

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

Renneberg (Re), 2020 SKREC 4

Date: June 4, 2020
Commission File: 2019-36

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

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

David Chow – Chairperson

Robert Volk

Lori Patrick

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. Renneberg breached Commission Bylaw 714 by failing to take reasonable steps to discover facts pertaining to a property for which he accepted an agency agreement.

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 714 states:

“A registrant shall take reasonable steps to discover facts pertaining to every property for which the registrant accepts an agency agreement that a prudent registrant would take in order to fulfil the obligation to avoid error, misrepresentation or concealment of pertinent facts.”

FACTS:

- [4] In accordance with subsection 9(4) of *The Real Estate Regulations* (“the Regulations”), the Hearing Committee accepts Mr. Renneberg’s Statement of Facts and Admissions, which includes the following relevant points:
- [5] Mr. Renneberg 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 15, 2008.
- [6] Mr. Renneberg 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. Renneberg has completed the continuing professional development seminars each registration year since 2008-2009.
- [8] Mr. Renneberg is presently registered under the provisions of *The Real Estate Act* as a salesperson with Carway Holdings Ltd. O/A Realty Executives Saskatoon.
- [9] On September 21, 2015, the Seller signed an MLS® System Seller’s Brokerage Contract listing the Property for sale with Realty Executives Saskatoon. Registrant A and Mr. Renneberg were named as co-listing agents. The September 2015 MLS® Data Input form identified the square footage as approximately 1,060 on one level.
- [10] The listing indicates that the Property is 1,060 sq. ft. on one level above ground.
- [11] Given how much time has passed since Mr. Renneberg listed the Property for sale, he does not recall if he measured the Property or what process was used to conduct the measurement. His co-listing agent, Registrant A, could have measured the Property.
- [12] Mr. Renneberg’s usual process is to use a large tape measure to measure the exterior of the house, usually with the help of a co-worker. He takes into account

cantilevers and bay windows. Mr. Renneberg does not believe that all registrants use the same process to measure houses.

- [13] On November 10, 2015, the Seller signed a Cancellation of a Seller's Brokerage Contract cancelling the September 2015 agreement.
- [14] On November 10, 2015, the Seller signed a Seller's MLS® Brokerage Contract listing the Property for sale with Realty Executives Saskatoon. Mr. Renneberg and Registrant A were named as co-listing agents. The MLS® Data Input Form also identifies the square footage as 1,060 on one level.
- [15] During the Commission's investigation process, Mr. Renneberg was advised that the Former Registrant had been interested in purchasing the Property in 2016 when it was listed with Mr. Renneberg.
- [16] During the Commission's investigation process, Mr. Renneberg was advised that, while viewing the Property, the Former Registrant began to doubt the square footage set out in the listing and took his own measurements of the Property. The Former Registrant's measurements did not agree with the square footage set out in the listing.
- [17] During the Commission's investigation process, Mr. Renneberg was advised that the Former Registrant sent him a text message advising of the square footage discrepancy.
- [18] Mr. Renneberg does not recall receiving a text message from the Former Registrant about the square footage of the Property.
- [19] The statement of square footage remained the same from the initial listing to the sale.
- [20] On February 9, 2016, the Buyers wrote an offer to purchase the Property.
- [21] Registrant B represented the Buyers.
- [22] On February 10, 2016, the Seller wrote a Counter Offer increasing the purchase price.
- [23] On February 11, 2016, the Buyers signed acceptance of the counter offer.
- [24] On February 19, 2016, a Notice to Remove Conditions was signed removing all four conditions on the Property.
- [25] On March 7 and 9, 2016, the Buyers and the Seller signed an Amendment changing the possession date.

- [26] The transaction completed and the Buyers took possession of the Property.
- [27] In January of 2019, the Buyers listed the Property for sale.
- [28] Registrant C acted as the listing agent.
- [29] Mr. Renneberg was advised that, prior to listing the Property for sale, Registrant C measured the Property and determined that the Property was just slightly under 960 square feet.
- [30] If the square footage was incorrect on his listing, Mr. Renneberg is unsure how the discrepancy occurred.
- [31] As there is no standard for measurement mandated by the Commission, it is not clear to Mr. Renneberg that Registrant C's statement of square footage is more accurate than his own.

REASONS:

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

Mitigating Factors

- [33] Mr. Renneberg has no previous sanction history.
- [34] The coronavirus pandemic has had a significant and largely negative impact on the real estate market and on registrants' incomes generally.

Aggravating Factors

- [35] There are no aggravating factors present.

Prior Decisions & Other Considerations

- [36] 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.

[37] 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.

[38] Mr. Renneberg listed the Property for sale with a colleague and cannot say with any certainty that he personally measured the Property for which he accepted the listing, how he carried out his measurement of the Property, or if the Property was measured at all at the time he listed it for sale. Regardless, the Property was listed in 2016 as being 1,060 sq. ft. Another registrant interested in purchasing the property noted what seemed to be a discrepancy in the listed square footage and the actual square footage of the Property. The registrant advised Mr. Renneberg of the error, but Mr. Renneberg does not appear to have undertaken any additional inquiries after being advised of the error and the Property sold. In 2019, another registrant measured the Property to re-list it for sale and discovered that the Property was slightly less than 960 sq. ft.

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

[39] Mr. Renneberg represented the Seller on the transaction in issue. The agent who represented the buyer is also alleged to have breached Commission legislation by failing to conduct an independent measurement of the square footage.

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

[40] There is no evidence indicating that Mr. Renneberg gained any benefits or suffered any losses as a result of the breach.

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

[41] One of the Buyers who purchased the Property while it was listed for sale by Mr. Renneberg is upset at the discrepancy in the square footage. She discovered the discrepancy when re-listing the Property for sale with a different agent 3 years after purchasing and believes that this discovery affected the re-sale value negatively and significantly.

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

[42] Mr. Renneberg must be reminded that it is a registrant's responsibility to verify all of the facts related to the property with which the registrant dealing.

6. *The need for general deterrence to protect the public.*
- [43] Registrants must be reminded that it is their responsibility to verify all facts related to the properties with which they are dealing.
7. *The need to maintain the public's confidence in the integrity of the profession.*
- [44] Members of the public rely on registrants to provide accurate information about the properties they are buying and selling. Failing to take reasonable steps to verify the facts related to these properties jeopardizes the trust the public places on registrants and threatens the integrity of the profession.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [45] Mr. Renneberg'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. Renneberg's breach of Bylaw 714?

- [46] There are several previous decisions dealing with breaches of Bylaw 714. Four of these decisions bear much factual similarity to the Mr. Renneberg's case.
- [47] In *Rusnak (Re)*, [2016 SKREC 6](#) (file #2011-14) ("*Rusnak*"), Diane Rusnak was issued a letter of reprimand and was ordered to pay a \$1,500 fine for breaching Bylaw 714.
- [48] Ms. Rusnak represented sellers in a transaction. In the listing, Ms. Rusnak stated that the Property was approximately 868 square feet. Ms. Rusnak consulted the Rate Payer Profile provided by the Saskatchewan Assessment Management Agency, which listed the size of the property as 672 square feet. Notwithstanding this information, the MLS® Data Input Form and the listing advertisement Ms. Rusnak prepared stated the approximate size of the Property as 868 square feet.
- [49] The Property was sold to the Buyers in 2008. Three years later, the Buyers approached another registrant to list the Property for sale. At that time, the other registrant consulted the Profile for the Property provided by the Saskatchewan Assessment Management Agency and informed the Buyers that the property was smaller than the approximate size contained in the 2008 listing. The other registrant then measured the property and confirmed that it was 676 square feet, rather than 868 square feet.
- [50] The Hearing Committee noted as mitigating factors that Ms. Rusnak admitted her misconduct and signed a Statement of Facts and Admissions.

- [51] The Hearing Committee noted as an aggravating factor that Ms. Rusnak had a prior sanction history for breach of a different bylaw where she also made inaccurate statements about a property in a feature sheet.
- [52] Ms. Rusnak relied on information from other sources, such as the SAMA profile, when stating the square footage of the Property on the MLS® Data Input form, rather than taking a physical measurement of the Property.
- [53] Mr. Renneberg's breach of the bylaw is similarly serious to that of the registrant in *Rusnak*. While both Mr. Renneberg and Ms. Rusnak misstated the measurement of the Property in a listing, Ms. Rusnak relied on information from other sources. While Ms. Rusnak had a previous sanction history for a similar offence, Mr. Renneberg has not been able to provide any information about how he came to the statement of square footage in his listing. That said, an appropriate sanction for Mr. Renneberg's breach of the bylaw must take into account the current economic climate.
- [54] In *Maduck (Re)*, [2014 SKREC 3](#) (file #2011-07) ("*Maduck*"), Lawrence Maduck was issued a \$2,000 fine and an order of reprimand for breaching Bylaw 714. The listing stated the square footage of a commercial property was 5,040 when, in fact, it was only 4,162 square feet. Mr. Maduck consulted the City of Regina Tax Assessment and an old MLS Listing to determine the square footage.
- [55] The Hearing Committee considered that Mr. Maduck had no sanction history, readily admitted guilt, and was co-operative, despite delay caused by another registrant's failure to reply to the request of a review officer.
- [56] The Committee noted the significant difference in square footage as an aggravating factor. The Committee stated: "It is not sufficient to rely on information from other sources, particularly when the physical measurements are easily obtained."
- [57] Mr. Renneberg's breach is similarly serious to that of the registrant in *Maduck*. Unlike Mr. Maduck, Mr. Renneberg has not been able to provide any information about how he determined the square footage of the Property. However, an appropriate sanction for Mr. Renneberg's breach of the bylaw must take into account the current economic climate.
- [58] In *Doderai (Re)*, [2009 SKREC 20](#) (file #2009-17A) ("*Doderai*"), Lou Doderai was issued a \$2,000 fine and a letter of reprimand for breaching Bylaw 714. Mr. Doderai did not physically measure the square footage of a property and instead relied on historical and incorrect information.
- [59] The Hearing Committee considered Mr. Doderai's lack of previous sanction history and the length of time he had been in the real estate industry. The Commission also noted that the situation was easy to remedy, Mr. Doderai's co-

operation with the investigation, and the fact that he admitted his mistake and had no intention to deceive the buyer or seller. They further noted that there was no evidence of quantum of loss.

- [60] As aggravating factors, the Committee noted that a difference of 200 square feet is a major difference.
- [61] Mr. Renneberg's breach of the bylaw is similarly serious to that of the registrant in *Doderai*. While both Mr. Renneberg and Mr. Doderai misstated the measurement of the Property in a listing, Mr. Renneberg could not provide any information about how he determined the square footage of the Property. However, the sanction in this case must be determined with the current economic situation in mind.
- [62] In *Vanderburg (Re)*, [2005 SKREC 9](#) (file #2005-22B) ("*Vanderburg*"), Edna Vanderburg was ordered to pay a \$1,500 fine and was issued a letter of reprimand for breaching Bylaw 714. Ms. Vanderburg failed to measure the property to verify the actual square footage as opposed to simply restating the advertised square footage.
- [63] The Investigation Committee stated that Ms. Vanderburg was co-operative.
- [64] The Hearing Committee noted that Ms. Vanderburg had no previous sanction history and that she was an experienced member of the real estate industry, having been registered for approximately 26 years. They also considered Ms. Vanderburg's representations at the hearing, including that she did not agree with the Investigation Committee's recommendation for disciplinary action or believe that orders of reprimand were appropriate.
- [65] The Commission considered "the fact that this was an unusual property and the circumstances of this property made it reasonable and prudent for the registrant to measure the property herself." The fact that the parties may not have considered the square footage to be important at the time of the purchase does not relieve the registrant of the duty to measure the square footage of an unusual property.
- [66] However, the Committee did not order restitution in *Vanderburg*. They stated that "restitution is only appropriate where there is clear and unequivocal evidence of a loss caused by the registrant and the loss itself [is] clearly quantifiable."
- [67] Mr. Renneberg's breach of the bylaw is less serious than that of the registrant in *Vanderburg*. Both Mr. Renneberg and Ms. Vanderburg misstated the measurement of the Property in a listing. However, an appropriate sanction for Mr. Renneberg's breach of the bylaw must take into account the current economic climate.

- [68] The decision in *Vanderburg* was 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”.
- [69] An order of reprimand and a fine of approximately \$1,500 are appropriate sanctions for Mr. Renneberg’s breach of Bylaw 714.
- [70] As Mr. Renneberg has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [71] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Renneberg, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [72] 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 714:
- a. Mr. Renneberg shall receive an order of reprimand for the violation of Bylaw 714;
 - b. Mr. Renneberg 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. Mr. Renneberg’s registration shall be terminated if he fails to make payment as set out above.
- [73] There shall be no order as to costs.

Dated at Moose Jaw this 4th day of June, 2020.

“David Chow”
David Chow, Chairperson