

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

*Schmid (Re)*, 2019 SKREC 33

Date: September 19, 2019  
Commission File: 2019-19A

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF JENNA SCHMID**

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

Jeffrey P. Reimer- Chairperson

Cliff Iverson

Bill Preston

**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*, Ms. Jenna Schmid breached Bylaw 726(b) by creating an MLS® Listing that stated the basement walls of the Property were concrete when they were, in fact, wood.

**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 726(b) states: “Any advertisement or incentive or the offering of any incentive or the participation in an incentive program to the public as an inducement to trade in real estate undertaken or authorized by a registrant shall not be inaccurate.”

**FACTS:**

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

[5] Ms. Schmid 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 30, 2013.

[6] Ms. Schmid has taken the following real estate courses:

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

[7] Ms. Schmid has completed the continuing professional development seminars each registration year since 2013-2014.

[8] Ms. Schmid is presently registered under the provisions of *The Real Estate Act* as a salesperson with Century 21 Fusion Realty Inc. O/A Century 21 Fusion.

[9] On July 7, 2018, the Sellers signed a Seller’s MLS® Brokerage Contract listing the Property for sale with Century 21 Fusion.

[10] Ms. Schmid and Registrant A acted as co-listing agents.

[11] The initial MLS® Data Input Form, which formed the basis of the listing, stated that the Property had a concrete basement when, in fact, the basement walls were made of wood. Ms. Schmid completed this document.

[12] The Property had been previously listed by another registrant in 2000. This prior listing specified wood walls in the basement.

[13] On October 19, 2018, the Buyer wrote an offer to purchase the Property.

[14] The Sellers accepted this offer on October 20, 2018.

[15] Between December 27 and December 30, 2018, the Buyer was made aware, following a home inspection, that the basement was constructed of wood and not concrete, as the MLS® Listing had stated.

- [16] The Buyer was compensated for the cost of the home inspection when this information was discovered.
- [17] A portion of the wood basement walls were visible outside the house.
- [18] The transaction ultimately collapsed, but the Buyer had already sold her home on the basis of her offer to purchase the Property.

## **REASONS:**

- [19] The Investigation Committee and Ms. Schmid considered the following as relevant in agreeing to the within consent order:

### Mitigating Factors

- [20] Ms. Schmid was very co-operative with the investigation.
- [21] Ms. Schmid has no prior sanction history.
- [22] The misconduct was an honest mistake on the part of Ms. Schmid. There was no evidence of an intent to defraud or deceive.
- [23] The Seller signed off on the MLS® Data Input form.
- [24] The Buyer was compensated by Ms. Schmid and her brokerage for the price of the home inspection.

### Aggravating Factors

- [25] Ms. Schmid had access to a prior listing of the Property that indicated the basement walls were made of wood and a small wood section of the basement was visible from the outside foundation wall. Registrants must take reasonable steps to discover information about the properties they are listing for sale.

### Prior Decisions & Other Considerations

- [26] 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.

[27] 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.*

[28] Ms. Schmid advertised the Property as having concrete basement walls when the basement walls were actually made of wood. The complainant buyer wrote an offer to purchase the Property, believing that it had a concrete basement. The Buyer refused to complete the transaction when she learned the basement walls were made of wood, but had already sold her home believing she would be purchasing the Property.

[29] Ms. Schmid made an honest mistake and there is no evidence to suggest that her error was intentional or malicious.

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

[30] Although Ms. Schmid co-listed the property with another registrant, she was still responsible for ensuring that the information in the MLS® Listing was accurate.

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

[31] There is no evidence to suggest that Ms. Schmid enjoyed any benefits or suffered any losses as a result of her breach of the legislation.

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

[32] Believing she would be moving into the Property, the Buyer sold her home. When the transaction fell through, she was forced to find a new place to live.

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

[33] Ms. Schmid must be reminded of the importance of ensuring all listings and advertisements are accurate.

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

[34] All registrants must be reminded of the importance of meticulously verifying information entered for listings and ensuring there is no false or inaccurate information.

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 information they find in listings and advertisements created by registrants is accurate and true.

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

[36] Ms. Schmid'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. Pederson's breach of Bylaw 702?**

[37] There are several Hearing Committee decisions dealing with breaches of Bylaw 726(b), three of which have almost identical facts to the issue at hand.

[38] The decision in *Wiebe (Re)*, [2018 SKREC 38](#) (file #2017-83) ("*Wiebe*"), *Robinson (Re)*, [2014 SKREC 7](#) (file #2012-67) ("*Robinson*"), and *Doderai (Re)*, [2011 SKREC 10](#) (file #2010-25) ("*Doderai*") involve registrants whose listing of a property misstated some information regarding the basement or foundation.

[39] In *Wiebe*, Joseph Wiebe was issued an order of reprimand and a \$2,250 fine when he listed a property for sale and stated in the MLS® Listing that the basement walls were composed of ICF block, when they were not. A second MLS® Listing was created with respect to the property that also stated the basement walls were composed of ICF block. Interested buyers wrote an unconditional offer to purchase the property that was accepted by the sellers. Thereafter, the prospective buyers discovered that the basement walls were actually composed of concrete. The buyers wanted compensation for the false advertising and misrepresentation. An appraiser that Mr. Wiebe contacted stated that he typically would not make an adjustment for an ICF basement over a concrete basement. The buyers ultimately completed their purchase of the property.

[40] Mr. Wiebe had no previous sanction history and was co-operative with the investigation.

[41] The complainant buyers relied on the information contained in Mr. Wiebe's advertisements. They learned that the foundation was not composed of ICF block after they had entered into an unconditional contract of purchase and sale with the sellers.

- [42] Ms. Schmid's breach of Bylaw 726(b) is less serious than that of Mr. Wiebe. While both Mr. Wiebe and Ms. Schmid created MLS® Listings which mistakenly identified a material used to make the basement walls, Mr. Wiebe created two MLS® Listings which inaccurately indicated that the Property had an ICF block foundation. Further, the Buyers in Mr. Wiebe's case wrote an unconditional offer under the mistaken belief that the Property had ICF block foundation. This offer was accepted by the seller before the buyers found out that the basement actually had concrete walls, leaving the buyers stuck with the property with concrete walls when they had intended to purchase a property with ICF block foundation. In contrast, Ms. Schmid and the other parties involved discovered the error prior to the removal of conditions.
- [43] In *Robinson*, Mark Robinson was ordered to pay a \$1,000 fine and issued a letter of reprimand for placing an advertisement that stated that the basement wall was composed of "cindercryt blk" when it was, in fact, "concrete, drywall, brick". The MLS® Data Input Form completed by the seller contained the correct basement wall type, but a second form completed by the registrant contained the inaccurate basement wall type. Mr. Robinson was not made aware of the error before the listing expired, so he had no opportunity to correct it.
- [44] The Hearing Committee considered that Mr. Robinson had no previous sanction history, accepted responsibility for the errors, and asked that his apologies be passed on to the seller. The Committee also noted that the second, inaccurate Data Input Form was signed by the seller, and that there was no evidence of harm to the public as a result of the error because no sale resulted from the inaccurate MLS® listing.
- [45] Ms. Schmid's breach of Bylaw 726(b) is very similar to that of the registrant in *Robinson*. Both Mr. Robinson and Ms. Schmid's misconduct are very similar in that they both mistakenly listed inaccurate information regarding the basement of a property. Further, as was the case in *Robinson*, Ms. Schmid's seller client signed the listing agreement without noting that the description of the basement material was inaccurate.
- [46] In *Doderai*, the Superintendent of Real Estate upheld a hearing decision in which Lou Doderai received an order of reprimand and was ordered to pay a \$2,000 fine for advertising a property as having a concrete foundation when Mr. Doderai knew that the basement walls were constructed of preserved wood.
- [47] The Hearing Committee considered that he had one prior sanction with the Commission and the length of time he had been in the real estate industry at the time of the incident. This was more than just a case of simply "checking the wrong box". Mr. Doderai knew of the error and corrected the feature sheets after he noticed the error, but did not contact the buyers or anyone else to advise them of the error. The Committee noted that the public relies on the registrants of the

province to properly handle the transactions and to ensure that the training and disciplinary processes for registrants create a sufficient standard that the public can trust that the advertising they view is correct. The Committee felt that Mr. Doderai did not comprehend the seriousness and potential hardship created by incorrect advertising, both to the public and to the reputation of the real estate industry.

- [48] Mr. Doderai appealed the amount of the fine to the Superintendent. Mr. Doderai's appeal was dismissed. The Superintendent concurred with the Hearing Committee's facts as set out above.
- [49] Ms. Schmid's breach of Bylaw 726(b) is less serious than that of the registrant in *Doderai*. While both registrants created inaccurate listings, Ms. Schmid was unaware of the inaccuracy and had no prior sanction history. Mr. Doderai, on the other hand, became aware of the inaccuracy and did not inform the buyers. Further, Mr. Doderai had a previous sanction history. Ms. Schmid has more mitigating factors and fewer aggravating factors than the registrant in *Doderai* to be considered when determining an appropriate sanction.
- [50] An order of reprimand and a fine of approximately \$1,000 are appropriate sanctions for Ms. Schmid's breach of Bylaw 726(b).
- [51] As Ms. Schmid has agreed to sign this consent order, there will be no order as to costs.

#### **CONSENT ORDER:**

- [52] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of the salesperson, Jenna Schmid, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [53] 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 726(b):
- a. Jenna Schmid shall receive an order of reprimand for the violation of Bylaw 726(b);
  - b. Jenna Schmid 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 *Act*, and
  - c. Jenna Schmid's registration shall be suspended if she fails to make payment as set out above.
- [54] There shall be no order as to costs.

Dated at Regina, Saskatchewan this 19<sup>th</sup> day of September, 2019.

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