

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

Bhatia (Re), 2017 SKREC 7

Date: August 15, 2017
Commission File: 2015-47

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF GURPREET BHATIA**

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

Randal C. Touet - Chairperson
Paul Jaspar
Trevor Koot

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. Gurpreet Bhatia breached Saskatchewan Real Estate Commission Bylaw 702 by failing to protect and promote the interests of his clients.

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 702 states: “A registrant shall protect and promote the interests of his or her client. This primary obligation does not relieve the registrant from the obligation of dealing fairly with all other parties to the transaction.”

FACTS:

[4] In accordance with subsection 9(4) of *The Real Estate Regulations* (“the Regulations”), the Hearing Committee accepts Gurpreet Bhatia’s Statement of Facts and Admissions, which includes the following relevant points:

[5] Mr. Bhatia has been continuously registered as a salesperson under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since May 5, 2014.

[6] Mr. Bhatia has taken the following real estate courses:

- Real Estate as a Professional Career;
- Commercial Real Estate as a Professional Career;
- Residential Real Estate as a Professional Career; and
- Farm Real Estate as a Professional Career.

[7] Mr. Bhatia has completed the continuing professional development seminars each registration year since 2014-2015.

[8] Mr. Bhatia is presently registered under the provisions of *The Real Estate Act* as a salesperson with Re/Max Crown Real Estate.

[9] At the time of the transaction, Mr. Bhatia was a salesperson with #101265377 Saskatchewan Ltd. O/A Porchlight Realty.

[10] On May 30, 2015, the Sellers signed an MLS® System Seller’s Brokerage Contract listing the Property for sale.

[11] A registrant from another brokerage (the “Sellers’ Agent”) acted as the listing agent.

[12] In the listing for the Property, the Sellers indicated that they wanted at least 30 days’ notice for possession.

[13] On June 6, 2015, the Buyers wrote an offer to purchase the Property.

[14] The offer called for possession at 10:00 a.m. on June 26, 2015.

[15] The Buyers had given notice to their landlord and would need to move out for July 1, 2015.

- [16] Mr. Bhatia represented the Buyers.
- [17] On June 6, 2015, the Sellers wrote a Counter Offer that, among other things, amended the possession date to June 29, 2015.
- [18] The Buyers accepted the Counter Offer on June 6, 2015.
- [19] On June 17, 2015, Mr. Bhatia left on a trip to India.
- [20] The trip to India had been planned prior to his clients making an offer to purchase the Property.
- [21] Mr. Bhatia referred the Buyers to another registrant at his brokerage, but they refused to deal with anyone else.
- [22] The Buyers wanted Mr. Bhatia to finish handling the transaction as there was not much left to do.
- [23] Mr. Bhatia agreed to finish handling the transaction.
- [24] To facilitate his continued management of the file, Mr. Bhatia had his clients sign a removal of conditions and two different amendments, one extending conditions to June 19, 2015 and the other extending conditions to June 23, 2015. Mr. Bhatia carried these documents with him and his clients also had a copy.
- [25] Mr. Bhatia left a copy of the removal of conditions with the Buyers and told them to send it to the Sellers' Agent as soon as they received financing approval.
- [26] Mr. Bhatia is aware and believes it to be true that, as of June 17, 2015, the Sellers had not received a removal of conditions or an amendment extending conditions.
- [27] Mr. Bhatia received a phone call from the Sellers' Agent advising him of the same. Mr. Bhatia told her that she should have the removal of conditions that afternoon and, if she did not, Mr. Bhatia was flying to India and would email her when he arrived.
- [28] An Amendment extending the deadline for the removal of conditions to June 19, 2015 appears to have been completed on June 17, 2015. The Amendment also removed Buyer 1 as a buyer and added Buyer 3 to the contract as a co-buyer. This document was signed by Buyer 2 and Buyer 3.
- [29] Mr. Bhatia arrived in India on June 19, 2015.
- [30] India is approximately 11 hours ahead of Saskatchewan.

- [31] When Mr. Bhatia arrived in India, he learned that the Buyers had not been approved for financing.
- [32] Mr. Bhatia spoke to the Buyers' mortgage broker and was told that the broker only needed to send in some documents he had already received from the Buyers and that he was comfortable with lifting the financing condition.
- [33] On June 19, 2015, the Buyers and the Sellers signed a Notice to Remove Conditions which indicated that all conditions had been removed and the sale was "firm".
- [34] Mr. Bhatia advised the Buyers to go see the lawyer they had chosen.
- [35] The Buyers advised him that they had spoken to the lawyer they had chosen.
- [36] On June 28, 2015, Mr. Bhatia called another registrant at his brokerage and asked if he would get the keys on June 29, 2015 and turn them over to the Buyers.
- [37] Mr. Bhatia received a phone call from his clients advising that the bank had backed out and financing had been pulled.
- [38] Mr. Bhatia does not understand what the Buyers signed at the lawyer's office if the lawyer had not received instructions from the bank.
- [39] On June 29, 2015, Mr. Bhatia sent an email to the Sellers' Agent advising that there appeared to be a delay at the bank's end. Mr. Bhatia told her the lawyer got instructions the previous week, but they were not complete. Mr. Bhatia advised that they might end up waiting until the next day.
- [40] Mr. Bhatia is aware and believes to be true that, on June 29, 2015, the Buyers spoke to their mortgage broker again and decided to work with a different lender that had previously approved them for financing.
- [41] On June 30, 2015, Mr. Bhatia sent an email to the Sellers' Agent advising that the Buyers would be working with a different lender and requesting an extension of the possession date to get the new financing in order.
- [42] Mr. Bhatia is aware and believes to be true that, on June 30, 2015, the other registrant from his brokerage sent an email to the Sellers' Agent advising that he needed to pick up keys to the Property.
- [43] Mr. Bhatia is aware and believes to be true that the Sellers' Agent advised the other registrant from his brokerage that her brokerage had not received instructions to release keys to the Property and that Mr. Bhatia had told her the Buyers' financing had fallen through.

- [44] Mr. Bhatia is aware and believes to be true that, on July 2, 2015, the lawyer representing the Sellers (the "Sellers' Lawyer") wrote a letter to the lawyer representing the Buyers. The letter stated that, by failing to complete the transaction on or before the possession date set out in the Residential Contract of Purchase and Sale, the Buyers had forfeited their \$5,000 deposit to the Sellers. The Sellers would proceed with the sale of the Property to the Buyers if the Buyers were to deliver the forfeited \$5,000 deposit plus another \$10,000 non-refundable deposit to the Sellers' Lawyer's office by 11:00 a.m. July 3, 2015. The Buyers would have to take possession of the Property no later than July 15, 2015. There would be no extensions.
- [45] On July 3, 2015, the Sellers' Agent sent Mr. Bhatia an email setting out the terms on which the Sellers would proceed with the sale of the Property to the Buyers. The Buyers would have to deliver the \$15,000 non-refundable deposit to the Sellers' Lawyer's office by 11:00 a.m. that day.
- [46] On July 3, 2015, Mr. Bhatia replied to the Sellers' Agent's email and apologized for the communication gap since he was away. Mr. Bhatia advised that one of the Buyers was not agreeable to putting another \$10,000 down on the Property. Mr. Bhatia asked her to discuss the matter with the Sellers and let him know what the Sellers wanted to do.
- [47] On July 3, 2015, the Sellers' Agent sent Mr. Bhatia an email advising that the Sellers had put the Property on the market that day and that they had an accepted offer on the Property.

REASONS:

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

Mitigating Factors

- [49] Mr. Bhatia has no previous sanction history.
- [50] Mr. Bhatia was co-operative with the investigation.
- [51] Mr. Bhatia had been registered for less than a year at the time of the transaction.
- [52] Mr. Bhatia tried to refer the Buyers to another registrant at his brokerage, but the Buyers did not want to deal with anyone else.

Aggravating Factors

[53] The Buyers lost their \$5,000 deposit when they were not able to complete the transaction after removing conditions.

Prior Decisions & Other Considerations

[54] 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 there to be specific deterrence to protect the public.
6. The need for there to be general deterrence to protect the public.
7. The need to maintain the public’s confidence in the integrity of the professional.
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.

[55] 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.

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

[56] Mr. Bhatia left the country on a planned holiday before the Buyers’ transaction completed. At the Buyers’ insistence, Mr. Bhatia continued to represent them in their purchase of a property. As a result, Mr. Bhatia had the Buyers sign documents in advance. There were several miscommunications between Mr. Bhatia, the Sellers’ Agent, the Buyers and the other registrant from his brokerage. The Buyers ultimately forfeited their deposit when they were unable to complete the transaction after removing conditions.

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

[57] Mr. Bhatia was the sole perpetrator of these breaches of the legislation.

3. Whether the offending member suffered or gained as a result of the breaches.

[58] There is no evidence to suggest that Mr. Bhatia suffered a loss or experienced a gain as a result of his breach of the legislation.

4. *The impact of the breaches on complainants or others.*

[59] The Sellers were upset that the Buyers were not able to complete their purchase of the property, especially after agreeing to allow the Buyers a few extra days to obtain new financing. The Buyers ultimately lost their \$5,000 deposit.

5. *The need for there to be specific deterrence to protect the public.*

[60] Specific deterrence is needed in this case to ensure that Mr. Bhatia understands that he is obligated to protect and promote the interests of his clients and that, when circumstances prevent him from satisfying this obligation, he cannot continue in his representation of the client, even if the client insists. Mr. Bhatia must also understand that having a client complete documents in advance for use when he is not available is not appropriate.

6. *The need for there to be general deterrence to protect the public.*

[61] General deterrence is needed to ensure that other registrants know that the obligation to protect and promote the interests of the client includes the obligation to stop representing the client if it becomes clear that the registrant is not able to adequately protect the client's interests. All registrants must be aware that having a client complete documents in advance for use if the registrant is unavailable is not an appropriate practice.

7. *The need to maintain the public's confidence in the integrity of the professional.*

[62] A member of the public who is dealing with a registrant must be confident that the registrant is working in her or her best interests. This confidence is bolstered by the knowledge that, if circumstances prevent the registrant from satisfying their professional obligations to clients, the registrant will be forthcoming about the issues and, if necessary, refer the client to another registrant to ensure the client's interests are adequately represented.

8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*

[63] Mr. Bhatia's conduct falls below the minimum acceptable standard of registrant conduct, but his actions were not egregious.

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

[64] In 2012-62 [In the Matter of Duane Braaten](#) ("Braaten"), the registrant was fined \$500, ordered to pay \$5,774.17 in costs and issued an order of reprimand for failing to ensure that his brokerage retained proper records relating to a property management client and for failing to respond to the client's emails or to follow up with employees to ensure someone was responding to the client's emails. At the hearing, Mr. Braaten gave evidence regarding the significant personal stress he was facing at the time of the transaction and indicated that he relied on his employees to carry out their duties.

- [65] Mr. Braaten did not have a previous sanction history and had been a registrant since 1986. He was co-operative with the investigation and admitted to his breaches of the legislation. There was no suggestion that Mr. Braaten intended to deceive the client. The issues Mr. Braaten was facing in his personal life were a mitigating factor.
- [66] The Hearing Committee noted that Mr. Braaten had the opportunity to deal with the situation in a number of circumstances, but that he did not do so. The Committee stressed the importance of general deterrence, stating it is important for all brokers and registrants to take responsibility for their business.
- [67] Mr. Bhatia's breach of the legislation is more serious than that of the registrant in *Braaten*. Mr. Bhatia's breach of Bylaw 702 also involved having his clients sign documents in advance for use after he left on holiday. Mr. Braaten's sanction was mitigated by evidence of significant stress he was experiencing in his personal life.
- [68] In 2005-03 [*In the Matter of Lauri Rose*](#) ("Rose"), the registrant was issued an order of reprimand and a \$1,500 fine for having her buyer clients sign documents in advance and for using one of the pre-signed documents to remove a financing condition when the buyers had not yet obtained unconditional approval of their mortgage application. The buyers ultimately had to back out of the deal because they were not able to obtain financing.
- [69] Ms. Rose had no previous sanction history and did not experience any personal gain in the transaction. The anxiousness of the buyer clients to close the sale mitigated against a more severe penalty, but the Hearing Committee cautioned that the excitement of the client does not relieve the registrant of his or her duty to protect the client.
- [70] The Hearing Committee noted that the role of the registrant is to provide the information and guidance to the client in order that the client can make the decision. The Committee also stated that they do not condone the use of pre-signed forms, regardless of the difficulty of locating clients. This often leads to confusion and may put the registrant in the position of deciding matters for the client rather than allowing the client to make the informed decision.
- [71] Mr. Bhatia's breach of Bylaw 702 is similar to that of the registrant in *Rose*. Neither Mr. Bhatia nor Ms. Rose had a previous sanction history. Both registrants followed their clients' wishes to their clients' detriment. In *Rose*, the Committee sanctioned the registrant for making the decision to remove the financing condition on the clients' behalf instead of giving the clients the information needed to make the decision on their own. Mr. Bhatia allowed the clients to make their own decisions, but failed to provide them with the information and guidance needed to protect their interests.

