

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

Tomyn (Re), 2020 SKREC 10

Date: November 10, 2020
Commission File: 2019-58

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF SHAWN TOMYN**

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

Jeffrey Reimer- Chairperson

Anne Parker

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)(a) of *The Real Estate Act*, Mr. Tomyn failed to promptly notify the landlord or listing agent of the status of his client's deposit.

Count 2:

That, contrary to section 39(1)(c) of *The Real Estate Act*, Mr. Tomyn breached Commission Bylaw 701(b) by submitting a statement to a Review Officer of the Commission that omitted to state a material fact.

LEGISLATION:

- [2] Section 39(1) of *The Real Estate Act* states, in part:

"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

(a) it is harmful to the best interests of the public, the registrants or the Commission;

...

(c) 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 701(b) states:

"No registrant shall make or permit to be made, whether orally or otherwise, a statement, record, report, notice or other document required by this Act, the regulations or the bylaws that...omits to state a material fact."

FACTS:

- [4] In accordance with subsection 9(4) of The Real Estate Regulations ("the Regulations"), the Hearing Committee accepts Mr. Tomyn's Statement of Facts and Admissions, which includes the following relevant points:
- [5] Mr. Tomyn 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 September 4, 2014.
- [6] Mr. Tomyn has taken the following real estate courses:
- Phase 1 – Real Estate as a Professional Career;
 - Residential Real Estate as a Professional Career;
 - Farm Real Estate as a Professional Career; and
 - Commercial Real Estate as a Professional Career.
- [7] Mr. Tomyn has completed the continuing professional development seminars each registration year since 2014-2015.
- [8] Mr. Tomyn is presently registered under the provisions of *The Real Estate Act* as a salesperson with Coldwell Banker Signature ("Coldwell").
- [9] On April 15, 2019, the Tenant wrote an Offer to Lease the Property from the Landlord.
- [10] Mr. Tomyn represented the Tenant.

- [11] Registrant A represented the Landlord.
- [12] The Offer to Lease stated that the Tenant was to pay a deposit in an amount equal to three months' base rent, occupancy and GST to Coldwell within five business days of acceptance of the offer. The deposit was to be held in trust pending completion or other termination of the offer.
- [13] The Landlord accepted the Offer to Lease on April 16, 2019.
- [14] On April 23, 2019, the Tenant wrote a deposit cheque in the amount of \$24,203.79 to be deposited into Coldwell's trust account.
- [15] On April 29, 2019, Conexus Credit Union sent a notice to Coldwell stating that a cheque from the Tenant in the amount of \$24,203.79 had been returned as NSF.
- [16] On April 30, 2019, Mr. Tomyn sent an email to the Administrator, an employee of Coldwell, asking if the Tenant's cheque had been deposited. She replied that it had.
- [17] The brokerage office received the April 29 NSF notice from Conexus Credit Union on May 1, 2019.
- [18] After Mr. Tomyn learned that the cheque had been returned, he called the Tenant to ask what had happened. The Tenant said he was not sure what happened and asked for a day to make some calls and find out what had happened.
- [19] Mr. Tomyn called the Tenant the day after learning of the returned cheque, but could not get in touch with him.
- [20] Mr. Tomyn tried again the next day, but still could not get in touch with the Tenant.
- [21] Mr. Tomyn then visited the Tenant at his shop. The Tenant told him some bills had come out of the account at the same time as the deposit cheque and apologized for the cheque being returned. The Tenant asked for a day to move some money into the account and requested that Mr. Tomyn contact him the next day for a new cheque.
- [22] Mr. Tomyn contacted the Tenant about a new cheque, but he did not receive a response to his message.
- [23] On May 1, 2019, the Administrator sent an email to Mr. Tomyn advising that the deposit cheque had been returned NSF.
- [24] Mr. Tomyn spoke to the Administrator shortly thereafter. He told her that he would get another cheque and she told him that he needed to advise the other

brokerage of the issue. She recommended Mr. Tomyn get an amendment to cover himself.

- [25] Mr. Tomyn went to visit the Tenant and was told the Tenant just could not come up with the money for the deposit. The Tenant told Mr. Tomyn that he could not commit to signing the lease for various reasons.
- [26] In Mr. Tomyn's initial response to the complaint, he stated that he told the Tenant he understood that business was tough and that it was better to have figured this out before he moved in to the Property, as it definitely would have crippled his business.
- [27] Mr. Tomyn's initial response to the complaint made no mention of the fact that he had obtained a second deposit cheque from his client.
- [28] In the course of the investigation, Mr. Tomyn learned that the Administrator and his broker (the "Broker") had provided information to the Commission that made reference to the second deposit cheque. Mr. Tomyn subsequently sent a revised response to the complaint to Commission staff that included information about the second cheque.
- [29] In his subsequent statement, Mr. Tomyn stated that, during his meeting with the Tenant to discuss the returned cheque, he had informed the Tenant that he was obligated to the deal until he decided not to remove conditions. Mr. Tomyn stated that the Tenant wrote him another cheque, which was delivered to the brokerage's trust account.
- [30] A new deposit cheque was turned over to the brokerage and deposited into the trust account on May 1, 2019.
- [31] On May 1, 2019, the Landlord signed a Change of Terms and Conditions/Notice to Remove Conditions amending two of the terms of the agreement.
- [32] The Tenant signed this document on May 2, 2019.
- [33] Mr. Tomyn did not submit a copy of the May 1 Change of Terms and Conditions/Notice to Remove Conditions to his brokerage.
- [34] On May 2, 2019, the Tenant signed a Change of Terms and Conditions/Notice to Remove Conditions amending a term and removing the Tenant's financing condition.
- [35] The Landlord signed this document on May 6, 2019.
- [36] Mr. Tomyn did not submit a copy of the May 2 Change of Terms and Conditions/Notice to Remove Conditions to his brokerage.

- [37] On May 3, 2019, Registrant A sent an email to Mr. Tomyn to which he had attached the initial draft lease from the Landlord, noting that the Landlord's legal team had not yet reviewed the document so there would likely need to be adjustments later on.
- [38] On May 6, 2019, Mr. Tomyn sent an email to the Administrator advising that the deal between the Landlord and Tenant was dead and requested that she issue a cheque to the Tenant.
- [39] On May 7, 2019, the Administrator responded to advise that the second deposit cheque had only gone into trust on May 1, so it would have to be held until Friday to ensure it cleared the account.
- [40] Mr. Tomyn asked the Administrator to call him to discuss the deposit.
- [41] On May 7, 2019, the Broker sent a letter to the Tenant advising that his deposit cheque was being returned. The letter referenced the fact that the first deposit cheque had been returned NSF. The letter stated that funds are usually held in the brokerage's trust account for 10 business days to ensure the cheque clears, but that, at my request, the brokerage had agreed to release the funds to the Tenant early. The letter stated that the Tenant would need to provide the brokerage with a bank draft in the amount of \$24,203.79 in the event the second deposit cheque bounced.
- [42] On May 9, 2019, Mr. Tomyn sent an email to Registrant A advising that the Tenant had reviewed the draft lease with his lawyer and decided not to pursue the lease any further. He advised that the Tenant would not be removing condition (a) and apologized for the time Registrant A had spent pursuing the lease agreement between the parties.
- [43] That same day, Registrant A replied to advise that the lease condition was not an "out" and that the Tenant had not raised any specific issues with the standard commercial lease that had been provided. He stated that Mr. Tomyn's brokerage was not authorized to release the deposit back to the Tenant, as the Landlord was likely to claim it on the basis that the Tenant was negotiating in bad faith.
- [44] Mr. Tomyn replied to advise that all he had to do was provide Registrant A with a number of reasons the lease did not suit the Tenant's requirements. Mr. Tomyn requested that Registrant A please move on as the deal was dead.
- [45] On May 10, 2019, Mr. Tomyn sent an email to Registrant A advising that the Tenant's lawyer had raised several concerns regarding language in the lease with which the Tenant was uncomfortable, such as the section of the lease dealing with parking restrictions. He stated that his client had instructed him to inform Registrant A that there were issues with the draft lease with which the Tenant was not comfortable and that the Tenant was not able to continue pursuing the opportunity.

- [46] On May 10, 2019, Mr. Tomyn sent another email to Registrant A advising that he had requested information regarding the deposit cheque he received from the Tenant and that he was informed the cheque had been returned NSF.
- [47] Mr. Tomyn did not tell Registrant A that he had obtained a second deposit cheque from the Tenant.
- [48] On May 13, 2019, Registrant B, another registrant at the listing brokerage, sent an email to Mr. Tomyn noting that the NSF notice from the bank was dated April 29 and stating that he and Registrant A needed to advise the Landlord why they had not been notified of the returned cheque until May 10.
- [49] Mr. Tomyn responded to advise that, after the Tenant's Offer to Lease had been accepted by the Landlord, he had picked up a deposit cheque from the Tenant and delivered it to his brokerage's conveyance manager who entered it into the brokerage's trust account in an appropriate manner. He stated that he received notification that the cheque had bounced. He stated that he made it clear to the Tenant that the deposit cheque bouncing was not acceptable and was told there wasn't sufficient money in the business at that time.
- [50] Mr. Tomyn did not mention the second deposit cheque in his correspondence with Registrant B.
- [51] Mr. Tomyn believes that his obligation was to represent his client and he believes that he did that throughout the process.
- [52] The Commission bylaws do not set a specific timeline in which a returned cheque must be reported to the other brokerage. If there had been a specific timeline, Mr. Tomyn believes he would have met it.

REASONS:

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

Mitigating Factors

- [54] Mr. Tomyn does not have a previous sanction history.
- [55] The coronavirus pandemic has had a significant and largely negative impact on the real estate market and on registrants' incomes generally.

Aggravating Factors

- [56] Mr. Tomyn failed to provide the listing brokerage with important information about the deposit on multiple occasions. Mr. Tomyn did not notify the listing brokerage

when he was advised that the Tenant's initial deposit cheque had been returned, when he obtained a second deposit cheque from the Tenant, or when this second deposit was returned to the Tenant at Mr. Tomyn's request.

- [57] Mr. Tomyn was specifically advised by the Administrator that he was obligated to notify the listing brokerage of the returned cheque.
- [58] Mr. Tomyn's decision to withhold information about the deposit from the listing brokerage appears quite deliberate.
- [59] Mr. Tomyn appears to have deliberately withheld material information from the Commission. Registrant conduct that interferes with the Commission's ability to regulate the industry and investigate complaints in the public interest is a serious issue.

Prior Decisions & Other Considerations

- [60] 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.
- [61] 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.*
- [62] Mr. Tomyn represented the Tenant in an Offer to Lease. The deposit cheque Mr. Tomyn received from the Tenant pursuant to the Offer to Lease was returned NSF, but Mr. Tomyn did not immediately notify the landlord or listing brokerage of the issue. Mr. Tomyn obtained a second deposit cheque from the Tenant, but did not advise the landlord or listing brokerage that a second deposit cheque had

been obtained. The Tenant elected not to proceed with the lease and Mr. Tomyn directed his brokerage to return the deposit to the Tenant. The deposit was returned to the Tenant before Mr. Tomyn advised the listing agent that the Tenant would not be proceeding with the lease. Mr. Tomyn did not notify the landlord or the listing brokerage that the second deposit had been returned to the Tenant.

- [63] Mr. Tomyn's initial response to the complaint failed to make any mention of having obtained a second deposit cheque from the Tenant or of having instructed the brokerage to return this deposit to the Tenant. It was only after Mr. Tomyn became aware that other representatives of his brokerage had provided the Commission with information about the second deposit that he submitted a revised response to the complaint that mentioned the second deposit cheque.
2. *The role of the offending member in the breaches.*
- [64] Mr. Tomyn was the only registrant involved in his breaches of the legislation.
3. *Whether the offending member suffered or gained as a result of the breaches.*
- [65] There is no evidence to suggest that Mr. Tomyn suffered any losses or enjoyed any benefits as a result of his breaches.
4. *The impact of the breaches on complainants or others.*
- [66] The Landlord may be entitled to forfeiture of the Tenant's deposit. Mr. Tomyn's decision to instruct his brokerage to return the deposit to the Tenant before notifying the listing brokerage of the Tenant's decision to back out of negotiations may impede the Landlord's ability to collect the money it is owed.
- [67] Registrant conduct that interferes with the Commission's ability to regulate the industry and investigate complaints has the potential to diminish public confidence in the Commission's ability to protect the public interest and to damage the reputation of the real estate industry as a whole.
5. *The need for specific deterrence to protect the public.*
- [68] Specific deterrence is needed to ensure that Mr. Tomyn understands that his conduct was unacceptable and inappropriate. Mr. Tomyn must understand the fundamental importance of a deposit to a real estate transaction and that both parties to a transaction must have all the pertinent information regarding the status of the deposit.
- [69] It must be made clear to Mr. Tomyn that registrant conduct that impedes the Commission's ability to regulate the industry and investigate complaints will not be tolerated.
6. *The need for general deterrence to protect the public.*
- [70] General deterrence is needed to ensure that all registrants recognize the fundamental importance of a deposit to a real estate transaction and understand

that both parties to a transaction must have all the pertinent information regarding the status of the deposit.

- [71] It must be made clear to all registrants that registrant conduct that impedes the Commission's ability to regulate the industry and investigate complaints will not be tolerated.
 - 7. *The need to maintain the public's confidence in the integrity of the profession.*
- [72] Members of the public must be confident that they are receiving all pertinent information regarding the status of the deposit from the registrants with whom they are dealing.
- [73] The public must be reassured that the Commission is able to conduct effective and efficient investigations of potential misconduct on the part of registrants. Registrant conduct that impedes the Commission's investigative function is detrimental to public confidence in the Commission's ability to regulate the industry.
 - 8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [74] Mr. Tomyn's conduct falls well below the standard expected of registrants. The seriousness of his breach of s. 39(1)(a) is exacerbated by his failure to be candid and forthcoming with a Review Officer of the Commission.
- 9. *The range of sanction in similar cases.*

A. What is an appropriate sanction for Mr. Tomyn's breach of s. 39(1)(a) of the Act?

- [75] In *Miron (Re)*, [2010 SKREC 1](#) (file #2009-40) ("Miron"), Rick Miron was issued an order of reprimand and a \$3,500 fine for breaching s. 39(1)(a) by failing to handle a deposit appropriately. Mr. Miron assisted a buyer in writing an offer to purchase that stated a deposit was received and would be deposited into the brokerage's trust account within two business days of acceptance when, in fact, no deposit had been received. A deposit cheque was obtained and deposited into the brokerage's trust account, but it was returned without having been cashed. Mr. Miron failed to notify the listing agent or the seller of the returned deposit. He made many unsuccessful attempts to secure a deposit from his buyer clients before a new deposit cheque was obtained. This cheque was also returned by the financial institution because a change on the instrument had not been initialled. Mr. Miron first spoke to his broker about the transaction on the intended date of possession. Although the buyer's solicitor believed the transaction might complete, the transaction ultimately collapsed.
- [76] The Hearing Committee considered Mr. Miron's lack of previous sanction history and the length of time he had been in the real estate industry.

- [77] While the Committee understood that Mr. Miron truly believed the buyer would come through, it is essential that any issues with the deposit be clear to all parties to a transaction. It is not appropriate for a registrant to state in an offer that a deposit has been received when that is not the case. The Committee wanted to stress that the offer must reflect the truth of the transaction, not what the registrant wishes will take place. The public expects that all parties viewing a contract will be able to rely on it and that is what the Commission is obligated to enforce.
- [78] The Hearing Committee stressed that the level of trust a registrant has in his or her client is not relevant and that a registrant must immediately inform the other side of the transaction that the funds are not there and cannot be relied upon to secure the sale. The Committee recognized deposits as one of the most basic parts of a trade in real estate and stressed that every registrant must ensure deposits are handled in an appropriate manner. All parties to the transaction must know what is happening with the deposit and that a failure to treat a deposit properly will be treated with a serious sanction.
- [79] Mr. Tomyn's breach of s. 39(1)(a) of the *Act* is more serious than that of the registrant in *Miron*. Mr. Tomyn was specifically advised that he was obligated to advise the other brokerage of the returned deposit. Mr. Miron believed that his buyer client would come through with the deposit and complete the transaction. While Mr. Tomyn may have believed that the Tenant would come through with a new deposit after the first cheque was returned, he knew that the second deposit cheque had been returned to the Tenant for two days before he even contacted the listing brokerage to advise that the Tenant would not be completing the lease. Mr. Tomyn's actions are more deliberate than those of the registrant in *Miron*.
- [80] In *Didur (Re)*, [2009 SKREC 23](#) (file #2008-56) ("*Didur*"), the Deputy Superintendent of Real Estate affirmed the decision of a Hearing Committee in which Christian Didur was issued an order of reprimand and a \$3,500 fine and was ordered to serve a 30-day suspension of his certificate of registration for breaching s. 39(1)(a) of the *Act* by failing to notify the listing agent that a deposit had not been collected. The first deposit cheque Mr. Didur received from his buyer client was returned due to insufficient funds and a second cheque increasing the deposit was not received on time. A second cheque was also returned due to insufficient funds and Mr. Didur was advised by the buyer's brother that information the buyer had provided about the source of the deposit was untrue. The listing agent was not advised that no deposit had been received for another 10 days after Mr. Didur had been advised that he was being misled by the buyer. Ultimately, the buyer never delivered a deposit to the brokerage and the transaction did not complete.
- [81] The Hearing Committee considered Mr. Didur's lack of previous sanction history and the short length of time he had been in the real estate industry. Mr. Didur expressed his remorse for his actions.

- [82] While the Committee had sympathy for Mr. Didur as it seemed he had been manipulated by the buyer, it felt that issues surrounding the deposit are of significant importance in every real estate transaction. All parties rely on the deposit to show the seriousness of the buyer's intention to complete the transaction and many of the seller's decisions about how to proceed may be predicated on the amount of the deposit. The Committee stated that it is essential and fundamental that the seller know immediately if the deposit is non-existent, especially in similar cases where the buyer's agent has already told the seller that a deposit has been received. When this ceases to be true, the seller must be notified immediately.
- [83] While the Hearing Committee appreciated Mr. Didur's remorse, it was imperative that the fundamental importance of the deposit be protected in the decisions. The Committee stated that the public must have confidence that a registrant will ensure that the deposit is received when the registrant has stated that it is there. The Committee felt that a strong sanction was appropriate because Mr. Didur's error was not an isolated incident.
- [84] Mr. Tomyn's breach of s. 39(1)(a) is more serious than that of the registrant in *Didur*. Both registrants failed to notify the seller or listing agent that the buyer's brokerage was not holding a deposit on multiple occasions. However, there is no evidence to suggest that Mr. Tomyn was being misled by the Tenant and Mr. Didur had not been registered long at the time of his breach. Mr. Tomyn had been specifically advised that he needed to advise the other brokerage that the deposit had been returned due to insufficient funds.
- [85] In *Peters (Re)*, [2008 SKREC 19](#) (file #2007-82) ("Peters"), the Hearing Committee ordered an order of reprimand, a \$2,000 fine, educational upgrading and a 90-day suspension against Cindy Peters for breaching s. 39(1)(a) of the Act by failing to advise a listing agent that her buyer clients intended to collapse the transaction. Although Ms. Peters' clients completed an amendment stating they were abandoning their purchase of the Property, Ms. Peters did not deliver a copy of the document to the listing brokerage. The sellers were not advised of the buyers' decision until their agent contacted Ms. Peters to discuss the completion of the purchase.
- [86] The Hearing Committee considered Ms. Peters' previous sanction history and the length of time she had been in the real estate industry.
- [87] While the Committee understood that personal circumstances can lead to difficulty in dealing with commitments, the registrant's obligation to look after their clients was paramount. There was no excuse for the lack of simple communication to the other parties and there was no reason this could not have been dealt with in a timely fashion. The Committee noted that the obligation to pass along information of a collapsed deal was significant and that Ms. Peters breached this fundamental element of her responsibility as a registrant.

- [88] Given Ms. Peters' previous sanction history, the Hearing Committee felt that a more significant fine, a suspension and an educational component were required to ensure Ms. Peters would take more responsibility for her actions and that the public and all registrants would realize that the Commission would make registrants responsible for their actions.
- [89] Mr. Tomyn's breach of s. 39(1)(a) of the *Act* is less serious than that of the registrant in *Peters*. While both registrants failed to notify the listing brokerage of a collapsed transaction in a timely manner, the seriousness of Ms. Peters' breach was exacerbated by her previous sanction history. However, Mr. Tomyn also failed to notify the listing brokerage that the Tenant's initial deposit cheque had been returned NSF even though he had been specifically advised that he was required to do so.
- [90] In *Carriere (Re)*, [2001 SKREC 1](#) (file #2000-32) ("Carriere"), Levern Carriere was issued an order of reprimand and a \$1,000 fine for breaching s. 39(1)(a) by completing an offer to purchase that failed to clearly indicate that the deposit had not been received from the buyer. The offer stated that the deposit cheque had been received and would be deposited within two business days of acceptance. Mr. Carriere did not receive a deposit cheque, but he did receive assurances from the buyer that the funds would arrive shortly, which he passed along to the seller. Shortly thereafter, the buyer disappeared. No funds were ever received and the transaction did not complete.
- [91] The Hearing Committee considered Mr. Carriere's lack of previous sanction history and there was no evidence suggesting that his actions were a deliberate attempt at wrongdoing. Mr. Carriere commented that he had made a mistake and learned from the incident. The fact that Mr. Carriere disclosed to the seller that the brokerage had not received the deposit within two days of acceptance mitigated a more severe fine.
- [92] The Committee considered the handling of trust monies to be an important issue and noted that Mr. Carriere's actions were very serious. The deposit was recognized as a fundamental aspect of a real estate transaction and the Committee stressed that extra care should be taken where a substantial deposit is expected. The Committee stated that sellers rely on deposit information to make decisions with respect to the transaction and that it is imperative that the information on the contract is accurate.
- [93] Mr. Tomyn's breach of s. 39(1)(a) of the *Act* is more serious than that of the registrant in *Carriere*. Mr. Tomyn did not disclose the fact that his client's initial deposit cheque had been returned NSF to the listing brokerage for over a week, despite having been instructed to do so by the conveyancing secretary at his brokerage, and he never disclosed the fact that a replacement cheque had been obtained. Mr. Tomyn instructed his brokerage to return the second deposit cheque to the Tenant two days before telling the listing brokerage that the Tenant did not intend to proceed with the lease. The Hearing Committee in *Carriere* did

not find evidence of a deliberate attempt at wrongdoing, while Mr. Tomyn's actions suggest a deliberate intention to withhold pertinent information about the deposit from the landlord and the listing brokerage.

- [94] *Carriere* was decided in 2001. In 2008, the Saskatchewan real estate market underwent a significant expansion that saw a significant rise in property values. As property values rise, there is a corresponding increase in the commission registrants can expect to earn on trades in real estate. Fines ordered by the Commission to act as deterrents against misconduct must keep pace with rising commissions and general inflation or the Commission runs the risk of fines coming to be seen as a "cost of doing business".
- [95] 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.
- [96] An order of reprimand, a \$3,000 fine and a 30-day suspension of his certificate of registration are appropriate sanctions for Mr. Tomyn's breach of s. 39(1)(a) of the Act.

B. What is an appropriate sanction for Mr. Tomyn's breach of Bylaw 701(b)?

- [97] In *Schmidt (Re)*, [2007 SKREC 7](#) (file #2006-51B) ("Schmidt"), Andy Schmidt was issued an order of reprimand, ordered to pay a \$5,000 fine and \$300 in hearing costs, and his certificate of registration was suspended for 90 days for breaching Bylaw 701 by providing false information to a review officer of the Commission. Mr. Schmidt was an owner of a property that had been purchased in the fall of 2005. The property was listed for sale in 2006 and the listing indicated that the property had received new shingles in 2004. Mr. Schmidt did not own the property in 2004 and had no knowledge of whether or not the previous owner had replaced the shingles. Mr. Schmidt and his partner, also a registrant and joint owner of the property, advised the review officer, verbally and in writing, that they had replaced the shingles in 2006. Mr. Schmidt remained adamant that the shingles were new until he was confronted with clear evidence that they had not been replaced. Throughout the investigation, Mr. Schmidt was uncooperative and antagonistic; at one point, he advised the review officer that he had done the shingles himself.
- [98] Mr. Schmidt had previously been sanctioned for a serious offence. The Hearing Committee stated that misleading and providing false information to a review officer could not be tolerated and noted that potential purchasers should be able to have confidence that the information set out in a listing is correct and that investigations undertaken by the Commission are taken seriously.

- [99] Mr. Tomyn's breach of Bylaw 701 is less serious than that of the registrant in *Schmidt*. Mr. Tomyn does not have a previous sanction history. While any action that impedes the investigation of a complaint made to the Commission is a serious issue, Mr. Schmidt actively provided information he knew to be false to a review officer. Mr. Tomyn was not forthcoming in his initial response to the complaint, but he did not provide false information to the review officer.
- [100] The decision in *Schmidt* was rendered prior to 2008. As such, consideration must be paid to the impact rising property values and inflation have had on commissions or the Commission runs the risk of having fines viewed as a "cost of doing business".
- [101] That said, attention must also be paid to the impact the ongoing coronavirus pandemic has had on the Canadian economy in general and on real estate markets in particular.
- [102] An order of reprimand, a \$3,000 fine, and a two-week suspension of his certificate of registration, to be served concurrently with the suspension ordered against him for his breach of s. 39(1)(a) of the *Act*, are appropriate sanctions for Mr. Tomyn's breach of Bylaw 701(b).
- [103] As Mr. Tomyn has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [104] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Tomyn, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [105] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(a) of *The Real Estate Act*:
 - a. Mr. Tomyn shall receive an order of reprimand for the violation of s. 39(1)(a) of the *Act*;
 - b. Mr. Tomyn shall, within 60 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$3,000.00 fine for the said violation of the *Act*;
 - c. Mr. Tomyn's certificate of registration shall be suspended for a period of 30 days, beginning on December 5, 2020 and ending on January 4, 2021; and
 - d. Mr. Tomyn's registration shall be terminated if he fails to make payment as set out above.

- [106] With respect to Count 2, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Bylaw 701(b):
- e. Mr. Tomyn shall receive an order of reprimand for the violation of Bylaw 701(b);
 - f. Mr. Tomyn shall, within 60 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$3,000.00 fine for the said violation of the bylaw;
 - g. Mr. Tomyn's certificate of registration shall be suspended for a period of 14 days, beginning on December 5, 2020 and ending on December 19, 2020; and
 - h. Mr. Tomyn's registration shall be terminated if he fails to make payment as set out above.

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

Dated at Regina this 10th day of November, 2020.

"Jeffrey Reimer"
Hearing Committee Chairperson