

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

*Harvey (Re)*, 2017 SKREC 11

Date: September 11, 2017  
Commission File: 2017-08

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF GEORGE HARVEY**

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*, Mr. George Harvey breached section 18(1)(b) of the *Act* by trading in real estate as a broker while he was not registered as a broker.

**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 18(1)(b) of *The Real Estate Act* states: “No person shall trade in real estate...as a broker, unless the person is registered as a broker.”

**FACTS:**

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

[5] Mr. Harvey was continuously registered as a salesperson under the provisions of *The Real Estate Brokers Act* with the Superintendent of Insurance from December 27, 1968 until December 3, 1970.

[6] Mr. Harvey was registered as a broker under the provisions of *The Real Estate Brokers Act* in the Province of Saskatchewan with the Superintendent of Insurance from

- March 26, 1973 to June 30, 1978;
- April 10, 1980 to June 30, 1981;
- March 18, 1983 to June 30, 1983;
- August 17, 1983 to June 30, 1985;
- September 10, 1985 to June 30, 1988.

[7] Mr. Harvey has been registered as a broker under the provisions of *The Real Estate Brokers Act, 1987* and *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission from:

- July 1, 1988 to June 30, 1989;
- September 13, 1989 to June 30, 1990;
- August 16, 1990 to June 30, 2016 (as a salesperson from September 19, 1991 to December 1, 1992 and October 6, 1998 to March 30, 2001);
- January 30, 2017 to present.

[8] Mr. Harvey has taken the following real estate courses:

- Pre-March 1976 Licensing Course; and
- Real Estate 350 Upgrade Course.

[9] Mr. Harvey has completed the continuing professional development seminars each registration year since 2001-2002.

[10] Mr. Harvey is presently registered under the provisions of *The Real Estate Act* as a broker with Wheatland Realty Ltd.

[11] Mr. Harvey is the broker and sole registrant of Wheatland Realty Ltd.

[12] Mr. Harvey’s 2015-2016 certificate of registration expired on June 30, 2016.

- [13] Mr. Harvey neglected to renew his certificate of registration for the 2016-2017 year.
- [14] Mr. Harvey was ill for over two weeks and he was also dealing with his sister in Washington D.C. who had been diagnosed with Alzheimer's disease.
- [15] Mr. Harvey did not realize that he had failed to renew his certificate of registration.
- [16] On October 6, 2016, the Sellers signed an Exclusive Farm Listing Agreement with Wheatland Realty Ltd. listing the Property for sale.
- [17] An advertisement was created and published with respect to the Property.
- [18] On November 24, 2016, Ms. Gail Armstrong, Registration and Office Administrator at the Saskatchewan Real Estate Commission, sent an email to Mr. Harvey, at the email address he provided to the Commission, to inquire whether he was acting as a broker.
- [19] Mr. Harvey does not recall receiving this email. He did not reply.
- [20] On December 9, 2016, Ms. Armstrong sent another email, to the same email address, requesting a response to her email of November 24.
- [21] Mr. Harvey does not recall receiving this email. He did not reply.
- [22] On January 30, 2017, Ms. Armstrong sent an email, to the same email address, attaching a letter advising that Mr. Harvey was not registered and that she had attempted to contact him on two previous occasions.
- [23] Mr. Harvey received Ms. Armstrong's January 30 email and contacted her immediately.
- [24] Mr. Harvey became registered on January 30, 2017.
- [25] Mr. Harvey was not involved in the purchase or sale of any properties between July 1, 2016 and January 29, 2017.
- [26] Mr. Harvey did not list any properties for sale, other than the Property above, between July 1, 2016 and January 29, 2017.
- [27] There was no activity in Mr. Harvey's trust account between July 1, 2016 and January 29, 2017.

**REASONS:**

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

#### Mitigating Factors

[29] Mr. Harvey was co-operative with the investigation.

[30] Mr. Harvey signed a Statement of Facts and Admissions acknowledging his misconduct.

[31] There was no activity in Mr. Harvey's brokerage's trust account during the period of time during which Mr. Harvey was not registered.

[32] The Property was not sold while Mr. Harvey was not registered, nor did he receive any offers to purchase the property during that time.

[33] Mr. Harvey was ill for two weeks and was also dealing with his sister in Washington D.C. who had been diagnosed with Alzheimer's disease.

[34] Mr. Harvey does very few transactions each year.

[35] There are no other registrants working out of Mr. Harvey's brokerage.

#### Aggravating Factors

[36] Mr. Harvey was unregistered for seven months.

[37] Mr. Harvey failed to respond to several emails from the Commission regarding his registration status.

[38] The ramifications of non-registration are significant: no REIX coverage for negligence and no defalcation coverage in the event of trust account violations.

#### Previous Discipline History

[39] In 1997-31, Mr. Harvey was issued an order of reprimand and a \$500 fine for negotiating with a seller whose property was listed for sale by another brokerage in breach of Bylaw 709.

[40] In 1997-40, Mr. Harvey was issued an order of reprimand for failing to protect and promote the interests of a buyer client in breach of Bylaw 702. The buyer had made Mr. Harvey aware that she required a very low-noise area to live in. Mr. Harvey found the buyer a property and, after she signed an offer to purchase the property, the buyer found out that the property was within a couple blocks of a railway line

that was in use. The buyer failed to complete the transaction and forfeited her deposit.

### Prior Decisions & Other Considerations

[41] 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 there to be specific deterrence to protect the public.
6. The need for there to be general deterrence to protect the public.
7. The need to maintain the public’s confidence in the integrity of the professional.
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.

[42] 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.*

[43] Mr. Harvey failed to renew his certificate of registration and traded in real estate while not registered to do so.

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

[44] Mr. Harvey was the sole perpetrator of this breach of the legislation.

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

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

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

[46] There is no evidence to suggest that any other parties were harmed by Mr. Harvey’s actions.

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

[47] While it does appear to be the result of an oversight rather than a deliberate decision to trade while unregistered, specific deterrence is needed to reiterate to

Mr. Harvey that trading in real estate on behalf of other people is a serious undertaking that requires registration with the Commission.

6. *The need for there to be general deterrence to protect the public.*
- [48] General deterrence is needed to ensure that other registrants know that the Commission will not tolerate registrants continuing to trade in real estate after allowing their certificate of registration to lapse. Proper registration is necessary.

7. *The need to maintain the public's confidence in the integrity of the professional.*
- [49] The public must be reassured that individuals trading in real estate are registered with the Commission to do so. The public must know that the Commission is committed to registration and that the regulation of the industry is important.

8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [50] Mr. Harvey's conduct falls outside the range of acceptable registrant conduct, but his breach of the legislation was not egregious.

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

**A. What is an appropriate sanction for Mr. Harvey's breach of section 18(1)(b)?**

- [51] There are no previous decisions dealing with a breach of section 18(1)(b).
- [52] There is a decision dealing with a registrant who traded in real estate as a property manager without having completed the requisite property management course: *In the Matter of Trevor Milnthorp* (2007-91), [2008 SKREC 5](#) ("*Milnthorp*"). The registrant was found guilty of a fraudulent act in contravention of section 39(1)(b) of the *Act*. The registrant was of the mistaken belief that he was permitted to trade in property management. When he was advised that he was not registered to trade as a property manager, he ceased all property management activities. He received an order of reprimand and was ordered to pay a \$2,500 fine and complete educational upgrading. Although this decision deals with a different section of the *Act*, the substance of the contravention is the same as in the case at hand.
- [53] The circumstances in *Milnthorp* are more serious than the case at hand. Both cases involve registrants trading in real estate without being properly registered to do so. Mr. Harvey did not realize he had failed to renew his certificate of registration; Mr. Milnthorp was operating under the mistaken belief that he was permitted to trade in property management. Both registrants took steps to remediate the situation once they were made aware of the issue. However, there are more mitigating factors at play in the current situation than there were in *Milnthorp*. Also, Mr. Harvey has completed the education needed to act as a broker

in Saskatchewan; he was not permitted to trade in real estate as a broker at the time because he had failed to renew his certificate of registration.

- [54] Mr. Harvey's previous disciplinary decisions date back to 1997. Given the length of time that has passed, the prior findings of professional misconduct should not be taken into consideration in determining an appropriate sanction.
- [55] An order of reprimand and a \$2,000 fine are appropriate sanctions for Mr. Harvey's breach of section 18(1)(b).
- [56] As Mr. Harvey 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, the Hearing Committee, with the consent of the Broker, George Harvey, and the Investigation Committee of the Saskatchewan Real Estate Commission, 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 the breach of section 18(1)(b) of the *Act*:
- a. George Harvey shall receive an order of reprimand for the violation of section 18(1)(b);
  - b. George Harvey shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$2,000.00 fine for the said violation of the *Act*; and
  - c. George Harvey'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 Saskatoon, Saskatchewan this 11<sup>th</sup> day of September, 2017.

Randal C. Touet,  
Hearing Committee Chairperson