DECISION OF
THE SASKATCHEWAN REAL ESTATE COMMISSION
AND CONSENT ORDER

Oz Property Services Ltd. *(Re),* 2022 SKREC 5

Date: July 20, 2022
Commission File: 2020-61

IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF OZ PROPERTY SERVICES LTD.

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

David Chow, Q.C. - Chairperson

Allan Myers

Dean Staff

CHARGE and ADMISSION OF MISCONDUCT:

[1] The brokerage 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* in that it breached Commission Bylaw 702 by failing to protect and promote the interests of a client by mishandling a security deposit.

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 states:

"A registrant shall protect and promote the interests of his or her client. This primary obligation does not relieve the registrant from the obligation of dealing fairly with all other parties to the transaction."

FACTS:

[4] In accordance with subsection 9(4) of The Real Estate Regulations ("the Regulations"), the Hearing Committee accepts Oz Property Services Ltd. ("Oz") Statement of Facts and Admissions, which includes the following relevant points:

[5] The Corporate Owner owns Property 1. The Landlord is a representative of the Corporate Owner.

[6] On August 17, 2017, the Tenant entered into a Residential Tenancy Agreement with Oz with respect Property 2.

[7] On August 24, 2017, the Ministry of Social Services (the "MSS") sent a letter to Oz advising that the MSS had provided a security deposit guarantee for $849 for the Tenant. The letter noted that the guarantee was subject to conditions, one of which being that "the tenant does not move to another property owned or managed by you".

[8] On March 21, 2018, Oz and the Corporate Owner entered into an Agreement whereby Oz was contracted to rent, lease, operate and manage Property 1.

[9] The Tenant wanted to move to larger accommodations with her children and applied for Property 1.

[10] On May 10, 2018, the Tenant entered into a Residential Tenancy Agreement with Oz with respect to Property 1. Pursuant to this agreement, the Tenant's tenancy at Property 1 was to commence on June 1, 2018.

[11] On May 31, 2018, an employee of Oz sent an email to the Landlord advising that the Tenant had come into the brokerage office that day to pay her first month's rent in full and that verification had been received from the Tenant's worker that "they will be issuing out her guarantee letter for damage deposit."

[12] On June 6, 2018, Oz completed a Condition of Premises Checklist regarding Property 2. This form indicated that the unit had not been cleaned and that there had been some damage done to the walls and blinds.

[13] During the move-out inspection of Property 2, Teresa Hall, the broker for Oz, advised the Tenant that, because Oz was applying for the Letter of Guarantee for Property 2, it would revoke any Letter of Guarantee that would have been issued for her new residence at Property 1.

[14] Oz and the Tenant came to an agreement whereby the Tenant would pay cash for the security deposit at Property 1 and a payment plan was set up to achieve this goal.

[15] On June 7, 2018, Oz filed a Notice of Claim – Social Services' Security Deposit Guarantee regarding the Tenant's tenancy at Property 2.

[16] At the time the Tenant took possession of Property 1, the Landlord was advised that the anticipated Letter of Guarantee for the security deposit would be revoked and that a payment plan had been set up for the Tenant to make cash payments of $150 until the full deposit was paid. The Landlord acknowledged and agreed to the payment plan.

[17] On August 23, 2018, Ms. Hall met with the Landlord and advised him that he was contradicting the terms of the management agreement with Oz and that the agreement would be terminated effective September 30, 2018. The Landlord insisted that he receive vacant possession of Property 1 on October 1, 2018.

[18] On August 23, 2018, Oz filed an Evictions Requiring Notice of One Calendar Month with respect to the Tenant's tenancy at Property 1.

[19] On September 19, 2018, the MSS sent a letter to Oz regarding the Tenant's security deposit guarantee. The letter stated that the MSS would no longer be responsible for security deposit claims against the Tenant after September 18, 2018. The letter noted the Tenant's address as Property 1.

[20] On September 23, 2018, Oz generated a Rental Income Statement with respect to Property 1. The statement indicated that September rent in the amount of $849 had been received and a $150 security deposit had been received from the Tenant. The statement noted that the cash security deposit had been given to the Corporate Owner and the trust account closed on September 24, 2018.

[21] On October 2, 2018, Oz completed a Condition of Premises Checklist regarding Property 1. The checklist noted that there was garbage and debris left behind and marker on the walls and floors.

[22] The move-out report and keys were returned to the Landlord on October 2, 2018.

[23] The Landlord contacted the brokerage office on many occasions inquiring about the guarantee letter, which Ms. Hall had explained had been revoked for Property 1.

[24] On October 5, 2018, the Landlord completed a Notice of Landlord's Claim for Security Deposit with respect to the Tenant's tenancy.

[25] On December 27, 2018, the Landlord sent an email to Ms. Hall advising that it was possible that the Tenant's security deposit cheque would be sent to Oz within the next few weeks. He requested that Ms. Hall advise him when the cheque arrived.

[26] On January 22, 2019, the Landlord sent an email to Ms. Hall advising that the MSS had confirmed that the cheque had been issued on December 21, 2018 and sent to the brokerage's address.

[27] On January 23, 2019, Ms. Hall sent an email to the Landlord advising that he had been misinformed by the MSS and that the cheque that had been issued with respect to the letter of guarantee for the Tenant was for a previous rental property and not for Property 1. She stated that the letter of guarantee issued for Property 1 was subsequently dishonoured by the MSS. Ms. Hall stated that, as a result, the Tenant had been advised that her letter of guarantee was no longer valid and payment arrangements were made for her to pay the security deposit with cash, but that she was unfortunately evicted before this arrangement for payment could be fulfilled.

[28] The Landlord forwarded her email to the Security Deposit Unit of the MSS. He stated that he was confused by the information he received from Oz that there was no deposit for Property 1 while the Tenant was a tenant.

[29] Someone from the MSS replied to the Landlord to advise that they had pulled the Tenant's file and there was a copy of an email sent to the Landlord on December 18 saying a payment was set to be paid on December 22 and that the cheque in the amount of $849 would be mailed to Oz. They stated: "It was paid on Dec 21 from the Notice of Landlord's claim for Security Deposit for [Property 1]. The letter of Guarantee would have been issued June 1, 2018 for this address."

[30] On January 24, 2019, Ramona from the MSS sent an email to the Landlord advising that the MSS had not received a Notice of Claim Form with respect to Property 2 and that, if they had received a claim form for that property, they would have denied the claim and issued a denial letter stating, "Our policy states that when the tenant moves to another address where the property is owned and/or managed by the same landlord, the security deposit guarantee provided for the tenant at the previous address will be transferred to the tenant's new address." She stated: "Therefore, the deposit guarantee has been transferred from (in this case) Property 2 to Property 1 which is what happened." She stated that the MSS received a claim form for Property 1 and a cheque for $849 was issued on December 21, which was the security deposit guarantee which had been transferred from Property 2.

[31] Ms. Hall believed that MSS erred in advising the Landlord that the letter of guarantee for the Tenant was paid out with respect to Property 1, as it was actually paid out with respect to Property 2.

[32] The brokerage received a cheque from MSS in December of 2018 with respect to the Tenant. The brokerage disbursed these funds with respect to Property 2.

[33] On February 13, 2019, MSS sent a letter to Oz regarding the Security Deposit Guarantee for the Tenant. The letter advised that MSS had received the brokerage's claim for the above tenant, but that department policy stated that, when a tenant moves to another address where the property is owned and/or managed by the same landlord, the security deposit guarantee provided for the tenant at the previous address will be transferred to the tenant's new address. As such, the deposit guarantee had been transferred from Property 2 to Property 1. The letter concluded: "The security deposit guarantee cannot be claimed if the tenant moves to another building owned or managed by the same landlord. For this reason your claim has been denied."

[34] Ms. Hall believes that as the Property Manager she attempted to fulfill her duty to protect the interests of both property owners, when dealing with a Social Services client. The Letter of Guarantee originally issued and still in effect (at that time) was claimed for the first property. Arrangements were made and accepted to have the tenant pay a cash deposit for the second property. Unfortunately, the tenancy agreement was cancelled before the repayment terms for the deposit could be fulfilled. At no time did she believe that she was failing to protect and promote the interests of a client.

[35] Ms. Hall has taken the events which occurred as a learning tool and has since implemented new policies regarding tenants who rely on a Letter of Guarantee issued by Social Services for the purposes of a security deposit. Tenants with a Letter of Guarantee who transfer to another property within the scope of the Property Manager must pay a cash deposit for the new rental unit. Thereafter, each property will hold an independent security deposit.

REASONS:

[36] The Investigation Committee and Oz Property Services Ltd. considered the following as relevant in agreeing to the within consent order:

<u>Mitigating Factors</u>

[37] Neither the brokerage nor its broker, Teresa Hall, has a previous sanction history with the Commission.

[38] Ms. Hall was cooperative with the investigation.

Aggravating Factors

[39] The brokerage's landlord client has been unable to collect the security deposit to which the MSS has indicated he is entitled.

[40] Ms. Hall's misunderstanding of the MSS policies regarding letters of guarantee may mean that other deposits held by the brokerage have been distributed incorrectly.

Prior Decisions & Other Considerations

[41] 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.

[42] 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.

[43] Oz managed the Montreal Street Property on behalf of a landlord. The tenant that was placed at the property had moved from another property that was also managed by Oz. The tenant's security deposit had been paid by way of a letter of guarantee from the Ministry of Social Services (the "MSS"). The MSS has a policy against paying out a security deposit pursuant to a letter of guarantee when a tenant moves from a property that is owned or managed by the same landlord to another property owned or managed by the same landlord.

Oz did not correctly understand the MSS policy and made a claim to the MSS with respect to alleged damages the tenant had caused at the other property. The tenant's tenancy at the Montreal Street Property was ended and the MSS

paid out the tenant's security deposit in accordance with the letter of guarantee. While an MSS employee confirmed that the security deposit had been paid with respect to the Montreal Street Property, Oz believed that the deposit had been paid out with respect to the other property and paid it out accordingly. After the deposit had been released to the other landlord, Oz received a letter from MSS confirming that the deposit had been paid with respect to the Montreal Street Property.

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

[44] The brokerage, represented by Ms. Hall, was the only registrant involved in the breach of the legislation.

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

[45] There is no evidence to suggest that the brokerage suffered a loss or enjoyed a benefit as a result of its breach of the legislation.

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

[46] The complainant has been unable to collect on the letter of guarantee provided by the MSS because the brokerage has taken the position that the deposit had been paid out with respect to a different property.

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

[47] Specific deterrence is needed to ensure that the brokerage and Ms. Hall understand the importance of correctly applying the MSS' policies regarding the distribution of security deposits paid in accordance with letters of guarantee.

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

[48] General deterrence is needed to ensure that all brokerages understand the importance of correctly applying the MSS' policies regarding the distribution of security deposits paid in accordance with letters of guarantee.

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

[49] Members of the public must be confident that the brokerages they engage to manage properties on their behalf are correctly applying the MSS' policies regarding the distribution of security deposits paid in accordance with letters of guarantee.

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

[50] Oz'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 Oz's breach of Bylaw 702?

[51] There are no previous hearing decisions involving facts similar to the case at hand, but there are decisions that set out relevant principles to be applied.

[52] In *Morrison (Re)*, 2019 SKREC 35 (file #2019-02) ("*Morrison*"), Justin Morrison was issued an order of reprimand and a $1,500 fine for his breach of Bylaw 702. Mr. Morrison represented the buyer of a property. A home inspection had identified several items that needed repair and the seller had agreed to fix the items set out in the inspector's list. As the seller had agreed to do the repairs right away, Mr. Morrison did not take any steps to incorporate the seller's obligation to repair the items into the contract of purchase and sale. One of the issues that the seller was supposed to repair continued to cause problems for the buyer after she took possession of the Property.

[53] Mr. Morrison was cooperative with the investigation.

[54] At the time of the breach, Mr. Morrison had been a registrant for almost 10 years and he had been sanctioned by the Commission in 2016 and 2017. The buyer was extremely upset with Mr. Morrison's conduct.

[55] In *Ziegeman (Re)*, 2019 SKREC 13 (file #2016-41) ("*Ziegeman*"), Larry Ziegeman was issued an order of reprimand and a $1,500 fine for his breach of Bylaw 702. Mr. Ziegeman's seller client told him that she did not want to be in the position of selling her home without having purchased another property. Buyers wrote an offer to purchase the seller's property and Mr. Ziegeman drafted a counter offer that did not make the sale of the seller's property subject to the seller purchasing another property. Mr. Ziegeman did not include such a condition in the contract because, given the status of negotiations regarding the seller's purchase of another property, the issue did not arise in his mind as a concern. The buyers accepted the seller's counter offer. Shortly thereafter, the seller backed out of her purchase of the other property and the buyers removed conditions on their purchase of the seller's property. The seller advised Mr. Ziegeman that she was going to back out of the sale of her property and that she was very upset about having sold her property without having purchased another. Ultimately, the seller did complete the sale of her property to the buyers and her purchase of another property.

[56] Mr. Ziegeman had no previous sanction history and he was cooperative with the investigation. As a result of this situation, Mr. Ziegeman lost a longstanding relationship with a family he had known for more than 30 years.

[57] Mr. Ziegeman was acting as a limited dual agent in the sale of the seller's property. Registrants must be even more diligent when there are no other registrants involved in a transaction to ensure the paperwork is properly completed and the transaction is managed properly. Mr. Ziegeman's seller client was very upset that she had sold her home without having purchased another.

[58] In *Campbell (Re)*, 2019 SKREC 8 (file #2018-41) ("*Campbell*"), Carmen Campbell was issued an order of reprimand and a $1,250 fine for her breach of Bylaw 702. Ms. Campbell represented buyers who wrote a conditional offer to purchase a property. The offer included an option clause which gave the buyers 48 hours to remove all conditions in the event the seller accepted another offer. Ms. Campbell had taken some time off work to be with her father, who had just been diagnosed with terminal cancer. The listing agent sent an email to Ms. Campbell to which he attached a completed X-Hour Notice advising that the sellers had accepted another offer and the buyers had 48 hours to remove conditions. Ms. Campbell did not see this email, nor did she see any of the listing agent's follow up emails until after the buyers' 48-hour window had expired. The buyers' purchase of the property collapsed. Ms. Campbell's buyer clients initiated civil proceedings against her and her former brokerage.

[59] Ms. Campbell had no previous sanction history and was cooperative with the investigation. She was experiencing significant stress in her personal life at the time of the breach.

[60] As they had not been made aware that the sellers had accepted another offer on the property, Ms. Campbell's clients did not realize that their 48-hour window to remove conditions on their purchase had begun. Ms. Campbell's clients did not remove conditions and their contract of purchase and sale with the sellers collapsed.

[61] In *Sanderson (Re)*, 2019 SKREC 6 (file #2016-28) ("*Sanderson*"), Sylvia Sanderson was issued an order of reprimand and a $1,500 fine for her breach of Bylaw 702. Ms. Sanderson had listed a property for sale. She received an offer from a buyer, which was countered by her seller client. Ms. Sanderson received a text message from the buyer's agent stating that the registrant would be sending a new offer. Shortly thereafter, Ms. Sanderson received an offer to purchase the property from another buyer. Ms. Sanderson discussed this new offer with her seller clients, who decided to accept it. The sellers signed acceptance of the second offer. Rather than writing a new offer, the first buyer accepted the counter offer from the seller. Ms. Sanderson advised the registrant representing the first buyer that the sellers had already accepted another offer and the sellers proceeded with the sale of the property to the second buyer.

[62] Ms. Sanderson had no previous sanction history and was cooperative with the investigation.

[63] Ms. Sanderson was registered as a broker. As registrants with additional training and experience who are expected to supervise the actions of all registrants and employees of their brokerage, brokers are held to a higher standard of behaviour. Ms. Sanderson's actions placed her seller clients in a precarious legal position.

[64] In each of these decisions, the underlying issue was the fact that the registrant had implicitly undertaken to protect and promote the interests of the client, but

demonstrably failed to do so, whether by drafting a contract of purchase and sale that did not provide adequate protection for the client or by failing to recognize a significant threat to the client's interests.

[65] In the case at hand, Oz not only undertook to protect and promote the interests of its client, but to directly exercise the client's legal rights and satisfy some of the client's legal obligations. Oz misunderstood the MSS policy regarding the payment of security deposits pursuant to a letter of guarantee and, in doing so, misdirected funds that were owing to its client. As such, Oz's breach of Bylaw 702 is more serious than that of the registrants in the other cases.

[66] An order of reprimand, an order for restitution directing Oz to pay $849 to the Landlord and/or the Corporate Owner, and a $1,500 fine are appropriate sanctions for Oz's breach of Bylaw 702.

[67] As Ms. Hall has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

[68] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Oz Property Services Ltd., and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:

[69] 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:

a. Oz Property Services Ltd. shall receive an order of reprimand for the violation of Bylaw 702;
b. Oz Property Services Ltd. shall, within 60 days of the date of this order, pay to the Saskatchewan Real Estate Commission a $1, 500.00 fine for the said violation of the *Act*;
c. Oz Property Services Ltd. shall, within 60 days of the date of this order, pay to the Landlord and/or the Corporate Owner $849.00 in restitution for the said violation of the *Act;* and
d. Teresa Hall's registration shall be terminated if she fails to make payment as set out above.

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

Dated at Moose Jaw, in the Province of Saskatchewan, this 20th day of July 2022.

"David M. Chow",
Hearing Committee Chairperson