

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

*Lorenz (Re)*, 2018 SKREC 2

Date: February 16, 2018  
Commission File: 2015-79

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF WALLY LORENZ**

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

Jeffrey Reimer - Chairperson  
Mike Duggleby  
Al Myers

**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. Wally Lorenz breached section 58(1)(a) of the *Act* by failing to put offers to purchase in writing.

**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 58(1)(a) of the *Act* states: "An offer to purchase obtained by a registrant ...is to be in writing, dated and signed by the buyer in the presence of a witness."

## **FACTS:**

- [4] In accordance with subsection 9(4) of *The Real Estate Regulations* (“the Regulations”), the Hearing Committee accepts Wally Lorenz’s Statement of Facts and Admissions, which includes the following relevant points:
- [5] Mr. Lorenz 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 July 1, 2004.
- [6] Mr. Lorenz has taken the following real estate courses:
- Fundamentals of Real Estate;
  - Principles of Mortgage Financing;
  - Principles of Real Estate Appraisal; and
  - Principles of Real Property Law.
- [7] Mr. Lorenz has completed the continuing professional development seminars each registration year since 2004-2005.
- [8] Mr. Lorenz is presently registered under the provisions of *The Real Estate Act* as a salesperson with 101288656 Saskatchewan Ltd. O/A Re/Max of the Battlefords.
- [9] On or about January 29, 2015, the Seller listed the Property for sale with Re/Max of the Battlefords.
- [10] Mr. Lorenz acted as the listing agent.
- [11] In January of 2015, the Buyer contacted Mr. Lorenz and arranged to view the Property.
- [12] The Buyer asked Mr. Lorenz to take a verbal offer of \$225,000 to the Seller.
- [13] Mr. Lorenz spoke to the Seller about the verbal offer and was advised that she was not interested in responding to an offer of \$225,000, but would be interested in an offer that was much closer to the listing price.
- [14] Mr. Lorenz communicated this information to the Buyer.
- [15] The Buyer made a second verbal offer of \$245,000.
- [16] Mr. Lorenz presented this second verbal offer to the Seller, who responded that the offer needed to be at \$260,000.
- [17] Mr. Lorenz communicated this information to the Buyer.

- [18] On March 14, 2015, the Buyer wrote an offer to purchase the Property. The offer was \$255,000 subject to several conditions.
- [19] On March 15, 2015, the Seller wrote a Counter Offer increasing the purchase price to \$256,000 and adding a condition that the offer be subject to her removing all conditions on her accepted offer to purchase a new property by April 1, 2015.
- [20] On March 16, 2015, the Buyer accepted the Counter Offer.
- [21] The Buyer was not approved for financing and the transaction collapsed.
- [22] The Buyer had the Property appraised.
- [23] The Buyer told Mr. Lorenz the Property had appraised at \$215,000, although the appraisal did not include the 32' x 32' heated shop or the 14' x 27' addition that was also heated.
- [24] The Buyer asked Mr. Lorenz to take a verbal offer of \$215,000 to the Seller. The purchase price would include the fridge, stove, satellite dish, window coverings, light fixtures, gazebo, work benches in the shop, and all 8" train tracks plus engines and cars. The offer would be subject to financing, a home inspection, the Seller providing the average of the last 12 months of power and energy bills, and a Property Condition Disclosure Statement.
- [25] Mr. Lorenz took this verbal offer to the Seller and was told she was not interested in an offer of \$215,000. The Seller told Mr. Lorenz that a value of \$270,000 was more reasonable considering the upgrades that had been made to the Property.
- [26] Mr. Lorenz communicated this information to the Buyer.
- [27] The Buyer offered another \$10,000 in cash for the outbuilding, which Mr. Lorenz communicated to the Seller.
- [28] The Seller agreed to accept an offer of \$225,000 from the Buyer, which Mr. Lorenz communicated to the Buyer.
- [29] On April 2, 2015, the Buyer wrote an offer to purchase the Property. The offer was \$225,000 subject to several conditions. The offer was to include the following: fridge; stove; satellite dish; window coverings and light fixtures as shown, with the exception of the window coverings in the master bedroom; all work benches in shops; and all 8 inch train tracks, engines and cars.
- [30] The Seller accepted this offer the same day.

- [31] The Buyer took possession of the Property on May 8, 2015.
- [32] The Buyer was unable to walk through the Property and receive keys until May 11, 2015. At the time of his walk through, it was clear that the yard had not been cleaned up.
- [33] The Buyer was adamant the dog run and surrounding gravel be removed and that the area in which the animals were wintered with an electric fence, shelter barn and lots of straw and manure would need to be cleaned up and removed. The Buyer advised that if this was not done within two weeks, he would be contacting his lawyer to take action.
- [34] Mr. Lorenz agreed to clean up and remove the dog run and to clean up the area in which the animals had been wintered. Mr. Lorenz hired a company to conduct the clean-up at his own expense of \$1,200.
- [35] Mr. Lorenz personally filled and removed two trailer loads of manure from the Property, which took from 10 -12 hours of his time.
- [36] At all relevant times, Mr. Lorenz believed that he was carrying out his fiduciary duties of loyalty, obedience, competence, confidentiality, accountability and disclosure to the Seller and Buyer.

## **REASONS:**

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

### Mitigating Factors

- [38] Mr. Lorenz has no previous sanction history.
- [39] Mr. Lorenz was co-operative with the investigation.
- [40] Mr. Lorenz believed that he was carrying out his fiduciary duties to the Seller and Buyer.
- [41] The contract of purchase and sale between Mr. Lorenz's clients was ultimately reduced to writing.

### Aggravating Factors

- [42] Mr. Lorenz communicated three verbal offers to the Seller on behalf of the Buyer.

### Prior Decisions & Other Considerations

[43] 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.

[44] 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.*

[45] On three separate occasions, Mr. Lorenz communicated detailed verbal offers to the Seller on behalf of the Buyer. The contract of purchase and sale was ultimately reduced to writing.

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

[46] Mr. Lorenz was the sole perpetrator of this breach of the legislation.

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

[47] There is no evidence to suggest that Mr. Lorenz benefitted from his actions, nor is there evidence that he suffered any losses.

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

[48] There is no evidence of harm to either of Mr. Lorenz’s clients, but the possibility of miscommunication and dispute between a buyer and seller arising out of a verbal offer is significant.

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

[49] Mr. Lorenz must be reminded that registrants are prohibited from communicating verbal offers among clients. All offers must be reduced to writing and presented to the client.

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

[50] General deterrence is needed to remind all registrants that verbal offers are not permitted and that all offers must be reduced to writing and presented to the client.

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

[51] The public must be reassured that the registrant they have engaged to represent their interests is acting in accordance with the requirements set out in the *Act*. Reducing all offers to writing protects parties to a contract of purchase and sale by ensuring that the terms of the contract are understood and agreed to by both parties and that the parties have the best chance of enforcing the terms of the agreement in the event of a dispute.

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

[52] Mr. Lorenz'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. Lorenz's breach of Section 58(1)(a) of the Act?**

[53] In *Stewart (Re)*, [2016 SKREC 7](#) (file #2012-60) ("*Stewart*"), Lily Stewart was issued an order of reprimand and ordered to pay a \$1,000 fine for failing to put an offer to purchase in writing. Ms. Stewart and her buyer clients viewed a property that was listed for sale by owner. Ms. Stewart advised the seller that her clients were interested in making an offer which was conditional and subject to a satisfactory building inspection. She advised that her clients were leaving the next day and would not be making a formal offer until after they returned from Toronto. The next day, the seller contacted Ms. Stewart and advised that he wanted an offer right away by the end of the day. Ms. Stewart advised the seller that she was not in a position to present any offer as the buyers had left for Toronto and were not intending to make an offer until possibly some future date. Ultimately, the verbal offer was never put in writing.

[54] Ms. Stewart had no previous sanction history and she was co-operative with the investigation. She had only been registered for approximately one year at the time of the violation.

- [55] There was disagreement as to whether or not the verbal offer was made subject to any conditions precedent. If the offer had been reduced to writing, there would be an independent record of the terms and conditions of the agreement. The seller was very upset that the buyer failed to follow through with the purchase.
- [56] Mr. Lorenz's breach of section 58(1)(a) is more serious than that of the registrant in *Stewart*. While there is no evidence of consumer harm in the case at hand, Mr. Lorenz had been registered for just over 10 years at the time of the transaction giving rise to the complaint. Mr. Lorenz communicated verbal offers to the Seller on three separate occasions.
- [57] In *Martens (Re)* (file #2001-67) ("*Martens*"), Larry Martens was issued an order of reprimand and ordered to pay a \$1,000 fine for failing to commit an offer to purchase to writing. At the time of the transaction, Mr. Martens had been a registrant for over fifteen years. Mr. Martens assisted in the verbal negotiation of an agreement for sale. The alleged buyer decided not to move into the property and requested the return of a deposit she had paid to Mr. Martens; the seller told Mr. Martens he wanted the deposit. When questioned by his broker, Mr. Martens turned the money over to his brokerage. He was terminated by the brokerage shortly thereafter.
- [58] Mr. Martens had no prior sanction history. There was no evidence of consumer harm or intent to mislead the buyer or seller.
- [59] The Hearing Committee considered the breach of section 58(1)(a) a serious violation of the legislation. Consumers rely on registrants to commit to writing the agreement between the parties. A properly written offer may have avoided the dispute between the buyer and seller with respect to the deposit.
- [60] Mr. Lorenz's breach of section 58(1)(a) is similarly serious to that of the registrant in *Martens*. While there was actual consumer harm in *Martens*, Mr. Lorenz communicated verbal offers to the Seller on three separate occasions.
- [61] The sanction in *Martens* must be considered in light of the impact inflation and a changing real estate market has had on the amount of commission registrants stand to receive with respect to a trade in real estate. Fines must keep pace with the expanding market to ensure that disciplinary action does not become a mere "cost of doing business".
- [62] An order of reprimand and a \$1,500 fine are appropriate sanctions for Mr. Lorenz's breach of section 58(1)(a) of the *Act*.
- [63] As Mr. Lorenz has agreed to sign this consent order, there will be no order as to costs.

**CONSENT ORDER:**

- [64] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of the Salesperson, Wally Lorenz, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [65] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of section 58(1)(a) of the Act:
- a. Wally Lorenz shall receive an order of reprimand for the violation of section 58(1)(a) of the Act;
  - b. Wally Lorenz 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
  - c. Wally Lorenz's registration shall be suspended if he fails to make payment as set out above.
- [66] There shall be no order as to costs.

Dated at Regina, Saskatchewan this 16<sup>th</sup> day of February, 2018.

"Jeffrey Reimer"  
Jeffrey Reimer, Chairperson