

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

*Chung (Re)*, 2022 SKREC 4

Date: February 14, 2022  
Commission File: 2021-02

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF JOHN CHUNG**

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

Jeffrey P. Reimer - Chairperson

Alberta Mak

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. Chung breached Commission Bylaw 726(c) by creating an advertisement that was reasonably capable of misleading its recipient.

**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(c) 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:  
(c) reasonably capable of misleading the recipient or intended recipient;*

**FACTS:**

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

[5] Mr. Chung 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 August 22, 2007.

[6] Mr. Chung 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
- Property Management as a Professional Career.

[7] Mr. Chung has completed the continuing professional development seminars each registration year since 2006-2008.

[8] Mr. Chung is presently registered under the provisions of *The Real Estate Act* as a salesperson with Regina Realty Sales Ltd. O/A Royal LePage Regina Realty.

[9] In early December of 2020, the Buyer’s Representative instructed his real estate agent to request an information package regarding the Property. The information package included a pro forma statement of the financials. The Property is a 22-unit multi-family apartment complex.

[10] The Property was owned by the Corporate Seller and Mr. Chung and another registrant were named as the co-listing agents.

[11] Mr. Chung had created a feature sheet respecting the Property. The document included a spreadsheet titled “Financials – Proforma”. The spreadsheet noted the “Gross Income (Actual)” as \$146,340.

[12] In preparing the spreadsheet, Mr. Chung relied solely on information provided to him (and believed by him to be accurate) by the Corporate Seller, and in particular a profit/loss statement prepared by the Corporate Seller which shows a

gross income of \$143,928.30. Prior to publishing the spreadsheet, Mr. Chung provided it to the Corporate Seller to review and confirm the information (as is his standard practice).

- [13] The spreadsheet Mr. Chung produced showed the potential net operating income of the Property. As with most pro formas, assumptions would be made as he was projecting income into the future. Mr. Chung assumed potential buyers viewing the spreadsheet would understand that the figures were a projection because the spreadsheet was titled “pro forma”, it had a line for vacancy rate, and it did not include any specific dates or fiscal period.
- [14] Mr. Chung used the word “actual” in the spreadsheet because, at the time he was preparing the pro forma, he used actual rents that the Corporate Seller was getting for each unit or had gotten at different points in the recent past, as opposed to the rents that could be obtained if the units were renovated or the market were stronger. Since it was a pro forma, Mr. Chung prepared it on the assumption that all units were occupied, but also assumed that the subsequent line showing the vacancy rate would flag that the number would be based on full occupancy. Mr. Chung wanted to show potential buyers that the rents were realistic and so used the word “actual”.
- [15] The pro forma included a disclaimer at the bottom of the page as follows:
- “Not intended to solicit any party under a relevant contract. The information above is derived from sources believed reliable; however, no warranties or representations are being made regarding such information including the potential income, costs, or profits associated with a property. Interested parties should consult a qualified professional for investment, financial or tax advice.”
- [16] On December 17, 2020, the Buyer’s Representative wrote an offer to purchase the Property. Pursuant to the contract, the Corporate Seller was to provide the Buyer with various documents, including monthly statements of gross revenue and operating costs. The offer was made subject to, among other things, the Buyer being satisfied with a review of the last 12 months’ income and expense statements within 72 hours of receipt.
- [17] The Corporate Seller signed acceptance of the offer on December 18, 2020.
- [18] The profit/loss statement to August 31, 2020, which was provided to the Buyer showed a gross income of \$143,928.30, which did not match the \$146,340 claimed as actual rent on the pro forma plus \$1,200 for laundry. The Buyer was unsure how the gross rent had been calculated in the pro forma because none of the monthly rent rolls totalled the amount claimed and because the pro forma did not account for the vacancy rate disclosed in the financials.
- [19] Ultimately, the Buyer did not complete the purchase of the Property. To Mr. Chung’s knowledge, the Buyer did not suffer any harm as a result.

[20] While Mr. Chung can understand and appreciate the Buyer's frustration with the wording of the pro forma, he did not intend to misrepresent the Property. Mr. Chung made an honest mistake in his wording of the pro forma.

## **REASONS:**

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

### Mitigating Factors

[22] Mr. Chung was co-operative with the investigation.

[23] Mr. Chung has no previous sanction history.

### Aggravating Factors

[24] There are no aggravating factors at play.

### Prior Decisions & Other Considerations

[25] 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.

[26] 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.*

[27] Mr. Chung created a pro forma with respect to a property which described the statement of rental income as “Gross Income (Actual)” when, in fact, the number did not represent an amount of gross rental income that had actually been collected by the property owner at any point in time. Mr. Chung chose to describe the stated income as “actual” because it was based on rents that had been collected with respect to the rental units at various points in the recent past.
2. *The role of the offending member in the breaches.*

[28] Mr. Chung had co-listed the Property for sale with another registrant from his brokerage, but he indicates that he was solely responsible for the pro forma in question.
3. *Whether the offending member suffered or gained as a result of the breaches.*

[29] There is no evidence to suggest that Mr. Chung 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.*

[30] There is no evidence of actual consumer harm arising out of Mr. Chung’s breach of the bylaw, as the potential buyer was provided with financial information in order that he might carry out his due diligence with respect to the Property.
5. *The need for specific deterrence to protect the public.*

[31] Specific deterrence is needed to ensure that, going forward, Mr. Chung carefully considers his wording when drafting advertisements to ensure that the information contained in said advertisements is accurate and clear to potential recipients.
6. *The need for general deterrence to protect the public.*

[32] General deterrence is needed to remind all registrants of the importance of clearly drafted advertisements that contain information that is accurate and clear to potential recipients.
7. *The need to maintain the public’s confidence in the integrity of the profession.*

[33] Members of the public must be confident that the advertisements created by registrants include only accurate information that is presented clearly so as to avoid misunderstandings.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*

[34] Mr. Chung’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. Chung’s breach of Bylaw 726(c)?**

- [35] In *Lautermilch (Re)*, 2019 SKREC 7 (file #2018-26) (“Lautermilch”), Eldon Lautermilch was issued an order of reprimand and a \$1,750 fine for his breach of Bylaw 726(c). Mr. Lautermilch listed a property that was located on an unnamed island in Saskatchewan. The location of the property became an issue because the MLS® would not allow a listing that did not include a civic address. In consultation with his broker and the local real estate association, an MLS® Listing was created and published that identified the address of the property as Weber Island near La Ronge when, in fact, the property was not located on Weber Island. Comments on the listing stated that the property was on its own unnamed island. The owner of the only property actually located on Weber Island had contacted Mr. Lautermilch about the listing and requested that he remove the reference to Weber Island, but he did not do so.
- [36] Mr. Lautermilch had no previous sanction history and was cooperative with the investigation. Mr. Lautermilch had consulted with his broker and the Association about how to advertise the property on the MLS®.
- [37] Mr. Lautermilch did not amend the listing after he was contacted by the owner of the only property actually located on Weber Island and specifically asked to do so.
- [38] Mr. Chung’s breach of Bylaw 726(c) is more serious than that of the registrant in *Lautermilch*. The MLS® listing Mr. Lautermilch created did include the correct information about the location of the property, albeit alongside an inaccurate statement of the location, and he had consulted with his broker and real estate association about how to complete the listing.
- [39] In *Mahon (Re)*, 2018 SKREC 20 (file #2016-70) (“Mahon”), Marianne Mahon was issued an order of reprimand and a \$2,000 fine for her breach of Bylaw 726(c). Ms. Mahon had listed a property for sale that was comprised of two lots. Ms. Mahon had assumed that the property was made up of two lots that were separated by a fence, one of which included a house and garage and the other of which was clear. Ms. Mahon had attempted to contact the municipal office, but could not get any information. The MLS® Listing Ms. Mahon created stated: “Great location on 2 lots. Corner lot has 1 bedroom house with single garage, other lot is clear.” Ms. Mahon told a potential buyer that the property included the lot with the “For Sale” sign on it that was surrounded by a fence and the vacant lot next to it. The buyer purchased the property and placed her recreational camper on the vacant lot. Shortly thereafter, the buyer was contacted by a town bylaw officer and told she would have to remove the camper from the vacant lot because it was town property. Ms. Mahon subsequently measured the lot and discovered that her initial assumption had been incorrect and that the vacant lot on the other side of the fence was not part of the property.
- [40] Ms. Mahon had no previous sanction history and was cooperative with the investigation. She acknowledged her error and apologized when questioned by her buyer client. Ms. Mahon signed a consent order acknowledging her error.

- [41] Ms. Mahon acted as a limited dual agent in the transaction. Registrants must be even more diligent when there are no other registrants involved in a transaction to ensure the information presented to the parties is accurate and the transaction is managed properly.
- [42] Mr. Chung's breach of Bylaw 726(c) is less serious than that of the registrant in Mahon. The purchaser of the property listed for sale by Mr. Chung discovered that the figure stated in the pro forma prepared by Mr. Chung did not, in fact, represent the actual gross income collected with respect to the property before the purchase was complete.
- [43] In Shank (Re), 2011 SKREC 3 (file #2010-45) ("Shank"), Doris Shank was issued an order of reprimand and a \$500 fine for breaching Bylaw 726(c) by referring to "new listings" in her advertising when the listing did not, in fact, meet the criteria of her "new listing" policy. The newspaper in which the advertisements were published had failed to make changes to correct the error after the first proof was viewed and the team did not wait for the second proof before approving the advertisement. Since the error, the brokerage changed its policy to require that the final, correct proof be viewed prior to approval of an advertisement.
- [44] Ms. Shank had no prior sanction history and she had been in the industry for 14 years. The brokerage had not intended for the misleading advertisement to proceed. The Hearing Committee noted that the newspaper's acknowledgement of its error kept the fine from being significantly higher.
- [45] The Committee stressed that a brokerage must ensure that misleading or incorrect advertising is not placed before the public as it could lead to a lack of respect for the real estate industry. Registrants and brokers must supervise the advertising process, including establishing a proper and effective system for the review of advertising that goes out from the brokerage.
- [46] Mr. Chung's breach of Bylaw 726(c) is more serious than that of the registrant in Shank. In Shank, the newspaper in which the advertisements were published bore some responsibility for the error; Mr. Chung has taken sole responsibility for the creation and publication of the pro forma.
- [47] In Emde (Re), 2003 SKREC 9 (file #2002-56) ("Emde"), Gary Emde was issued an order of reprimand and a \$250 fine for breaching Bylaw 726 by preparing a feature sheet that did not clearly indicate whether or not a basement suite conformed to municipal bylaws. After beginning renovations on the basement, the buyers learned that there was a zoning bylaw deficiency, and many construction requirements would be necessary to bring the building up to code.
- [48] The Hearing Committee noted that there was no intent to mislead on Mr. Emde's part and that he was not representing the buyers.

- [49] Mr. Emde was aware that the basement suite was not a legal suite and had indicated this fact on advertisements published elsewhere. The Committee noted that registrants may not know what is important to different buyers, so they must provide accurate information that will not be capable of misleading consumers.
- [50] Mr. Chung's breach of Bylaw 726 is more serious than that of the registrant in Emde. Mr. Emde's advertisement was silent as to whether or not the basement suite conformed to municipal bylaws while Mr. Chung explicitly and inaccurately described the statement of income in the pro form as "actual".
- [51] The decision in Emde was 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 this decision was rendered.
- [52] An order of reprimand and a \$2,000.00 fine are appropriate sanctions for Mr. Chung's breach of Bylaw 726(c).
- [53] As Mr. Chung has agreed to sign this consent order, there will be no order as to costs.

#### **CONSENT ORDER:**

- [54] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Chung, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [55] 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 726(c):
- a. Mr. Chung shall receive an order of reprimand for the violation of Bylaw 726(c);
  - b. Mr. Chung shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$2,000.00 fine for the said violation of the *Act*; and
  - c. Mr. Chung's registration shall be terminated if he fails to make payment as set out above.
- [56] There shall be no order as to costs.

Dated at Regina, in the province of Saskatchewan, this 14<sup>th</sup> day of February 2022.

"Jeffrey P. Reimer"  
Hearing Committee Chairperson