

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

Kazakoff (Re), 2021 SKREC 7

Date: September 15, 2021
Commission File: 2020-50

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF JESSE KAZAKOFF**

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

Jeffrey P. Reimer- Chairperson
Wayne Zuk
Dean Staff

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. Kazakoff breached section 39(1)(a) of *The Real Estate Act* by engaging in conduct that is not in the best interests of the public by having clients sign documents that were known to contain errors.

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.*”

FACTS:

- [3] In accordance with subsection 9(4) of The Real Estate Regulations (“the Regulations”), the Hearing Committee accepts Mr. Kazakoff’s Statement of Facts and Admissions, which includes the following relevant points:
- [4] Mr. Kazakoff 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 July 11, 2012.
- [5] Mr. Kazakoff has taken the following real estate courses:
- Phase 1 – Real Estate as a Professional Career; and
 - Residential Real Estate as a Professional Career.
- [6] Mr. Kazakoff has completed the continuing professional development seminars each registration year since 2012-2013.
- [7] Mr. Kazakoff is presently registered under the provisions of *The Real Estate Act* as a salesperson with Century 21 Fusion Realty Inc. O/A Century 21 Fusion.
- [8] In May of 2020, the Buyers were working with Mr. Kazakoff to find a property in Saskatchewan.
- [9] The Buyers were interested in the Property. The Property was listed “For Sale By Owner”. Mr. Kazakoff spoke with the seller, who agreed to sign a Seller’s MLS® Brokerage Contract with Century 21 Fusion. The contract was “only relevant for Jesse Kazakoff’s buyers the Buyers”.
- [10] On June 10, 2020, the Buyers wrote an offer to purchase the Property. The offer was open for acceptance by the seller until 10:00 p.m. on June 10, 2020.
- [11] The offer names Mr. Kazakoff as the registrant representing the Buyers and the seller.
- [12] Buyer A texted Mr. Kazakoff and noted that the offer made reference to a septic tank.
- [13] Mr. Kazakoff replied to apologize for the error and said he would change the reference to the septic tank and put in the sump pump.
- [14] Buyer B asked if they could change the offer to a purchase price of \$47,000 subject to financing, home inspection and septic tank cleaning/emptying and to add the sump pump.

- [15] Mr. Kazakoff replied that there was no septic tank at the Property and that it was on the town sewer system. He stated that he would change the offer to \$47,000.
- [16] Buyer A asked if they were signing the original offer or if Mr. Kazakoff was creating a new one.
- [17] Mr. Kazakoff replied that he was editing the original offer he had sent and that he would let them know when the revisions were completed.
- [18] Mr. Kazakoff texted the Buyers to advise that he had to cancel the first offer he had sent them to sign, but then noted that it would not let him cancel it. He stated: "If you can just sign it the way it is and I will correct it when it comes back and send you a copy to approve before I send it to sellers."
- [19] Buyer A replied: "we haven't signed the first one though."
- [20] Mr. Kazakoff responded: "Yeah you can sign the first one."
- [21] Buyer A confirmed that the offer had been signed and sent. She noted that she was "a bit nervous about signing something without the corrections" and asked Mr. Kazakoff to "ensure [he sent them] a copy before sending it to the seller".
- [22] Buyer B texted: "I've signed my copy. Please revise it and send me back the revisions for approval before proceeding to the seller".
- [23] Mr. Kazakoff texted the Buyers to advise that he had emailed the revised offer and asked that they reply to approve the changes.
- [24] The Buyers noted a misspelling of Buyer A's name on a FINTRAC form but approved the other documents. Buyer A stated that, once the change was made to the FINTRAC form, Mr. Kazakoff could send the offer to the seller.
- [25] The Buyers noted that an attached Schedule "B" stated that the offer was conditional on a completed Property Condition Disclosure Statement being delivered to the buyer on or before January 31, 2017 and asked Mr. Kazakoff if it was relevant.
- [26] Mr. Kazakoff replied that it was not relevant and that the document had been deleted.
- [27] Mr. Kazakoff sent the offer to the seller, but he had difficulty contacting the seller because he was tied up in a previous engagement.
- [28] At 3:54 p.m. on June 10, 2020, Mr. Kazakoff texted the seller to say that, if he wanted to counter the Buyers' offer, he could "Just write in your price, and or

other changes and I can change on this end after you sign and send it to you for approval before it goes to the buyers.”

REASONS:

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

Mitigating Factors

[30] Mr. Kazakoff was co-operative with the investigation.

[31] Mr. Kazakoff has no previous sanction history.

Aggravating Factors

[32] Mr. Kazakoff was representing both the Buyers and the seller in the transaction. Registrants in limited dual agency must be especially diligent in protecting and promoting the interests of their clients, as there is no other registrant involved in the transaction to notice or correct any errors.

Prior Decisions & Other Considerations

[33] 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.

[34] 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.*
[35] Mr. Kazakoff drafted an offer to purchase a property on behalf of his buyer clients and sent it to them to sign electronically. The documents included errors and Mr. Kazakoff was having difficulty amending or cancelling the signing package. Mr. Kazakoff asked his buyer clients to sign the documents as they were and said that he would correct the errors after the documents were signed and returned. Mr. Kazakoff agreed to send the amended documents to the Buyers for review before sending them along to the seller, which he did.
2. *The role of the offending member in the breaches.*
[36] Mr. Kazakoff 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.*
[37] There is no evidence to suggest that Mr. Kazakoff enjoyed a benefit or suffered a loss as a result of the breach.
4. *The impact of the breaches on complainants or others.*
[38] There is no evidence of actual consumer harm arising out of Mr. Kazakoff's breach of the legislation, but the potential for harm resulting from a registrant instructing clients to sign documents that are known to contain errors is significant.
5. *The need for specific deterrence to protect the public.*
[39] Specific deterrence is needed to ensure that Mr. Kazakoff understands that having clients sign documents that are known to include errors is not acceptable under any circumstances.
6. *The need for general deterrence to protect the public.*
[40] General deterrence is needed to remind all registrants that having clients sign documents that are known to include errors is not an acceptable practice.
7. *The need to maintain the public's confidence in the integrity of the profession.*
[41] Members of the public rely on registrants to draft contracts of purchase sale that adequately and accurately describe the deal the parties intended to strike. A client must be confident that the documents a registrant has presented for signature are accurate to the best of the registrant's knowledge and ability.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
[42] Mr. Kazakoff'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. Kazakoff's breach of s. 39(1)(a) of the Act?

- [43] In *Jacobucci (Re)*, [2018 SKREC 22](#) (file #2016-53) (“*Jacobucci 2018*”), Victor Jacobucci was issued an order of reprimand and a \$1,250 fine for breaching s. 39(1)(a) by having clients sign blank listing documents. The brokerage contract and MLS® Data Input Form Mr. Jacobucci sent to his seller clients included minimal information. The sellers signed the forms and returned them to Mr. Jacobucci, who then filled in additional information.
- [44] Mr. Jacobucci had no previous sanction history and was cooperative with the investigation. He had been in the real estate industry for over 40 years and he signed a Consent Order acknowledging his error.
- [45] The MLS® Listing that Mr. Jacobucci created included some inaccurate information about the fences, roof, water heater and number of bathrooms in the property.
- [46] Mr. Kazakoff’s breach of s. 39(1)(a) of the *Act* is more serious than that of the registrant in *Jacobucci 2018*. Mr. Kazakoff was representing both parties as a limited dual agent and there were more mitigating factors at play in *Jacobucci 2018*. While allowing clients to sign documents that have not been filled in completely is not appropriate, instructing clients to sign documents that are known to include errors is a more serious issue.
- [47] In *Jacobucci (Re)*, [2019 SKREC 37](#) (file #2018-29) (“*Jacobucci 2019*”), Victor Jacobucci was issued an order of reprimand and a \$1,500 fine when he was once again found in breach of s. 39(1)(a) for allowing his seller client to sign an agency agreement before the document was fully completed. At the time the seller signed the brokerage contract provided by Mr. Jacobucci, the expiration date was left blank. As Mr. Jacobucci tried to complete the paperwork during a meeting, the seller refused to wait and signed the incomplete document. Mr. Jacobucci completed the paperwork in accordance with his verbal agreement with the seller.
- [48] Mr. Jacobucci had been registered with the Commission since 1978.
- [49] Although Mr. Jacobucci had a previous sanction history, the conduct giving rise to the most recent complaint had occurred before a decision was rendered in the previous case.
- [50] Mr. Jacobucci was acting as a limited dual agent in the transaction.
- [51] Mr. Kazakoff’s breach of s. 39(1)(a) of the *Act* is similarly serious to that of the registrant in *Jacobucci 2019*. While Mr. Jacobucci had been previously sanctioned for similar conduct, allowing clients to sign incomplete documents is not as serious a violation as instructing clients to sign documents that are known to include errors.

- [52] In *Johnston (Re)*, [2008 SKREC 21](#) (file #2008-03) ("*Johnston*"), Ian Johnston was issued an order of reprimand and a \$1,500 fine for breaching s. 39(1)(a) by adding information to a brokerage contract/MLS® Data Input Form without written authorization from the seller. The amended form included features of the property that were not originally noted on the form signed by the sellers. Mr. Johnston had the sellers sign the listing document before it was completed.
- [53] The Hearing Committee considered Mr. Johnston's lack of previous sanction history and the length of time he had been in the real estate industry.
- [54] The Committee noted that, once documents have been signed by a client, there should be no discussion as to whether or not the client agreed to the contents of the documents. Clients should only sign documents after they have been fully completed and, with the advent of email and fax technology, the Committee saw no excuse for not checking these matters first.
- [55] Mr. Kazakoff's breach of s. 39(1)(a) of the *Act* is more serious than that of the registrant in *Johnston*. Mr. Kazakoff was acting as a limited dual agent and he instructed his clients to sign documents that were known to include errors.
- [56] In *Ashton (Re)*, [2007 SKREC 12](#) (file #2006-70) ("*Ashton*"), Ron Ashton was issued an order of reprimand and ordered to pay a \$2,500 fine and \$1,500 in costs for breaching s. 39(1)(a) by creating a Schedule "A" for a real estate transaction that did not indicate a start date, the name or address of his registered brokerage, the date of possession by the buyer, or whether the possession was to be vacant or otherwise. No written documentation was created prior to the complainant moving into the property owned by Mr. Ashton and sometime after the complainant moved in, Mr. Ashton prepared a handwritten document that set out the terms of the agreement between the parties. The Hearing Committee had great difficulty determining whether the transaction was an agreement for sale or a lease with an option to purchase.
- [57] The Committee stated that, as a senior and experienced registrant, Mr. Ashton should have been much clearer in the documentation he prepared. Clear documentation is an essential aspect of trading in real estate and one the Commission was concerned registrants are taking proper steps to address. The Committee trusted that, going forward, Mr. Ashton and all registrants would be careful to ensure that the documentation completed with respect to trades in real estate was properly completed to allow the registrants and the clients to know exactly what the transaction involved.
- [58] Mr. Kazakoff's breach of s. 39(1)(a) is similarly serious to that of the registrant in *Ashton*. While the seriousness of Mr. Ashton's breach was exacerbated by the fact that he was personally involved in the transaction, Mr. Kazakoff was representing both parties as a limited dual agent and he allowed his clients to sign documents that included errors.

- [59] The decision in *Ashton* was rendered prior to a significant expansion of the real estate market that occurred in 2008. Property values increased substantially and, as a result, the commissions registrants could expect to earn on trades in real estate increased as well. The impact this market expansion and general inflation have had on commissions must be considered when determining sanctions for a registrant's breach of the legislation, or the Commission runs the risk of disciplinary action coming to be considered a "cost of doing business".
- [60] An order of reprimand and a \$1,750.00 fine are appropriate sanctions for Mr. Kazakoff's breach of s. 39(1)(a) of the *Act*.
- [61] As Mr. Kazakoff has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Kazakoff, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:

- [62] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of section 39(1)(a) of the *Act*:
- a. Mr. Kazakoff shall receive an order of reprimand for the violation of section 39(1)(a) of the *Act*.
 - b. Mr. Kazakoff shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$1,750.00 fine for the said violation of the *Act*, and
 - c. Mr. Kazakoff's registration shall be terminated if he fails to make payment as set out above.
- [63] There shall be no order as to costs.

Dated at the City of Regina this 15th day of September 2021.

"Jeffrey P. Reimer"
Hearing Committee Chairperson