

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

Stark (Re), 2021 SKREC 3

Date: March 25, 2021
Commission File: 2020-75

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF RICK STARK**

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

David M. Chow - Chairperson

Vern McLelland

Cam Bristow

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. Stark breached Commission Bylaw 725.2 by failing to make written disclosure of his relationship to the buyer to the seller in a timely manner.

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 725.2 states:

“Prior to the seller accepting an offer to purchase, a broker, branch manager, associate broker or salesperson shall disclose in writing to a seller the registrant’s relationship to the buyer when the buyer is an immediate family member of the registrant.”

[4] Bylaw 103.1 states, in part, that:

*“**IMMEDIATE FAMILY MEMBER** means any person connected with a registrant by blood relationship, marriage, common-law or adoption or a partnership, corporation, organization or business wholly or materially owned or controlled by an immediate family member to the registrant. For the purposes of this bylaw, persons are connected by:*

- (a) blood relationship if one is the child or other descendant or ascendant of the other or one is the brother or sister of the other;*
- (b) marriage if one is married to the other or to a person who is connected by blood relationship to the other...”*

FACTS:

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

[6] Mr. Stark was registered as a salesperson under the provisions of *The Real Estate Brokers Act* in the Province of Saskatchewan with the Superintendent of Insurance from December 12, 1975 until August 17, 1983.

[7] Mr. Stark was continuously registered as a broker under the provisions of *The Real Estate Brokers Act, 1987* with the Saskatchewan Real Estate Commission from July 1, 1988 until December 7, 1989. He was then continuously registered as a salesperson under the provisions of *The Real Estate Brokers Act, 1987* and *The Real Estate Act* with the Commission from December 7, 1989 until June 30, 2005.

[8] Mr. Stark has been continuously registered as an associate broker under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Commission since July 1, 2005.

[9] Mr. Stark has taken the following real estate courses:

- Pre-March 1976 Licensing Course;
- Real Estate 200; and

- Real Estate 300.

- [10] Mr. Stark has completed the continuing professional development seminars each registration year since 2001-2002.
- [11] Mr. Stark is presently registered under the provisions of *The Real Estate Act* as an associate broker with Carway Holdings Ltd. O/A Realty Executives Saskatoon.
- [12] In September of 2019, the Property was listed for sale by Brokerage A.
- [13] Registrant A acted as the listing agent.
- [14] On September 7, 2019, the Corporate Buyer wrote an offer to purchase the Property.
- [15] Mr. Stark was named as the salesperson representing the buyer.
- [16] Mr. X wholly or materially controls the Corporate Buyer.
- [17] Mr. X is Mr. Stark's stepson. Mr. Stark is currently married to Mr. X's mother.
- [18] The seller signed acceptance of the offer from the Corporate Buyer on September 7, 2019.
- [19] On September 9, 2019, Mr. Stark completed a Disclosure of Interest in Trade form in which he disclosed to the seller that Mr. X is his stepson.

REASONS:

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

Mitigating Factors

- [21] Mr. Stark has no previous sanction history.
- [22] Mr. Stark has been a registrant since 1975.
- [23] Mr. Stark was cooperative with the investigation.
- [24] Mr. Stark did complete the mandatory disclosure form, he simply failed to do so prior to the seller signing acceptance of the offer.

Aggravating Factors

- [25] There are no aggravating factors.

Prior Decisions & Other Considerations

- [26] 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.
- [27] 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.*
- [28] Mr. Stark wrote an offer to purchase a property on behalf of a corporation wholly or materially controlled by his stepson. Although Mr. Stark did provide the seller with written disclosure of his relationship to the Corporate Buyer, he did not do so prior to the seller signing acceptance of the offer.
- 2. The role of the offending member in the breaches.*
- [29] Mr. Stark 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.*
- [30] There is no evidence to suggest that Mr. Stark enjoyed a benefit or suffered a loss as a result of his breach of the legislation.
- 4. The impact of the breaches on complainants or others.*
- [31] There is no evidence of consumer harm arising out of Mr. Stark’s breach of the legislation, but the risk of harm posed to the public by registrants failing to disclose their relationships to parties to a transaction is significant.

5. *The need for specific deterrence to protect the public.*
- [32] Specific deterrence is needed to ensure that Mr. Stark understands his disclosure obligations and to emphasize the importance of making the required disclosure in a timely manner.
6. *The need for general deterrence to protect the public.*
- [33] General deterrence is needed to ensure that all registrants understand their disclosure obligations and to emphasize the importance of making the required disclosure in a timely manner.
7. *The need to maintain the public's confidence in the integrity of the profession.*
- [34] Members of the public must be reassured that they are receiving the appropriate disclosures from registrants in a timely manner.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [35] Mr. Stark'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. Stark's breach of Bylaw 725.2?

- [36] There are two previous hearing decisions dealing with breaches of Bylaw 725.2.
- [37] In *Chilliak (Re)*, [2019 SKREC 10](#) (file #2017-52) ("*Chilliak*"), Barry Chilliak was issued an order of reprimand and a \$1,000 fine for his breach of Bylaw 725.2. A property was listed for sale by Mr. Chilliak's brokerage and Mr. Chilliak's son wrote an offer to purchase the property. The offer named Mr. Chilliak as the registrant representing his son. Mr. Chilliak's son, who was also a registrant, completed a Disclosure of Interest in Trade form, but Mr. Chilliak did not complete a separate disclosure form notifying the seller that he was providing real estate services to his son. The seller accepted the offer from Mr. Chilliak's son.
- [38] Mr. Chilliak was cooperative with the investigation.
- [39] Mr. Chilliak was registered as a broker. As the people responsible for ensuring that the registrants and employees under their supervision are complying with the legislation, brokers are held to a higher standard of conduct.
- [40] Mr. Stark's breach of the bylaw is less serious than that of the registrant in *Chilliak*. Mr. Stark does not have a previous sanction history and he is not registered as a broker. Mr. Stark did complete a Disclosure of Interest in Trade form disclosing his relationship to the buyer, but only did so after the seller had accepted the Corporate Buyer's offer to purchase.

- [41] In *Leier (Re)*, [2008 SKREC 11](#) (file #2007-09) ("*Leier*"), Marty Leier was issued an order of reprimand and a \$1,000 fine for his breach of Bylaw 725.2. Mr. Leier wrote an offer to purchase a property on behalf of "Mr. A and/or assignee". A few days later, Mr. Leier used an amendment to the contract of purchase and sale to disclose to the seller that the buyer was his son. The transaction completed some time later and Mr. Leier and his spouse declared themselves owners of the property, though Mr. Leier's son and his partner remained beneficial owners of the property. Two days later, Mr. Leier and his spouse listed the property for sale. Mr. Leier failed to disclose his ownership of the property to a buyer before receiving an offer to purchase the property from said buyer.
- [42] The seriousness of Mr. Leier's breach of the bylaw was exacerbated by the fact that he represented both parties to the second sale as a limited dual agent and his status as a long-term registrant. The Hearing Committee felt a serious point needed to be made because a significant document was absent on two personal transactions involving the same property.
- [43] Mr. Stark's breach of the bylaw is less serious than that of the registrant in *Leier*. Mr. Stark was not personally involved in the transaction and he was not acting as a limited dual agent.
- [44] The decision in *Leier* was rendered in 2008. Since 2008, the real estate market in Saskatchewan has undergone significant change. Property values increased considerably and, as a result, the commission registrants can expect to earn on trades in real estate increased as well. Sanctions ordered against registrants must keep pace with these increases or the Commission runs the risk of fines becoming a "cost of doing business". Consideration must also be paid to the general inflation that has occurred in the years since this decision was rendered.
- [45] An order of reprimand and a \$750 fine are appropriate sanctions for Mr. Stark's breach of Bylaw 725.2.
- [46] As Mr. Stark has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

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

- [48] 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 725.2:
- a. Mr. Stark shall receive an order of reprimand for the violation of Bylaw 725.2;
 - b. Mr. Stark shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$750.00 fine for the said violation of the bylaw; and
 - c. Mr. Stark's registration shall be terminated if he fails to make payment as set out above.

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

Dated at the City of Moose Jaw this 25th day of March, 2021.

"David M. Chow"
Hearing Committee Chairperson