

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

Blanchette (Re), 2017 SKREC 8

Date: August 15, 2017
Commission File: 2016-09

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF ERLINDA BLANCHETTE**

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*, Ms. Erlinda Blanchette breached Bylaw 702 by failing to deal fairly with all parties to a transaction.

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 Erlinda Blanchette’s Statement of Facts and Admissions, which includes the following relevant points:
- [5] Ms. Blanchette 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 October 31, 2012.
- [6] Ms. Blanchette has taken the following real estate courses:
- Real Estate as a Professional Career;
 - Residential Real Estate as a Professional Career; and
 - Farm Real Estate as a Professional Career.
- [7] Ms. Blanchette has completed the continuing professional development seminars each registration year since 2012-2013.
- [8] Ms. Blanchette is presently registered under the provisions of *The Real Estate Act* as a salesperson with Global Direct Realty Inc.
- [9] In January 2016, Ms. Blanchette was registered under the provisions of *The Real Estate Act* as a salesperson with #101258251 Saskatchewan Ltd. O/A Better Homes and Gardens Real Estate Signature Service.
- [10] Ms. Blanchette is aware and believes it to be true that, on September 4, 2015, the Property was listed for sale with another brokerage.
- [11] An agent from the other brokerage acted as the listing agent.
- [12] An MLS Listing was created with respect to the Property. This listing specifies that appointments to view the Property must be made through the salesperson and that, in order to arrange a showing, interested parties are to contact the listing agent by phone or text message.
- [13] On or about January 11, 2016, Ms. Blanchette’s husband and Ms. Blanchette were showing a property to buyer clients. One of the buyer clients asked if it would be possible to view the Property as well.
- [14] Ms. Blanchette’s client told her that he had phoned and the home would be available between 6:30 and 8:00 p.m.
- [15] Ms. Blanchette assumed that her client had spoken with the listing agent and that the listing agent had granted her clients permission to view the Property.

- [16] Ms. Blanchette assumed that the details of the viewing had been cleared with her husband.
- [17] Her husband assumed the details of the viewing had been cleared with her.
- [18] At 6:40 p.m. on January 11, 2016, Ms. Blanchette's husband opened the lockbox on the Property. Ms. Blanchette's husband, the buyer clients and Ms. Blanchette entered the Property.
- [19] While inside the Property, Ms. Blanchette's clients informed her that they had a friend who lived next door. At this point, Ms. Blanchette asked her clients who had given them permission for the showing and was told that one of the buyer clients had spoken with the seller's ex-boyfriend.
- [20] When Ms. Blanchette realized that the showing had not been confirmed by the listing agent, she told her clients that they needed to leave the Property right away.
- [21] At 6:51 p.m., an email was sent to the listing agent notifying her that Ms. Blanchette's husband had opened the lock box at the Property at 6:40 p.m.
- [22] At 6:53 p.m. on January 11, 2016, Ms. Blanchette called the listing agent, but she did not answer her phone. Ms. Blanchette did not leave a message.
- [23] At 7:17 p.m. on January 11, 2016, the listing agent phoned Ms. Blanchette to ask why she had shown the Property without permission.
- [24] Ms. Blanchette apologized to the listing agent for the miscommunication with the buyer clients.
- [25] Ms. Blanchette did not intentionally disregard the instructions set out in the MLS Listing.
- [26] Ms. Blanchette will take steps to ensure that no similar miscommunications occur in the future. Since this incident, Ms. Blanchette has started using a checklist that indicates when she requested a particular showing and when permission for the showing is granted.
- [27] After Ms. Blanchette apologized to the listing agent and explained that her showing resulted from a miscommunication with the buyer clients, the listing agent advised that other registrants had shown the Property without notification, that she would not put up with it anymore, and that she was going to report it.
- [28] Ms. Blanchette did not wilfully plan to show the Property without permission.

REASONS:

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

Mitigating Factors

[30] Ms. Blanchette has no previous sanction history.

[31] Ms. Blanchette was co-operative with the investigation.

[32] Ms. Blanchette signed a Statement of Facts and Admissions acknowledging her misconduct.

[33] Ms. Blanchette's clients implied to her they had obtained permission from the listing agent to view the Property.

[34] Ms. Blanchette tried to contact the listing agent once she realized her clients had not received permission to view the Property.

[35] Ms. Blanchette admitted her mistake when confronted by the listing agent.

Aggravating Factors

[36] The lockbox system requires sellers to put a great deal of faith in registrants to follow the rules and to obtain permission from the seller or the listing agent before using the lockbox to gain entry to a property.

[37] The potential damage to the real estate industry as a whole.

Prior Decisions & Other Considerations

[38] 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.

[39] 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.

[40] Ms. Blanchette entered a listed property without obtaining permission from the listing agent to do so.

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

[41] Ms. Blanchette and her husband, who is also a registrant, were showing properties to their buyer clients. The fact that another registrant was present does not relieve Ms. Blanchette of her obligation to ensure she has permission from the appropriate person to access a property. Ms. Blanchette states that she assumed her buyer clients had spoken to the listing agent and obtained permission to view the property. Ms. Blanchette cannot rely on her clients to fulfill her professional obligations.

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

[42] There is no evidence to suggest that Ms. Blanchette suffered a loss or experienced a gain as a result of her breach of the legislation.

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

[43] The listing agent was very upset that a registrant had shown the property without obtaining permission.

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

[44] Specific deterrence is needed in this case to ensure that Ms. Blanchette understands that she must always obtain permission from a seller or the seller's agent to access a property. It must also be stressed to Ms. Blanchette that she cannot rely on her clients to carry out her professional obligations.

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

[45] General deterrence is needed to ensure that other registrants know that accessing a property without first obtaining permission from the seller or the seller's agent is never acceptable. This is the second time in two years a registrant is being disciplined for showing a property without permission (see: *West (Re)*, [2015 SKREC 13](#) (file 2014-18)). It must also be made clear to all registrants that they cannot rely on their clients to carry out their professional obligations.

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

[46] The lockbox system requires sellers to put a great deal of faith in the integrity and professionalism of registrants. The lockbox allows registrants who participate in the system to access the property at any time. Sellers must be confident that registrants are not abusing the system or using the lockboxes to enter their homes without first obtaining permission.

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

[47] Ms. Blanchette's actions represent a serious breach of the legislation. Although she did not do so intentionally, she used the lockbox to access the property without getting permission from the seller or the seller's agent, violating the seller's right to privacy and security in her home.

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

A. What is an appropriate sanction for Ms. Blanchette's violation of Bylaw 702?

[48] There is one prior decision with facts similar to the case at hand.

[49] In *West (Re)*, [2015 SKREC 13](#) (file 2014-18) ("*West*"), the registrant was issued an order of reprimand and ordered to pay a \$1,000 fine for showing a property to clients without first obtaining permission from the seller or the seller's agent. Mr. West had spoken to the listing agent, but decided not to show the property to his clients because it had an accepted offer. Later that day, the listing agent received an email notification that Mr. West had accessed the lockbox for the subject property. That day, the owners of the property arrived to find two vehicles in their driveway and met two men coming out the front door. One of those men was identified as Mr. West. Mr. West apologized to the listing agent and to the sellers. The listing agent telephoned his clients to apologize for the incident. The clients expressed their concern about break-ins, thefts and the fact that Mr. West did not leave his card.

[50] Mr. West had no previous sanction history and signed a Statement of Facts and Admissions. He acknowledged his error immediately when contacted by the listing agent. The listing agent sent out an email to a number of registrants detailing his frustration with the situation. As a result, a significant number of registrants in the province were made aware of Mr. West's error. Ultimately, Mr. West stepped down from his position as a Commission member as a result of the situation.

[51] Mr. West had been a registrant since 1976. He knew what was expected of him when showing properties to his clients. This represented a serious lapse in judgment. There was significant potential damage to the real estate industry as a whole.

- [52] Ms. Blanchette's actions were as serious as those of the registrant in West. In addition to his fine, Mr. West experienced significant professional embarrassment as a result of the listing agent reporting the situation to several other registrants and ultimately stepped down from his position as a Commission member.
- [53] Other previous decisions do not share similar facts to the situations in West or the case at hand, but they do provide some principles that can be applied here.
- [54] In *Chubb (Re)*, [2007 SKREC 8](#) (file 2007-22) ("*Chubb*"), the registrant was issued a letter of reprimand and ordered to pay a fine of \$3,500 for breaching Bylaw 702 by releasing keys to a property to the buyer's father prior to approval of all documentation and consent of all parties involved. Mr. Chubb had been registered since 1985 and had one prior sanction for a breach of section 39(1)(b) of the Act. Pursuant to the contract of purchase and sale, the buyer was to take possession of the property on March 1, 2007. On March 2, Mr. Chubb released the keys to the buyer's father without any written documentation or authorization from the buyer, seller or legal counsel to do so. The buyer was out of the country on March 1 and had not attended at the lawyer's office to sign the necessary documents. Purchase documents were obtained on March 8 and the sale ultimately completed.
- [55] The Hearing Committee was very concerned about the seemingly unconcerned manner in which the keys were released without authorization of any kind. The Committee reiterated the importance of obtaining the seller's authorization to release the keys. Mr. Chubb's decision to grant possession without the proper authorization put all parties at risk. Registrants are responsible for protecting the parties to a trade in real estate and Mr. Chubb's decision to release keys without authorization was a dereliction of this duty. The only mitigating factor the Committee noted was the ultimate completion of the transaction. The Committee also noted that Mr. Chubb did not appear at the mitigation hearing to offer an explanation for his actions.
- [56] Ms. Blanchette's conduct is not as serious as that of the registrant in Chubb. Mr. Chubb was a long-time registrant at the time of the infraction and knew or ought to have known the proper way to handle the situation. The actions of Ms. Blanchette and Mr. Chubb represent a serious lapse in judgement. While Ms. Blanchette accessed the property without the sellers' authorization, the access was temporary and for the purpose of showing the listed property to potential buyers. This is not as serious as purporting to grant legal possession of real property to a buyer without the authorization of the seller, not to mention the fact that the keys were released to the buyer's father without any confirmation of the buyer's consent.
- [57] In *Aldous (Re)*, [2008 SKREC 13](#) (file 2008-01) ("*Aldous*"), the registrant was issued a letter of reprimand and ordered to pay a fine of \$500 for breaching section 39(1)(a) of the Act by releasing keys to a property to the buyer prior to the

possession date and prior to approval from the seller. Ms. Aldous had been a registrant since 1992. There were no lawyers involved in the transaction. Possession was to take place on January 1, 2008. On December 24, 2007, the buyers brought the purchase funds to Ms. Aldous' brokerage and she released the keys to the buyers. On December 28, the buyers telephoned the listing agent and requested access to the property, advising that they had already received the keys. A representative of the listing brokerage contacted the buyers and the buyers returned the keys to the listing brokerage. The sale ultimately completed.

- [58] The Hearing Committee noted that there was no malicious intent on Ms. Aldous' part and it was clear that the buyers understood they were not being granted possession of the property when they received the keys (they contacted the listing brokerage to ask for permission to enter the property and measure a room). The Committee did not condone her actions, but felt that they were less serious than the circumstances in *Chubb* because possession was not being granted without the seller's authorization. The complaint did not come from the sellers.
- [59] The conduct for which the registrant was sanctioned in *Aldous* boils down to providing her buyers with a means of accessing a property without the authorization of the sellers. The Committee noted that it was clear that Ms. Aldous had impressed upon the buyers the fact that they were not taking possession of the property early, but simply receiving the keys early because Ms. Aldous would be away on the actual possession date. Ms. Blanchette's conduct is more serious in that she and her clients actually did access a property without the authorization of the sellers.
- [60] In *Smith (Re)*, [2010 SKREC 3](#) (file 2008-79) ("*Smith*"), the registrant was issued a letter of reprimand and ordered to pay a fine of \$3,000 for violating section 39(1)(a) of the Act by setting into motion a chain of events that resulted in the keys being released to the buyer of real property without first receiving approval from the sellers or at the direction of the sellers' lawyer. Ms. Smith had been registered for approximately four years at the time of the breach. She had been told by the buyers' lawyer that he did not see any problem with releasing the keys. Ms. Smith left the keys to the property in an envelope at the brokerage office for her buyers to pick up. Ms. Smith thereafter received a phone call from the buyers' lawyer advising that the sellers' lawyer had said the keys should not be released. She tried to get in touch with the buyers and with someone at the brokerage office, but she was unsuccessful and the keys were released to the buyers. The sale did ultimately complete.
- [61] Ms. Smith was co-operative with the investigation and signed a Statement of Facts admitting guilt. She did not have a prior sanction history and had been in the real estate industry less than four years when the breach occurred. At the mitigation hearing, she indicated that she did not realize that authorization from the seller/seller's lawyer was required to grant possession. She believed she was to use her best judgment to determine whether or not to release keys and she thought

she had done the right thing. The Hearing Committee stressed the significant risk to the parties and reiterated that it is the seller who authorizes the release of keys, not the seller's agent.

- [62] Ms. Blanchette's conduct is not as serious as that of the registrant in Smith. Ms. Smith purported to grant possession of the property to her buyers without the authorization of the sellers. Although Ms. Blanchette and her clients accessed the property without the authorization of the sellers, it was a temporary access for the purpose of viewing the property. Many of the mitigating factors in these cases are similar (e.g. lack of previous sanction history, co-operation with the investigation).
- [63] Each of the cases mentioned above emphasize a seller's right to control access to their property. The actions of the registrants in each of these cases violated that right. Until a seller has legally transferred ownership of the property to a buyer, the seller remains entitled to grant or refuse access to the property as he or she sees fit. Registrants are not permitted to substitute their judgment for the legal authorization of the seller. Just because a seller lists his or her property for sale does not mean that he or she has waived his or her expectation of privacy or his or her right to grant or refuse access to the property.
- [64] A letter of reprimand and a \$1,500 fine are appropriate sanctions for Ms. Blanchette's breach of 702.
- [65] As Ms. Blanchette has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [66] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, the Hearing Committee, with the consent of the Salesperson, Erlinda Blanchette, and the Investigation Committee of the Saskatchewan Real Estate Commission, hereby orders:
- [67] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for the violation of Commission Bylaw 702:
- a. Erlinda Blanchette shall receive an order of reprimand for the violation of Commission Bylaw 702;
 - b. Erlinda Blanchette shall, within 60 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. Erlinda Blanchette's registration shall be suspended if she fails to make payment as set out above.
- [68] There shall be no order as to costs.

Dated at Saskatoon, Saskatchewan this 15th day of August, 2017.

"Randal C. Touet",
Hearing Committee Chairperson