

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

Moore (Re), 2021 SKREC 1

Date: March 25, 2021
Commission File: 2019-50

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF BRANDON MOORE**

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

David M. Chow - Chairperson

Vern McClelland

Cam Bristow

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. Moore breached s. 57(1) of the *Act* by failing to ensure that an agency agreement was signed in the presence of a witness.

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] Section 57(1) of the *Act* states:

“Subject to the regulations, every written agency agreement is to be executed in the presence of a witness.”

FACTS:

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

[5] Mr. Moore was continuously registered as a salesperson under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission from September 26, 2014 until June 30, 2017. He was continuously registered as a broker from July 1, 2017 until January 6, 2020.

[6] Mr. Moore has been continuously registered as an associate broker under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since January 6, 2020.

[7] Mr. Moore 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;
- Farm Real Estate as a Professional Career; and
- Real Estate Office Management & Brokerage.

[8] Mr. Moore has completed the continuing professional development seminars each registration year since 2014-2015.

[9] Mr. Moore is presently registered under the provisions of *The Real Estate Act* as an associate broker with eXp Realty of Canada Inc. O/A eXp Realty.

[10] At all times, relevant to this matter, Mr. Moore was registered under the provisions of *The Real Estate Act* as a broker with Black Dog Republic Realty Inc. (“Black Dog”)

[11] In July of 2018, Mr. Moore’s former brokerage, Black Dog, and the Developer signed a Marketing Consulting & Direct Sales Agreement (the “Agreement”) regarding the Property.

[12] Mr. A is a representative of the Developer, which had planned a golf resort and housing development at the Lake.

[13] No one signed as witness to Mr. Moore's electronic signature or to the electronic signature of Mr. A on the Agreement.

REASONS:

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

Mitigating Factors

[15] Mr. Moore was co-operative with the investigation.

Aggravating Factors

[16] At the time of the breaches, Mr. Moore was registered as a broker. As the people responsible for ensuring that all registrants and employees of a brokerage are complying with the legislative requirements, brokers are held to a higher standard of conduct. This aggravating factor is of limited weight, however, because Mr. Moore is no longer registered as a broker.

Previous Sanction History

[17] Mr. Moore has a previous sanction history.

- In *Moore (Re)*, [2019 SKREC 40](#) (file #2019-38) ("*Moore*"), Mr. Moore was found to have breached Bylaw 701(a) by drafting an offer to purchase which stated that the purchaser owned the property when, in fact, the property was not owned by the purchaser and Bylaw 730 by failing to use the mandatory Residential Contract of Purchase and Sale and Notice To Remove Condition(s) on Residential Contract of Purchase and Sale. Mr. Moore represented both the builder and the purchaser in a contract of purchase and sale regarding a new home. The hearing in *Moore* took place in December of 2019, several months after the conduct giving rise to the current charges. As such, Mr. Moore did not have a previous sanction history at the time of the alleged breaches.

Prior Decisions & Other Considerations

[18] 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.

[19] 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.

[20] An agency agreement signed by Mr. Moore was not signed in the presence of a witness.

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

[21] Mr. Moore 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.

[22] There is no evidence suggesting that Mr. Moore has suffered a loss or enjoyed a benefit as a result of the breach.

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

[23] There is no indication of actual consumer harm arising out of Mr. Moore's breach of the legislation.

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

[24] Mr. Moore must be reminded that all agency agreements used by registrants must meet the minimum requirements set out in the legislation.

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

[25] Registrants must be reminded that all agency agreements used by registrants must meet the minimum requirements set out in the legislation.

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

[26] Members of the public must be confident that the agency agreements presented to them by registrants meet the minimum requirements set out in the legislation.

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

[27] Mr. Moore'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. Moore's breach of s. 57(1) of the Act?

- [28] There are five previous decisions dealing with breaches of s. 57(1) of the *Act*, none of which bear much factual similarity to the case at hand. In each of the other decisions dealing with a breach of this section, the registrant failed to have an owner of the property sign the agency agreement.
- [29] In *Molenaar (Re)*, [2018 SKREC 12](#) (file #2016-42) ("*Molenaar*"), Chris Molenaar was issued an order of reprimand and a \$750 fine for breaching s. 57(1) of the *Act* by failing to obtain the signature of one of two property owners on a listing. When he met with Seller A, Mr. Molenaar was told that Seller A had authority to sign documents on Seller B's behalf. Seller A signed the listing agreement and Mr. Molenaar put up a "For Sale" sign at the property. Mr. Molenaar did not obtain copies of the documentation purporting to grant Seller A authority to sign on Seller B's behalf and it was later discovered that the documents Seller A had signed did not grant him sole authority to deal with the sale of the property.
- [30] Mr. Molenaar was cooperative with the investigation and had no previous sanction history. He signed a consent order acknowledged his error.
- [31] The Hearing Committee noted that the brokerage contract is the document that sets out the terms of the agency relationship between a seller and a brokerage, and it is the document that entitles the brokerage to collect a commission on the sale of the listing property. As such, it is critical the document be properly executed. Seller B only became aware that the property was listed for sale when she saw a "For Sale" sign on the lawn.
- [32] Mr. Moore's breach of s. 57(1) of the *Act* is less serious than that of the registrant in *Molenaar*. Mr. Molenaar failed to obtain the signature of one of two sellers on an agency agreement while Mr. Moore failed to ensure that the signatures of the client and the representative of the brokerage on the agency agreement were witnessed. However, the seriousness of Mr. Moore's breach of the *Act* is somewhat aggravated by the fact that he was registered as a broker at the time.
- [33] In *Aldous (Re)*, [2018 SKREC 10](#) (file #2016-19) ("*Aldous*"), Catherine Aldous was issued an order of reprimand and a \$500 fine for breaching s. 57(1) of the *Act*. A brokerage contract was completed that purported to list the property for sale with Ms. Aldous' brokerage. Ms. Aldous acted as the listing agent. The seller had not signed the brokerage contract. In the spaces left for the owner to sign, Ms. Aldous had noted, "As per Request" and signed beside this notation on the second page as a witness. No one signed the brokerage contract on behalf of the seller's brokerage.

- [34] Ms. Aldous did not have a previous sanction history and was cooperative with the investigation. She signed a consent order acknowledging her error.
- [35] The Hearing Committee reiterated the fundamental importance of the brokerage contract to the agency relationship and stated that it is critical that the brokerage contract be reviewed and signed by the seller.
- [36] Mr. Moore's breach of s. 57(1) of the *Act* is less serious than that of the registrant in *Aldous*. Ms. Aldous failed to obtain the signature of the seller an agency agreement while Mr. Moore failed to ensure that the signatures of the client and the representative of the brokerage on the agency agreement were witnessed. However, Mr. Moore was registered as a broker at the time of the breach.
- [37] In *Chavady (Re)*, [2017 SKREC 3](#) (file #2013-39) ("*Chavady*") and *Hallgrimson (Re)*, [2017 SKREC 4](#) (file #2013-39A) ("*Hallgrimson*"), Paul Chavady and Jerry Hallgrimson were each issued an order of reprimand and a \$350 fine for breaching s. 57(1) of the *Act*. The registrants represented the sellers of a property, but only obtained the signature of one of the two sellers on the agency agreement.
- [38] Neither Mr. Chavady nor Mr. Hallgrimson had a previous sanction history and both registrants were cooperative with the investigation. Both registrants acknowledged their errors and displayed remorse for the distress their conduct had caused the sellers. There was no evidence that either Mr. Chavady or Mr. Hallgrimson had benefitted from their breaches of the legislation and there was minimal evidence of consumer harm as the listing did not result in a sale and the registrants agreed to cancel the listing.
- [39] The Hearing Committee noted the fundamental importance of the agency agreement. Several documents were signed by only one of two sellers.
- [40] Mr. Moore's breach of s. 57(1) of the *Act* is less serious than that of the registrants in *Chavady* and *Hallgrimson*. Mr. Chavady and Mr. Hallgrimson failed to obtain the signature of one of two sellers on an agency agreement while Mr. Moore failed to ensure that the signatures of the client and the representative of the brokerage on the agency agreement were witnessed. Mr. Moore was, however, registered as a broker at the time of the breach.
- [41] In *Thiessen (Re)*, [2015 SKREC 5](#) (file #2012-10) ("*Thiessen*"), Corey Thiessen was issued an order of reprimand and a \$250 fine for his breach of s. 57(1) of the *Act*. Seller A contacted Mr. Thiessen about selling a property that formed part of his mother's estate. Mr. Thiessen took on the listing. Although the listing contract named Seller A and Seller B as the sellers, only Seller A signed the contract. Mr. Thiessen signed the contract on behalf of his brokerage, but failed to have someone sign as witness to his signature.

- [42] Mr. Thiessen had no sanction history and was cooperative with the investigation. There was no evidence of consumer harm and Mr. Thiessen believed that the quality of his documentation had improved greatly since his new broker had been reviewing it.
- [43] Although Seller A had signed a document giving Seller B authority to sign documents on his behalf, Mr. Thiessen did not obtain Seller B's signature on all necessary documents. Mr. Thiessen had been registered for approximately eleven years at the time of the transaction. Mr. Thiessen was personally involved in the transaction; as such, he should have been especially careful.
- [44] Mr. Moore's breach of s. 57(1) of the *Act* is less serious than that of the registrant in *Thiessen*. Mr. Thiessen failed to obtain the signature of one of two sellers on an agency agreement while Mr. Moore failed to ensure that the signatures of the client and the representative of the brokerage on the agency agreement were witnessed. While Mr. Thiessen was personally involved in the transaction, the seriousness of Mr. Moore's breach of the *Act* is made somewhat more serious by the fact that he was registered as a broker at the time of the breach.
- [45] An order of reprimand and a \$500 fine are appropriate sanctions for Mr. Moore's breach of s. 57(1) of the *Act*.
- [46] As Mr. Moore has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [47] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Moore, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [48] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of s. 57(1) of the *Act*:
- a. Mr. Moore shall receive an order of reprimand for the violation of s. 57(1) of the *Act*,
 - b. Mr. Moore shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$500.00 fine for the said violation of the *Act*, and
 - c. Mr. Moore's registration shall be terminated if he fails to make payment as set out above.
- [49] There shall be no order as to costs.

Dated at the City of Moose Jaw this 25th day of March, 2021.

“ David M. Chow ”
Hearing Committee Chairperson