

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

Morrison (Re), 2019 SKREC 35

Date: October 7, 2019
Commission File: 2019-02

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF JUSTIN MORRISON**

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

David M. Chow - Chairperson

Lori Patrick

Anne Parker

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. Justin Morrison breached Saskatchewan Real Estate Commission Bylaw 702 by failing to protect and promote the interests of his client when he did not incorporate the seller's obligation to complete the work on the property into the contract of purchase and sale.

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 states: “A registrant shall protect and promote the interests of his or her client. This primary obligation does not relieve the registrant from the obligation of dealing fairly with all other parties to the transaction.”

FACTS:

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

[5] Mr. Morrison 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 October 29, 2008.

[6] Mr. Morrison 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. Morrison has completed the continuing professional development seminars each registration year since 2008-2009.

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

[9] On November 3, 2017, the Buyer and her boyfriend viewed the Property.

[10] Mr. Morrison acted as the Buyer’s representative.

[11] The Buyer signed an Ancillary Services form requesting only a home inspection.

[12] On November 4, 2017, the Buyer wrote an offer to purchase the Property that was made subject to a home inspection.

[13] Other registrants represented the Seller.

[14] On November 4, 2017, the Seller wrote a counter offer. The Buyer accepted the counter offer that same day.

[15] On November 8, 2017, a home inspection was done by the Inspector.

[16] In an email, the Inspector outlined a list of items that needed to be repaired.

[17] Mr. Morrison negotiated the items in the Inspector’s email with the listing agent. The Seller agreed to fix the items set out in the list right away.

- [18] Mr. Morrison did not take any steps to incorporate the Seller's obligation to repair the items set out in the Inspector's email into the contract of purchase and sale as the Seller had agreed to do the repairs right away.
- [19] On November 8, 2017, the Buyer texted Mr. Morrison asking what would be fixed by the Seller and what would have to be fixed by her.
- [20] On November 10, 2017, the Buyer and the Seller signed an Amendment extending conditions to November 15, 2017.
- [21] To the best of Mr. Morrison's knowledge, the Seller completed the repairs as set out in the list prepared by the Inspector.
- [22] On November 15, 2017, the Buyer's boyfriend, the Buyer's father, the Inspector, and Mr. Morrison completed a walk-through of the Property.
- [23] Later that same day, the Buyer signed a Notice to Remove Conditions removing the financing and home inspection conditions. The document stated that the deal was firm.
- [24] On November 22, 2017, the Buyer sent Mr. Morrison a text message asking if the vent/insulation and doorbell had been fixed.
- [25] On November 28, 2017, the Buyer received the keys to the Property.
- [26] On January 11, 2018, the Buyer and Mr. Morrison spoke on the phone about some of the issues the Buyer was having with the Property.
- [27] On January 18, 2018, the Buyer sent a text message to Mr. Morrison advising that water had leaked through the vapour barrier and came through some lights and the smoke detector.
- [28] On February 13, 2018, Mr. Morrison texted the Buyer to say that he did not put the items from the Inspector's list in an Amendment because the seller agreed to get them done right away when Mr. Morrison spoke with them prior to removal of conditions. On November 15, 2017, as indicated in paragraph 22, a walkthrough was completed, and a checklist of repairs was verified.

REASONS:

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

Mitigating Factors

- [30] Mr. Morrison has been co-operative with the investigation.

Aggravating Factors

- [31] Mr. Morrison has 2 prior sanctions in which he was found in breach of the legislation.
- In *Morrison (Re)*, [2016 SKREC 5](#) (file #2013-14), Mr. Morrison received a letter of reprimand and a fine of \$2,000 for breach of Section 58(1)(a). On more than one occasion, Mr. Morrison signed as witness to the buyers' signatures even though he was not present when the buyers signed. He also signed two offers to purchase on behalf of the buyers "As per Agent".
 - In *Morrison (Re)*, [2017 SKREC 1](#) (file #2012-32), Mr. Morrison received a letter of reprimand and a fine of \$750 for breaching section 39(1)(a) and a letter of reprimand and a fine of \$750 for breaching section 58(1)(b)(ii). He purchased a property owned by Seller A and Seller B. The property was listed on the Saskatchewan Matrix with a single owner, Seller A. The offer to purchase named Seller A as the sole seller. Both Seller A and Seller B signed the contract as sellers. Despite the fact that Mr. Morrison was the buyer, he first signed the offer "As per agent" on the first buyer signature line and signed as a witness to both signature lines, even though the second buyer signature line was blank. Mr. Morrison then signed as a buyer on the second buyer signature line and his assistant signed as witness beside his witness signature for the second buyer line.
- [32] At the time of the breach, Mr. Morrison had been a registrant for almost ten years.
- [33] The Buyer is extremely upset with Mr. Morrison's conduct.

Prior Decisions & Other Considerations

- [34] 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.

[35] 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.

[36] Mr. Morrison represented the Buyer in her purchase of the Property. The home inspection revealed some issues. Mr. Morrison discussed these issues with the listing agent and was told the Seller would correct the issues prior to possession. Mr. Morrison did not ensure that the Seller's obligation to complete the repairs was incorporated into the contract. The Buyer took possession of the Property and found that one of the issues the Seller was supposed to correct had not been fixed.

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

[37] Mr. Morrison is solely responsible for this failure to update the written contract to accurately reflect the obligations owed between the parties. There was another registrant involved in the transaction, but it was Mr. Morrison's responsibility to ensure that the Buyer's interests were adequately protected.

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

[38] There is no evidence to suggest that Mr. Morrison benefitted from his actions, nor is there any evidence that he suffered a loss as a result.

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

[39] A registrant's failure to be diligent when completing paperwork can have serious consequences. If the Seller's obligation to correct the frost issue had been written into the contract, the Buyer would likely have more leverage to get the Seller to fix the problem and would have a much clearer path to collect from the Seller in a civil proceeding.

[40] The Buyer states that Mr. Morrison made her experience of purchasing her first home "a living hell".

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

[41] Specific deterrence is needed to ensure that Mr. Morrison understands that registrants must be diligent when completing documents relating to a trade in real estate and the importance of amending and updating the written contract between the parties to ensure it accurately reflects the terms of the bargain the buyer and seller have struck.

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

[42] General deterrence is needed to ensure that other registrants understand the importance of ensuring that the contract of purchase and sale accurately reflects the agreement between the parties.

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

[43] The public must be reassured that the registrants they engaged to assist them in trades in real estate are making sure the contracts the registrants are drafting accurately reflect the agreements between the buyers and sellers.

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

[44] Mr. Morrison'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. Morrison's breach of Bylaw 702?

[45] There is an extensive library of previous sanctions dealing with breaches of Bylaw 702. For the purposes of this file, three of these decisions will be relied on as they bear the most similarity to the case at hand.

[46] In *Boire (Re)*, [1998 SKREC 17](#) (file #1997-57) ("*Boire*"), Rick Boire was issued an order of reprimand and a \$500 fine for breaching Bylaw 702 in several ways while acting as a limited dual agent. First, Mr. Boire neglected to get all parties to the transaction to sign the final plans and specs as per the contract of purchase and sale. Second, Mr. Boire did not clearly state the terms and conditions for the purchase of the lot on the contract. Lastly, Mr. Boire did not clearly indicate the measurements for the plan. All of the foregoing demonstrated a failure by Mr. Boire to not only protect and promote the interests of his clients, but also to deal fairly with all parties to the transaction. No educational upgrading was required as Mr. Boire came to understand that registrants must make the appropriate changes to contracts in writing and have the appropriate parties sign the documents.

[47] Mr. Morrison's breach is similarly serious to that of the registrant in *Boire*. Mr. Morrison was not acting as a dual agent and only his failure to incorporate the Seller's obligation into the written contract constitutes a violation of Bylaw 702. However, Mr. Morrison does have two prior sanctions relating to failure to properly deal with forms and Mr. Boire had no previous sanction history with the Commission at the time of the transaction in issue.

- [48] *Boire* was decided in 1998. In 2008, the Saskatchewan real estate market underwent a significant expansion that saw a significant rise in property values. As property values rise, there is a corresponding increase in the commissions registrants can expect to earn on trades in real estate. Fines ordered by the Commission to act as deterrents against misconduct must keep pace with rising commissions or the Commission runs the risk of fines coming to be seen as a “cost of doing business”.
- [49] In *Thiessen (Re)*, [2015 SKREC 5](#) (file #2012-10) (“*Thiessen*”), Corey Thiessen was issued an order of reprimand and a \$2,000 fine for failing to advise his seller clients when he was added to the transaction as a buyer and for failing to obtain the signatures of both clients on all documents.
- [50] Seller A contacted Mr. Thiessen about selling a property that formed part of his mother’s estate. Mr. Thiessen took on the listing. The sellers were listed as Seller A and Seller B, however only Seller A signed the contract. Mr. Thiessen did not obtain documentation confirming that Seller A and/or Seller B were executors of their mother’s will, personal representatives for her estate, or in any way responsible for and in a position to sell the Property. Mr. Thiessen obtained a handwritten note stating that Seller A authorized Seller B to act on his behalf for the sale of their mother’s home. Thereafter, an amendment to the listing agreement was only signed by Seller A. Mr. Thiessen’s wife ultimately purchased the property. Mr. Thiessen was later advised that transfer documents would need to be amended to include him as a second buyer. Mr. Thiessen did not amend the Residential Contract of Purchase and Sale to reflect the fact that he had been added to the transaction as a buyer. The majority of Mr. Thiessen’s dealings with respect to the property were verbal and with Seller A who, he understood, would forward information along to Seller B.
- [51] Mr. Thiessen had no sanction history and he co-operated with the investigation. There was no evidence he deliberately withheld the fact of his inclusion as a buyer from the Sellers. There was no evidence of consumer harm. Mr. Thiessen did complete a Disclosure of Interest in Trade Form advising the sellers that the initial buyer was his wife.
- [52] Mr. Thiessen had been a registrant for approximately eleven years at the time of the transaction. The Hearing Committee noted that registrants should be especially careful with disclosure and keeping clients informed when they are personally involved in the transaction as a buyer or seller.
- [53] Mr. Morrison’s breach of Bylaw 702 is slightly more serious than that of the registrant in *Thiessen*. While both Mr. Morrison and Mr. Thiessen failed to amend the Residential Contract of Purchase and Sale to accurately reflect the situation, Mr. Morrison’s breach has left the Buyer with no legal course of action should something go wrong with the work that was done on the Property. Further, while

Mr. Thiessen was personally involved in the transaction, Mr. Morrison has two prior sanctions.

- [54] In *Baxter (Re)*, [2019 SKREC 14](#), (file #2016-51) ("*Baxter*"). Rita Baxter received an order of reprimand and a \$2,500 fine for failing to protect the interests of her buyer client. Ms. Baxter listed a property for sale. She pulled copies of the title to the 34 quarter sections that made up to the property, but she did not review them initially. During a viewing of the property at which Ms. Baxter was present, her buyer client asked if there were any easements on any of the quarter sections included in the package. The sellers told the buyer that there was an easement for the road allowance and one other small easement, but that was it. In fact, there were easements restricting use registered on title to 21 of the 34 quarter sections that comprised the property. The buyer only learned of the easements when his lawyer searched title to the quarter sections after conditions were removed. The buyer ultimately refused to complete his purchase of the property.
- [55] Ms. Baxter failed to ensure that her buyer client was aware that there were easements restricting the use of 21 of the 34 quarter sections he intended to purchase for the purposes of farming.
- [56] Ms. Baxter had no previous sanction history and was co-operative with the investigation. She had been a registrant since 1996.
- [57] Ms. Baxter is 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. Ms. Baxter was representing both the sellers and the buyer as a limited dual agent. Registrants in limited dual agency must be especially diligent in protecting and promoting the interest of their clients, as there is no other registrant involved in the transaction to notice or correct any errors.
- [58] Mr. Morrison's breach of Bylaw 702 is slightly less serious than that of the registrant in *Baxter*. Mr. Morrison has two prior sanction histories and his breach may have left his client with no legal recourse against the seller. However, Ms. Baxter was registered as a broker at the time of her breach and her breach ultimately led to the collapse of the transaction.
- [59] A \$1,500.00 fine and a letter of reprimand are appropriate sanctions for Mr. Morrison's breach of Bylaw 702.
- [60] As Mr. Morrison has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

[61] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of the Salesperson, Justin Morrison, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:

[62] 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 702:

- a. Justin Morrison shall receive an order of reprimand for the violation of Bylaw 702;
- b. Justin Morrison 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 bylaw; and
- c. Justin Morrison's registration shall be suspended if he fails to make payment as set out above.

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

Dated at Moose Jaw, Saskatchewan this 7th day of October, 2019.

"David M. Chow"
David M. Chow, Chairperson