer signed a Notice to Remove Conditions removing the financing condition.
- [29] Seller B had second thoughts about selling the Property to the Developer and the Sellers consulted their lawyer in relation thereto. However, the Sellers ultimately completed the transaction voluntarily and with independent legal advice.
- [30] Mr. Anderson's brokerage collected commission from the Sellers.

REASONS:

- [31] The Investigation Committee and Mr. Anderson considered the following as relevant in agreeing to the within consent order:

Mitigating Factors

[32] Mr. Anderson has no previous sanction history.

[33] Mr. Anderson has been a registrant since 1983.

[34] Mr. Anderson was co-operative with the investigation.

Aggravating Factors

[35] There are no aggravating factors.

Prior Decisions & Other Considerations

[36] In May of 2012, the Appeals Committee of the Real Estate Council of Ontario rendered a decision [*In the Matter of Suzette Thompson*](#) (“*Thompson*”). The Appeals Committee in *Thompson* set out a series of factors to be considered when determining the appropriate sanction for a registrant found in breach of the legislation. The factors are as follows:

1. The nature and gravity of the breaches of the Code of Ethics.
2. The role of the offending member in the breaches.
3. Whether the offending member suffered or gained as a result of the breaches.
4. The impact of the breaches on complainants or others.
5. The need for specific deterrence to protect the public.
6. The need for general deterrence to protect the public.
7. The need to maintain the public’s confidence in the integrity of the profession.
8. The degree to which the breaches are regarded as being outside the range of acceptable conduct.
9. The range of sanction in similar cases.

[37] These factors are reasonable considerations and can offer guidance to members of a Hearing Committee tasked with crafting an appropriate sanction for a registrant found to have committed professional misconduct. These factors have been consistently applied in Saskatchewan Real Estate Commission consent orders since September 2016.

1. The nature and gravity of the breaches of the Code of Ethics.

[38] Mr. Anderson and Registrant A improperly created a document listing the commission payable to their brokerage for the transaction. While a notation was later added to state that the Sellers would pay a 7% commission, this notation was not present on the form when the Sellers first signed it.

2. The role of the offending member in the breaches.

[39] Mr. Anderson and Registrant A were the only registrants involved in the breach.

3. *Whether the offending member suffered or gained as a result of the breaches.*
[40] There is no evidence to show that Mr. Anderson gained any benefits or suffered any losses as a result of the breach.

4. *The impact of the breaches on complainants or others.*
[41] There is no evidence to show that the Sellers suffered any loss as a result of the breach.

5. *The need for specific deterrence to protect the public.*
[42] Mr. Anderson must be made aware of the importance of clearly explaining and defining his relationship with clients and non-clients. Further, they must be reminded of the importance of properly drafting documents as required by the legislation.

6. *The need for general deterrence to protect the public.*
[43] Registrants must be made aware of the importance of properly defining and drafting documents with clients and non-clients, respectively.

7. *The need to maintain the public's confidence in the integrity of the profession.*
[44] Registrants occupy a position of trust with members of the public. Members of the public must be ensured that their trust is not misplaced. Any registrant conduct which undermines this trust cannot be tolerated as it jeopardizes the integrity and efficiency of the real estate industry as a whole.

8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
[45] Mr. Anderson's conduct falls below the standard expected of registrants, but it was not egregious.

9. *The range of sanction in similar cases.*

A. What is an appropriate sanction for Mr. Anderson's breach of s. 66(2) of the Act?

[46] There are only two previous decisions under Section 66.

[47] In *DeMarsh (Re)*, [2014 SKREC 6](#) (file #2013-04) ("*DeMarsh*"), Don DeMarsh received a \$2,500 fine and an order of reprimand when he breached section 66(3) of the Act while he represented the seller of a property. After the Brokerage Contract expired, Mr. DeMarsh was approached by a couple looking for a rental property with an option to purchase. Mr. DeMarsh spoke to the seller, who agreed to consider a rental purchase. The seller did not sign a new Brokerage Contract. Mr. DeMarsh prepared a Residential Contract of Purchase and Sale setting out the terms of the agreement for sale.

- [48] In June of 2011, nearly one year after the Brokerage Contract expired, Mr. DeMarsh's brokerage collected commission on the sale. Mr. DeMarsh was found guilty for failing to provide the couple with an Ancillary Services form.
- [49] The seller who paid the commission did not complain about it, this violation came to light while investigating the other charge. The brokerage contract had expired almost one year prior to the agreement for sale. Mr. DeMarsh was forthright and co-operative during the investigation. He wished to reach a timely and cost effective solution. No order for costs was sought because Mr. DeMarsh agreed to sign a Consent Order.
- [50] Mr. DeMarsh was also fined \$1,500 and issued an order of reprimand for failing to provide the couple with an Ancillary Services form.
- [51] Mr. Anderson's breach is slightly less serious than that of the registrant in *DeMarsh*. While he was not working with an expired brokerage contract, he did not have any brokerage contract at all with the Sellers.
- [52] In *Manton (Re)*, (file #1998-55) Jo ann Manton received an order of reprimand when she breached Section 66(2) while acting as a dual agent in an exclusive 24-hour seller's brokerage contract. At the time of the transaction, Ms. Manton was new to the real estate industry and agreed to a commission scheme proposed by the seller. In this scheme, the seller agreed to pay commission in a form other than "a lump sum or a percentage of the sale price". The Saskatchewan Real Estate Commission found no evidence that the buyer or seller was harmed in this specific trade in real estate.
- [53] The decision in *Manton* was rendered prior to an expansion of the real estate market in 2008 that saw significant increases in property values. As property values rise, so do the commissions registrants can expect to earn on trades in real estate. When using older decisions as precedent, the impact general inflation and rising property values have had on commissions payable to registrants on trades in real estate must be considered. Failure to account for these factors could lead to disciplinary action by the Commission coming to be considered a "cost of doing business".
- [54] Mr. Anderson's breach is more serious than that of the registrant in *Manton*. Mr. Anderson is not new to the real estate industry. He knew, or ought to have known, better. Further, in *Manton*, the parties were dealing with an exclusive 24-hour seller's brokerage contract, not a commission agreement without a brokerage contract.
- [55] An order of reprimand and a \$1,000 fine are appropriate sanctions for Mr. Anderson's breach of Section 66.

[56] As Mr. Anderson has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

[57] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Dale Anderson, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:

[58] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of s. 66(2) of the *Act*:

1. Mr. Anderson shall receive an order of reprimand for the violation of s. 66(2) of the *Act*;
2. Mr. Anderson 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
3. Mr. Anderson's registration shall be suspended if he fails to make payment as set out above.

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

Dated at Regina this 12th day of June, 2019.

“Jeffrey P. Reimer”,
Jeffrey P. Reimer, Chairperson