

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

*Bode (Re)*, 2019 SKREC 41

Date: December 2, 2019  
Commission File: 2019-41

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF DENNIS BODE**

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

David M. Chow - Chairperson

Wayne Zuk

Dean Staff

**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. Dennis Bode breached Saskatchewan Real Estate Commission Bylaw 702.1 by filling out a cancellation form and witnessing the signatures of another brokerage's seller clients on said form.

**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 702.1 states: “A registrant shall not engage in conduct that is disgraceful, unprofessional or unbecoming of a registrant in the course of his or her practice.”

**FACTS:**

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

[5] Mr. Bode has been registered as a salesperson under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since May 19, 2010.

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

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

[7] Mr. Bode has completed the continuing professional development seminars each registration year since 2010-2011.

[8] Mr. Bode is presently registered under the provisions of *The Real Estate Act* as a salesperson with Prairie Business Brokers Ltd.

[9] On January 8, 2018, the mobile home located at the Property was listed for sale.

[10] Mr. Bode acted as the listing agent.

[11] On February 26, 2018, the Sellers completed a Residential Contract of Purchase and Sale to purchase the Property.

[12] Mr. Bode represented the Sellers in their purchase of the Property.

[13] The Sellers took possession of the Property on March 2, 2018.

[14] Since the purchase, the Sellers have maintained a friendship with Mr. Bode and have both helped him with odd jobs.

[15] In May of 2019, the Sellers started considering the possibility of selling the Property. They contacted Mr. Bode to ask what they should do to get the Property sold.

[16] Mr. Bode advised them to clean up the yard, have a yard sale, finish painting the exterior, paint the interior ceiling, and get a different window covering. Mr. Bode told them to call him when they were done with all of the recommended improvements.

- [17] One of the Sellers became anxious to sell and the decision was made to list the Property immediately.
- [18] On or about June 11, 2019, the Sellers contacted Registrant A with regards to listing the Property for sale.
- [19] On or about June 17, 2019, Registrant A met the Sellers to list the Property. The Sellers signed a broker contract listing the Property for sale with Registrant A's brokerage.
- [20] Registrant A informed the Sellers that they could cancel the listing agreement at any time.
- [21] As of June 19, 2019, the listing of the Property was up on Matrix.
- [22] By June 22, 2019, the Sellers came to regret their decision to list the Property for sale with Registrant A's brokerage.
- [23] On June 22, 2019, one of the Sellers attended at Mr. Bode's office and explained that he and his co-seller had come to regret their decision to sign a listing with Registrant A and that they wanted to cancel the listing, but did not want to speak directly to Registrant A about it. The Seller asked Mr. Bode if he could help with the cancellation.
- [24] When the Sellers asked for Mr. Bode's help, he believed the ethical and responsible thing to do was help them rather than tell them there was nothing he could do for them.
- [25] Mr. Bode drafted a Cancellation of a Seller's Brokerage Contract that purported to cancel the listing agreement between the Sellers and Registrant A's brokerage. Mr. Bode then gave the Seller a ride home. Mr. Bode remained in his truck until the Sellers came out and signed the document. Mr. Bode witnessed the signatures.
- [26] Mr. Bode then returned to his office and forwarded the documents to Registrant A along with a text message stating: "...[the Sellers] have asked me to send you a cancellation document I will forward it to your mailing address Thank you".
- [27] Registrant A spoke to the Sellers and they were not able to come to an agreement regarding the cancellation of the listing contract.
- [28] Mr. Bode told Registrant A that he was not listing the Property for sale, but that the Sellers had asked for his help because they did not want to talk to Registrant A.

[29] Mr. Bode spoke to the Sellers and the Sellers decided not to pursue the cancellation of their listing with Registrant A's brokerage.

[30] Mr. Bode texted Registrant A stating "...[the Sellers] called and told me they talk to you and you said that you're fine with them staying with you please confirm and let me know what's going on".

## **REASONS:**

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

### Mitigating Factors

[32] Mr. Bode has no previous sanction history.

[33] Mr. Bode has been registered with the Commission since 2010.

[34] Mr. Bode was co-operative with the investigation.

[35] Mr. Bode was terminated from his previous brokerage as a result of Registrant A's complaint.

### Aggravating Factors

[36] There were no aggravating factors.

### Prior Decisions & Other Considerations

[37] 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.

[38] 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.*

[39] Mr. Bode inappropriately completed a cancellation form at the request of the Sellers. The Sellers sought Mr. Bode's help with the cancellation of a listing due to a previously established relationship. However, Mr. Bode knew that the Sellers were not currently his clients and that they had listed the Property for sale with a different brokerage. As such, Mr. Bode should not have filled out the cancellation form for the Sellers.

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

[40] Mr. Bode was the only registrant involved in the breach.

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

[41] There is no evidence that Mr. Bode suffered any losses or gained any benefits as a result of his conduct. The Sellers did not list the Property for sale with Mr. Bode.

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

[42] There was no evidence of consumer harm. The Sellers were extremely appreciative of Mr. Bode's willingness to help them, but this does not absolve Mr. Bode of his professional obligations.

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

[43] Specific deterrence is needed to make it clear to Mr. Bode that it is not acceptable for registrants to complete cancellation forms for clients of other brokerages. It must be emphasized that it is extremely inappropriate to fill out any kind of form for a non-client, but especially inappropriate for a registrant to fill out a cancellation form for clients of another brokerage. Mr. Bode must be reminded of the need to maintain the requisite standards of professionalism, even when dealing with friends.

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

[44] Registrants must be reminded of the need to remain professional, even when dealing with friends and those with whom they have previous relationships. Regardless of the relationships between the parties and the intention of the registrant, it is never okay for a registrant to fill out a cancellation form for clients of another brokerage.

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

[45] Registrants are placed in a position of trust. Members of the public must be reassured that this trust in registrants is not misplaced. To ensure this, registrants must maintain professionalism in all dealings with members of the public, but also with other registrants. Members of the public should be confident that the documents they are receiving in the course of a trade in real estate were prepared by the registrants identified as the representatives of the parties to the transaction.

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

[46] Mr. Bode'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. Bode's breach of Bylaw 702.1?**

[47] There are seven previous decisions dealing with breaches of Bylaw 702.1, one of which bears similarity to Mr. Bode's case as it deals with a registrant drafting cancellation forms for clients of another brokerage. The other decisions deal almost exclusively with registrants making inappropriate and unprofessional comments to other registrants, professionals, and members of the public.

[48] In *Badinski (Re)*, [2018 SKREC 14](#), (file #2017-05) ("*Badinski*"), Tynelle Badinski was issued an order of reprimand and a \$1,500 fine for breaching Bylaw 702.1 by drafting cancellation forms for clients of her former brokerage. As a salesperson registered with Re/Max Keystone Realty ("Keystone"), Ms. Badinski represented several sellers who had listed their properties for sale with the brokerage. When Ms. Badinski decided to transfer to a new brokerage, she contacted several of these sellers to advise them of her decision. Many of the sellers wanted to move their listings to the new brokerage so they could continue working with Ms. Badinski.

[49] Ms. Badinski advised these sellers that they would have to cancel their listings with Keystone if they wanted to relist with her at the new brokerage. She drafted cancellation forms for several of the sellers and did not tell them that Keystone was not obligated to agree to their request to cancel their listing agreements.

[50] Ms. Badinski had no previous sanction history and was co-operative with the investigation.

[51] Ms. Badinski contacted several clients to discuss her move to a new brokerage and assisted all of these clients in attempting to cancel their listings with her former brokerage. Ms. Badinski states that all of these conversations occurred prior to her move to the new brokerage and that all of the cancellations were at the request of her clients. The agency relationship between members of the public and the brokerages that represent them is a fundamental component of

the real estate industry. Registrant conduct that undermines this relationship is not acceptable.

- [52] Mr. Bode's breach of Bylaw 702.1 is not as serious as that of the registrant in *Badinski*. Based on the evidence discovered throughout the course of our investigation, Mr. Bode did not approach the Sellers and certainly not with the intention of having them re-list the Property for sale with him. In fact, the Sellers and Mr. Bode state that it was the Sellers who contacted Mr. Bode and asked for his help as they had a previous relationship and viewed Mr. Bode as a friend. Mr. Bode then acted on instruction from the Sellers and drafted the cancellation form, witnessing the Sellers' signatures. In contrast, Ms. Badinski initiated the conversations with the clients and completed cancellation documents for multiple clients.
- [53] While the situation around the drafting and signing of the cancellation form is different than in *Badinski*, it is still inappropriate and unprofessional to draft a cancellation form for the clients of a different brokerage. This is so regardless of the relationship between the parties and the surrounding circumstances.
- [54] There is also a decision under section 63(a) of the *Act* that bears some similarity to the case at hand, despite the fact that it deals with a different section of the legislation.
- [55] In *Ferguson (Re)*, [2003 SKREC 18](#), (file #2002-39) ("*Ferguson*"), Belinda Ferguson was issued an order of reprimand and ordered to pay a \$1,000 fine and \$1,000 in hearing costs for breaching s. 63(a) of the *Act* by trading in real estate on behalf of a brokerage other than the brokerage with which she was registered. Ms. Ferguson had clients of a brokerage sign documents cancelling their listing agreements with the brokerage when she was not registered to trade with that brokerage. The seller had signed a listing agreement with the brokerage when Ms. Ferguson was a registrant of that brokerage. After Ms. Ferguson terminated her registration with that brokerage and became registered as a salesperson with another brokerage, she witnessed the seller's signature on a form cancelling the seller's listing with her former brokerage. Ms. Ferguson contacted individuals under contract with her former brokerage after she became registered with her new brokerage to inform them of her new employment.
- [56] Ms. Ferguson was not devious and did not attempt to hide her activities of providing and completing cancellation documents and witnessing the signatures of the sellers on the documents. The Hearing Committee did not find that Ms. Ferguson's actions were a deliberate attempt to mislead the clients or the brokerage.
- [57] Mr. Bode's breach of Bylaw 702.1 is not as serious as the breach of the registrant in *Ferguson*. Again, Mr. Bode did not approach the Sellers with the intention of having them re-list the Property for sale with him; the Sellers sought Mr. Bode's guidance when they regretted listing their Property with Registrant A. In contrast,

the circumstances in *Ferguson* suggest that Ms. Ferguson was hoping her former clients would follow her to the new brokerage when she contacted them. Further, Ms. Ferguson, like the registrant in *Badinski*, signed cancellations for multiple clients.

- [58] *Ferguson* was decided in 2002. In 2008, a significant expansion occurred in the Saskatchewan real estate market that drastically increased property values and the commissions registrants could expect to earn on trades in real estate. Sanctions ordered against registrants must keep pace with the impact the changing real estate market and inflation have had on property values or the Commission runs the risk of fines becoming a “cost of doing business”.
- [59] There are some relevant principles that can be drawn from other decisions of Hearing Committees dealing with breaches of other sections of the legislation.
- [60] The Hearing Committee stated that not knowing the proper procedure for the cancellation of listing agreements or the applicable legislation is not a valid defence for consideration in these matters.
- [61] In *Fry (Re)*, [2003 SKREC 1](#), (file #2002-25) (“*Fry*”), Don Fry was found to have breached s. 39(1)(a) of the *Act* when he directly contacted a seller under an agency agreement with another brokerage without first receiving authorization to do so from the other brokerage. The Hearing Committee stated that all registrants shall respect the agency relationship between a registrant and a buyer or seller and 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 are a serious violation which may warrant the suspension or cancellation of a registrant’s certificate of registration.
- [62] In *Howsam (Re)*, [2005 SKREC 3](#), (file #2003-34) (“*Howsam*”), Jeff Howsam was found to have breached Bylaw 709 by negotiating directly with sellers he knew to be exclusively represented. In its decision, the Hearing Committee reiterated that all registrants must respect the agency relationship between a registrant and a buyer or seller. The Hearing Committee stated that registrants cannot be anything less than professional, ethical and respectful in their dealings with each other at all times, otherwise they jeopardize the interest of their clients and the integrity of the industry.
- [63] In *Rempel (Re)*, [2010 SKREC 7](#), (file #2009-57) (“*Rempel*”), Len Rempel was found in breach of Bylaw 709 for contacting a buyer who was already involved in an exclusive relationship with another brokerage and asking negotiation questions of the buyer. The Hearing Committee stated that Mr. Rempel’s blatant disregard for the provisions of the *Act* could not be condoned and that registrants must have respect for other registrants and their clients.
- [64] Each of these decisions emphasizes the importance of agency relationships between a buyer or seller and the brokerage representing them and requires

registrants to show appropriate respect for that relationship. The Hearing Committee in *Howsam* specifically emphasized the need for registrants to act professionally, ethically, and respectfully in dealings with one another and noted that failure to do so can be detrimental to the interests of their clients and to the integrity of the industry as a whole.

- [65] An order of reprimand and a \$1,000 fine are appropriate sanctions for Mr. Bode's breach of Bylaw 702.1.
- [66] As Mr. Bode has agreed to sign this consent order, there will be no order as to costs.

**CONSENT ORDER:**

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

- [68] 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 702.1:
- a. Dennis Bode shall receive an order of reprimand for the violation of Bylaw 702.1;
  - b. Dennis Bode shall, within 60 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 bylaw; and
  - c. Dennis Bode's registration shall be terminated if he fails to make payment as set out above.

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

Dated at Moose Jaw, Saskatchewan this 2<sup>nd</sup> day of December 2019.

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