

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

*Sharma (Re)*, 2022 SKREC 1

Date: January 24, 2022  
Commission File: 2021-30

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF GAUTAM SHARMA**

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

Randal C. Touet - Chairperson

Tim Hammond

Anne Parker

**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. Sharma failed to notify the 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 *Act*, Mr. Sharma 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. Sharma’s Statement of Facts and Admissions, which includes the following relevant points:

[5] Mr. Sharma 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 15, 2019.

[6] Mr. Sharma 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. Sharma has completed the continuing professional development seminars each registration year since 2019-2020.

[8] Mr. Sharma is presently registered under the provisions of *The Real Estate Act* as a salesperson with 102043961 Saskatchewan Ltd. O/A Re/Max Bridge City Realty.

[9] In April of 2021, the Property was listed for sale by Brokerage A.

[10] Registrant A acted as the listing agent.

- [11] On April 2, 2021, the Buyers wrote an offer to purchase the Property. Paragraph 1.2(b) of the offer stated that a \$5,000 deposit by cheque had been received by the buyer's brokerage and would be deposited into the brokerage trust account within two business days of acceptance of the offer.
- [12] Mr. Sharma drafted the April 2 offer to purchase the Property.
- [13] The Buyers had not provided an initial deposit when the offer was written on April 2, 2021.
- [14] On April 2, 2021, the sellers wrote a Counter Offer increasing the purchase price and including the following item: "Deposit to be increased to \$10,000.00 upon removal of conditions by April 14<sup>th</sup> 2021".
- [15] On April 3, 2021, the Buyers signed acceptance of the Counter Offer.
- [16] On April 6, 2021, one of the buyers wrote a \$5,000 cheque representing the initial deposit on the Buyers' purchase of the Property.
- [17] Mr. Sharma had told the Buyers that the deposit cheque needed to be deposited into the trust account within two business days of the accepted Counter Offer, but the client could not come to the office until April 6, 2021. The cheque was received that day and deposited into the brokerage's trust account on April 7, 2021.
- [18] On April 12, 2021, the Buyers and the sellers signed an Amendment establishing a \$1,000 holdback to be held by the buyer's lawyer until the successful completion of several listed items.
- [19] On April 14, 2021, the Buyers signed a Notice to Remove Conditions removing all conditions on their purchase of the Property.
- [20] Registrant A assumed that Mr. Sharma had the deposit increase in hand when he received the Notice to Remove Conditions.
- [21] On April 14, 2021, Mr. Sharma advised the Buyers that the deposit increase needed to be in the trust account. The Buyers did not come into the office until April 19, 2021.
- [22] On April 19, 2021, one of the buyers wrote a cheque for \$5,000 representing the deposit increase on the purchase of the Property.
- [23] The deposit cheque was received on April 19, 2021 and immediately deposited.
- [24] Possession took place on May 15, 2021 as per the contract of purchase and sale.

- [25] On May 17, 2021, a lawyer involved in the transaction sent a letter advising that the sale of the Property had been concluded and title had registered in the names of the Buyers.
- [26] On May 25, 2021, the Buyers signed an Amendment that included the following: “Initial deposit of \$5000 to be received within 3 business days of acceptance. Further deposit of \$5,000 to be received within 5 business days of removal of final condition(s).” The document indicated that it was signed on April 3, 2021, but the electronic signature stamps of the Buyers indicate that it was, in fact, signed on May 25.
- [27] On May 25, 2021, Mr. Sharma sent an email to Registrant A asking him to have his seller clients sign an attached amendment handling the deposit. Mr. Sharma told him that the requirement was coming from Mr. Sharma’s brokerage.

## **REASONS:**

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

### Mitigating Factors

- [29] Mr. Sharma was co-operative with the investigation.
- [30] Mr. Sharma had no previous sanction history.
- [31] Mr. Sharma had only been registered for about a year and a half at the time of the breach.

### Aggravating Factors

- [32] Mr. Sharma failed to notify the listing agent that both the initial deposit and the deposit increase were several days late.

### Prior Decisions & Other Considerations

- [33] 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.

[34] 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.*

[35] Mr. Sharma represented the buyers of a property. Although the contract of purchase and sale he drafted indicated that a deposit had already been received by his brokerage, the initial deposit was actually received 4 days after the offer was written. The deposit was supposed to be increased upon removal of conditions, but the deposit increase was actually received 5 days after conditions were removed.

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

[36] Mr. Sharma was the only registrant involved in his breaches of the legislation. Mr. Sharma suggested that the listing agent also has a responsibility to ensure that a deposit was received in accordance with the contract of purchase and sale, but previous hearing decisions make it clear that it is the buyer's agent who is responsible for notifying the listing agent of a late or missing deposit.

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

[37] There is no evidence to suggest that Mr. Sharma suffered a loss or enjoyed a benefit as a result of his breaches of the legislation.

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

[38] There is no evidence of actual consumer harm arising out of Mr. Sharma's breaches of the legislation, but the risk of harm to consumers when registrants draft inaccurate contracts and do not advise of late or missing deposits is significant.

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

[39] Specific deterrence is needed to ensure that Mr. Sharma understands that, when he is acting as a buyer's agent, it is his responsibility to draft contracts that contain only accurate information and to notify the listing agent or the seller in the event a deposit has not been received in accordance with the contract of purchase and sale.

6. *The need for general deterrence to protect the public.*
- [40] General deterrence is needed to remind all registrants 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. All registrants must understand the importance of drafting contracts that include only accurate information.
7. *The need to maintain the public's confidence in the integrity of the profession.*
- [41] 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.
- [42] Clients rely on registrants to accurately and clearly draft the contracts of purchase and sale they are entering to 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.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [43] Mr. Sharma'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. Sharma's breach of s. 39(1)(a) of the Act?**

- [44] 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.
- [45] 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.

- [46] The Hearing Committee considered Mr. Miron's lack of sanction history and the length of time he had been in the real estate industry.
- [47] 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.
- [48] Mr. Sharma'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. Mr. Sharma's buyer clients did ultimately deliver the deposit and deposit increase to the brokerage and the transaction completed.
- [49] 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.
- [50] 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.
- [51] 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.
- [52] Mr. Sharma'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. Mr. Sharma did receive the deposit funds from his clients and the transaction completed.

- [53] 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.
- [54] 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.
- [55] 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.
- [56] Mr. Sharma'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. Mr. Sharma did receive the deposit and increase from his clients and the transaction did complete.
- [57] An order of reprimand and a \$1,000 fine are appropriate sanctions for Mr. Sharma's breach of s. 39(1)(a) of the *Act*.

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

- [58] 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.
- [59] 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.
- [60] 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.
- [61] Mr. Sharma's breach of s. 58(1)(b)(v) of the *Act* is less serious than that of the registrant in *Dodman*. Mr. Sharma does not have a previous sanction history and the transaction in which he was involved did not include the suspicious elements present in *Dodman*.
- [62] In *Carriere (Re)*, [2001 SKREC 1](#) (file #2000-32) ("*Carriere*"), Lavern 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.
- [63] 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.

- [64] 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.
- [65] Mr. Sharma'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 inaccurately stated that the buyer's brokerage had received a deposit cheque from the buyer.
- [66] 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.
- [67] An order of reprimand and a \$1,000 fine are appropriate sanctions for Mr. Sharma's breach of s. 58(1)(b)(v) of the *Act*.
- [68] As Mr. Sharma has agreed to sign this consent order, there will be no order as to costs.

#### **CONSENT ORDER:**

- [69] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Sharma, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [70] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(a) of *The Real Estate Act*:
- a. Mr. Sharma shall receive an order of reprimand for the violation of section 39(1)(a) of the *Act*,
  - b. Mr. Sharma shall, within 30 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. Sharma's registration shall be terminated if he fails to make payment as set out above.

- [71] 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. Sharma shall receive an order of reprimand for the violation of s. 58(1)(b)(v) of the *Act*;
  - b. Mr. Sharma shall, within 30 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. Sharma's registration shall be terminated if he fails to make payment as set out above.

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

Dated at Saskatoon in the Province of Saskatchewan this 24<sup>th</sup> day of January 2022.

"Randal C. Touet"  
Hearing Committee Chairperson