

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

Moser (Re), 2019 SKREC 32

Date: August 28, 2019
Commission File: 2019-25

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF CHRISTOPHER MOSER**

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

Jeffrey P. Reimer- Chairperson

Vern McClelland

Robert Volk

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. Moser breached Commission Bylaw 709 by carrying on negotiations concerning an exclusively listed property with the client directly without the consent of the client's agent.

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 709 states:

“Negotiations concerning exclusively listed property or negotiations with any party who is exclusively represented shall be carried on with the client’s agent and not with the client directly, except with the consent of the client’s agent.”

FACTS:

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

[5] Mr. Moser has been continuously registered under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission as a salesperson since May 27, 2015.

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

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

[7] Mr. Moser has completed the continuing professional development seminars each registration year since 2015-2016.

[8] Mr. Moser is presently registered under the provisions of *The Real Estate Act* as a salesperson with Hometown Realty Ltd. O/A Century 21 Hometown.

[9] In the winter of 2018, the Property was listed for sale with Royal LePage Signature. A bank (the “Seller”) owned the Property.

[10] Registrant A acted as the listing agent.

[11] Mr. X was Registrant A’s contact at the bank.

[12] On December 31, 2018, the First Buyer wrote an offer to purchase the Property.

[13] Mr. Moser represented the First Buyer.

[14] On January 2, 2019, the Seller wrote a Counter Offer to the First Buyer increasing the purchase price and adding a term stating that the Property was to be sold as is, where is, that there were no warranties, and that all information was to be verified by the First Buyer.

[15] The First Buyer did not accept the Counter Offer.

- [16] On March 18, 2019, the First Buyer wrote another offer to purchase the Property. This offer was open for acceptance until 1:00 p.m. on March 20, 2019.
- [17] On March 21, 2019, Registrant A contacted Mr. Moser to advise that he had not heard back from Canada Mortgage and Housing Corporation and could not get hold of the representative. Registrant A advised Mr. Moser that they would have to let the offer lapse and he would let Mr. Moser know what they said when he heard back.
- [18] Mr. Moser expressed his surprise at how long it was taking to get an answer.
- [19] Registrant A agreed that the lengthy delay was unusual.
- [20] On March 22, 2019, the First Buyer wrote a third offer to purchase the Property. This offer was open for acceptance until 4:00 p.m. on March 28, 2019.
- [21] At 11:21 a.m. on March 22, 2019, Mr. Moser sent this offer to Registrant A via email. Mr. Moser blind carbon copied Mr. X on this email.
- [22] At 11:22 a.m. on March 22, 2019, Mr. Moser sent a text message to Registrant A advising that he had sent another offer.
- [23] Registrant A responded to confirm receipt.
- [24] On March 23, 2019, the Second Buyer wrote an offer to purchase the Property.
- [25] Registrant A also represented the Second Buyer.
- [26] The Seller accepted the Second Buyer's offer to purchase the Property.
- [27] On March 25, 2019, Registrant A texted Mr. Moser to advise that the bank had decided to go with a different offer on the Property.
- [28] Mr. Moser responded to Registrant A's text message to indicate that he was not happy with how the transaction played out and that he was concerned that his buyer clients had not been given a fair opportunity to purchase the Property.

REASONS:

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

Mitigating Factors

- [30] Mr. Moser has no previous sanction history.

[31] Mr. Moser was co-operative with the investigation.

Aggravating Factors

[32] There are no aggravating factors.

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] Mr. Moser represented buyers who wrote multiple offers to purchase the Property, which had been listed for sale by a bank. Mr. Moser submitted an offer to the listing agent and did not understand why it was taking so long to get a response from the bank. After this offer expired, Mr. Moser assisted his buyer clients in writing another offer on the same terms and sent this offer to the listing agent via email. Mr. Moser blind carbon copied the representative of the bank who was overseeing the sale of the Property on the email to which he had attached his clients’ offer.

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

[36] Mr. Moser 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.

[37] There is no evidence to suggest that Mr. Moser enjoyed a benefit or suffered a loss as a result of his breach of the legislation.

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

[38] There is no evidence of consumer harm arising out of Mr. Moser's breach of the legislation, but registrant conduct that undermines the agency relationship between the seller and the listing agent has the potential to damage public confidence in the concept of the agency relationship and the reputation of the real estate industry as a whole.

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

[39] Specific deterrence is needed to ensure that Mr. Moser is aware that his actions have the potential to undermine the principles of the agency relationship between clients and brokerages.

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

[40] 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.

[41] Members of the public must be reassured that the importance of the agency relationship between clients and brokerages is recognized and protected. Registrant conduct that undermines these agency relationships runs the risk of damaging consumer confidence in the real estate industry.

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

[42] Mr. Moser'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. Moser's breach of Bylaw 709?

[43] There are six previous decisions dealing with a breach of Bylaw 709, only one of which bears much factual similarity to the case at hand.

[44] In *Fox (Re)*, [2006 SKREC 1](#) (file #2005-53) ("*Fox*"), Kari Fox was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 709 by negotiating an accepted offer to lease without the consent of the listing brokerage. The Hearing Committee found that Ms. Fox had acted properly up until the time she provided the seller with the offer to lease, notwithstanding that she also provided the listing brokerage with a copy of the offer to lease. On the basis of information provided by the seller, the document that Ms. Fox drafted purported to alter the commission ordinarily payable to the listing brokerage.

- [45] There was no evidence of consumer harm and Ms. Fox had no previous sanction history. The Hearing Committee considered Ms. Fox's admission of her error and her personal appearance at the hearing. Ms. Fox assumed that the seller and the listing brokerage were in communication, but it appeared that they were not.
- [46] The Committee noted that Ms. Fox was not at liberty to entertain adjustments or changes to the seller's brokerage contract without ensuring adequate communication with the seller's brokerage. The Committee also indicated that, because Ms. Fox had not made any inquiries of the listing agent, she had no knowledge of potential issues, such as environmental issues, that might have an impact on the property and she was, therefore, less able to represent her client in this instance.
- [47] Mr. Moser's breach of Bylaw 709 is more serious than that of the registrant in *Fox*. The seller in *Fox* was often the one to initiate contact with Ms. Fox and it appeared as though Ms. Fox had assumed the seller and the listing brokerage were in communication. Mr. Moser appears to have sent a copy of the offer to the bank representative because he did not trust that the listing agent was properly communicating his clients' offers to the seller.
- [48] Although it does not deal with a breach of Bylaw 709, the decision in *Fry (Re)*, [2003 SKREC 1](#) (file #2002-25) ("*Fry*") is based on similar facts to the case at hand.
- [49] In *Fry*, Donald Fry was issued an order of reprimand and ordered to pay a \$250 fine for breaching s. 39(1)(a) of *The Real Estate Act* by directly contacting a seller under an agency agreement with another brokerage without authorization from the other brokerage to do so. Mr. Fry had been trying, unsuccessfully, to get in touch with the listing agent to get some information for a couple of days. He contacted one of the sellers to ask for the information. He did not contact the broker at the listing brokerage.
- [50] Mr. Fry had no previous sanction history, was co-operative with the investigation and showed remorse for his actions. There was no evidence of consumer harm and no evidence that Mr. Fry's actions were intended to cause a problem for the seller or get an unfair advantage. There was no evidence of intent of wrongdoing.
- [51] The Hearing Committee noted that the actions of a registrant who directly contacts a buyer or seller who is in an agency relationship with another registrant without authorization from that other registrant was a serious violation that might warrant the suspension or cancellation of a registrant's certificate of registration. The mitigating factors in *Fry* led the Committee to conclude that such a sanction was not warranted in that instance.
- [52] The Committee stated that all registrants were to respect the agency relationship between a registrant and a client. A registrant seeking information from another

registrant's client could have adverse effects for the buyer or seller, who may not be aware of the potential negative impact that a disclosure of a particular fact to another registrant may have on the client. Such conduct challenges the ability of a registrant to protect and promote the interests of his or her client in a trade in real estate.

- [53] Mr. Moser's breach of Bylaw 709 is more serious than the breach of s. 39(1)(a) of the *Act* in *Fry*. Mr. Fry had been trying to get in touch with the listing agent for a couple of days to get some information without success, while the listing agent responded in a reasonable time to all communications from Mr. Moser. Additionally, Mr. Moser sent a copy of an offer to purchase the Property to the seller, while Mr. Fry contacted the seller to request some information. There were more mitigating factors at play in *Fry*.
- [54] The decisions in *Fox* and *Fry* were rendered prior to a significant expansion of the real estate market that saw an increase in property values throughout Saskatchewan in 2008. As property values rise, the commissions registrants can expect to earn on trades in real estate increases proportionally. When using hearing decisions that were rendered prior to 2008, there must be consideration of the impact this market expansion and general inflation have had on commissions to ensure that sanctions ordered by the Commission do not come to be regarded simply as a "cost of doing business".
- [55] An order of reprimand and a \$2,000 fine are appropriate sanctions for Mr. Moser's breach of Bylaw 709.
- [56] As Mr. Moser has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [57] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Moser, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [58] 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 709:
1. Mr. Moser shall receive an order of reprimand for the violation of Bylaw 709;
 2. Mr. Moser shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$2,000.00 fine for the said violation of the bylaw; and
 3. Mr. Moser's registration shall be suspended if he fails to make payment as set out above.
- [59] There shall be no order as to costs.

Dated at Regina this 28th day of August, 2019.

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