

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

Bhatia (Re), 2019 SKREC 25

Date: May 23, 2019
Commission File: 2017-47

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF GURPREET BHATIA**

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

David M. Chow - Chairperson

Anne Parker

Wayne Zuk

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. Bhatia breached Commission Bylaw 702.1 by acting in an unprofessional manner or by acting in a manner unbecoming of a registrant by failing to ensure the buyer understood that Mr. Bhatia was not representing him in 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 702.1 states:

“A registrant shall not engage in conduct that is disgraceful, unprofessional or unbecoming of a registrant in the course of his or her practice.”

FACTS:

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

[5] Mr. Bhatia 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 May 5, 2014.

[6] Mr. Bhatia has taken the following real estate courses:

- Phase 1 – Real Estate as a Professional Career;
- Commercial Real Estate as a Professional Career;
- Residential Real Estate as a Professional Career; and
- Farm Real Estate as a Professional Career.

[7] Mr. Bhatia has completed the continuing professional development seminars each registration year since 2014-2015.

[8] Mr. Bhatia is presently registered under the provisions of *The Real Estate Act* as a salesperson with Global Direct Realty Inc.

[9] At all times relevant to this matter, Mr. Bhatia was registered under the provisions of *The Real Estate Act* as a salesperson with Century 21 Dome Realty Inc. and Crown Real Estate Inc. O/A Re/Max Crown Real Estate.

[10] Mr. Bhatia was approached by the Buyer and two other gentlemen to assist them with real estate purchases. They were looking to have new houses built for them.

[11] Mr. Bhatia does not believe that the Buyer was ever his client.

[12] Mr. Bhatia offered all three men a Buyer’s Brokerage Contract to sign, but all three declined, stating that they were just looking around and would not be interested in working exclusively with him.

[13] The Buyer denies ever being offered a Buyer’s Brokerage Contract by Mr. Bhatia.

[14] Mr. Bhatia ended up referring the Buyer and the other two gentlemen to a home builder, the Builder.

- [15] On June 26, 2016, Mr. Bhatia completed a Real Estate Client Registration Form registering the Buyer with the Builder. The form states that, if the registered client completes the purchase of a Builder property, the agent will receive the commission in accordance with the terms set out on the form.
- [16] Mr. Bhatia was present when the Buyer and the other two gentlemen signed the construction contracts with the Builder. Mr. Bhatia arranged a meeting for the three men and the Builder at his brokerage office.
- [17] On October 11, 2016, Mr. Bhatia sent an email to the Buyer to which he had attached a Construction Agreement between the Builder and the Buyer regarding the Property. The email requested that the Buyer return the document to Mr. Bhatia as soon as possible and advised the Buyer to call Mr. Bhatia at any time if he had any questions about the document.
- [18] Mr. Bhatia signed the Construction Agreements between the three men and the Builder as a witness because he was present when the three buyers signed contracts with the Builder.
- [19] On June 7, 2017, Mr. Bhatia sent an email to the Buyer to which he had attached an Affidavit of Execution and an Amendment to the Construction Agreement. The Amendment indicates that changes are to be made to the contract dated May 6, 2016 between the Builder and the Buyer.
- [20] Mr. Bhatia contacted the Buyer when it was brought to his attention that the Buyer was not co-operating and that the deal was going to fall through. Mr. Bhatia tried to convince the Builder to give the Buyer another month to satisfy the condition, but the Buyer refused to sign the amendment.
- [21] The Buyer asserts that Mr. Bhatia was acting as his agent and that Mr. Bhatia was supposed to be representing him in his dealings with the Builder.
- [22] Mr. Bhatia did not specifically advise the Buyer that they were not in an agency relationship and that Mr. Bhatia was not representing the Buyer in his dealings with the Builder.

REASONS:

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

Mitigating Factors

- [24] Mr. Bhatia was co-operative with the investigation.

Aggravating Factors

- [25] The agency relationship between members of the public and the brokerage that represents them is a fundamental component of the real estate industry. Registrant conduct that undermines this relationship is not acceptable.

Previous Sanction History

- [26] In *Bhatia (Re)*, [2017 SKREC 7](#) (file #2015-47), Mr. Bhatia was found to have breached Bylaw 702 by failing to protect and promote the interests of his clients when he continued to represent them in their purchase of a property while he travelled out of the country. The decision in SREC File 2015-47 was rendered after the conduct giving rise to the current charges took place. As such, it is not appropriate to consider Mr. Bhatia's previous sanction history as an aggravating factor.

Prior Decisions & Other Considerations

- [27] 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.

- [28] 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.

- [29] Mr. Bhatia acted unprofessionally when he failed to ensure that the Buyer understood that Mr. Bhatia was not representing him in the transaction.

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

- [30] Mr. Bhatia was the only registrant involved in his breach of the legislation.

3. *Whether the offending member suffered or gained as a result of the breaches.*
[31] There is no evidence to suggest that Mr. Bhatia enjoyed any benefits or suffered any losses as a result of his breach of the legislation.

4. *The impact of the breaches on complainants or others.*
[32] The Buyer was left confused as to his relationship with Mr. Bhatia. He believed that Mr. Bhatia was acting as his agent.

5. *The need for specific deterrence to protect the public.*
[33] It must be made clear to Mr. Bhatia that his actions have the potential to undermine the principles of the agency relationship between clients and brokerages, generally.

6. *The need for general deterrence to protect the public.*
[34] All registrants must be reminded of the importance of the agency relationship between members of the public and brokerages and that it is not appropriate for registrants to engage in conduct that damages or undermines these relationships.

7. *The need to maintain the public's confidence in the integrity of the profession.*
[35] Members of the public must be reassured that the importance of the agency relationship between clients and brokerages is recognized and protected. Members of the public must be confident that only their authorized agent is purporting to act on their behalf and that the registrants they encounter are authorized agents of the parties they are claiming to represent. Registrant conduct that undermines these agency relationships runs the risk of damaging that confidence.

8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
[36] Mr. Bhatia'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 Mr. Bhatia's breach of Bylaw 702.1?

[37] In *Wu (Re)*, [2018 SKREC 35](#) (file #2017-58) ("*Wu*"), Sky Wu was issued an order of reprimand and a \$1,500 fine for acting in an unprofessional manner or by acting in a manner unbecoming of a registrant by failing to ensure the buyer understood that he was not representing her in a transaction. Mr. Wu and his business partner owned a property. Mr. Wu's business partner showed the property to the buyer and Mr. Wu wrote an offer on a Residential Contract of Purchase and Sale for the buyer. The offer did not indicate that the buyer or seller was represented by any brokerage. Although Mr. Wu believed that the buyer was aware that Mr. Wu was only involved in the transaction as a seller, the

buyer's complaint to the Commission stated that she had believed Mr. Wu was acting as her agent in the purchase of the property.

- [38] Mr. Wu did not have a previous sanction history and was co-operative with the investigation. He did not earn any commission from the transaction.
- [39] Mr. Wu was personally involved in the transaction and there were no other registrants involved in the transaction. The agency relationship between members of the public and the brokerage that represent them is a fundamental component of the real estate industry. Registrant conduct that undermines this relationship is not acceptable.
- [40] Mr. Bhatia's breach of Bylaw 702.1 is similarly serious to that of the registrant in *Wu*. Mr. Wu did not have a previous sanction history and did not earn any commission from the transaction, but he was personally involved in the transaction as an owner of the property.
- [41] An order of reprimand and a fine of approximately \$1,250 are appropriate sanctions for Mr. Bhatia's breach of Bylaw 702.1.
- [42] As Mr. Bhatia has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [43] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Gurpreet Bhatia, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [44] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Bylaw 702.1:
1. Mr. Bhatia shall receive an order of reprimand for the violation of Bylaw 702.1;
 2. Mr. Bhatia shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$1,250.00 fine for the said violation of the bylaw; and
 3. Mr. Bhatia's registration shall be suspended if he fails to make payment as set out above.
- [45] There shall be no order as to costs.

Dated at Moose Jaw, Saskatchewan this 23rd day of May, 2019.

“David M. Chow”
David M. Chow, Chairperson