

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

Stroeder (Re), 2017 SKREC 9

Date: September 5, 2017
Commission File: 2015-69

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF SHANNON STROEDER**

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

Mr. Jeffrey P. Reimer - Chairperson

Mr. Vern McClelland

Mr. Dave Hepburn

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. Shannon Stroeder breached Saskatchewan Real Estate Commission Bylaw 701(a) by making or permitting to be made a statement, record, report, notice or other document required by the Act, the regulations or the bylaws that contains an untrue statement of a material fact, that being the square footage of a property.

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 701(a) states: “No registrant shall make or permit to be made, whether orally or otherwise, a statement, record, report, notice or other document required by this Act, the regulations or the bylaws that...contains an untrue statement of a material fact.”

FACTS:

- [4] In accordance with subsection 9(4) of *The Real Estate Regulations* (“the Regulations”), the Hearing Committee accepts Shannon Stroeder’s Statement of Facts and Admissions, which includes the following relevant points:
- [5] Ms. Stroeder 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 September 14, 2010.
- [6] Ms. Stroeder has taken the following real estate courses:
- Real Estate as a Professional Career; and
 - Residential Real Estate as a Professional Career.
- [7] Ms. Stroeder has completed the continuing professional development seminars each registration year since 2010-2011.
- [8] Ms. Stroeder is presently registered under the provisions of *The Real Estate Act* as a salesperson with Chedan Enterprises Ltd. O/A Century 21 Diamond Realty.
- [9] On April 20, 2013, the Sellers signed an MLS® System Seller’s Brokerage Contract listing the Property for sale with Century 21 Diamond Realty.
- [10] Ms. Stroeder acted as the listing agent.
- [11] The MLS® System Data Input Form completed with respect to the Property indicates that the Property is 1,280 square feet.
- [12] The resulting MLS Listing states that the Property is 1,280 square feet.
- [13] Ms. Stroeder obtained the square footage of the Property by consulting the Saskatchewan Assessment Management Agency (“SAMA”) Report.
- [14] It was very cold the day the Sellers signed the listing agreement, so Ms. Stroeder did not go outside to conduct her own exterior measurements.

- [15] Ms. Stroeder intended to return to the Property another day and conduct the measurements, but she became busy with other listings and did not measure the exterior of the Property to confirm the information in the SAMA Report.
- [16] The Buyers purchased the Property in the summer of 2013.
- [17] The Buyers were represented by another registrant from a different brokerage (the "Buyers' Agent").
- [18] In August of 2014, Ms. Stroeder was contacted by the Buyers' Agent to discuss the Property. The Buyers' Agent told Ms. Stroeder that she had been engaged to list the Property for sale and that, while conducting measurements, she had noticed that her measurements did not accord with Ms. Stroeder's listing or with the SAMA Report.
- [19] The Buyers' Agent told Ms. Stroeder that the Buyers were upset to learn of the difference in the square footage.
- [20] Ms. Stroeder has been advised and believes it to be true that, in January of 2015, SAMA attended at the Property to measure the home and found it to be 1,120 square feet.

REASONS:

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

Mitigating Factors

- [22] Ms. Stroeder has no previous sanction history.
- [23] Ms. Stroeder was co-operative with the investigation.
- [24] Ms. Stroeder signed a Statement of Facts and Admissions acknowledging her misconduct.

Aggravating Factors

- [25] Members of the public relied on the accuracy of the information Ms. Stroeder recorded about the size of the Property. Approximately one year after purchasing the Property, the Buyers decided to list it for sale. The Buyers' Agent conducted her own measurements of the Property in the course of the listing and discovered the discrepancy.

Prior Decisions & Other Considerations

- [26] 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.
- [27] 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.*
- [28] Ms. Stroeder was aware that she was obligated to take her own measurements of the Property, but failed to do so. She relied on information from the SAMA Report that was ultimately determined to be inaccurate. Members of the public relied on the inaccurate information she had provided.
2. *The role of the offending member in the breaches.*
- [29] Ms. Stroeder was the sole perpetrator of this breach of the legislation.
3. *Whether the offending member suffered or gained as a result of the breaches.*
- [30] There is no evidence to suggest that Ms. Stroeder benefitted from her actions, nor is there evidence that she suffered any losses.
4. *The impact of the breaches on complainants or others.*
- [31] The Buyers were upset to learn of the discrepancy in the square footage.
5. *The need for specific deterrence to protect the public.*
- [32] Ms. Stroeder must be reminded that she is responsible for conducting her own measurements of every property she lists for sale.

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

- [33] General deterrence is needed to remind all registrants that a listing agent is required to measure every property he or she lists for sale.

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

- [34] The public must be reassured that the information given by registrants is accurate and has been verified by the registrant.

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

- [35] Ms. Stroeder'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 Ms. Stroeder's breach of Bylaw 701(a)?

- [36] In *Rusnak (Re)*, [2016 SKREC 6](#) (file 2011-14) ("*Rusnak*"), the registrant was issued an order of reprimand and ordered to pay a \$2,000 fine for making or permitting to be made a statement, record, report, notice or other document required by the Act, the regulations or the bylaws that contained an untrue statement of a material fact and/or omitted to state a material fact. As part of a listing, Ms. Rusnak stated that the approximate size of the property was 868 square feet on one level. Ms. Rusnak consulted the SAMA Rate Payer Profile, which listed the property as 672 square feet. The buyers purchased the property in 2008. In 2011, the buyers approached another registrant to list the property for sale. The other registrant consulted the SAMA Profile, measured the property and reported to the buyers that the property was smaller than the approximate size set out in the 2008 listing.
- [37] Ms. Rusnak admitted her misconduct and signed a Statement of Facts and Admissions.
- [38] Ms. Rusnak had a prior sanction history for breaching Bylaw 726 by making inaccurate statements about a property in a feature sheet.
- [39] Ms. Stroeder's actions are not as serious as those of the registrant in *Rusnak*. Ms. Stroeder does not have a previous sanction history and the approximate size set out in Ms. Rusnak's listing did not accord with the SAMA Profile she consulted.
- [40] In *Maduck (Re)*, [2014 SKREC 3](#) (file 2011-07) ("*Maduck*"), the registrant was issued an order of reprimand and ordered to pay a \$2,000 fine for making a statement, record, report, notice or other document required by the Act, Regulations or Bylaws that contains an untrue statement of a material fact. Mr. Maduck prepared an MLS® Data Input Form that listed the total building area of

the property as 5,040 square feet. Mr. Maduck relied on information obtained from the City of Regina, an old MLS® listing of the property and a lease agreement provided by the owner to determine the total size of the building and the relative sizes of the two separate spaces within the building. A buyer purchased the property. A subsequent survey of the property determined that it was approximately 4,162 to 4,182 square feet.

- [41] Mr. Maduck had no previous sanction history.
- [42] It is not sufficient for registrants to rely on information from other sources, particularly when the physical measurements are easily obtained.
- [43] Ms. Stroeder's actions are not as serious as those of the registrant in Maduck. The discrepancy between the size of the property set out Mr. Maduck's listing and the actual size of the property was much larger than the discrepancy in the case at hand.
- [44] In *Elder (Re)*, [2013 SKREC 7](#) (file 2010-13) ("*Elder*"), the registrant was issued an order of reprimand and fined \$2,500 for making or permitting to be made a statement, record, report, notice or other document required by the Act, the regulations or the bylaws that contained an untrue statement of a material fact and/or omitted to state a material fact. In a listing, Ms. Elder indicated that the property was a rectangular shape and that the property included the house, garage, water well that serviced the property and the access road to the property. Ms. Elder relied on the information she had included in her listing of the property several years prior and did not take steps to verify the property boundaries. As part of a potential sale, the seller obtained the services of a surveyor and it was discovered that the water well servicing the property was wholly situated on another parcel of land owned by a third party; that the access road connecting the property to the municipal roadway was partially situated on another parcel of land owned by a third party, eliminating access to the property; and that a portion of the yardsite believed to be part of the property was actually situated on another parcel of land owned by a third party. The seller was unable to negotiate an easement for the purpose of accessing the well and using the driveway. The potential buyer ended negotiations for the property and the seller moved from the property, as the owner of the neighbouring property took the position that it was trespassing to access the property.
- [45] Ms. Elder was a long-time registrant with no previous sanction history.
- [46] The consequences suffered by the seller were severe and Ms. Elder's breaches of the Bylaws were significant. The Deputy Superintendent of Real Estate stated that it "is fundamental that registrants verify facts before they are set out in listing agreements" and that "[o]ther registrants and the public must be able to rely on the accuracy of these representations in making their recommendations and decisions."

- [47] Ms. Stroeder's actions are not as serious as those of the registrant in Elder. Ms. Elder relied on the information contained in her own previous listing of the property, while Ms. Stroeder relied on information obtained from a SAMA Report. The consequences suffered by Ms. Elder's client were far more severe than those suffered by the Buyers who relied on Ms. Stroeder's information.
- [48] An order of reprimand and a \$1,750 fine are appropriate sanctions for Ms. Stroeder's breach of Bylaw 701(a).
- [49] As Ms. Stroeder has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [50] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, the Hearing Committee, with the consent of the Salesperson, Shannon Stroeder, and the Investigation Committee of the Saskatchewan Real Estate Commission, hereby orders:
- [51] 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 701(a):
- a. Shannon Stroeder shall receive an order of reprimand for the violation of Bylaw 701(a);
 - b. Shannon Stroeder shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$1,750.00 fine for the said violation of the *Act*; and
 - c. Shannon Stroeder'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 Regina, Saskatchewan this 5th day of September, 2017.

Jeffrey P. Reimer,
Hearing Committee Chairperson