

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

Chiplew (Re), 2020 SKREC 1

Date: February 26, 2020
Commission File: 2019-49

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF LYNN CHIPLEY**

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

Jeffrey P. Reimer- Chairperson

Tara Faris-Peters

Cliff Iverson

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. Chiplew breached Commission Bylaw 712(e) by failing to take reasonable steps to ensure that the brokerage and its registrants were in compliance with the *Act*, the regulations and the bylaws.

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 712(e) states:

“A broker or branch manager shall be responsible for...taking reasonable steps to ensure that the brokerage and its registrants are in compliance with the Act, the regulations and the bylaws”.

FACTS:

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

[5] Ms. Chipley was continuously registered as a salesperson under the provisions of *The Real Estate Brokers Act* in the Province of Saskatchewan with the Superintendent of Insurance from December 13, 1979 until April 22, 1981.

[6] Ms. Chipley was continuously registered as a salesperson under the provisions of *The Real Estate Brokers Act*, *The Real Estate Brokers Act, 1987*, and *The Real Estate Act* in the Province of Saskatchewan with the Superintendent of Insurance and the Saskatchewan Real Estate Commission from January 8, 1988 until December 31, 2000.

[7] Ms. Chipley has been continuously registered as a broker under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since January 1, 2001.

[8] Ms. Chipley has taken the following real estate courses:

- Real Estate 150; and
- Real Estate 350.

[9] Ms. Chipley has completed the continuing professional development seminars each registration year since 2001-2002.

[10] Ms. Chipley is presently registered under the provisions of *The Real Estate Act* as a broker with #101007078 Saskatchewan Ltd. O/A Century 21 Border Real Estate Service (2000).

[11] In 2014, the Owner passed away leaving behind the Property.

[12] The Owner passed away with a Will. The Will named the Executor and another person as executors. However, the Executor’s co-executor had also passed away.

[13] The Executor contacted Registrant A to list the Property. The listing stayed with Registrant A when she joined Century 21 Border Real Estate Services (2000) in 2017.

- [14] An MLS® Data Input Form was signed. This document gives the dates of the brokerage contract as April 5, 2017 until April 4, 2018.
- [15] The Owner's Will had not been probated at the time this initial listing was signed.
- [16] After having the Property listed with Registrant A for several years, the Executor decided to re-list with another registrant.
- [17] On June 8, 2017, the Executor and a representative of the brokerage signed a Cancellation of the Brokerage Contract.
- [18] The Executor re-listed the Property with Registrant B, another registrant at the same brokerage.
- [19] On June 8, 2017, the Executor signed a Seller's MLS® Brokerage Contract. The Property was listed for \$150,000.
- [20] Registrant B was named as the listing agent.
- [21] After the Property was listed, Registrant B showed Ms. Chipley a copy of the Will and Ms. Chipley authorized Registrant B to proceed with the listing.
- [22] Ms. Chipley had been advised on previous occasions by local lawyers that registrants could list properties while the probate process was underway.
- [23] At the time Ms. Chipley discussed the listing with Registrant B, Ms. Chipley was unaware that the Executor had not made any progress toward having the Will probated in the 4 years the Property had been listed.
- [24] Registrant B found a buyer offering \$78,000. The Executor agreed to sell the Property.
- [25] The Executor signed acceptance of the offer, but the majority of the beneficiaries did not agree to the sale.
- [26] One of the lawyers handling the file discovered that the Will had not been probated and declared the agreement null and void as the Executor did not have legal authority to sell the Property.
- [27] The Buyers initiated a civil action against the Executor and the estate.
- [28] The Executor filed a third party claim against Ms. Chipley and the brokerage.
- [29] The brokerage now has a policy regarding the handling of estates in the policy guide. However, this policy was not in place when Registrant B listed the Property for sale.

[30] Ms. Chipley is prepared to take responsibility for allowing Registrant B to negotiate an offer on the Property when the Executor was not in a position to list the Property or accept an offer.

REASONS:

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

Mitigating Factors

[32] Ms. Chipley has no previous sanction history.

[33] Ms. Chipley has been registered with the Commission since 1979.

[34] Ms. Chipley was cooperative with the investigation.

[35] Ms. Chipley has taken responsibility for her actions.

Aggravating Factors

[36] Ms. Chipley is a broker. As the people responsible for ensuring their registrants are in compliance with the legislation, brokers are held to a higher standard of conduct.

[37] The Buyers have sued the estate and the Executor for failing to complete the contract. This could have been avoided if representatives of Ms. Chipley's brokerage had known to raise the issue with the Executor and ask about the probate process.

Prior Decisions & Other Considerations

[38] 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.

[39] 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.*

[40] Ms. Chipley authorized a registrant under her supervision to proceed with a listing on the basis of a Last Will and Testament when the Will had not been probated. The Executor entered into a contract of purchase and sale, but the transaction collapsed because the Will had not been probated. As a result, the Buyers initiated a civil action against the estate and the Executor.

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

[41] Ms. Chipley was the broker responsible for supervising the registrant who took the listing. Ms. Chipley discussed the listing with Registrant B and did not raise any issue about the fact that the Will had not been probated.

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

[42] There is no evidence to suggest that Ms. Chipley suffered any losses or gained any benefits as a result of the breach.

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

[43] As a result of the brokerage listing the Property, an offer to purchase was made and accepted. However, when it was discovered that the Will had not been probated, the sale fell through and the Buyers commenced legal action.

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

[44] Specific deterrence is needed to ensure Ms. Chipley understands the importance of a broker's role in providing supervision and guidance to the registrants and employees of her brokerage.

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

[45] All brokers must be reminded of the importance of the role a broker plays in providing supervision and guidance to the registrants and employees of the brokerage.

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

[46] Members of the public must be confident that the registrants they engage to represent them in trades in real estate are taking all the necessary steps to abide by the legislation. The public must be reassured that all registrants and employees of a brokerage that they deal with in the course of a trade in real estate are being appropriately supervised by the broker responsible for them.

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

[47] Ms. Chipley'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 Ms. Chipley's breach of Bylaw 712(e)?

[48] There are five previous decisions dealing with breaches of Bylaw 712(e).

[49] In *Batty (Re)*, [2019 SKREC 12](#) (file #2017-19) ("*Batty*"), Gerald Batty was issued an order of reprimand and a \$1,000 fine for failing to ensure that registrants of his brokerage were in compliance with the legislation. A registrant under Mr. Batty's supervision, Registrant A, represented the Buyer and the Seller of the Property as a limited dual agent. Mr. Batty provided Registrant A with assistance in drafting terms set out in a Schedule "A" to the Buyer's offer, which directed that \$3,700 of the deposit would be returned to the Buyer in the event the transaction collapsed. Registrant A received the deposit from the Buyer's ex-husband and signed a memorandum with the Buyer's ex-husband stating that the \$3,700 would be returned to him in the event the transaction collapsed. Mr. Batty became aware of Registrant A's agreement with the Buyer's ex-husband shortly after it was made.

[50] Mr. Batty had no previous sanction history and had been a registrant since 1981. He was co-operative with the investigation.

[51] Mr. Batty was 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.

[52] Ms. Chipley's breach is more serious than that of the registrant in *Batty*. Both Ms. Chipley and Mr. Batty were long-time registrants with no previous sanction history. Mr. Batty was aware that a registrant under his supervision had drafted two documents that provided contradictory information about how a deposit was to be handled in the event that a transaction collapsed, but did not identify the drafting issue and did not ensure the registrant corrected the issue. Ms. Chipley was aware that a registrant under her supervision had listed a property on the basis of authority set out in a Will that had not been probated. There is also evidence of consumer harm that could have been prevented if Ms. Chipley had raised the alarm about trying to list a property on the basis of a Will that had not been probated.

[53] In *Dominguez (Re)*, [2018 SKREC 6](#) (file #2013-09B) ("*Dominguez*"), Matt Dominguez was issued an order of reprimand and a \$1,000 fine for failing to ensure that registrants of his brokerage were in compliance with the legislation. Salespersons under Mr. Dominguez's supervision hosted an open house at a property with respect to which the owners had not signed an agency agreement with the brokerage nor had the owners provided any other written authorization to advertise the property for sale. A link to a Kijiji advertisement regarding the open

house was posted to a Facebook page that the registrants operated together. Neither of the registrants involved in the open house submitted the Kijiji advertisement or Facebook post to Mr. Dominguez for review prior to posting. The brokerage's social media coordinator, using Mr. Dominguez's personal Facebook account, "liked" the Facebook post linking to the Kijiji advertisement for the property. Mr. Dominguez had not advised the social media coordinator that content "liked" should be reviewed and approval given prior to "liking", nor did he advise the registrants involved in the open house that they were required to submit all advertising for approval prior to publication on social media platforms. The registrants involved in the open house had also created posts on another Facebook page that included a list of open houses scheduled in the Moose Jaw area. The owners of the properties included in the list had not provided the brokerage with any written authorization to advertise their properties for sale and neither of the lists of open houses had been submitted to Mr. Dominguez for review prior to posting. The brokerage did not have a written policy regarding advertising through social media at the time.

- [54] Mr. Dominguez had no previous sanction history and was co-operative with the investigation. He signed a Consent Order acknowledging his error.
- [55] Mr. Dominguez did not have an advertising policy in place to ensure that advertisements created and published by registrants under his supervision were compliant with the Commission requirements. The only employee of Mr. Dominguez's brokerage who was tasked with reviewing advertising posted by registrants of the branch office was not a registrant herself.
- [56] Ms. Chipley's breach of Bylaw 712(e) is similarly serious to that of the registrant in *Dominguez*. Both Ms. Chipley and Mr. Dominguez failed to have appropriate policies and procedures in place to ensure that all registrants of their respective brokerages were meeting the Commission's requirements. However, this is Ms. Chipley's first charge of professional misconduct in the nearly 40 years she has been a registrant. That being said, there is also evidence of consumer harm that could have been prevented if Ms. Chipley had raised the alarm about trying to list a property on the basis of a Will that had not been probated.
- [57] In *Dickie (Re)*, [2015 SKREC 3](#) (file #2014-01A) ("*Dickie*"), Elaine Dickie was issued an order of reprimand and a \$2,000 fine for failing to take reasonable steps to ensure that a registrant under her supervision had notified the Commission that he had been charged with criminal offences. The registrant had contacted Ms. Dickie when he learned that he was being charged with fraud and Ms. Dickie did not ensure that the registrant had reported the charges to the Commission as required.
- [58] Ms. Dickie had been a registrant since 1993 and had no previous sanction history. The registrant's lawyer had erroneously advised the registrant that the criminal charges did not need to be reported to the Commission. Ms. Dickie was co-operative with the investigation.

- [59] Ms. Dickie failed to ensure the registrant was reporting to the Commission on two occasions: once when the charges were laid against the registrant and a second time when he was convicted of the offences.
- [60] Ms. Chipley's breach of Bylaw 712(e) is similarly serious to that of the registrant in *Dickie*. Both Ms. Chipley and Ms. Dickie were long-time registrants with no previous sanction history. Ms. Dickie was aware the registrant under her supervision had been charged with a criminal offence, just as Ms. Chipley was aware that a registrant under her supervision had listed a property without evidence of probate. Ms. Chipley failed to adequately supervise on one occasion, while Ms. Dickie failed to adequately supervise the registrant on two occasions: once when the charges were laid against him and once when he was convicted of the offences. However, there is also evidence of consumer harm that could have been prevented if Ms. Chipley had raised the alarm about trying to list a property on the basis of a Will that had not been probated.
- [61] In *Bashutski (Re)*, [2012 SKREC 1](#) (file #2011-07A), Al Bashutski was issued an order of reprimand and a \$2,000 fine and ordered to pay \$1,000 in hearing costs for failing to take reasonable steps to ensure that a salesperson under his supervision was responding to requests for information from a review officer of the Commission. Mr. Bashutski advised the registrant that he should reply to the review officer and thought it had been done.
- [62] There was no evidence of monetary loss to the client and Mr. Bashutski apologized for not replying himself or pushing his salesperson more firmly to reply. Mr. Bashutski did not have a previous sanction history.
- [63] The Hearing Committee stated that a broker cannot simply state that he or she thought something had taken place. It is also stated that it is the obligation of the broker to supervise their registrants to make sure they are in compliance with the legislation.
- [64] Ms. Chipley's breach of Bylaw 712(e) is more serious than that of the registrant in *Bashutski*. Mr. Bashutski was aware that a registrant under his supervision had been asked to provide information to a review officer of the Commission, but failed to follow up with the registrant and ensure that a response had been provided. Ms. Chipley was aware that a registrant under her supervision was going to list a property on the basis of a Last Will and Testament, without any evidence that probate had been completed. In fact, Ms. Chipley authorized the registrant to do so. There is also evidence of consumer harm that could have been prevented if Ms. Chipley had raised the alarm about trying to list a property on the basis of a Will that had not been probated.
- [65] In *Wouters (Re)*, [2009 SKREC 26](#) (file #2008-54A) ("*Wouters*"), the Deputy Superintendent of Real Estate confirmed the decision of a Hearing Committee to issue an order of reprimand and \$1,000 fine against Kevin Wouters for permitting a registrant under his supervision to publish advertisements that did not identify the registrant's brokerage. Mr. Wouters had met with this registrant to discuss

previous non-compliant advertisements, but failed to implement reasonable efforts to prevent future breaches or satisfactory corrective action. After the meeting, the registrant published a further 42 non-compliant advertisements. Mr. Wouters did not review the advertisements prior to publication.

- [66] Mr. Wouters was contrite and co-operative with the investigation. Prior to the hearing, he implemented policies to deal with future advertising issues. There was no evidence of public harm and Mr. Wouters did not have a previous sanction history. He was a new branch manager at the time of the breach and the situation provided a steep learning curve.
- [67] Ms. Chipley's breach of Bylaw 712(e) is similarly serious to that of the registrant in *Wouters*. Mr. Wouters was aware that the registrant under his supervision had published non-compliant advertising in the past and, though he did meet with the registrant to discuss it, did not implement reasonable efforts to prevent future breaches or satisfactory corrective action. Subsequent to their meeting, the registrant under Mr. Wouters' supervision published a further 42 non-compliant advertisements. Although Ms. Chipley was aware of the property the registrant under her supervision had listed, there is no evidence that the registrant had a history of improperly listing properties and the issue was confined to one single transaction. In *Wouters*, there was no evidence of public harm. In contrast, there is evidence of consumer harm flowing from Ms. Chipley's breach of the bylaw.
- [68] An order of reprimand and a \$2,000 fine are appropriate sanction for Ms. Chipley's breach of Bylaw 712(e).
- [69] As Ms. Chipley has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [70] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Ms. Chipley, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [71] 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 712(e):
- a. Ms. Chipley shall receive an order of reprimand for the violation of Bylaw 712(e);
 - b. Ms. Chipley 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
 - c. Ms. Chipley's registration shall be terminated if she fails to make payment as set out above.
- [72] There shall be no order as to costs.

Dated at Regina, Saskatchewan this 26th day of February, 2020.

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