

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

*Kostiuk (Re)*, 2021 SKREC 13

Date: March 2, 2021  
Commission File: 2020-57

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF JASON KOSTIUK**

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

Jeffrey P. Reimer- Chairperson

Wayne Zuk

Lori Patrick

**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. Kostiuk breached Commission Bylaw 726(b) by creating an advertisement that included an inaccurate statement of the size of the garage at 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 726(b) states:

*“Any advertisement or incentive or the offering of any incentive or the participation in an incentive program to the public as an inducement to trade in real estate undertaken or authorized by a registrant shall not be...inaccurate”.*

**FACTS:**

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

[5] Mr. Kostiuk 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 March 8, 2004.

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

- Fundamentals of Real Estate;
- Principles of Mortgage Financing;
- Principles of Real Property Law; and
- Principles of Real Estate Appraisal.

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

[8] Mr. Kostiuk is presently registered under the provisions of *The Real Estate Act* as a salesperson with Crown Real Estate Inc. O/A Re/Max Crown Real Estate.

[9] On October 29, 2018, the Sellers signed a Seller’s MLS® Brokerage Contract listing the Property for sale with Re/Max Crown Real Estate.

[10] Mr. Kostiuk acted as the listing agent.

[11] The Property had been listed for sale previously by another registrant, Registrant A. Registrant A listed the Property on September 22, 2006 and created MLS® Listing 1 which stated “Mechanics dream 28x32 ft heated garage w/ access off alley”.

[12] Mr. Kostiuk represented Seller A in his purchase of the Property in October of 2006.

[13] Mr. Kostiuk became friends with Seller A over the years and he had been at the Property a half dozen times over the years. During this time, he did not become

aware that the dimensions of the garage were not what he and his client had believed them to be.

- [14] Mr. Kostiuk met with the Sellers at the Property on October 29, 2018 in order to list the Property for sale.
- [15] The Sellers also signed a Residential Saskatchewan MLS® Data Input Form stating that the garage was 32' x 28'.
- [16] Mr. Kostiuk did not measure the garage prior to having the Sellers sign the MLS® Data Input Form.
- [17] Mr. Kostiuk had limited access to the back yard that day because the owners had placed their two large dogs in the yard while they met with him in the house to sign the documents. Seller A ran his business out of the garage, which also limited access to the garage sometimes. Mr. Kostiuk believed this may be why he did not measure the garage prior to completing the listing documents.
- [18] Mr. Kostiuk had no reason to believe that the garage dimensions were different from what he believed them to be at the time the listing documents were signed.
- [19] The Data Input Form provided the basis for MLS® Listing 2, which also included the following comment: "Great 3 bedroom bungalow with mechanics dream 28x32 heated garage."
- [20] On December 30, 2018, the Buyers wrote an offer to purchase the Property.
- [21] The Buyers were represented by Registrant B.
- [22] Registrant B had shown the Property to the Buyers twice before they wrote an offer.
- [23] On December 31, 2018, the Sellers accepted the offer from the Buyers.
- [24] Registrant B and the Buyers were at the Property on January 7, 2019 for the home inspection. The Sellers also facilitated access to the Property for the Buyers later that day for the purpose of taking some measurements.
- [25] On January 9, 2019, the Buyers signed a Notice to Remove Conditions removing all conditions on their purchase of the Property.
- [26] The Buyers took possession of the Property in February of 2019.
- [27] About a year and a half later, the Buyers measured the garage and found that it was only 26' x 28', not 28' x 32' as advertised.

- [28] The Buyers contacted Registrant B in June of 2020 and advised that they had measured the garage and learned that the measurements in the listing were not accurate.
- [29] After the Buyers contacted her, Registrant B measured the garage and confirmed that it was only 26' x 28'.
- [30] Registrant B contacted Mr. Kostiuk on June 14, 2020 to advise of the potential garage size issue. She informed him that she had measured the garage and that it measured as 26' x 28', not 28' x 32' as indicated in the listing.
- [31] The Buyers were concerned that they lost some of the resale value of the Property because of the discrepancy in the size of the garage.

### **REASONS:**

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

#### Mitigating Factors

- [33] Mr. Kostiuk has no previous sanction history.
- [34] Mr. Kostiuk was cooperative with the investigation.

#### Aggravating Factors

- [35] Members of the public relied on the information in Mr. Kostiuk's advertisement in their purchase of the Property.
- [36] The size of the garage was held out as a prominent feature of the Property.

#### Prior Decisions & Other Considerations

- [37] 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.

[38] 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.*

[39] Mr. Kostiuk listed the Property for sale. He did not measure the garage and instead restated the measurements found in a previous listing for the Property. He published an MLS® listing that identified the garage as being 28' x 32'. The Buyers purchased the Property, in part because of the size of the garage. Some time after taking possession of the Property, the Buyers discovered that the garage was, in fact, only 26 x 28 square feet.

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

[40] Mr. Kostiuk was the only registrant involved in his breach of the legislation. The Buyers were represented by another registrant in their purchase of the Property.

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

[41] There is no evidence to suggest that Mr. Kostiuk 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.*

[42] The Buyers were relying on the information in Mr. Kostiuk's advertisement when they purchased the Property.

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

[43] Specific deterrence is needed to remind Mr. Kostiuk that, as a listing agent, he is responsible for taking steps to verify information he intends to include in advertisements for a property, including taking his own measurements.

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

[44] General deterrence is needed to remind all registrants of their obligation to take steps to verify information that will be included in advertisements, including taking their own measurements of a property.

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

[45] Members of the public must be confident that the information in advertisements created and published by registrants is accurate and has been verified to the best of the registrant's ability.

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

[46] Mr. Kostiuk'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. Kostiuk's breach of Bylaw 726(b)?**

[47] There are several previous hearing decisions that deal with breaches of Bylaw 726(b) involving misstatements of the square footage of a property.

[48] In *Sinclair (Re)*, [2010 SKREC 8](#) (file #2010-02A) ("*Sinclair*"), Annette Sinclair was issued an order of reprimand and a \$2,000 fine for misstating the square footage of a property listed for sale. There was a 17% error in the square footage of the house and Ms. Sinclair's notes showed several different square footages written down with one having been selected. The Hearing Committee stated that the different square footages should have indicated to Ms. Sinclair that there was an error in the square footage.

[49] Ms. Sinclair was a long-time registrant with no previous sanction history.

[50] The Committee noted that the situation would have been easy to remedy and felt that Ms. Sinclair's conduct required a serious sanction.

[51] Mr. Kostiuk's breach of the bylaw is similarly serious to that of the registrant in *Sinclair*. While Mr. Kostiuk did not have multiple statements of the square footage of the garage that should have caused him to question the size of the garage, he did not measure the garage at the Property and chose to simply rely on the information stated in a previous listing.

[52] In *Kotlar (Re)*, [2007 SKREC 4](#) (file #2006-52) ("*Kotlar*"), Reginald Kotlar was issued an order of reprimand and a \$500 fine for including the below-ground level of a multi-level home as part of the above-ground square footage in an advertisement. Mr. Kotlar admitted that the advertisement could have been clearer to ensure prospective buyers were aware that the stated square footage included the below-ground level.

[53] There was no evidence of loss to any party and Mr. Kotlar did independently verify the square footage of the property. He had no prior sanction history and there was no evidence of an intention to deceive or mislead the public.

[54] Mr. Kostiuk's breach of the bylaw is more serious than that of the registrant in *Kotlar*. Mr. Kotlar independently verified the square footage of the property, while Mr. Kostiuk elected to rely on information taken from a previous listing.

- [55] In *Morrison (Re)*, [2007 SKREC 6](#) (file #2006-50) (“*Morrison*”), Leo Morrison was issued an order of reprimand and a \$5,000 fine and ordered to take educational upgrading for placing an advertisement that misrepresented the size of a lot and the size and layout of the cottage on the property. A surveyor discovered that the property’s irregularly-shaped lot resulted in the encroachment of the cabin on an adjacent property.
- [56] Mr. Morrison admitted his error.
- [57] Mr. Morrison had a previous sanction history and all of the information needed to create an accurate listing had been available to him. The Hearing Committee noted some credibility issues for Mr. Morrison because he had owned the property at one time and his parents had continued to develop it, sometimes with his input. The Committee considered suspending Mr. Morrison’s certificate of registration because he had represented both parties as a limited dual agent, the ease with which he could have obtained accurate information and the credibility issues, but ultimately decided against it.
- [58] Mr. Kostiuk’s breach of the bylaw is less serious than that of the registrant in *Morrison*. Mr. Kostiuk does not have a previous sanction history and he was cooperative with the investigation. Mr. Kostiuk did not act as a limited dual agent in the transaction and he had never owned or had an interest in the Property.
- [59] The decisions in *Kotlar* and *Morrison* were rendered in 2007. In 2008, the Saskatchewan real estate market underwent a significant expansion that saw a corresponding rise in property values. As property values rise, so do the commissions 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”.
- [60] An order of reprimand and a \$1,750 fine are appropriate sanctions for Mr. Kostiuk’s breach of Bylaw 726(b).
- [61] As Mr. Kostiuk has agreed to sign this consent order, there will be no order as to costs.

#### **CONSENT ORDER:**

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

- [63] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Commission Bylaw 726(b):
- a. Mr. Kostiuk shall receive an order of reprimand for the violation of Commission Bylaw 726(b);
  - b. Mr. Kostiuk 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 bylaw; and
  - c. Mr. Kostiuk's registration shall be terminated if he fails to make payment as set out above.

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

Dated at Regina this 2<sup>nd</sup> day of March, 2021.

"Jeffrey Reimer"  
Hearing Committee Chairperson