

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

*Jarvis (Re)*, 2020 SKREC 7

Date: September 25, 2020  
Commission File: 2019-52

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF DAVID JARVIS**

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

David Chow- Chairperson

Wayne Zuk

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*, Mr. Jarvis breached s. 58(1)(b) of the *Act* by drafting offers to purchase that did not include an expiry date or an address for the buyer.

**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 58 of the *Act* states, in part:

*“An offer to purchase obtained by a registrant:*

*...*

*(b) is to clearly show, prior to execution by the buyer:*

*...*

*(ii) the names and addresses of the buyer and seller;*

*...*

*(ix) the time and date by which the offer is to be accepted;”*

### **FACTS:**

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

[5] Mr. Jarvis 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 May 31, 2004.

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

- Real Estate Practice in Saskatchewan – Reciprocal Course;
- Principles of Mortgage Financing – Equivalency;
- Principles of Real Estate Appraisal – Equivalency; and
- Principles of Real Property Law – Equivalency.

[7] Mr. Jarvis has completed the continuing professional development seminars each registration year since 2003-2004.

[8] Mr. Jarvis is presently registered under the provisions of *The Real Estate Act* as a salesperson with Musgrave Agencies Real Estate Ltd. O/A Musgrave Agencies.

[9] The Hamlet is a hamlet within the RM.

[10] Mr. Jarvis met with representatives of the RM in December of 2017. He was told the RM wanted to acquire properties in the Hamlet. Mr. Jarvis suggested inserting a clause in the contract stating that the buyer would pay the higher of the initial offered price and 5% over the appraised value of the property to ensure the sellers were treated fairly and that the seller be able to choose which appraisal company to use. The motivation of the buyer would become evident if the offers were made in the RM’s name, so the RM set up a numbered company with their lawyer and the Numbered Company was named as the buyer on all

offers. The RM did not put a cap on how many properties they were willing to offer on, but did indicate they would end their offering at some point. Mr. Jarvis was asked to provide a “best guess” offer based on an external visual appraisal of a property and instructed to make offers without any conditions.

- [11] Mr. Jarvis went over the Ancillary Services form with representatives of the RM prior to any homes being purchased.
- [12] On March 22, 2018, the Numbered Company wrote an offer to purchase Property 1 from Seller A. The offer was \$30,000 and there were no conditions.
- [13] The offer did not include an expiry date or an address for the buyer.
- [14] Seller A accepted the offer on March 26, 2018.
- [15] On April 26, 2018, the Numbered Company wrote an offer to purchase Property 2 from Seller B. The offer was \$140,000 and there were no conditions.
- [16] The offer did not include an expiry date or an address for the buyer.
- [17] On April 30, 2018, Seller B wrote a Counter Offer increasing the purchase price.
- [18] The Counter Offer did not include an expiry date.
- [19] The Numbered Company accepted the Counter Offer on May 2, 2018.
- [20] On April 26, 2019, the Numbered Company wrote an offer to purchase Property 3 from Seller B. The offer was \$45,000 and there were no conditions.
- [21] The offer did not include an expiry date or an address for the buyer.
- [22] On April 30, 2018, Seller B wrote a Counter Offer increasing the purchase price to \$75,000 and adjusting the possession date.
- [23] The Numbered Company accepted the Counter Offer on May 2, 2018.
- [24] On April 26, 2018, the Numbered Company wrote an offer to purchase Property 4 from Seller C. The offer was \$30,000 and there were no conditions.
- [25] The offer did not include an expiry date or an address for the buyer.
- [26] On May 2, 2018, Seller C wrote a Counter Offer increasing the purchase price to \$50,000.
- [27] The Numbered Company accepted the Counter Offer on May 2, 2018.

- [28] On April 26, 2018, the Numbered Company wrote an offer to purchase Property 5 from Seller D. The offer was \$35,000 and there were no conditions.
- [29] The offer did not include an expiry date or an address for the buyer.
- [30] On May 2, 2018, Seller D wrote a Counter Offer increasing the purchase price to \$55,000.
- [31] The Numbered Company accepted the Counter Offer on May 2, 2018.
- [32] On May 2, 2018, the Numbered Company wrote an offer to purchase Property 6 from Seller B. The offer was \$7,500 and there were no conditions.
- [33] The offer did not include an expiry date or an address for the buyer.
- [34] Seller B signed acceptance of this offer on May 2, 2018.
- [35] On May 2, 2018, the Numbered Company wrote an offer to purchase Property 7 from Seller B. The offer was \$70,000 and there were no conditions.
- [36] The offer did not include an expiry date or an address for the buyer.
- [37] The offer initially indicated that the buyer had signed on April 25, 2018, but that date was crossed out and replaced with May 2.
- [38] Seller B signed acceptance on April 30, 2018.
- [39] On May 15, 2018, the Numbered Company wrote an offer to purchase Property 8 from Seller B. The offer was \$7,500 and there were no conditions.
- [40] The offer did not include an expiry date or an address for the buyer.
- [41] Seller B accepted the offer on May 18, 2018.
- [42] On June 5, 2018, the Numbered Company wrote an offer to purchase Property 9 from Seller E. The offer was \$50,000 and there were no conditions.
- [43] The offer did not include an expiry date or an address for the buyer.
- [44] Seller E accepted the offer on June 7, 2018.
- [45] On July 9, 2018, the Numbered Company wrote an offer to purchase Property 10 from Seller F. The offer was \$60,000 and there were no conditions.
- [46] The offer did not include an expiry date or an address for the buyer.
- [47] Seller F signed acceptance of the offer on July 12, 2018.

- [48] On July 24, 2018, the Numbered Company wrote an offer to purchase Property 11 from Seller G. The offer was \$340,000 and there were no conditions.
- [49] The offer did not include an expiry date or an address for the buyer.
- [50] Seller G accepted the offer on July 26, 2018.
- [51] On August 1, 2018, the Numbered Company wrote an offer to purchase Property 12 from Seller H. The offer was \$195,000 and there were no conditions.
- [52] The offer did not include an expiry date or an address for the buyer.
- [53] On August 1, 2018, Seller H wrote a Counter Offer changing the possession date.
- [54] The Numbered Company accepted the Counter Offer on August 2, 2018.
- [55] On August 13, 2018, the Numbered Company wrote an offer to purchase Property 13 from Seller I. The offer was \$65,000 and there were no conditions.
- [56] The offer did not include an expiry date or an address for the buyer.
- [57] Seller I accepted the offer on August 17, 2018.
- [58] The lack of an address for the buyer on the offers Mr. Jarvis prepared was an oversight. He had intended to include the address of the lawyer who had handled the incorporation of the Numbered Company on the offers.
- [59] The offers did not include an expiry date at the request of Mr. Jarvis' client. The RM was concerned that sellers would feel pressured to accept the offers within a stated timeline, so directed Mr. Jarvis to leave the offers open without an expiry date. The RM understood that it would have to withdraw the offer in writing in order to end the offer.

## **REASONS:**

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

### Mitigating Factors

- [61] Mr. Jarvis has no previous sanction history.
- [62] Mr. Jarvis has been a registrant since 2004.
- [63] Mr. Jarvis was cooperative with the investigation.

[64] All of the offers to purchase that failed to include the required information were written on behalf of the same buyer.

[65] Mr. Jarvis did not include an expiry date in the offers to purchase at the instructions of his client. The intent was to cause less stress for the sellers.

### Aggravating Factors

[66] Mr. Jarvis failed to include mandatory elements in 13 offers to purchase.

### Prior Decisions & Other Considerations

[67] 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.

[68] 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.*

[69] Mr. Jarvis represented a buyer client that wanted to remain anonymous. Mr. Jarvis drafted 13 offers on behalf of this client, none of which included an expiry date or an address for the buyer.

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

[70] Mr. Jarvis 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.*
- [71] There is no evidence to suggest that Mr. Jarvis suffered a loss or enjoyed a benefit as a result of his breach of the legislation.
4. *The impact of the breaches on complainants or others.*
- [72] There is no evidence of consumer harm arising out of Mr. Jarvis' breach of the legislation. The residents of the Hamlet take issue with the manner in which the transaction was handled, but the majority of their complaints relate to the manner in which the RM proceeded with its purchase of properties in the Hamlet.
5. *The need for specific deterrence to protect the public.*
- [73] Specific deterrence is needed to remind Mr. Jarvis that the items set out in s. 58 of the *Act* are mandatory elements of an offer to purchase drafted by a registrant.
6. *The need for general deterrence to protect the public.*
- [74] General deterrence is needed to remind all registrants that the items set out in s. 58 of the *Act* are mandatory elements of an offer to purchase drafted by a registrant.
7. *The need to maintain the public's confidence in the integrity of the profession.*
- [75] Members of the public must be confident that the offers to purchase they receive from registrants are completed in accordance with the requirement set out in the *Act*.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [76] Mr. Jarvis' 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. Jarvis' breach of s. 58(1)(b) of the *Act*?**

- [77] There are several decisions dealing with breaches of s. 58(1)(b) of the *Act*, but very few bear much factual similarity to the case at hand and many of these previous decisions are over twenty years old. Additionally, most of these previous decisions deal with a registrant's failure to clearly show the price offered by the buyer and the terms and conditions of the offer. While the information Mr. Jarvis omitted from the offers to purchase he drafted is important information, a contract of purchase and sale that includes inaccurate or incomplete information about the purchase price and the terms and conditions of the contract could result in significant confusion and disagreement about the details of the bargain the parties believe they have struck. As such, the principles applicable in those previous decisions are of little assistance in determining an appropriate sanction for Mr. Jarvis' breach of the legislation.

- [78] There is one previous decision dealing with a breach of s. 58(1)(b) of the *Act* that may be of assistance.
- [79] In *Amichand (Re)*, [2018 SKREC 9](#) (file #2016-74) ("*Amichand*"), Will Amichand was issued an order of reprimand and a \$750 fine for drafting an offer to purchase that did not include the name, address or telephone number of Mr. Amichand's brokerage. The buyers' signatures on the offer to purchase were not witnessed.
- [80] Mr. Amichand did not have a previous sanction history and was cooperative with the investigation. He signed a Consent Order acknowledging his error.
- [81] The offer Mr. Amichand provided to his buyer clients was lacking in multiple elements required by the *Act*. He had an interest in the corporate seller. A registrant's personal involvement in a transaction places a higher onus on that registrant to ensure that all necessary documents are properly completed. Mr. Amichand was a representative of the corporate seller and represented the buyers as a limited dual agent. Registrants must be even more diligent when there are no other registrants involved to ensure the information presented to the parties is accurate and the transaction is managed properly.
- [82] Mr. Jarvis' breach of s. 58(1)(b) of the *Act* warrants a more significant sanction than that of the registrant in *Amichand*. Mr. Jarvis put care into drafting the offers to purchase due to the political nature of the files. While there were more aggravating factors at play in *Amichand*, Mr. Jarvis drafted 13 offers to purchase that each failed to include two of the required elements of an offer to purchase obtained by a registrant.
- [83] The allegations made against Mr. Jarvis in the complaint received by the Commission were not substantiated.
- [84] The coronavirus pandemic began exerting significant pressure on the Canadian economy in March of 2020. As a result of large-scale layoffs in some industries and the general economic uncertainty, real estate markets are also experiencing declines. While sanctions are intended to serve as punishment for a breach of a registrant's professional obligations, the Commission should avoid penalties that are overly punitive. The current economic climate must be considered when crafting appropriate sanctions for a registrant's misconduct.
- [85] An order of reprimand and a \$2,500 fine are appropriate sanctions for Mr. Jarvis' breach of s. 58(1)(b) of the *Act*.
- [86] As Mr. Jarvis has agreed to sign this consent order, there will be no order as to costs.

