

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

Butler (Re), 2020 SKREC 8

Date: October 29, 2020
Commission File: 2020-22

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF MICHELLE BUTLER**

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

Randal C. Touet - Chairperson

Lori Patrick

Robert (Bob) Volk

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. Butler breached Commission Bylaw 702.1 by engaging in unprofessional conduct by failing to follow a seller's instructions regarding showing a property.

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 Ms. Butler’s Statement of Facts and Admissions, which includes the following relevant points:

[5] Ms. Butler 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, 2015.

[6] Ms. Butler has taken the following real estate courses:

- Phase 1 – Real Estate as a Professional Career;
- Property Management as a Professional Career;
- Residential Real Estate as a Professional Career;
- Commercial Real Estate as a Professional Career; and
- Farm Real Estate as a Professional Career.

[7] Ms. Butler has completed the continuing professional development seminars each registration year since 2015-2016.

[8] Ms. Butler is presently registered under the provisions of *The Real Estate Act* as a salesperson with #101267374 Saskatchewan Ltd. O/A Royal LePage Vidorra.

[9] In May of 2020, the Property was listed for sale with Royal LePage Hallmark.

[10] The Seller is the owner of the Property.

[11] Though she does not recall seeing it, Ms. Butler acknowledges that the Seller posted a sign on the front door of the Property which stated as follows: **“ONLY ENTER THIS HOME IF YOU ARE WEARING PROTECTIVE GLOVES, MARK, OR SCARF, TO PREVENT THE SPREADING OF COVID-19”**.

[12] On May 12, 2020, Ms. Butler showed the Property to potential buyers.

[13] Ms. Butler met her clients outside the Property and they gathered on the front lawn to talk before entering the home. She asked her clients if they had brought their personal protective equipment (“PPE”) and they told her they had not. Ms. Butler checked the listing and the remarks noted that “face coverings” were

acceptable. She and her buyer clients agreed that the buyers would use their jackets to cover their faces. As her clients did not have gloves, Ms. Butler asked them not to touch anything inside the home. After opening the lockbox, but before opening the door, Ms. Butler put on her mask and gloves and sanitized her gloves.

[14] To Ms. Butler's knowledge, her clients kept their faces shielded by their jackets and did not touch anything. However, at some points, her attention was focused on the Property, not her clients.

[15] Ms. Butler believes the showing was conducted in a safe and responsible manner.

REASONS:

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

Mitigating Factors

[17] Ms. Butler does not have a previous sanction history.

[18] Ms. Butler was cooperative with the investigation.

[19] Ms. Butler did request that her clients cover their faces with their jackets and refrain from touching anything in the Property as they did not have gloves.

[20] The ongoing coronavirus pandemic has had a significant and largely negative impact on the real estate market and on registrants' incomes generally.

Aggravating Factors

[21] There are no aggravating factors present.

Prior Decisions & Other Considerations

[22] 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.

[23] 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.

[24] Ms. Butler failed to follow a homeowner's instructions when showing a property to potential buyers. The homeowner had indicated that personal protective equipment was to be worn by anyone entering the house. Ms. Butler's clients had not brought any masks or gloves to the showing, but Ms. Butler proceeded with the showing after instructing her clients to use their jackets to cover their faces and to refrain from touching anything in the house.

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

[25] Ms. Butler was the only registrant involved in her breach of the legislation.

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

[26] There is no evidence to suggest that Ms. Butler suffered a loss or enjoyed a benefit as a result of her breach of the legislation.

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

[27] There is no evidence of actual consumer harm, but the risk of harm is significant as the occupants of the Property could have been infected with the coronavirus as a result of Ms. Butler's decision.

[28] Additionally, homeowners place a considerable amount of trust in registrants when they list their properties for sale. Registrant conduct that shows a lack of respect for a seller's restrictions regarding showings runs the risk of leaving sellers feeling unsure of whether or not they can trust registrants to access their properties.

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

[29] Specific deterrence is needed to make it clear to Ms. Butler that she is obligated to adhere to any restrictions or limitations placed on showings by the owner of a property.

6. *The need for general deterrence to protect the public.*
- [30] General deterrence is needed to ensure all registrants understand that they are obligated to adhere to any restrictions or limitations placed on showings by the owner of a property.
7. *The need to maintain the public's confidence in the integrity of the profession.*
- [31] Members of the public who list their properties for sale with registrants must be confident that any restrictions or limitations they place on the ability of registrants to access the property will be respected.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [32] Ms. Butler'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. Butler's breach of Bylaw 702.1?

- [33] There are no previous decisions under Bylaw 702.1 that bear much factual similarity to the case at hand. There is a line of cases decided under Bylaw 702 that deal with registrants who showed properties to potential buyers without first obtaining permission from the seller or seller's agent.
- [34] In *Ackerman (Re)*, [2018 SKREC 18](#) (file #2015-80) ("*Ackerman*"), Brett Ackerman was issued an order of reprimand and a \$1,000 fine for showing a property without first obtaining permission from the listing agent. When the property was initially listed for sale, it was described as vacant and interested parties were asked to contact the listing agent to make an appointment to view the property. Mr. Ackerman contacted the listing agent who advised that it was an estate sale and he could show it at any time. Sometime thereafter, the listing agent changed brokerages and the property was relisted. The new listing indicated that the property was occupied by a tenant and requested that interested parties contact the listing agent to make an appointment to view the property. Approximately one month after he first showed the property to his client, Mr. Ackerman was approached by another buyer interested in the property. Mr. Ackerman printed off the listing and saw that it was still an estate sale. He assumed the property was vacant and did not contact the listing agent before showing the property to his client.
- [35] Mr. Ackerman had no previous sanction history and was cooperative with the investigation. He signed a consent order acknowledging his error.
- [36] Mr. Ackerman's conduct created the potential for harm to the real estate industry as a whole. The complainant was very upset by Mr. Ackerman's actions, as there was a young female tenant residing alone at the property at the time of the breach.

- [37] Ms. Butler's breach of Bylaw 702.1 is less serious than the registrant's breach of Bylaw 702 in *Ackerman*. Ms. Butler did have permission to view the property and there are no aggravating factors at play.
- [38] In *Blanchette (Re)*, [2017 SKREC 8](#) (file #2016-09) ("*Blanchette*"), Erlinda Blanchette was issued an order of reprimand and a \$1,500 fine for showing a property without obtaining permission from the listing agent. Ms. Blanchette and her husband, also a registrant, were asked to show a property to potential buyers. The MLS® Listing specified that viewing appointments were to be made through the listing agent. One of the buyers told Ms. Blanchette that he had called and the home would be available between 6:30 p.m. and 8:00 p.m. Ms. Blanchette assumed her client had obtained permission to view the property from the listing agent and that the details of the showing had been cleared through her husband. While inside the property, Ms. Blanchette asked the buyers who had authorized the showing and was told that one of the buyers had spoken to the seller's ex-boyfriend. At this point, Ms. Blanchette told her clients they needed to leave immediately. Ms. Blanchette spoke to the listing agent that night and apologized for the miscommunication.
- [39] Ms. Blanchette had no previous sanction history and was cooperative with the investigation. She signed a consent order acknowledged her misconduct and apologized to the listing agent for the miscommunication. Ms. Blanchette's clients implied to her that they had obtained permission from the listing agent to view the property.
- [40] The lockbox system requires sellers to put great faith in registrants to follow the rules and obtain permission from the seller or listing agent before entering the property. Ms. Blanchette's actions had the potential to cause damage to the real estate industry as a whole.
- [41] The fact that another registrant was present with Ms. Blanchette when she showed the property did not relieve her of her obligation to ensure that she had the necessary permission to access the property. Registrants cannot rely on other registrants or their clients to fulfill their professional obligations.
- [42] Ms. Butler's breach of Bylaw 702.1 is slightly less serious than the breach of Bylaw 702 in *Blanchette*. While Ms. Butler did have permission to show the property to her buyer clients, that permission was conditional upon Ms. Butler and her clients adhering to the restrictions the seller had placed on access to the property, namely that people could only enter the property if they were wearing appropriate PPE. The seriousness of Ms. Blanchette's breach of Bylaw 702 was mitigated by the fact that she relied on representations from her clients that they had obtained permission to view the property.
- [43] In *West (Re)*, [2015 SKREC 13](#) (file #2014-18) ("*West*"), George West was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 702 by showing a

property without obtaining permission from the listing agent. Mr. West called another registrant to discuss a listing. Mr. West was told the property was conditionally sold and, although the sellers were still permitting showings with an appointment, he decided not to make an appointment with the listing agent to show it to his clients. Later that day, the listing agent received an email notification that Mr. West had accessed the lockbox for the property. The sellers returned to the property and found two vehicles in the driveway and two men coming out the front door. Mr. West apologized to the sellers and the listing agent.

- [44] Mr. West admitted his wrongdoing immediately when contacted by the listing agent. The sellers' agent sent out an email to a number of registrants detailing his frustration with the situation, so a significant number of registrants were made aware of Mr. West's error. Mr. West stepped down from his position as a Commission member. He had no previous sanction history and signed a Statement of Facts and Admissions acknowledging his error.
- [45] Mr. West was a long-term registrant who knew what was expected of him when showing properties to clients. This represented a serious lapse in judgment. The sellers returned home to find two unknown men leaving their house. They contacted the listing agent to express concern about break-ins, theft and the fact that Mr. West had not left a business card. Mr. West's actions could have caused damage to the real estate industry as a whole. Mr. West's actions violated the seller's right grant or refuse access to their property to any person as the seller sees fit. Registrants are not permitted to substitute their judgment for the legal authorization of the seller.
- [46] Ms. Butler's breach of Bylaw 702.1 is less serious than the breach of Bylaw 702 in *West*. Ms. Butler had permission to show the Property to her buyer clients while Mr. West had consciously decided not to make an appointment to show a property to his buyer client.
- [47] Despite the line of cases decided under Bylaw 702 that deal with issues regarding the showing of properties, the case at hand is best characterized as unprofessional conduct or conduct unbecoming of a registrant in violation of Bylaw 702.1. Ms. Butler had authorization to show the property to her buyer clients, but the seller had placed restrictions on this authorization. Ms. Butler failed to abide by these restrictions and, in doing so, acted unprofessionally or in a manner unbecoming of a registrant.
- [48] 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.

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

CONSENT ORDER:

- [51] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Ms. Butler, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [52] 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 702.1:
- a. Ms. Butler shall receive an order of reprimand for the violation of Bylaw 702.1;
 - b. Ms. Butler shall, within 30 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. Ms. Butler's registration shall be terminated if she fails to make payment as set out above.
- [53] There shall be no order as to costs.

Dated at Saskatoon this 29th day of October, 2020.

"Randal C. Touet",
Hearing Committee Chairperson