

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

Cawkwell (Re), 2017 SKREC 12

Date: November 1, 2017
Commission File: 2016-79

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF EDWIN (TED) CAWKWELL**

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

Randy Touet - Chairperson
David Chow
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. Ted Cawkwell breached Saskatchewan Real Estate Commission Bylaw 727 by advertising a property for sale without written authorization from the owner.

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 727 states: "A registrant shall only advertise properties for sale or lease, or properties sold or leased when written authorization has been obtained from the

owner or the owner's lawful representative. The advertisement shall be in accordance with the lawful instructions of the owner or his or her lawful representative."

FACTS:

- [4] In accordance with subsection 9(4) of *The Real Estate Regulations* ("the Regulations"), the Hearing Committee accepts Ted Cawkwell's Statement of Facts and Admissions, which includes the following relevant points:
- [5] Mr. Cawkwell 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 November 15, 2011.
- [6] Mr. Cawkwell has taken the following real estate courses:
- Real Estate as a Professional Career;
 - Farm Real Estate as a Professional Career; and
 - Residential Real Estate as a Professional Career.
- [7] Mr. Cawkwell has completed the continuing professional development seminars each registration year since 2011-2012.
- [8] Mr. Cawkwell is presently registered under the provisions of *The Real Estate Act* as a salesperson with 100% Realty Associates Ltd. O/A Re/Max Saskatoon.
- [9] Sometime after April 22, 2016, Mr. Cawkwell became aware, through the grapevine, that the Sellers had listed approximately 49 quarter sections of land (the "Property") for sale with another brokerage.
- [10] The Seller's Agent acted as the listing agent.
- [11] In the summer of 2016, Mr. Cawkwell contacted the Seller's Agent to request information about the Property to give to some qualified buyers he knew about. The Seller's Agent told Mr. Cawkwell that he would get back to him, but he did not.
- [12] In early October of 2016, the Seller's Agent sent Mr. Cawkwell some details on the listing so that he could approach the qualified buyers he had mentioned to the Seller's Agent before. Mr. Cawkwell sought out additional information on the Property to provide to his qualified buyers.
- [13] Mr. Cawkwell contacted the Seller's Agent to try to get more information about the listing, but found him to be uncooperative.

- [14] Mr. Cawkwell's team spent over four days gathering 309 pages of information about the Property.
- [15] Mr. Cawkwell combined the information he received from the Seller's Agent with the information gathered by his team and created information packages relating to the property.
- [16] One of the information packages is a five-page colour package.
- [17] The other information package is an eight-page colour booklet.
- [18] Mr. Cawkwell spoke to his broker and a manager within his office to see if he was meeting all requirements before sending the information packages to the qualified buyers. Both his broker and his manager said it would be fine to send the information, but that he could not advertise the Property for sale. Mr. Cawkwell's manager added that the information packages needed to mention that the Property was listed by the other brokerage.
- [19] Mr. Cawkwell did not show his broker or his manager a copy of the information packages before sending the packages out to the qualified buyers.
- [20] The information packages were sent to 411 qualified buyers in Saskatchewan and elsewhere.
- [21] The Sellers did not give Mr. Cawkwell written authorization to distribute the information packages.
- [22] Mr. Cawkwell did not think that the information packages were advertisements and did not intend to breach Bylaw 727.

REASONS:

- [23] The Investigation Committee and Mr. Cawkwell considered the following as relevant in agreeing to the within consent order:
- [24] Clause 2(1)(b) of *The Real Estate Regulations* states as follows:

2(1) In these regulations:

...

(b) "advertisement" includes any oral, written or graphic representation with respect to trading in real estate:

- (i) in a newspaper, magazine, flyer, handbill or any other written form that is distributed in Saskatchewan;
- (ii) on a billboard or sign located in Saskatchewan; or
- (iii) on television, radio or other electronic means;

[25] In *Walz (Re)* (file #2002-17)(“Walz”), the Hearing Committee found, and the Superintendent of Real Estate affirmed in *Walz (Re)* (file #2002-17)(“*Walz Appeal*”), that the term “advertisement” as defined in the *Regulations* applies to the Commission Bylaws.

[26] Clause 2(bb) of *The Real Estate Act* states, in part, as follows:

2 In this Act:

...

(bb) “trade” means one or more of the following:

- (i) a disposition of, an acquisition of or a transaction in real estate by sale, purchase, exchange, option, lease or otherwise;
- (ii) an offering, advertisement, listing or showing of real estate for sale, purchase, exchange, option, lease or otherwise;
- (iii) an offer to purchase;
- (vii) any conduct, act or negotiation, in the furtherance or attempted furtherance of any one or more of the things mentioned in this clause;

[27] The information packages Mr. Cawkwell created include detailed information about a large package of farmland for sale. The information packages listed the individual quarter sections that were being offered for sale and set out the number of acres and soil class in each quarter section. The information packages also set out the asking price for the Property and provided a brief list of the structures and a more detailed list of equipment that would be included in the sale.

[28] The purpose of creating and distributing the information packages was to make potential buyers aware that the Property was listed for sale and to encourage potential buyers to purchase the Property. The end purpose of distributing the information packages was to solicit an offer to purchase from a buyer to purchase the Property. This constitutes conduct in furtherance of an offer to purchase, conduct in furtherance of the disposition of real estate, and an advertisement of real estate for sale.

[29] The Superintendent in *Walz Appeal* affirmed the Hearing Committee’s finding that “[t]he listing of an address of a property in a document and informing the public that these are the properties for sale is an advertisement of a property.”

[30] Mr. Cawkwell distributed the information packages to 411 people and organizations that he had identified as “qualified buyers” for the Property, both in Saskatchewan and beyond. That the information packages were only distributed to those identified as “qualified buyers”, and not to the public at large, does not mean that they were not advertisements. The Hearing Committee in *Walz*, affirmed by the Superintendent of Real Estate in *Walz Appeal*, considered this

issue and determined that clients of a brokerage are considered “the public” and “[t]he general public would be considered to be all individuals except the owner of the property.” In *Walz/Walz Appeal*, that the advertisements were only distributed to clients of the brokerage did not mean that they were not, in fact, advertisements.

[31] The information packages created and distributed by Mr. Cawkwell are “advertisements” within the meaning set out in clause 2(1)(b) of the *Regulations* as they constitute written representations with respect to a trade in real estate in a written form that were distributed in Saskatchewan.

Mitigating Factors

[32] Mr. Cawkwell has no previous sanction history.

[33] Mr. Cawkwell was co-operative with the investigation.

Aggravating Factors

[34] Mr. Cawkwell sent the advertisements to over 400 people.

Prior Decisions & Other Considerations

[35] 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.

[36] 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.*

[37] Mr. Cawkwell created two advertisements regarding a property that was listed for sale by another brokerage. Although he did not have permission to do so, Mr. Cawkwell sent these advertisements to over 400 people.

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

[38] Mr. Cawkwell was the sole perpetrator of these breach of the legislation.

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

[39] There is no evidence showing that Mr. Cawkwell saw any gains as a result of his breach of the legislation, nor is there evidence showing he suffered any losses.

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

[40] The listing agent and brokerage were not happy to learn that Mr. Cawkwell had created and distributed the information packages.

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

[41] Mr. Cawkwell must be reminded that registrants are expected to respect the wishes of property owners. The owner of the Property was not Mr. Cawkwell's client, so he had no way of knowing how the seller wanted to proceed with respect to the marketing of the Property or the rationale behind the seller's decision. Mr. Cawkwell chose to substitute his own judgment for that of the seller and that is not appropriate conduct for a registrant.

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

[42] General deterrence is needed to remind all registrants that registrants are expected to respect the wishes of property owners.

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

[43] The public must be reassured that registrants will abide by their wishes, including their wishes with respect to how their property is marketed. Property owners must be confident that the limitations placed on advertising their properties for sale will be respected by registrants.

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

[44] Mr. Cawkwell's conduct falls well 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. Cawkwell's breach of Bylaw 727?

[45] In *Forster (Re)*, [2008 SKREC 9](#) (file #2007-100) ("*Forster*"), Ms. Forster was issued an order of reprimand and ordered to pay a \$1,500 fine for authorizing

and creating a pamphlet entitled *The Resort Review* without written permission of the owners of the properties listed with brokerages other than Forster Realty Inc. The purpose of the pamphlet was to show clients or customers properties in the area that were currently listed for sale. The brochure did not say that all the listings belonged to Ms. Forster's brokerage, and she believed that she was helping the other brokerages by promoting their listings.

- [46] The Hearing Committee stated that it wanted to "make it clear that there is a significant distinction between an advertising brochure and showing individual MLS listing information to...clients." The Committee stated that Ms. Forster had "no right to advertise properties without the permission of the owners." Her actions were considered a clear infringement on the rights of the owners. The Committee stated that registrants must be made aware that this is an important issue and that owners are the ones who decide whether advertising of their property is to take place.
- [47] Ms. Forster had a previous sanction history for breach of Bylaw 708 regarding an exclusive non-cooperating seller's contract.
- [48] Mr. Cawkwell's actions are more serious than those of the registrant in *Forster*. Ms. Forster created a pamphlet that set out a list of properties for sale in a specific geographic area. Mr. Cawkwell created information packages that included detailed information about a single property that was listed for sale by a different brokerage that he then distributed directly to over 400 people.
- [49] In *Baker (Re)*, [2005 SKREC 10](#) (file# 2004-75) ("*Baker*"), Robert Baker was issued an order of reprimand and ordered to pay a \$500 fine for providing a feature sheet to a single potential buyer relating to the marketing of a seller's property which he had prepared without written authorization from the seller or the seller's representative. Mr. Baker had verbal authorization for the feature sheet.
- [50] The Hearing Committee stated that "it is essential that the registrants follow the procedure set by the...Commission. It is not for each registrant to determine which rules he/she deems appropriate in each situation."
- [51] That the feature sheet did not create a concern was a mitigating factor, but the Committee noted that it did not excuse Mr. Baker's behaviour. The Committee recognized the difficulties Mr. Baker had encountered in his life and considered this to be a mitigating factor. Mr. Baker's conduct was considered a matter of human frailty, rather than malice. Mr. Baker showed remorse and understood that he was to be more careful in the future.
- [52] Mr. Baker had a previous sanction history for breach of section 58(1)(b)(iv) of the Act regarding drafting of terms and conditions in a commercial offer to purchase.

- [53] Mr. Cawkwell's actions are more serious than those of the registrant in *Baker*. Mr. Baker, operating under verbal authorization from the seller, created a feature sheet regarding a property and provided it to a single potential buyer. Mr. Cawkwell had received no indication from the seller that the widespread distribution of an information package was welcomed, nor is there any indication that the seller had been made aware of Mr. Cawkwell's plans. The information packages were distributed to over 400 people.
- [54] In *Re/Max Keystone Realty (Re)* (file #2003-15)(“*Keystone*”), the brokerage was issued an order of reprimand and ordered to pay a \$1,000 fine for advertising on the Internet through National Listing Service (“NLS”), properties listed with other brokerages for which Re/Max Keystone Realty did not have the owner's authority to advertise. The brokerage's NLS web page claimed that the brokerage was the listing brokerage for 75 properties listed on the NLS. At least 29 of these properties were actually listed by other brokerages.
- [55] The broker and brokerage had no previous sanction history. There was no evidence of actual consumer harm. The broker assumed responsibility for the violation and cooperated with the investigation. Action was taken to rectify the problem when the brokerage was notified of the issue by the Commission.
- [56] The Hearing Committee disagreed with the broker's suggestion that this was simply a technical error. The Committee noted that the disciplinary action served as a general deterrent to ensure registrants are aware of their responsibility to obtain proper authorization to advertise a property and to ensure public confidence in the industry by reassuring sellers that a brokerage will not advertise their property without their written authority.
- [57] Mr. Cawkwell's actions are more serious than those of the registrants in *Keystone*. While the registrants in *Keystone* created advertisements for 29 properties that were listed for sale by other brokerages, Mr. Cawkwell created a detailed information package regarding a single property that he distributed directly to over 400 people and organizations without any form of authorization from the seller. The seller had elected to sign an exclusive listing with the listing brokerage.
- [58] In *Walz (supra)*, Mr. Walz received an order of reprimand and a \$500 fine for authorizing the release of a document, listing 167 properties for sale, by salespeople registered to his brokerage to clients of the brokerage. The brokerage had written authorization from 34 of the owners of the properties, but did not have authorization for the remaining 133 properties. Clients who received the document were advised that the document included all homes on the MLS® for the Moose Jaw Real Estate Board, not just the homes under contract to the brokerage.

[59] The decisions in *Baker, Keystone, and Walz* must be considered in light of the fact that they were rendered before the significant increase in the value of real estate in Saskatchewan. Inflation and the changing real estate market have had an impact on the commission registrants can expect to earn on trades in real estate. As such, fines for breaches of the legislation must keep pace with the increase in commission to ensure they continue to act as a deterrent against registrant misconduct.

[60] An order of reprimand and a \$2,500 fine are appropriate sanctions for Mr. Cawkwell's breach of Bylaw 727.

[61] As Mr. Cawkwell has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

[62] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, the Hearing Committee, with the consent of the Salesperson, Ted Cawkwell, and the Investigation Committee of the Saskatchewan Real Estate Commission, hereby orders:

[63] 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 727:

- a. Ted Cawkwell shall receive an order of reprimand for the violation of Bylaw 727;
- b. Ted Cawkwell 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. Ted Cawkwell's registration shall be suspended if he fails to make payment as set out above.

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

Dated at Saskatoon, Saskatchewan this 1st day of November, 2017.

 "Randy Touet"
Randy Touet,
Hearing Committee Chairperson