

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

Imperial Properties Corp. (Re), 2019 SKREC 38

Date: November 6, 2019
Commission File: 2019-01A

**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
Vern McClelland
Doreen Heinbigner

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. (“Imperial”) breached Saskatchewan Real Estate Commission Bylaw 712(c) by allowing unregistered employees of the brokerage to trade in real estate.

Count 2:

That, contrary to section 39(1)(c) of *The Real Estate Act*, Imperial breached Saskatchewan Real Estate Commission Bylaw 617 by utilizing a property management agreement that does not:

- include the legal description of the property to be managed;
- indicate when the management fee is to be paid;
- specify the conditions on which the brokerage holds funds in trust;
- include authorization for the brokerage to transfer funds out of trust once the conditions of trust have been met; or,
- include a disclaimer stating that no claim can be made under the Real Estate Assurance Fund once funds have been removed from trust.

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 712(c) states: “A broker or branch manager shall be responsible for ensuring that the brokerage utilizes only registered personnel to perform the duties of registrants on behalf of the brokerage.”
- [4] Bylaw 617 states: “A written property management agreement shall be executed between a brokerage and the landlord and shall contain
- (a) the name and address of the brokerage and landlord;
 - (b) the identity of the property to be managed by street address, if applicable, and legal description;
 - (c) the amount of fee or commission to be paid to the brokerage and when the fee or commission will be paid;
 - (d) the conditions on which the brokerage holds funds in trust for a landlord;
 - (e) authorization of the landlord to transfer trust funds, when conditions of trust have been met, to an operating account on the landlord’s behalf;
 - (f) a disclaimer which states that once funds are removed from the property management trust account, in accordance with the conditions of trust, the funds are no longer considered as trust funds under *The Real Estate Act*. No claim can be made under the Real Estate Assurance Fund once funds are removed from the property management trust account in accordance with item (e).
 - (g) an expiry date of the agreement;
 - (h) the date of agreement.”

FACTS:

- [5] On April 28, 2018, Clients A signed a Property Management Agreement – Residential whereby Imperial would provide property management services with respect to Property #1.
- [6] Employee A, an employee of Imperial, signed this agreement (“Agreement #1”) on behalf of the brokerage.
- [7] Employee A is not registered with the Commission to trade in real estate.
- [8] Agreement #1 does not include the legal description of the property to be managed.

- [9] Agreement #1 does not indicate when the management fee is to be paid to Imperial.
- [10] Agreement #1 does not specify the conditions upon which the brokerage holds funds in trust.
- [11] Agreement #1 does not include authorization for Imperial to transfer funds out of trust once the conditions of trust have been met.
- [12] Agreement #1 does not include a disclaimer stating that no claim can be made under the Real Estate Assurance Fund once funds have been removed from trust.
- [13] On April 29, 2018, Clients B signed a Property Management Agreement – Residential whereby Imperial would provide property management services with respect to Property #2.
- [14] Employee A signed this agreement (“Agreement #2”) on behalf of Imperial.
- [15] Agreement #2 does not include the legal description of the property to be managed.
- [16] Agreement #2 does not indicate when the management fee is to be paid to Imperial.
- [17] Agreement #2 does not specify the conditions upon which the brokerage holds funds in trust.
- [18] Agreement #2 does not include authorization for Imperial to transfer funds out of trust once the conditions of trust have been met.
- [19] Agreement #2 does not include a disclaimer stating that no claim can be made under the Real Estate Assurance Fund once funds have been removed from trust.
- [20] On April 29, 2018, Clients B signed a Property Management Agreement – Residential whereby Imperial would provide property management services with respect to Property #3.
- [21] Employee A signed this agreement (“Agreement #3”) on behalf of Imperial.
- [22] Agreement #3 does not include the legal description of the property to be managed.

- [23] Agreement #3 does not indicate when the management fee is to be paid to Imperial.
- [24] Agreement #3 does not specify the conditions upon which the brokerage holds funds in trust.
- [25] Agreement #3 does not include authorization for Imperial to transfer funds out of trust once the conditions of trust have been met.
- [26] Agreement #3 does not include a disclaimer stating that no claim can be made under the Real Estate Assurance Fund once funds have been removed from trust.
- [27] The management of these properties was handled initially by Employee A before being fully delegated to Employee B, another employee of Imperial, during Employee A's extended sick leave.
- [28] Throughout the summer of 2018, Clients B were unsatisfied with the level of service they were receiving from employees of Imperial.
- [29] On November 9, 2018, Clients B sent the broker for Imperial an email setting out their issues with Employee B.
- [30] The broker replied that same day to tell Clients B that he was sorry they were not happy with Imperial's services, but that he was "no longer involved in the management of the Regina portfolio." Clients B were referred to Employee C, another employee of Imperial, and Employee A.

REASONS:

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

Mitigating Factors

- [32] Imperial was co-operative with the investigation.

Prior Decisions & Other Considerations

- [33] 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.

[34] 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.

[35] It is required in the province of Saskatchewan, as in all other provinces, that individuals become registered with the Commission prior to trading in real estate. Imperial undermined this requirement by allowing unregistered employees to trade in real estate on behalf of the brokerage.

[36] Imperial utilized a property management agreement that failed to include several of the mandatory elements.

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

[37] The brokerage is responsible for ensuring that its business is carried on in compliance with the legislation.

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

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

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

[39] Imperial's conduct had the potential to cause serious issue and confusion both for the brokerage and, more importantly, for Imperial's clients. Further, the failure to properly execute the property management agreement left the landlords without critical information about their relationship with the brokerage, such as the terms regarding the removal of funds from the trust account and the limitations of the protection offered by the Real Estate Assurance Fund.

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

[40] Imperial must be reminded of the importance of ensuring its employees are carrying on business in accordance with the legislation. Imperial must understand the importance of ensuring the agreements utilized by the brokerage comply with the legislative standards and include all the necessary elements.

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

[41] All brokerages must be reminded of the importance of ensuring that the employees under their supervision are complying with the requirements placed upon them by the legislation.

[42] Brokerages must be reminded of the importance of ensuring agreements comply with the legislative standards and include all the necessary elements.

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

[43] Members of the public must be confident that the representatives of a brokerage who are handling their transactions are properly educated and qualified to trade in real estate. Imperial's permitting unregistered individuals to trade in real estate was a breach of the position of trust that registrants occupy with members of the public.

[44] Failing to include necessary elements in an agreement can also betray this trust. Accuracy of agreements is of fundamental importance to the profession and maintaining its integrity.

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

[45] 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's breach of Bylaw 712(c)?

[46] There are two previous Hearing Committee decisions dealing with breaches of Bylaw 712(c).

[47] In *Dominguez (Re)*, [2018 SKREC 7](#) (file #2013-52) ("*Dominguez*"), Matt Dominguez received a \$1,000 fine and an order of reprimand for breaching Bylaw 712(c) by authorizing a former employee to continue dealing with a transaction after she had left the brokerage. On April 16, 2013, Registrant A left the brokerage and became registered as a salesperson with a different brokerage. As such, Registrant A's listing of the property reverted to Mr. Dominguez, as he was the branch manager at the time. Mr. Dominguez did not assign another salesperson to the transaction.

[48] On May 3, 2013, one of the buyers was going to view the property again. Registrant A agreed to attend with the seller, the buyer, the buyer's daughter, and a representative of Mr. Dominguez's brokerage. Mr. Dominguez was not able to personally attend the May 3 meeting and was unable to find another salesperson from his brokerage to attend. Mr. Dominguez advised Registrant A that there would not be a representative of the brokerage present and asked her

to handle the meeting. Registrant A asked Mr. Dominguez if it was okay for her to continue dealing with the transaction; he advised her that it was alright provided she had his permission.

- [49] Mr. Dominguez had no previous sanction history at the time of the breach, was co-operative with the investigation and signed a Consent Order acknowledging his misconduct.
- [50] At the time of the breaches, Mr. Dominguez was registered as a branch manager and subsequently became registered as a broker.
- [51] Imperial's breach of Bylaw 712(c) is more serious than that of the registrant in *Dominguez*. While Mr. Dominguez allowed a registrant from another brokerage to be involved in a transaction through his own brokerage, Imperial permitted a non-registrant to trade in real estate. Imperial's conduct is more serious because someone who is not registered and who has not completed the mandatory registrant's pre-licensing education was allowed to be involved in the transaction.
- [52] In *Bartlett, (Re)*, [2008 SKREC 18](#) (file #2008-31) ("*Bartlett*"), Keith Bartlett was issued a letter of reprimand and a \$1,000 fine for breaching Bylaw 712(c) by authorizing a registrant restricted to residential real estate to trade in commercial property. Mr. Bartlett believed a residential registrant could trade in real estate other than her restricted certificate of registration if the broker supervised those actions.
- [53] Mr. Bartlett admitted his error and accepted responsibility. He had no previous sanction history and was co-operative with the investigation. He cancelled the listing as soon as he became aware of the problem. At the time, Mr. Bartlett was a long-term registrant. There was no evidence of consumer harm.
- [54] Mr. Bartlett did not contact the Commission to confirm his belief. The Hearing Committee noted that the potential for harm or liability for a registrant acting beyond the scope of their registration is clear. Pleading ignorance is not an excuse for improper behaviour. The Committee stated that the Commission took the issue seriously for the protection of the public and further breaches by brokers would result in serious sanctions.
- [55] Imperial's breach of Bylaw 712(c) is more serious than that of the registrant in *Bartlett*. Mr. Bartlett allowed a registrant to trade in real estate that was outside the scope of what was permitted by her certificate of registration, but the individual to whom this permission was given was a registrant. In contrast, Imperial allowed a non-registrant to trade in real estate. The potential harm or liability for a registrant permitting a non-registrant to trade in real estate is clear.
- [56] An order of reprimand and a fine of \$1,250 are appropriate sanctions for Imperial's breach of Bylaw 712(c).

B. What is an appropriate sanction for Imperial's breach of Bylaw 617?

- [57] There are only two previous Hearing Committee decisions dealing with breaches of Bylaw 617.
- [58] In *Wilson (Re)*, [2019 SKREC 11](#) (file #2017-17) ("*Wilson*"), Roger Wilson was issued an order of reprimand and a \$750 fine for breaching Bylaw 617 by not properly filling in a property management agreement. Mr. Wilson was the broker for a property management brokerage. The owner signed a property management agreement with the brokerage whereby the brokerage would provide management services with respect to the owner's property. The space on the first page of the agreement in which the legal description of the property was to be noted was not filled in.
- [59] Mr. Wilson had no previous sanction history and was co-operative with the investigation.
- [60] Mr. Wilson was registered as a broker. As the people responsible for ensuring that the registrants and employees under their supervision are complying with the legislation, brokers are held to a higher standard of conduct.
- [61] Imperial's breach of Bylaw 617 is more serious than that of the registrant in *Wilson*. Both registrants improperly completed property management agreements. However, Imperial failed to include several mandatory elements in the property management agreement, while Mr. Wilson only missed the legal description of the property.
- [62] In *Hogan (Re)*, [2013 SKREC 5](#) (file #2012-46) ("*Hogan*"), Mike Hogan received a letter of reprimand and a \$1,500 fine and was ordered to pay \$1,150 in hearing costs when he breached Bylaw 617 by failing to include three mandatory elements in a property management agreement. These included the conditions on which the brokerage must hold funds in trust, the authorization of the landlord to transfer trust funds upon the trust conditions being met to an operating account, and a disclaimer indicating that once funds were removed from the property management trust account, they were no longer covered under *The Real Estate Act* and no claim could be made against the real estate assurance fund upon the funds removed.
- [63] The Hearing Committee considered Mr. Hogan's lack of previous sanction history, the fact that he was co-operative with the investigation, and that no harm was done.
- [64] Imperial's breach of Bylaw 617 is similarly serious to that of the registrant in *Hogan* as both registrants failed to include numerous mandatory elements for a property management agreement.
- [65] A letter of reprimand and a fine of \$1,250 are appropriate sanctions for Imperial's breach of Bylaw 617.

CONSENT ORDER:

- [66] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of the Brokerage, Imperial Properties Corp., and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [67] 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 712(c):
- a. Imperial shall receive an order of reprimand for the violation of Bylaw 712(c);
 - b. Imperial 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
 - c. Imperial's registration shall be suspended if it fails to make payment as set out above.
- [68] With respect to Count 2 the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Saskatchewan Real Estate Commission Bylaw 617:
- a. Imperial shall receive an order of reprimand for the violation of Bylaw 617;
 - b. Imperial 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
 - c. Imperial's registration shall be suspended if it fails to make payment as set out above.
- [69] There shall be no order as to costs.

Dated at Regina, Saskatchewan this 6th day of November, 2019.

"Jeffrey P. Reimer"
Jeffrey P. Reimer, Chairperson