

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

Honch (Re), 2020 SKREC 11

Date: November 10, 2020
Commission File: 2018-18

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF JESSE HONCH**

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

Jeffrey Reimer- Chairperson

Anne Parker

Cliff Iverson

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. Honch breached Bylaw 706 by publicly discrediting a competitor.

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 706 states:

“A registrant shall not publicly discredit a competitor. If a registrant’s opinion is sought regarding a specific transaction, it shall be rendered with strict professional integrity and courtesy.”

FACTS:

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

[5] Mr. Honch 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 July 29, 2009.

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

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

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

[8] Mr. Honch is presently registered under the provisions of *The Real Estate Act* as a salesperson with #101197391 Saskatchewan Ltd. O/A Coldwell Banker Signature.

[9] At all times relevant to this matter, Mr. Honch was registered under the provisions of *The Real Estate Act* as a salesperson with Rescom Realty PA Ltd. O/A Coldwell Banker Rescom Realty PA.

[10] In the spring of 2018, the Seller had the Property listed for sale with the Listing Brokerage.

[11] On or about February 22, 2018, Mr. Honch showed the Property to potential buyers.

[12] Mr. Honch had a previous experience with the Seller as she had purchased the Property from one of his clients. After she purchased the property, she started some home renovations and subsequently became aware of issues that had not been disclosed to her by her home inspector. The Seller blamed Mr. Honch and his client for not disclosing these issues and had sent Mr. Honch some very troubling messages relating to her home. At no point in time was Mr. Honch aware of the issues that the Seller complained about. Mr. Honch understands that his client who sold the Seller the Property was also unaware of the issues.

Mr. Honch further understands that the Seller later commenced an action against his client and her home inspector for her alleged damages.

- [13] Mr. Honch understands that when the Seller became informed that he was showing her home, the Seller without the permission of Mr. Honch or his clients, set up a recording device and recorded a private conversation he had with his client relating to the Property. At no point in time was Mr. Honch advised by the Seller or by Registrant A, that the Seller had set up a recording device. There was also no signage on the home advising that there was surveillance in place. Mr. Honch has no ability to advise as to whether or not the recording provided by the Seller is a true copy of the conversation or has been edited in any way. Mr. Honch's client has also never consented to her privacy being breached, whether it be by the Seller recording their private conversation, or for the Saskatchewan Real Estate Commission's use of the private conversation in this complaint.
- [14] During the showing, Mr. Honch informed his clients that the Property may be overpriced. He advised that he typically does not like to discount other agents in the City, "but whenever you see a red sign on the lawn it typically means it is going to be over priced". Mr. Honch also informed his clients that he had previously worked for the Listing Agent and his philosophy was to "list 'em high, bully 'em down."
- [15] Mr. Honch based his comments to his client on the fact that he felt it was his duty to inform his clients that the Property was in his opinion overpriced, and that part of the reason for the Property's current price was based upon the philosophy of the Listing Agent. The Listing Agent specifically advised Mr. Honch of this philosophy in the past while Mr. Honch was his assistant for two years, and Mr. Honch felt it was his duty as his client's REALTOR®, to advise them of this philosophy as this information may benefit his clients if they were looking at placing an offer on the Property.
- [16] The comments Mr. Honch made about the Listing Agent's listings he believes are based and supported by statistics. At the time Mr. Honch made the comments, the Listing Agent held the highest dollar value per square foot average in Prince Albert, the largest percentage of difference between list price and sale price, and the longest days on market of any agent in Prince Albert. Mr. Honch felt that he had an obligation to advise his client as to the reasons why the Property contained a listing which was in his opinion overpriced. He believed that he was protecting and promoting the interest of his client when he was discussing these issues with his client. Mr. Honch will ensure that in the future that he will be more considerate of his competitors when advising his clients.

REASONS:

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

Mitigating Factors

[18] Mr. Honch has no previous sanction history.

[19] Mr. Honch was co-operative with the investigation.

Aggravating Factors

[20] There are no aggravating factors.

Prior Decisions & Other Considerations

[21] 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.

[22] 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.

[23] While showing a property to buyer clients, Mr. Honch told his clients that if they see a red sign on the front lawn, the property is typically going to be overpriced. The clients asked which brokerage has red signs and Mr. Honch advised that it was the Listing Brokerage. Mr. Honch also advised the clients that he had worked with the Listing Agent early in his career and that the Listing Agent’s philosophy is to “list ‘em high, bully ‘em down”.

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

[24] Mr. Honch was the only registrant involved in this breach of the legislation.

3. *Whether the offending member suffered or gained as a result of the breaches.*
[25] There is no evidence to suggest that Mr. Honch 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.*
[26] There is no evidence of actual harm arising out of Mr. Honch's breach of the legislation. However, a registrant making disparaging comments about a fellow registrant can be harmful to public confidence in registrants and the reputation of the profession.

5. *The need for specific deterrence to protect the public.*
[27] Mr. Honch must be reminded that it is not appropriate for registrants to publicly discredit their fellow agents. Opinions about other agents and the properties they have listed for sale should be provided to clients in a courteous and professional manner.

6. *The need for general deterrence to protect the public.*
[28] General deterrence is needed to remind all registrants that it is not appropriate for registrants to publicly discredit their fellow agents. Opinions about other agents and the properties they have listed for sale should be provided to clients in a courteous and professional manner.

7. *The need to maintain the public's confidence in the integrity of the profession.*
[29] Members of the public must be confident in the competence and professionalism of the registrants they engage to represent them in trades in real estate. A registrant making disparaging comments about fellow registrants can be harmful to public confidence in registrants and in the overall reputation of the profession.

8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
[30] Mr. Honch'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. Honch's breach of Bylaw 706?

[31] There are three previous decisions under Bylaw 706.

[32] In *Lunde (Re)*, [2018 SKREC 13](#) (file #2015-50) ("*Lunde*"), Laurie Lunde was issued an order of reprimand and ordered to pay a \$2,000 fine for breaching Bylaw 706. Ms. Lunde was representing buyers who wrote an offer to purchase a property. The seller entered into a conditional contract of purchase and sale with another buyer and wrote a back-up counter offer to Ms. Lunde's clients. Ms. Lunde and her clients were not happy that they had not been made aware of any competing offers or with how the listing agent handled the multiple offer situation.

- [33] Ms. Lunde advised her buyer clients that, if the correct protocols were implemented, they would have stood a much better chance of being the first choice. She told them that “many ethical and legal errors were committed” and “an Agent with 30 years in the business cannot play the ‘dumb’ card.” She told her buyer clients that they were “deliberately omitted from having an opportunity to adjust [their] offer”. She told them that “cheating is not acceptable”.
- [34] Ms. Lunde had no previous sanction history and was co-operative with the investigation. She signed a Consent Order acknowledging her error.
- [35] Ms. Lunde’s discrediting statements were made in writing. The clients to whom she made these statements could have distributed her comments further, although they did not in this case. Ms. Lunde is registered as a branch manager and, as such, should be providing an example to other registrants on how to act properly as a registrant in Saskatchewan.
- [36] Mr. Honch’s breach of Bylaw 706 is less serious than that of the registrant in *Lunde*. Mr. Honch is not registered as a broker or branch manager and his comments about the Listing Agent and his brokerage were not made in writing.
- [37] In *MacFarlane (Re)*, [2015 SKREC 8](#) (file #2012-64) (“*MacFarlane*”), Shirley MacFarlane was issued an order of reprimand and ordered to pay a \$2,000 fine for breaching Bylaw 706. She sent several emails to her client that contained disparaging comments about registrants in Weyburn and about several individual agents.
- [38] Ms. MacFarlane suggested that some previously interested buyers may have changed their mind about the property because they “got talking to one of those other agents who perhaps discouraged them about [the] house”. She also stated that “these Weyburn agents are a breed of their own” and that “you cannot stray from their fixed way of thinking if you are an agent in that town”. Ms. MacFarlane stated that one registrant “looks like a real liar and crook”. She stated that another registrant “has been trouble with other agents” and is “very tough to deal with”. She stated that a third registrant was “really sounding almost goofy” and that he “needs to be fined” for leaving lights on and the door unlocked after showing the property. Ms. MacFarlane stated that she had “had enough of these silly agents in Weyburn”. Ms. MacFarlane compared a fourth registrant to a “fish flopping on the ground once it has been caught” and stated that she didn’t “think he [would] last long on his own, but there [seem] to be so many weak agents”.
- [39] Ms. MacFarlane had been in the industry for 20 years and had no previous sanctions. She was co-operative in the investigation and accepted responsibility for her conduct. The seller was already predisposed against realtors, particularly those in Weyburn. The Hearing Committee noted that Ms. MacFarlane seemed genuinely embarrassed by the situation.

- [40] Ms. MacFarlane discredited four registrants. She made her discrediting statements in writing, facilitating further public distribution of the remarks. The Committee noted that a registrant making disparaging comments about registrants harms public confidence in registrants and the reputation of the industry. Negative comments made by a registrant are likely afforded more weight by a member of the public.
- [41] Mr. Honch's breach of Bylaw 706 is less serious than that of the registrant in *MacFarlane*. Ms. MacFarlane discredited four individual registrants and Weyburn registrants as a whole. Mr. Honch did not make his comments about the Listing Agent and his brokerage in writing.
- [42] In *Gabruch (Re)* (file #2003-10) ("*Gabruch*"), Donna Gabruch was issued an order of reprimand and a \$1,000 fine for telling her clients that another registrant hated her and that if anything went wrong, it would be with that other registrant.
- [43] There was no evidence of consumer harm and Ms. Gabruch was co-operative with the Investigation Committee. She stated that she had learned from her actions.
- [44] Ms. Gabruch had been in the real estate industry for over 22 years at the time of the violation and should have known that a registrant should not publicly discredit a competitor. Ms. Gabruch had a previous sanction history. The Committee viewed the actions of a registrant who publicly discredits a competitor as a serious violation and the type of violation that may warrant the suspension or cancellation of a registrant's certificate of registration. The mitigating factors at play determined that suspension or cancellation of Ms. Gabruch's certificate of registration was not warranted.
- [45] Mr. Honch's breach of Bylaw 706 is less serious than that of the registrant in *Gabruch*. Mr. Honch does not have a previous sanction history and has not been in the real estate industry as long as Ms. Gabruch had at the time of her breach of the bylaw.
- [46] *Gabruch* was decided in 2003. In 2008, the real estate market in Saskatchewan underwent significant change. Property values increased considerably and, as a result, the commission registrants can expect to earn on trades in real estate increased as well. Sanctions ordered against registrants must keep pace with these increases or the Commission runs the risk of fines becoming a "cost of doing business". Consideration must also be paid to the general inflation that has occurred in the years since these decisions were rendered.
- [47] An order of reprimand and a \$1,000 fine are appropriate sanctions for Mr. Honch's breach of Bylaw 706.
- [48] As Mr. Honch has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

[49] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Honch, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:

[50] 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 706:

- a. Mr. Honch shall receive an order of reprimand for the violation of Bylaw 706;
- b. Mr. Honch shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$1,000.00 fine for the said violation of the bylaw; and
- c. Mr. Honch's registration shall be terminated if he fails to make payment as set out above.

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

Dated at Regina this 10th day of November, 2020.

"Jeffrey Reimer"
Hearing Committee Chairperson