

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

Amit (Re), 2021 SKREC 9

Date: November 3, 2021
Commission File: 2020-78

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF KUMAR AMIT**

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

David M. Chow - Chairperson

Cliff Iverson

Robert 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)(a) of *The Real Estate Act*, Mr. Amit failed to notify a listing brokerage in a timely manner that the buyer's deposit had not been collected in accordance with the contract of purchase and sale.

Count 2:

That, contrary to section 39(1)(c) of *The Real Estate Act*, Mr. Amit breached s. 58(1)(b)(v) of the *Act* by drafting an offer to purchase that did not clearly show the amount of the deposit made at the time of the offer.

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.”

[3] Section 58(1)(b)(v) of the *Act* states:

“An offer to purchase obtained by a registrant is to clearly show, prior to execution by the buyer, the amount of deposit, if any, made at the time of the offer and whether or not that deposit is to form part of the price.”

FACTS:

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

[5] Mr. Amit 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 2, 2015.

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

- Phase 1 – Real Estate 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] Mr. Amit has completed the continuing professional development seminars each registration year since 2015-2016.

[8] Mr. Amit is presently registered under the provisions of *The Real Estate Act* as a salesperson with 100% Realty Associates Ltd. O/A Re/Max Saskatoon.

[9] In September of 2020, the Property was listed for sale with Brokerage A.

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

- [11] Registrant A acted as the listing agent.
- [12] On September 21, 2020, the Buyer wrote an offer to purchase the Property. Paragraph 1.2(b) of the offer stated that a \$5,000 deposit by cheque “receipt of which by the Buyer’s Brokerage is hereby acknowledged and to be deposited within two business days of acceptance, to be held in trust and: (a) to be credited on account of purchase money pending completion; or (b) other termination of this contract.” Paragraph 1.2(e) of the offer does not note an amount, but indicates “Deposit made on removal of condition”. The offer was made subject to financing, a Property Condition Disclosure Statement and a home inspection by October 2, 2020.
- [13] The offer named Mr. Amit as the registrant representing the Buyer.
- [14] The Buyer did not have a deposit cheque at the time the offer was written and he was leaving to visit family out of town after the showing. Mr. Amit remained in Meadow Lake after the showing to prepare the paperwork. Mr. Amit and the Buyer had agreed over the phone that he would provide the deposit upon removal of conditions.
- [15] The Seller signed acceptance of the offer that same day.
- [16] At the time he signed acceptance of the offer, the Seller believed that the Buyer’s deposit had been received.
- [17] On September 23, 2020, Mr. Amit sent the Property Condition Disclosure Statement to the Buyer via email.
- [18] The Buyer’s application for financing was complicated because his name was on his sister’s car loan and he could not get approved for the mortgage unless he was able to take his name off of his sister’s loan.
- [19] On October 2 and 5, 2020, the Buyer and Seller signed an Amendment extending the deadline to remove conditions to October 14, 2020 and setting possession for December 1, 2020.
- [20] On October 9, 2020, the Buyer sent Mr. Amit an email: “Good news is my sister got approved but it will take some time cause of long weekend and her schedule as well. She’s hoping to have everything done by the 22nd of October. There is nothing I can do to speed this up.”
- [21] The Buyer told Mr. Amit that he was sure everything would be fine and that he was willing to book the inspection, but the earliest inspection date he could get was October 15, 2020. The Buyer told Mr. Amit that he did not want to lose the Property and was concerned about how to get an extension on conditions. Mr. Amit suggested that the Buyer remove the conditions he was sure about and

request an extension for the others. The Buyer told Mr. Amit that he was very confident about his financial approval.

- [22] On October 14, 2020, Mr. Amit sent a text message to the Buyer: "Please sign the email I sent. Removing conditions on PCDS, Finance and amendment for Price change to \$223k. Also extension for condition for inspection."
- [23] On October 14 and 15, 2020, the Buyer and the Seller signed an Amendment extending the home inspection condition to October 16, 2020 and reducing the purchase price.
- [24] On October 14, 2020, the Buyer signed to acknowledge receipt of the Property Condition Disclosure Statement completed by the Seller.
- [25] On October 14 and 15, 2020, the Buyer and the Seller signed a Notice to Remove Conditions removing the financing and Property Condition Disclosure Statement conditions.
- [26] On October 16 and 18, 2020, the Buyer and the Seller signed a Notice to Remove Conditions removing the home inspection condition.
- [27] At this time, Mr. Amit asked the Buyer to send him the \$5,000 deposit. The Buyer insisted on sending the bank draft to the brokerage office by mail.
- [28] On October 17, 2020, the Buyer sent Mr. Amit a text message: "My sister just got an email saying they will not be lending her the full amount of the loan. Only up to 35g. I don't understand why they would say that now when they gave her the full amount earlier."
- [29] Mr. Amit gave the Buyer some contacts to help him out and mentioned that, because conditions had already been removed, he would lose his deposit if he backed out.
- [30] The Buyer texted Mr. Amit to say that he was going to keep trying to get his name off the loan and try again, but that it would not be soon enough to get the Property.
- [31] Mr. Amit replied to suggest that the Buyer and his sister try another bank or private lender. He noted that, if the Buyer needed more time, they could move possession to January 1, 2021.
- [32] On October 19, 2020, Ms. Neufeld texted Mr. Amit asking which lawyer the Buyer would be using.
- [33] On October 20, 2020, Ms. Neufeld texted Mr. Amit again to ask for the lawyer's name.

- [34] On October 20, 2020, Mr. Amit replied to Ms. Neufeld: “I am waiting on My client to send me that info, m still waiting on him to send me the deposit which he is supposed to give me after removal of conditions. I will update you soon.”
- [35] As of October 23, 2020, Mr. Amit had not received any mail from the Buyer. He tried to call a few times, but received no response. The Buyer did not have phone service when he was visiting family, so Mr. Amit continued to wait.
- [36] On October 23, 2020, Mr. Amit sent an email to the Buyer: “I talked to you on Saturday about sending the Deposit to our office and we have not received yet. Just wondering when you will be able to send it so I can update your file. It also says on the Offer to purchase document that deposit will be made on Removal of Condition.”
- [37] On October 24, 2020, the Buyer sent Mr. Amit an email stating that the bank kept giving his sister the runaround and ugly interest payments, so he was going to have to wait on buying a house.
- [38] On October 24, 2020, Ms. Neufeld texted Mr. Amit to ask if he had received the deposit from his client.
- [39] On October 25, 2020, Mr. Amit forwarded the Buyer’s email to Ms. Neufeld and advised: “I requested the buyer to send me the deposit after he removed all conditions (as per contract). He is backing out because he figured out that his financial approval will be a problem if he do not get his name out of his sisters car loan. I have also notified this to my broker. I am forwarding his email response below.”
- [40] On October 26, 2020, Ms. Neufeld texted Mr. Amit: “I received your email and this is totally unacceptable. The sellers have spent the last week arranging storage for their belongings and securing a rental place. They have incurred a lot of cost. This should have been brought to our attention sooner.”

REASONS:

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

Mitigating Factors

- [42] Mr. Amit does not have a previous sanction history.
- [43] Mr. Amit was cooperative with the investigation.

Aggravating Factors

- [44] The Seller did not find out that the brokerage had not collected a deposit from the Buyer at the time the offer was written until after conditions had been removed and it was starting to appear as though the Buyer would not be able to complete the transaction.

Prior Decisions & Other Considerations

- [45] 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.
- [46] 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.*
- [47] Mr. Amit drafted an offer to purchase that included contradictory information about whether or not the Buyer’s deposit had been received at the time the offer was written.
- [48] Mr. Amit failed to collect the deposit from his client when required by the contract and he did not advise the listing agent that he had not obtained the deposit for several days.
2. *The role of the offending member in the breaches.*
- [49] Mr. Amit was the only registrant involved in his breaches of the legislation.

3. *Whether the offending member suffered or gained as a result of the breaches.*
- [50] There is no evidence to suggest that Mr. Amit 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.*
- [51] The Seller accepted the offer from Mr. Amit's client on the assumption that a deposit was being held by Mr. Amit's brokerage. Ultimately, the Buyer was unable to complete the transaction after removing conditions, but the Seller's ability to collect the deposit owing to him, particularly since the Buyer's brokerage never received it, remains to be seen.
5. *The need for specific deterrence to protect the public.*
- [52] Specific deterrence is needed to remind Mr. Amit of the importance of clear drafting when writing contracts of purchase and sale and of his obligation to make the listing brokerage aware when a deposit has not been collected in accordance with the contract as soon as possible after becoming aware of the delay.
6. *The need for general deterrence to protect the public.*
- [53] General deterrence is needed to remind all registrants of the importance of clear drafting when writing contracts of purchase and sale. Vague or uncertain language in the contract can mean that the documentation does not accurately reflect the deal the parties believe they have entered.
- [54] Registrants must be reminded that the registrant representing a buyer is responsible for collecting the deposit and, in the event the deposit is not received in accordance with the contract, making the listing brokerage aware of the delay as soon as possible.
7. *The need to maintain the public's confidence in the integrity of the profession.*
- [55] Members of the public rely on registrants to accurately and clearly draft the contracts of purchase and sale they are entering so as to avoid uncertainty, confusion and disputes between buyers and sellers. Registrant conduct that undermines public confidence in contracts drafted by industry members must be addressed.
- [56] Members of the public must be assured that registrants are handling deposits appropriately and that information about the status of a deposit is being shared between brokerages in a timely manner.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [57] Mr. Amit'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. Amit's breach of s. 39(1)(a) of the Act?

- [58] There are several previous decisions dealing with registrants who represented buyers and who failed to notify the listing brokerage in a timely manner that the buyer had not delivered a deposit to the buyer's brokerage in accordance with the contract of purchase and sale.
- [59] In *Miron (Re)*, [2010 SKREC 1](#) (file #2009-40) ("*Miron*"), Rick Miron was issued an order of reprimand and a \$3,500 fine for his breach of s. 39(1)(a). The offer he drafted on May 5, 2009 stated that a deposit had been received by the buyer's brokerage to be deposited within two business days of acceptance. Mr. Miron had not, in fact, received the buyer's deposit at that time. Mr. Miron obtained a deposit cheque from his buyer client on May 12, 2009. On May 19, 2009, the brokerage was notified that the cheque could not be deposited because a change made to the cheque had not been initialled. Mr. Miron was advised of the issue on May 20, 2009. Mr. Miron and the brokerage attempted to locate the buyers to secure a replacement cheque, but they were unsuccessful. The listing agent and the seller did not learn that the buyer's brokerage was not holding a deposit until June 1, 2009.
- [60] The Hearing Committee considered Mr. Miron's lack of sanction history and the length of time he had been in the real estate industry.
- [61] The Committee understood that Mr. Miron believed that the buyer would come through and the sale would take place, but it is essential that deposit issues are clear to all parties. It is not appropriate for a registrant to state in the offer to purchase that a deposit cheque has been received when, in fact, it has not been received. All parties viewing the contract must be able to rely on it. That is what the public expects and what the Commission is obligated to enforce. The Committee noted that deposits are one of the most basic parts of a trade in real estate and that every registrant must ensure that deposits are handled appropriately and all parties know what is happening with them.
- [62] Mr. Amit's breach of s. 39(1)(a) is less serious than that of the registrant in *Miron*. Mr. Miron failed to notify the listing agent or seller of issues with the deposit that arose on more than one occasion between May 5 and June 1, 2009.
- [63] In *Fuchs (Re)*, [2009 SKREC 7](#) (file #2008-72) ("*Fuchs*"), Aloysius Fuchs was issued an order of reprimand and a \$3,500 fine for his breach of s. 39(1)(a). Mr. Fuchs' buyer client advised that he would deliver the deposit cheque to the brokerage upon acceptance of the offer by the seller. The seller accepted the buyer's offer on July 28, 2008, but the buyer did not provide the deposit cheque. Mr. Fuchs did not notify the seller or the seller's agent that the deposit had not been received until August 25, 2008.

- [64] The Hearing Committee considered Mr. Fuchs' lack of sanction history and the length of time he had been in the real estate industry. The Committee sympathized with Mr. Fuchs, who was going through a difficult time in his personal life, but noted that it is important that clients and the public are properly protected and represented.
- [65] The Committee stated that the deposit is a fundamental part of a trade in real estate and that, when it is not there, all parties must be immediately advised in order that they may determine their legal and practical options going forward. The failure to notify the listing brokerage that the deposit had not been received for almost a month was not to be condoned and the Committee noted that it is not up to the seller's brokerage to check on the deposit. The buyer's agent and their brokerage must notify the listing brokerage immediately when the deposit is not received at the time it is due.
- [66] Mr. Amit's breach of s. 39(1)(a) is less serious than that of the registrant in *Fuchs*. Mr. Fuchs was going through a difficult time in his personal life, but he failed to notify the seller that no deposit has been received for almost one month.
- [67] In *Didur (Re)*, [2009 SKREC 23](#) (file #2008-56), the Deputy Superintendent of Real Estate affirmed the Hearing Committee's decision to issue an order of reprimand to Christian Didur and to make an order that Mr. Didur pay a \$3,500 fine and have his certificate of registration suspended for 30 days for his breach of s. 39(1)(a). Mr. Didur's buyer client was supposed to pay a \$5,000 deposit at the time the offer was written and increase the deposit by \$5,000 upon removal of conditions. The first deposit cheque was written on June 6, 2008 and returned "insufficient funds" ("NSF") on June 10, 2008. Mr. Didur did not advise the listing agent of the return. On June 10, 2008, the buyer signed a removal of conditions stating that the deposit increase would be put into trust with Mr. Didur's brokerage within 24 hours. At this time, the listing agent was told that the second deposit had not been received, but not that the first deposit had been returned NSF or that it had not been replaced. On June 11, 2008, the buyer signed a second removal of conditions which stated that the deposit increase had been put into trust with Mr. Didur's brokerage. Mr. Didur had not received the initial deposit or the deposit increase. On June 13, 2008, Mr. Didur received a \$10,000 cheque from the buyer postdated to June 16, 2008. On June 19, 2008, Mr. Didur was advised that the second cheque had been returned NSF. The buyer continued to assure Mr. Didur that the deposit would be delivered to the brokerage, but it was not. On July 7, 2008, four days before possession was supposed to transfer, the sales manager for Mr. Didur's brokerage contacted the listing brokerage to advise that the deposit cheques had not been received.
- [68] The Hearing Committee considered Mr. Didur's lack of previous sanction history and the short length of time he had been in the real estate industry at the time of the breach.

- [69] While the Committee had sympathy for Mr. Didur as it seemed he had been manipulated by the buyer, issues of the deposit are of significant importance in every real estate transaction. The Committee stated that, if the deposit is non-existent, it is essential and fundamental that the seller knows of it immediately. When the seller has been told that the deposit has been received, but that ceases to be true, the seller must be notified of the change immediately. The Hearing Committee felt that a strong sanction was needed because it was not an isolated incident; Mr. Didur failed to notify the seller of issues with the deposit on more than one occasion.
- [70] Mr. Amit's breach of s. 39(1)(a) is less serious than that of the registrant in *Didur*. Although it seemed that Mr. Didur had been manipulated by his buyer client, he failed to notify the seller or listing agent of several issues that arose with respect to the deposit over the course of four weeks.
- [71] An order of reprimand and a \$1,500 fine are appropriate sanctions for Mr. Amit's breach of s. 39(1)(a) of the *Act*.

B. What is an appropriate sanction for Mr. Amit's breach of s. 58(1)(b)(v) of the *Act*?

- [72] In *Dodman (Re)*, [2003 SKREC 17](#) (file #2003-22) ("*Dodman*"), Dale Dodman was issued an order of reprimand and a \$500 fine and ordered to pay partial costs and complete educational upgrading for breaching s. 58(1)(b)(v) of the *Act*. Ms. Dodman drafted an offer to purchase that stated that her brokerage was holding a \$5,000 deposit when, in fact, neither she nor her brokerage had received the deposit. The deposit was paid by the buyer directly to the seller.
- [73] The Hearing Committee had concerns about the transactions in which Ms. Dodman was involved and about what appeared to be extremely unusual actions by the individuals representing the corporate sellers. The Committee viewed the activities of a registrant who participates in the apparent over-inflation of the value of a property and the falsification of documentation provided to mortgage companies as a very serious issue. Registrants should be able to recognize these improper transactions and, as a person who had been registered for over 15 years at the time of the transaction, Ms. Dodman should have known something was wrong if, in fact, she did not.
- [74] The Committee considered Ms. Dodman's previous sanction history. The order was to serve as a specific deterrence to Ms. Dodman to ensure she was aware of the requirement to clearly state terms on an offer to purchase regarding the handling of the deposit. The Committee noted that a breach of the legislation is not technical and that it is not for the registrant to determine whether he or she should follow the rules.
- [75] Mr. Amit's breach of s. 58(1)(b)(v) of the *Act* is less serious than that of the registrant in *Dodman*. Mr. Amit does not have a previous sanction history and the

transaction in which he was involved did not include the suspicious elements present in *Dodman*.

- [76] In *Carriere (Re)*, [2001 SKREC 1](#) (file #2000-32) ("*Carriere*"), Levern Carriere was issued an order of reprimand and a \$500 fine for breaching s. 58(1)(b)(v) of the *Act* by drafting a contract of purchase and sale that did not properly represent the facts with respect to the deposit. Although Mr. Carriere had not received the deposit at the time it was written, this was not clearly indicated on the offer. The offer stated that the deposit cheque had been received and that it would be deposited within two business days of acceptance. Though Mr. Carriere received assurances from the buyer that the funds would arrive shortly, the deposit was never received. Shortly thereafter, the buyer disappeared and the transaction did not complete.
- [77] The Hearing Committee considered Mr. Carriere's lack of a previous sanction history. Mr. Carriere acknowledged that he had made a mistake and there was no evidence that his actions were a deliberate attempt at wrongdoing.
- [78] However, the handling of trust monies is an important issue and Mr. Carriere's actions in the transaction were very serious. The deposit is a fundamental aspect of a real estate transaction and sellers rely on deposit information to make decisions with respect to the transaction, so it is imperative that the information on the contract is accurate. The Committee noted that the public must be confident that registrants will clearly and accurately represent all terms and conditions on the contract of purchase and sale.
- [79] Mr. Amit's breach of s. 58(1)(b)(v) of the *Act* is similarly serious to that of the registrant in *Carriere*. In both instances, the registrant drafted a contract that did not clearly indicate that the brokerage had not yet received a deposit from the buyer.
- [80] The decisions in *Dodman* and *Carriere* were rendered before 2008. In 2008, the real estate market in Saskatchewan underwent 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 these decisions were rendered.
- [81] An order of reprimand and a \$1,000 fine are appropriate sanctions for Mr. Amit's breach of s. 58(1)(b)(v) of the *Act*.
- [82] As Mr. Amit has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

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

[84] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(a) of *The Real Estate Act*:

- a. Mr. Amit shall receive an order of reprimand for the violation of s. 39(1)(a);
- b. Mr. Amit 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*; and
- c. Mr. Amit's registration shall be terminated if he fails to make payment as set out above.

[85] With respect to Count 2, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of s. 58(1)(b)(v) of the *Act*:

- a. Mr. Amit shall receive an order of reprimand for the violation of s. 58(1)(b)(v);
- b. Mr. Amit shall, within 60 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 *Act*; and
- c. Mr. Amit's registration shall be terminated if he fails to make payment as set out above.

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

Dated at Regina in Province of Saskatchewan, this 3rd day of November 2021.

“David M. Chow”
Hearing Committee Chairperson