

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

Imperial Properties Corp. (Re), 2019 SKREC 27

Date: June 5, 2019
Commission File: 2017-42

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF IMPERIAL PROPERTIES CORP.**

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

Jeffrey P. Reimer- Chairperson

Doreen Heinbigner

Lori Patrick

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*, Imperial Properties Corp. breached s. 32(3) of the *Act* by failing to make Imperial Properties Corp. records available for inspection to the Commission or a person authorized by the Commission in a timely manner.

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 32 of the *Act* states:

“(1) The Commission, or a person authorized in writing by the Commission, may at any reasonable time inspect the records of a brokerage to determine whether:

(a) the amount of funds held in trust is the amount for which the brokerage is accountable;

(b) the brokerage maintains its records as required by this Act, the regulations and the bylaws;

(c) the brokerage and its registrants are complying with this Act, the regulations and the bylaws.

(2) The person making the inspection may demand the production of the records of the brokerage with respect to which the inspection is being made.

(3) A brokerage shall make its records available for inspection to a person mentioned in subsection (2).”

FACTS:

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

[5] Imperial Properties Corp. (“Imperial”) has been continuously registered as a brokerage under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since January 1, 2015.

[6] On January 12, 2016, an accountant from the Accounting Firm (the “Firm”) sent Imperial a letter advising that the Firm had been engaged by the Saskatchewan Real Estate Commission to conduct compliance reviews for real estate brokerage trust accounts. The letter requested that the brokerage send the Firm trust bank statements including cancelled cheques, bank reconciliations and trust liability listings from the date of inception to November 30, 2015. The accountant asked that the requested records be provided by January 27, 2016. The accountant also requested a listing in electronic form of all deals from the date of inception to November 30, 2015 and a list of property management clients.

[7] On January 27, 2016, the Property Accountant for Imperial was the initial point of contact for representatives of the Firm. The Property Accountant provided some of the requested documents to the accountant.

[8] On January 27, 2016, the Auditor from the Firm sent an email to the Property Accountant requesting further specific information including sample signatures of

all parties with signing authority on the brokerage's trust account, a trust liability listing covering January to November 2015, and documentation regarding electronic transfers.

- [9] That same day, the Property Accountant responded to the Auditor to say that the manager was on sick leave for a month and some information could not be obtained until she returned.
- [10] On March 3, 2016, the Auditor followed up with the Property Accountant regarding the requested documentation and information. This was the first communication from the Auditor to any employees of Imperial since his correspondence of January 27, 2016.
- [11] On March 4, 2016, the Property Accountant provided the Auditor with a substantial amount of the requested documentation. That same day, the Auditor requested further detail into his previous inquiry.
- [12] On March 31 and April 14, 2016, the Auditor followed up with the Property Accountant regarding his March 4, 2016 email as he had not been provided with the further details and information that he requested in his March 4, 2016 email.
- [13] On April 20, 2016, the Auditor began correspondence with the Accounting Manager for Imperial about the audit. The Auditor requested information from the Accounting Manager, much of which had initially been requested from the Property Accountant previously.
- [14] On April 25, 2016, the Accounting Manager provided some of the requested documentation to the Auditor. That same day, the Auditor provided the Accounting Manager with a revised list of information that the Auditor required for the audit.
- [15] On May 4, 2016, the Auditor provided the Accounting Manager with a list of information he required for the audit. On May 6, 2016, the Accounting Manager provided the Auditor with some of the requested documentation.
- [16] On May 9, 2016, the Auditor requested further information from the Accounting Manager in addition to information that the Accounting Manager failed to provide as requested on May 4, 2016.
- [17] Throughout May 2016, the Auditor and the Accounting Manager communicated with each other to clarify exactly what information the Auditor required that the previously provided communication did not contain.
- [18] On June 13, 2016, the Accounting Manager sent an email to the Auditor requesting clarification of some items. The Auditor responded to this email that same day.

- [19] On June 23, 2016, numerous emails were sent between the Accounting Manager and the Auditor with both the provision of some of the requested information and with further requests for information.
- [20] On June 24, 2016, the Auditor provided the Accounting Manager with a newly revised list of queries.
- [21] On June 30, 2016, the Auditor sent an email to the Legal and Compliance Manager at the Commission (“LCM”) requesting that she send an email to Imperial setting out the remaining information he needed and a deadline for response that would allow him to complete the audit by the end of July.
- [22] On July 7, 2016, the LCM sent Imperial an email that set out a list of the Auditor’s questions that had yet to be answered.
- [23] On July 8, 2016, the Accounting Manager provided the Auditor with sample signatures belonging to the individuals with signing authority on the brokerage’s trust account.
- [24] On July 12, 2016, the Accounting Manager provided the Auditor with the condo fees roll for various properties and the deposit summary for 2015 as the Auditor had requested.
- [25] On July 13, 2016, the Auditor provided the Accounting Manager with a newly revised query list. The Accounting Manager provided some of the requested information over the next two days.
- [26] On July 15, 2016, the Auditor provided the Accounting Manager with a newly revised query list.
- [27] On August 3, 2016, the Accounting Manager provided the Auditor with some of the requested documentation. The Auditor indicated the deficiencies to the Accounting Manager in an email on August 5, 2016.
- [28] On August 10, 2016, the Accounting Manager provided some of the requested documentation to the Auditor.
- [29] On October 7, 2016, the Auditor provided the Accounting Manager with a newly revised list of queries. This was the first email sent by the Auditor since his August 10, 2016 email. The Accounting Manager provided some of the requested documentation on November 1, 2016.
- [30] On November 1, 2016, the Auditor provided the Accounting Manager with a newly revised list of queries. The Accounting Manager provided some of the requested documentation to the Auditor on November 10, 2016.

- [31] On November 28, 2016, the Auditor sent an email to the LCM requesting that she send another email to Imperial and to the Accounting Manager setting out the outstanding information and requesting a response by December 9, 2016. This letter indicated that there was an outstanding request for documentation made by the Auditor to the Accounting Manager on November 1, 2016. The Auditor did not email the Accounting Manager after the Accounting Manager's November 10, 2016 email.
- [32] On December 1, 2016, the LCM sent Imperial an email requesting the information the Auditor needed to complete the audit. A response was requested by December 8, 2016 and Imperial was advised that non-compliance could result in prosecution. This email was copied to the Accounting Manager and the Auditor.
- [33] On December 1, 2016, the Accounting Manager sent an email to the Auditor, the LCM, and Imperial apologizing and promising to provide the requested information by December 8, 2016.
- [34] On December 6, 2016, the Accounting Manager sent an email to the Auditor to which he had attached some of the information requested in the Auditor's previous correspondence. The email also indicated that some of the requested documents were not included as some of the documents had been requested from the Regina office, but had not yet been received.
- [35] On December 6, 2016, the Accounting Manager sent an email to the Auditor, the LCM, and Imperial confirming that the documents requested by the Auditor had been sent.
- [36] On December 6, 2016, the Auditor sent an email to the Accounting Manager, the LCM, and Imperial stating that certain information that was previously requested was still outstanding.
- [37] On December 8, 2016, the Accounting Manager sent an email to the Auditor, the LCM, and Imperial providing some of the requested documentation, including one of the documents previously stated to have been requested from the Regina office.
- [38] On December 8, 2016, the Auditor sent an email to the Accounting Manager, the LCM, and Imperial requesting further documentation.
- [39] On December 9, 2016, the Accounting Manager sent an email to the Auditor, the LCM, and Imperial providing the requested documentation.
- [40] On December 13, 2016, the Auditor requested further details from the Accounting Manager.

- [41] On December 19, 2016, the Accounting Manager responded to say that he would reply to the Auditor's inquiries on December 23, 2016.
- [42] The Accounting Manager did not contact the Auditor on December 23, 2016.
- [43] On January 10, 2017, the Auditor sent a follow-up email to the Accounting Manager. He received an automated reply from "Accounting Services" advising that the email had been received.
- [44] On January 23, 2017, the Auditor sent a second follow-up email and received another automated response.
- [45] On January 23, 2017, the Auditor forwarded his most recent correspondence with the Accounting Manager to Imperial and to the LCM.
- [46] On January 23, 2017, a third employee of Imperial (the "Employee") sent an email to the Auditor responding to his questions and attached deposit documents.
- [47] On June 23, 2017, the Auditor sent an email to the Employee requesting further documentation. This was the first email the Auditor had sent since the Employee's January 23, 2017 email.
- [48] On June 27, 2017, the Employee sent an email to the Auditor stating that she would prepare the documentation requested and provide it to him later that week.
- [49] On June 29, 2017, the Employee sent an email to the Auditor to provide him with the requested documentation.
- [50] On June 29, 2017, the Auditor sent an email to the Employee requesting further documentation.
- [51] On July 6, 2017, a fourth employee of Imperial sent an email to the Auditor and the Employee to provide the Auditor with the documentation he requested from the Employee.
- [52] At all times when the President of Imperial was contacted directly by the Auditor or the LCM, a response was immediately provided by the President.

REASONS:

- [53] The Investigation Committee and Imperial Properties Corp. considered the following as relevant in agreeing to the within consent order:

Mitigating Factors

[54] Imperial Properties Corp. does not have a sanction history.

Aggravating Factors

[55] The length of time it took for the brokerage to provide the requested records was unacceptable.

Prior Decisions & Other Considerations

[56] 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.

[57] 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. These factors have been consistently applied in Saskatchewan Real Estate Commission consent orders since September 2016.

1. The nature and gravity of the breaches of the Code of Ethics.

[58] The Commission engages an accounting firm to conduct a financial audit of brokerages to ensure that the brokerages are dealing with trust money in accordance with the requirements set out in the legislation. Imperial Properties Corp. failed to provide the requested information to the auditor in a timely manner.

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

[59] The brokerage was the only registrant involved in its breach of the legislation.

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

[60] There is no evidence to suggest that Imperial enjoyed any benefits or suffered any losses as a result of its breach of the legislation.

4. *The impact of the breaches on complainants or others.*
- [61] The financial audit of Imperial was significantly delayed because the Auditor was not able to obtain the necessary information.
5. *The need for specific deterrence to protect the public.*
- [62] The brokerage must understand the importance of providing timely and complete responses to requests for information from the Commission or a person authorized by the Commission to collect information.
6. *The need for general deterrence to protect the public.*
- [63] Registrants must be reminded of the importance of providing timely and complete responses to inquiries from the Commission.
7. *The need to maintain the public's confidence in the integrity of the profession.*
- [64] The handling of trust money is of fundamental importance to the profession. Registrants occupy a position of trust with their clients. Conducting regular audits of brokerages to ensure trust money is being handled appropriately is an important means by which the Commission can reassure members of the public that their trust in registrants is not misplaced.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [65] Imperial'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 Imperial Properties Corp.'s breach of s. 32(3) of the Act?

- [66] While there are no previous sanctions specifically dealing with s. 32(3) of the *Act*, there are sanctions dealing with similar issues regarding failure to provide a timely and complete response to Commission inquiries.
- [67] In *Schweitzer (Re)*, [2015 SKREC 11](#) (file #2014-27) ("*Schweitzer*"), Alvin Schweitzer was fined \$2,500 and issued an order of reprimand for breaching s. 8(4) of the Regulations by failing to provide any substantive response to the requests of the Commission for information. Mr. Schweitzer had received \$50,000 as a deposit on a transaction from a buyer client and deposited the money into his brokerage's trust account. He made several unauthorized withdrawals from this money for unknown purposes and, when the transaction collapsed, he was only able to return \$30,000 of the deposit to his buyer client.
- [68] Mr. Schweitzer had been a registrant since May 18, 1979, and had no previous sanction history. Mr. Schweitzer's registration was suspended at the time of the hearing and had been since August 28, 2014.

- [69] Mr. Schweitzer was not co-operative with the investigation and did not acknowledge his wrongdoing, nor did he express remorse. The Hearing Committee stated that the requirement that a registrant co-operate with the Commission is integral to the Commission's duty to investigate complaints and, by doing so, to provide protection to the public. The Committee also noted that a \$3,000 fine would have been ordered against Mr. Schweitzer for his breach of s. 8(4) of the Regulations, were it not for the aggregate cap of \$15,000 in fines arising out of a single transaction.
- [70] Imperial's breach is less serious than that of the registrant in *Schweitzer*. The requirement that a registrant respond to requests from a person authorized by the Commission to conduct an audit of a brokerage is integral to the Commission's duty to regulate the conduct of brokerages and to ensure the brokerages are handling trust money in an appropriate manner. Although the requests for information in *Schweitzer* and in the case at hand both revolve around the brokerage's handling of trust money, Mr. Schweitzer never did respond to any of the requests for information. Employees of Imperial did eventually provide all of the requested information to the auditor.
- [71] In *Matharu (Re)*, [2012 SKREC 2](#) (file #2011-07B) ("*Matharu*"), Ajit Matharu was issued an order of reprimand and ordered to pay a \$3,000 fine and \$1,000 in costs for failing to reply to the requests of a review officer. In the course of an investigation into the conduct of another registrant, information was requested from Mr. Matharu. Correspondence was sent to Mr. Matharu on February 14, 2011, June 1, 2011 and September 22, 2011. No reply was received until after he was charged for failing to reply in November of 2011.
- [72] The Committee considered the length of time Mr. Matharu had been in the real estate industry and the significance of his two prior sanctions. The Committee felt that Mr. Matharu failed to respond because he simply did not consider it of sufficient importance to make a timely response.
- [73] As a result of Mr. Matharu's inaction, the investigation stalled, much to the chagrin of the complainant, who felt that nothing was happening, and the registrant against whom the complaint had been made, who had the allegations hanging over his head for almost a year.
- [74] Imperial's breach is slightly less serious than that of the registrant in *Matharu*. While the complainant and the other registrant involved in *Matharu* had to wait while the investigation stalled, Imperial took an entire year to provide the information requested by the auditor. In contrast, Mr. Matharu responded in nine months.
- [75] In *Dodman (Re)* (file #2002-72) ("*Dodman*"), Dale Dodman was fined \$500, required to do educational upgrading, and issued a letter of reprimand when she violated Section 8 of the Regulations by responding inappropriately to requests of the review officer and failing to provide the information requested.

- [76] Ms. Dodman had no previous sanction history.
- [77] The information requested related to the investigation of a serious matter and yet Ms. Dodman did not deliver the completed paperwork to her brokerage, nor did she turn the deposit over to the brokerage.
- [78] The Committee noted that the requirement for a registrant to fully cooperate with a request from the Commission's review officer is fundamental to the ability of the Commission to fulfill its mandate to protect the public interest in connection with trades in real estate.
- [79] The Committee also acknowledged that, while the issue of privacy is always a concern, it is not an excuse for non-delivery of documents as there is no privilege attributed to this.
- [80] Imperial's breach is of similar severity to that of the registrant in *Dodman*. While Ms. Dodman did respond to the requests for information of the review officer, she did not provide substantive responses which caused delays in the investigation. Similarly, employees of Imperial often provided responses to the auditor that did not contain the information requested or that contained only a portion of the information requested. Imperial took an entire year to provide a complete response to the auditor's inquiries, which also delayed the completion of the audit.
- [81] The decision in *Dodman* was rendered in 2002. Since that time, there has been a significant expansion in the real estate market in Saskatchewan that has resulted in significant increases in the commissions registrants can expect to earn on trades in real estate. As commissions increase, the sanctions ordered by the Commission for breaches of the legislation must keep pace to ensure that fines do not come to be considered as a mere "cost of doing business".
- [82] In *Downey (Re)* (file #1999-79) ("*Downey*"), Lyndon Downey was fined \$1,000 and issued an order of reprimand for breaching Section 8(3) of the Regulations when he provided only a portion of the information that the Investigation Committee had requested.
- [83] Mr. Downey had no previous sanction history, expressed remorse for his actions, and there was no evidence of consumer harm.
- [84] Imperial's breach is more serious than that of the registrant in *Downey*. This is because Imperial's employees failed to provide responses to several different requests for information over the course of a year, while Mr. Downey failed to provide a copy of a single document.
- [85] The decision *Downey* was rendered in 1999, and it should be noted that Commission fines have increased in the years since then.

[86] An order of reprimand and a fine of approximately \$1,500.00 are appropriate sanctions for Imperial's breach of s. 32(3) of the Act.

[87] As Imperial Properties Corp. has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

[88] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Imperial Properties Corp., and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:

[89] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of s. 32(3) of the *Act*:

1. Imperial Properties Corp. shall receive an order of reprimand for the violation of s. 32(3) of the *Act*;
2. Imperial Properties Corp. 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
3. Imperial Properties Corp.'s registration shall be suspended if the brokerage fails to make payment as set out above.

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

Dated at Regina this 5th day of June, 2019.

“Jeffrey P. Reimer”,
Jeffrey P. Reimer, Chairperson