

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

*Kramm (Re)*, 2017 SKREC 10

Date: September 5, 2017  
Commission File: 2016-18

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF SUSAN KRAMM**

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. Susan Kramm breached Saskatchewan Real Estate Commission Bylaw 726(b) by creating an advertisement that included inaccurate information.

**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 726(b) states: “Any advertisement or incentive or the offering of any incentive or the participation in an incentive program to the public as an inducement to trade in real estate undertaken or authorized by a registrant shall not be...inaccurate.”

**FACTS:**

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

[5] Ms. Kramm has been continuously registered under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission as a salesperson from April 30, 2009 until April 29, 2011, and as a broker since April 29, 2011.

[6] Ms. Kramm has taken the following real estate courses:

- Real Estate as a Professional Career;
- Residential Real Estate as a Professional Career;
- Farm Real Estate as a Professional Career;
- Commercial Real Estate as a Professional Career; and
- Real Estate Office Management & Brokerage.

[7] Ms. Kramm has completed the continuing professional development seminars each registration year since 2009-2010.

[8] Ms. Kramm is presently registered under the provisions of *The Real Estate Act* as a broker with Kramm Realty Ltd. O/A Realty Executives Battlefords.

[9] On or about January 17, 2014, Ms. Kramm and another party (the “Sellers”) listed the Property for sale with Realty Executives Battlefords.

[10] Ms. Kramm acted as the listing agent.

[11] An MLS Listing was created advertising the Property for sale.

[12] The MLS Listing states that the Property was built in 2010.

[13] In January of 2014, Ms. Kramm began representing the Buyer in his search for a home.

[14] After the Buyer made offers to purchase a few properties that were not successful, Ms. Kramm told him about the Property.

[15] Ms. Kramm told the Buyer that it was her property before taking him to view it.

- [16] The Buyer viewed the Property several times.
- [17] The Buyer and another party (the “Buyers”) purchased the Property.
- [18] After taking possession of the Property, the Buyer discovered that the Property had been built in 2008, not in 2010 as advertised.
- [19] A Detailed Property Report generated by the City of North Battleford indicates that the Property was built in 2008.
- [20] In August of 2014, the Buyer contacted Ms. Kramm to discuss the issue.
- [21] The building permit for the Property was issued in 2008.
- [22] The Property was vacant until 2010 and the final inspection was completed that year.
- [23] The statement in the MLS Listing that the Property was built in 2010 was a typographical error that was not caught on review.
- [24] Ms. Kramm offered to re-sell the Property for the Buyer and find him another home. Ms. Kramm told the Buyer she would make sure he got back his original \$300,000 purchase price by adjusting commission rates, making up the difference or purchasing the property back within a reasonable amount of time.

**REASONS:**

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

Mitigating Factors

- [26] Ms. Kramm has no previous sanction history.
- [27] Ms. Kramm was co-operative with the investigation.
- [28] The statement in the MLS Listing that the Property was built in 2010 was a typographical error, not a deliberate attempt to deceive potential buyers.
- [29] Ms. Kramm offered to sell the Property for the Buyer and find him another house. She told the Buyer she would make sure he got back the original \$300,000 purchase price by adjusting commission rates, making up the difference or purchasing the Property back within a reasonable amount of time.

### Aggravating Factors

- [30] Ms. Kramm was an owner of the Property. Registrants are under a heightened obligation to ensure the information they provide is accurate and that they are acting in accordance with their professional obligations when they are personally involved in a transaction.
- [31] Ms. Kramm also represented the Buyers in the transaction, so there was no other agent to question or independently verify the information Ms. Kramm provided.
- [32] A member of the public relied on the information Ms. Kramm provided.

### Prior Decisions & Other Considerations

- [33] 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.
- [34] 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.*
- [35] Ms. Kramm, an owner of the Property, advertised the Property as being built in 2010 when, in fact, it was built in 2008. Ms. Kramm sold the Property to the Buyers who discovered the error only after taking possession of the Property.
2. *The role of the offending member in the breaches.*
- [36] Ms. Kramm was the sole perpetrator of this breach of the legislation.

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

[37] There is no evidence to suggest that Ms. Kramm benefitted from her actions, nor is there evidence that she suffered any losses.

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

[38] The Buyers were upset to learn that the Property was two years older than they were initially told.

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

[39] Ms. Kramm must be reminded that she is responsible for ensuring that all advertisements she creates contain only accurate information. This is particularly true when Ms. Kramm is personally involved in the trade and when she is the only registrant involved in a transaction.

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

[40] General deterrence is needed to remind all registrants that a listing agent is required to ensure that only accurate information is presented in advertisements, particularly when the registrant is personally involved in the transaction or the only registrant involved in a transaction.

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

[41] The public must be reassured that the information given by registrants is accurate. This reassurance is especially important when members of the public are dealing with, or being represented by, a registrant who is personally involved in the transaction or the only registrant involved in a transaction.

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

[42] Ms. Kramm'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. Kramm's breach of Bylaw 726(b)?**

[43] There are several previous decisions dealing with registrants who were found to have created advertisements that included inaccurate information.

[44] While there are no decisions under 726(b) in which the registrant was personally involved in the transaction, *Morrison (Re)*, [2007 SKREC 6](#) (file 2006-50) ("*Morrison*") involves a transaction in which the registrant was representing his parents, the sellers, and the buyer as a limited dual agent.

- [45] Mr. Morrison was issued an order of reprimand, ordered to pay a \$5,000 fine and required to complete educational upgrading for inaccurately representing the size of a cottage and the size and shape of the lot on which the cottage was situated. Mr. Morrison owned the property before selling it to his parents. When they decided to sell the property, Mr. Morrison acted as the listing agent. Mr. Morrison also represented the buyers in their purchase of the property.
- [46] The Hearing Committee considered Mr. Morrison's previous sanction history and the length of time he had been in the real estate industry.
- [47] The Hearing Committee considered the fact that the buyers had been provided with an Ancillary Services form, but decided against obtaining a surveyor's certificate before taking possession of the property. The Committee also considered Mr. Morrison's assertions that his parents had added to the property after he sold it to them and that the property was sold fifteen years after he first purchased it.
- [48] The Hearing Committee found Mr. Morrison's breach of the legislation to be a very serious matter. The Committee stated that, as a limited dual agent, Mr. Morrison owed a duty to both the seller and the buyer to ensure the information provided was accurate. The Committee noted that the information to correct the data was available to Mr. Morrison and that he had opportunity to rectify the issues before they became problems.
- [49] The Hearing Committee had concerns about Mr. Morrison's credibility. Mr. Morrison had owned the property and sometimes assisted his parents in their continued development of the property. The Committee believed he should have known the information was inaccurate, but he did not take the time or effort to correct it when he had the chance.
- [50] Ms. Kramm's actions are not as serious as those of the registrant in *Morrison*. Ms. Kramm's error was the result of inadvertence as opposed to a failure to take steps to obtain accurate information. Ms. Kramm does not have a previous sanction history and there are no concerns about Ms. Kramm's credibility. However, the seriousness of Ms. Kramm's actions is increased by the fact that Ms. Kramm herself was a party to the transaction.
- [51] In *Langford (Re)*, [2014 SKREC 8](#) (file 2012-70) ("*Langford*"), the registrant was issued an order of reprimand and ordered to pay a \$1,000 fine for undertaking or authorizing an advertisement that was inaccurate. Mr. Langford created an MLS Listing that stated there was an existing real property report relating to the property when, in fact, no such report existed. Mr. Langford's seller clients entered into a Residential Contract of Purchase and Sale that required the sellers to provide a copy of the existing real property report to the buyers. Mr. Langford noticed the error and the buyers were advised that no such report existed prior to removing conditions.

- [52] Mr. Langford had no previous sanction history and the inaccurate listing was unintentional, rather than a deliberate misrepresentation. Mr. Langford ultimately contributed \$2,000 toward the cost of the required survey.
- [53] In *Robinson (Re)*, [2014 SKREC 7](#) (file 2012-67) (“Robinson”), the registrant was issued an order of reprimand and ordered to pay a \$1,000 fine for breaching Bylaw 726 by undertaking or authorizing an advertisement that was inaccurate and reasonably capable of misleading the recipient or intended recipient. Mr. Robinson acted as the listing agent for a property. The seller completed an MLS Data Input Form on which it was indicated that the basement walls were composed of “concrete, drywall, brick”. Mr. Robinson completed or caused an employee of his brokerage to complete a second copy of the MLS Data Input Form on which it was indicated that the basement walls were composed of “cindercrypt blk”. The resulting MLS Listing stated the basement wall type to be “Block, Other”.
- [54] Mr. Robinson had no previous sanction history and accepted full responsibility for his actions and errors from the beginning of the investigation process. The seller signed both copies of the MLS Data Input Form, including the copy on which the basement wall type was inaccurately stated. No sale resulted from the inaccurate listing and Mr. Robinson did not have an opportunity to correct the error because it was not brought to his attention until after the listing expired.
- [55] Ms. Kramm’s breach of Bylaw 726 is more serious than that of the registrants in *Langford* and *Robinson*. The Buyers did not discover the inaccurate information until after they completed their purchase of the property. Ms. Kramm was personally involved in the transaction and represented the Buyers in limited dual agency.
- [56] An order of reprimand and a \$2,500 fine are reasonable sanctions for Ms. Kramm’s breach of Bylaw 726(b).
- [57] As Ms. Kramm has agreed to sign this consent order, there will be no order as to costs.

#### **CONSENT ORDER:**

- [58] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, the Hearing Committee, with the consent of the Broker, Susan Kramm, and the Investigation Committee of the Saskatchewan Real Estate Commission, hereby orders:
- [59] 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 726(b):

- a. Susan Kramm shall receive an order of reprimand for the violation of Bylaw 726(b);
- b. Susan Kramm shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$2,500.00 fine for the said violation of the *Act*; and
- c. Susan Kramm's registration shall be suspended if she fails to make payment as set out above.

[60] There shall be no order as to costs.

Dated at Regina, Saskatchewan this 5<sup>th</sup> day of September, 2017.

Jeffrey P. Reimer,  
Hearing Committee Chairperson