

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

*Hammel (Re)*, 2018 SKREC 3

Date: February 16, 2018  
Commission File: 2016-02

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF FRANK HAMMEL**

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. Frank Hammel 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) 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 Frank Hammel’s Statement of Facts and Admissions, which includes the following relevant points:
- [5] Mr. Hammel 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 6, 2001.
- [6] Mr. Hammel has taken the following real estate courses:
- Fundamentals of Real Estate;
  - Principles of Mortgage Financing;
  - Principles of Real Estate Appraisal;
  - Principles of Real Property Law;
  - Real Estate Office Management & Brokerage.
- [7] Mr. Hammel has completed the continuing professional development seminars each registration year since 2001-2002.
- [8] Mr. Hammel is presently registered under the provisions of *The Real Estate Act* as a salesperson with #617382 Saskatchewan Ltd. O/A Re/Max of Moose Jaw.
- [9] In December of 2015, the Property was listed for sale with Re/Max of Moose Jaw.
- [10] Mr. Hammel acted as the listing agent.
- [11] On December 29, 2015, Mr. Hammel received a message indicating that someone was interested in the Property and Mr. Hammel should call him.
- [12] Mr. Hammel contacted this person, the Buyer, to discuss the Property.
- [13] On December 30, 2015, Mr. Hammel showed the Property to the Buyer and provided him with information about the Property, the reason the Property was being sold and what Mr. Hammel believed the Property would sell for.
- [14] At this time, the Buyer made a verbal offer to purchase the Property for \$35,000. This offer was not made subject to any conditions.
- [15] On December 31, 2015, Mr. Hammel sent an email to the Seller advising of the verbal offer.

- [16] That same day, the Seller replied by email increasing the purchase price to \$41,000.
- [17] Mr. Hammel spoke about this counter offer with the Buyer, who made a new verbal offer of \$37,500. This second offer was not made subject to any conditions.
- [18] On January 2, 2016, Mr. Hammel sent an email to the Seller indicating that the Buyer would not accept the counter offer of \$41,000, but made a second verbal offer of \$37,500.
- [19] On January 2, 2016, the Buyer wrote an offer to purchase the Property with a registrant from another brokerage as his agent (the "Buyer's Agent"). The offer of \$37,500 was not made subject to any conditions.
- [20] On January 3, 2016, the Seller wrote a counter offer to the Buyer increasing the purchase price to \$40,000. Mr. Hammel sent this counter offer to the Buyer's Agent on January 4, 2016.
- [21] On January 5, 2016, the Buyer wrote a second offer to purchase the Property with the Buyer's Agent as his agent. The offer of \$38,500 was not made subject to any conditions.
- [22] Mr. Hammel was approached by another interested buyer and a multiple offer situation arose.
- [23] The Seller ultimately decided to sell the Property to the other buyer

#### **REASONS:**

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

##### Mitigating Factors

- [25] Mr. Hammel has no previous sanction history.
- [26] Mr. Hammel has been registered since 2001.
- [27] Mr. Hammel was co-operative with the investigation.
- [28] Mr. Hammel signed a Statement of Facts and Admissions acknowledging his misconduct.

##### Aggravating Factors

- [29] Mr. Hammel communicated two verbal offers to the Seller on behalf of the Buyer. He communicated a verbal counter offer to the Buyer on behalf of the Seller.
- [30] The Buyer's offer was not committed to writing until the Buyer was represented by another registrant.

#### Prior Decisions & Other Considerations

- [31] 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.
- [32] 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.*
- [33] Mr. Hammel communicated a verbal offer to the Seller on behalf of the Buyer. Mr. Hammel communicated the Seller's counter offer back to the Buyer and brought a second offer back to the Seller. Communicating verbal offers and counter offers back and forth between clients carries a high risk of miscommunication between a buyer and a seller as to whether or not a contract exists and what the terms and conditions of said contract may be.
2. *The role of the offending member in the breaches.*
- [34] Mr. Hammel was the only registrant involved in the transaction when the verbal offers and counter offer were being exchanged between the parties. The Buyer eventually submitted a written offer that had been drafted by another registrant.
3. *Whether the offending member suffered or gained as a result of the breaches.*

[35] There is no evidence to suggest that Mr. Hammel 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.*

[36] There is no evidence of actual consumer harm, but the potential for confusion is high when offers and counter offers are not reduced to writing. The Buyer elected to have a written offer prepared and presented by another registrant.

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

[37] Specific deterrence is needed in this case to ensure that Mr. Hammel understands that all offers must be reduced to writing.

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

[38] General deterrence is needed to ensure that other registrants know that all offers must be reduced to writing.

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

[39] Members of the public must be reassured that registrants are taking all necessary steps to minimize the potential for dispute and miscommunication between the parties to a contract of purchase and sale.

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

[40] While Mr. Hammel's actions fall below the range of acceptable registrant conduct, they were not egregious.

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

**A. What is an appropriate sanction for Mr. Hammel's breach of section 58(1)(a)?**

[41] While there are six decisions dealing with breaches of section 58(1)(a), three of these decisions deal with irregularities in the signing or witnessing of offers. There are only three decisions under section 58(1)(a) that address a registrant's failure to reduce an offer to writing.

[42] 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 took some buyer clients to see 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, but that her clients were leaving for Toronto the next day. Ms. Stewart advised the seller that her clients 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. The verbal offer was never put in writing.

- [43] Ms. Stewart had no previous sanction history and had only been a registrant for approximately one year. She was co-operative with the investigation.
- [44] The seller was very upset that Ms. Stewart's buyer clients failed to follow through with the purchase. 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.
- [45] Mr. Hammel's actions are more serious than those of the registrant in *Stewart*. Ms. Stewart had only been registered for a year at the time of the relevant transaction. At the time of the transaction giving rise to the current proceedings, Mr. Hammel had been registered for approximately 14 years. Mr. Hammel communicated two offers and a counter offer between his clients, while Ms. Stewart presented a single verbal offer on behalf of her buyer clients.
- [46] In *Ehmann (Re)*, [2006 SKREC 2](#) (file #2005-40) ("*Ehmann*"), Paul Ehmann was issued an order of reprimand and ordered to pay a \$2,000 fine for creating a draft of an offer to lease that was not signed by the parties, dated correctly, affirmed by him and/or the seller and tenant and for not providing copies of the document to the seller and tenant. The terms of the lease were negotiated verbally and Mr. Ehmann failed to reduce them to writing in a timely manner. Ultimately, the seller wanted to terminate the lease in favour of a lease to another party. Mr. Ehmann attempted to evict the tenant by changing the locks and removing their machinery from the property. The tenant pursued legal action against Mr. Ehmann and the seller.
- [47] Mr. Ehmann had one prior disciplinary action for a similar matter. He was co-operative with the investigation and showed remorse.
- [48] The Hearing Committee found the circumstances of the case to be a dangerous precedent for registrants in not ensuring agreements they provide are in writing and clearly set forth the understanding between the parties. Mr. Ehmann took a very unprofessional approach to the transaction. If offers are not in writing and signed by the parties, they may take different views as to the agreement after the fact and there are only the parties' differing memories to rely on to reconstruct the agreement. Mr. Ehmann's actions were found to be self-serving and inconsistent; he did not act appropriately for anyone and his actions were seriously harmful to the best interests of the public and the registrants.
- [49] Mr. Hammel's actions are not as serious as those of the registrant in *Ehmann*. Mr. Ehmann had been sanctioned before for a similar failure to complete the proper paperwork. Mr. Hammel has no previous sanctions.

- [50] 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 writing. At the time of the infraction, Mr. Martens had been a registrant for over fifteen years. He 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 the 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.
- [51] Mr. Martens had no previous sanction history and there was no evidence of consumer harm. He was co-operative with the investigation and there was no evidence to indicate that he intended to deliberately mislead the buyer or seller.
- [52] The Hearing Committee stated that Mr. Martens had been in the real estate industry for a significant length of time and should know the requirements of committing an offer to writing. The Committee considered this a serious violation of real estate legislation and noted that consumers rely on registrants to commit to writing the agreement between the parties. It was suggested that a properly written offer may have avoided the dispute between the buyer and seller with respect to the deposit. The Committee found that Mr. Martens did not protect and promote the interests of his clients. The Hearing Committee stated that registrants must be made aware that an offer must be in writing and consumers must also be confident that registrants will protect their interests by committing all offers to writing to avoid any confusion or problems.
- [53] Mr. Hammel’s actions are not as serious as those of the registrant in *Martens*. In *Martens*, the buyer had given a deposit to Mr. Martens for the verbal rent-to-own agreement in October of 2001. As the buyer and seller could not agree who was entitled to the deposit when the transaction did not proceed, the brokerage was still holding the deposit at the time of the hearing in January of 2003.
- [54] The decisions in *Ehmann* and *Martens* must be considered in light of the impact inflation and the changing real estate market has had on real estate commissions. As property values rise, registrants can expect to earn larger commissions on the purchase and sale of real estate. Fines issued by the Commission must keep pace with the increase in commissions payable to registrants or there is a risk that these fines will cease to function as a deterrent against future misconduct and will come to be regarded as a “cost of doing business”.
- [55] An order of reprimand and a \$1,500 fine are appropriate sanctions for Mr. Hammel’s breach of s. 58(1)(a) of *The Real Estate Act*.
- [56] As Mr. Hammel 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 the Salesperson, Frank Hammel, 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 section 58(1)(a) of the *Act*:
- a. Frank Hammel shall receive an order of reprimand for the violation of section 58(1)(a);
  - b. Frank Hammel 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. Frank Hammel'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, Saskatchewan this 16<sup>th</sup> day of February, 2018.

"Jeffrey Reimer"  
Jeffrey Reimer, Chairperson