

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

Lang (*Re*), 2023 SKREC 2

Date: April 24, 2023
Commission File: 2021-66

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF ROBERT LANG**

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

Randal C. Touet - Chairperson

Tim Hammond

Bob 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)(c) of *The Real Estate Act*, Mr. Lang breached s. 8(4) of the *Regulations* by failing to respond to requests made by a review officer by the date set out in the request.

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] Section 8(4) of the *Regulations* states:

“A registrant shall respond, in writing, to the request made pursuant to subsection (3) and deliver the response to the review officer by the date set out in the request.”

FACTS:

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

[5] Mr. Lang 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 March 12, 2007.

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

- Real Estate as a Professional Career;
- Residential Real Estate as a Professional Career;
- Principles of Real Property Law; and
- Principles of Real Estate Appraisal.

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

[8] Mr. Lang is presently registered under the provisions of *The Real Estate Act* as a salesperson with TTKC Management Inc. O/A Sutton Group - Results Realty.

[9] In March of 2021, I represented the Sellers in the sale of the Property.

[10] In May of 2021, the Sellers and the Buyer entered into a contract of purchase and sale respecting the Property. Pursuant to this contract, the canister and attachments for the central vacuum were included in the purchase of the Property.

[11] The Buyer took possession of the Property on July 16, 2021 and, shortly thereafter, realized that the central vacuum system and attachments were missing from the Property. Mr. Lang followed up with the Sellers and, in September of 2021, delivered the central vacuum canister and attachments to the Property.

- [12] The Buyer was not happy with the condition of the items or how long it had taken for the items to be delivered and filed a complaint against Mr. Lang with the Commission.
- [13] On November 2, 2021, initial correspondence was sent to Mr. Lang advising of the complaint and requesting him to provide a response and all transaction documents that came to exist with his brokerage with respect to the sale of the Property. His response was requested on or before November 16, 2021.
- [14] As per Commission policy, Mr. Lang's broker, Keith Bartlett, was copied on all correspondence requiring a response that was sent to him.
- [15] Mr. Lang did not respond to the November 2 correspondence.
- [16] On November 18, 2021, a reminder was sent to Mr. Lang requesting his response to the previous correspondence on or before December 2, 2021.
- [17] Mr. Lang replied that same day to say that he had received the November 18 email, but that the November 2 email had ended up in his junk email folder. He advised that he would respond to the November 2 letter shortly.
- [18] On November 22, 2021, Mr. Lang provided a statement responding to the Buyer's complaint. He did not provide copies of any transaction documents.
- [19] On November 29, 2021, an email was sent to Mr. Lang with an additional question. His response was requested on or before December 13, 2021.
- [20] Mr. Lang provided his response to Commission staff on December 10, 2021.
- [21] On January 28, 2022, an email was sent to Mr. Lang with an additional question. His response was requested on or before February 11, 2022.
- [22] Mr. Lang did not respond to the January 28 email.
- [23] On February 16, 2022, a reminder was sent to Mr. Lang requesting his response on or before March 2, 2022.
- [24] Mr. Lang did not respond to the February 16 email.
- [25] On March 3, 2022, a second reminder was sent to Mr. Lang requesting his response on or before March 17, 2022.
- [26] On March 3, 2022, Mr. Lang replied to advise that he could not open the attachment and requested that it be sent again.
- [27] That same day, Commission staff replied to Mr. Lang with the additional question from the January 28 email set out in the body of the email itself.

- [28] Mr. Lang provided his response to Commission staff on March 15, 2022.
- [29] On March 29, 2022, an email was sent to Mr. Lang with an additional question. His response was requested on or before April 12, 2022.
- [30] Mr. Lang did not reply to the March 29 email.
- [31] On April 14, 2022, a reminder was sent to Mr. Lang requesting his response on or before April 21, 2022.
- [32] Mr. Lang did not reply to the April 14 email.
- [33] On April 22, 2022, a second reminder was sent to Mr. Lang requesting his response on or before April 29, 2022.
- [34] Mr. Lang did not reply to the April 22 email.
- [35] On May 2, 2022, a third reminder was sent to Mr. Lang specifically reminding him of his professional obligation to respond to requests for information from a review officer of the Commission and requesting a response by May 9, 2022.
- [36] Mr. Lang did not reply to the May 2 email.
- [37] On May 10, 2022, a fourth reminder was sent to Mr. Lang advising that, should he fail to provide a response on or before May 17, 2022, the Commission would pursue sanctions against him for his failure to reply.
- [38] On May 10, 2022, Mr. Lang replied to say that he had already replied to say that he could not open the attachment and requested that it be sent to him in a different format.
- [39] At the time, Mr. Lang did not realize that his email stating he could not open the attachment was actually sent in response to the January 28 email. That question had been sent to him on March 3 and he provided his response on March 15.
- [40] On May 10, 2022, Commission staff sent an email to Mr. Lang setting out the question that had been originally posed in the March 29 email.
- [41] Mr. Lang provided his response via email on May 18, 2022. He apologized for the late reply as his email was not getting the attachments.
- [42] On June 8, 2022, an email was sent to Mr. Lang requesting copies of the transaction documents that came to exist with his brokerage with respect to the listing and sale of the Property. His response was requested on or before June 22, 2022.

- [43] Mr. Lang did not reply to the June 8 email.
- [44] Between June 8 and 13, 2022, Mr. Lang was in Calgary. He was the head coach for Team Saskatchewan for the Canada Games, and this required he be out of town a lot over the summer.
- [45] On June 23, 2022, a reminder was sent to Mr. Lang requesting his response on or before July 7, 2022.
- [46] Mr. Lang did not reply to the June 23 email.
- [47] Mr. Lang was in Bismarck, North Dakota at a games camp from June 28 to August 2, 2022.
- [48] On July 8, 2022, a second reminder was sent to Mr. Lang requesting his response on or before July 22, 2022.
- [49] Mr. Lang did not reply to the July 8 email.
- [50] Mr. Lang was in Rocky Mountain, Alberta for wrestling camp from July 17 to 24, 2022.
- [51] On July 25, 2022, a third reminder was sent to Mr. Lang specifically reminding him of his professional obligation to respond to requests for information from a review officer of the Commission and requesting a response by August 2, 2022.
- [52] Mr. Lang did not reply to the July 25 email.
- [53] On August 4, 2022, a fourth reminder was sent to Mr. Lang advising that, should he fail to provide a response on or before August 11, 2022, the Commission would pursue sanctions against him for his failure to reply.
- [54] Mr. Lang did not reply to the August 4 email.
- [55] Mr. Lang was in Niagara Falls for the Canada Games from August 5 to 14, 2022.
- [56] Mr. Lang's email access was spotty while he was out of the country. He did not have many active files while he was coaching, and he had another agent in Regina covering his listings.
- [57] On August 16, 2022, Commission staff sent an email to Mr. Lang's broker, Keith Bartlett, requesting copies of the transaction documents and asking if Mr. Bartlett had followed up with Mr. Lang about his ongoing failure to respond to emails from Commission staff. A response was requested on or before August 30, 2022.

- [58] That same day, Mr. Bartlett replied to Commission staff via email to advise that he had told Mr. Lang repeatedly to respond to requests for information from Commission staff. The transaction documents were attached to the email.
- [59] On August 16, 2022, Mr. Lang sent an email to Commission staff advising that he had been out of town and that he would reply to the previous email the next day. He noted that he had sent an email the previous week while he was out of the country, but it might not have gone through.
- [60] This was the first time Mr. Lang advised Commission staff that he had been travelling over the summer.
- [61] On August 19, 2022, Commission staff sent Mr. Lang an email with questions about his out-of-town travel and how he had handled his active files while he was away. A response was requested on or before September 2, 2022.
- [62] Mr. Lang replied that same day to advise that he would have the documents scanned and emailed to the Commission that morning. He stated that he was in Bismarck, North Dakota and then in Niagara Falls for the Canada Games in which he was coaching.
- [63] Commission staff replied that a more specific response to the questions set out in the previous email was required. Mr. Lang was asked to ensure the Commission was in receipt of his reply by September 2.
- [64] On August 19, 2022, Mr. Lang sent an email to Commission staff to which he had attached the transaction documents.
- [65] On September 6, 2022, Commission staff sent an email to Mr. Lang advising that he had yet to respond to the questions set out in the August 19 email. A response was requested on or before September 13, 2022.
- [66] Mr. Lang did not reply to the September 6 email.
- [67] On September 14, 2022, a reminder was sent to Mr. Lang advising that, should he fail to provide a response on or before September 21, 2022, the Commission could pursue sanctions against him for his failure to reply.
- [68] On September 21, 2022, Mr. Lang provided his response. He apologized for his late reply.

REASONS:

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

Mitigating Factors

[70] Mr. Lang has no previous sanction history.

Aggravating Factors

[71] There are no aggravating factors.

Prior Decisions & Other Considerations

[72] 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.

[73] 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.

1. The nature and gravity of the breaches of the Code of Ethics.

[74] A complaint was filed against Mr. Lang by a member of the public. Throughout the investigation, Mr. Lang repeatedly failed to respond to requests for information from the review officer by the deadline specified in the request. After Mr. Lang’s broker was contacted and asked for an explanation of Mr. Lang’s failure to respond, Mr. Lang finally advised Commission staff that he had been travelling at some points during the investigation and that his travels had impeded his ability to respond in a timely manner.

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

[75] Mr. Lang is the only registrant responsible for his breach of the legislation. Mr. Lang’s broker indicated that he had repeatedly told Mr. Lang to respond to correspondence from the Commission.

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

[76] There is no evidence to suggest that Mr. Lang suffered a loss or enjoyed a benefit as a result of her breach of the legislation.

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

[77] There is no evidence of actual consumer harm arising out of Mr. Lang's breach of the legislation, but the potential harm posed to the general public and the industry by registrants who do not cooperate with Commission investigators is significant.

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

[78] Specific deterrence is needed to remind Mr. Lang of his professional obligations. Several of the emails sent to Mr. Lang in the course of the investigation referred specifically to the fact that failing to reply to requests for information from the Commission could lead to disciplinary action, but those warnings do not appear to have had much of an impact.

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

[79] General deterrence is needed to remind all registrants of their obligation to cooperate in the Commission's investigation of complaints.

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

[80] The public must be reassured that the Commission is committed to enforcing the legislation and that registrants are not permitted to hinder the investigation of complaints by simply refusing to cooperate.

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

[81] Mr. Lang'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. Lang's breach of s. 8(4) of the Regulations?

[82] In *Dodman (Re)*, [2019 SKREC 9](#) (file #2017-85) ("*Dodman*"), Dale Dodman was issued an order of reprimand and a \$2,500 fine for her breach of s. 8(4) of the *Regulations*. In December of 2014, Commission staff learned of several charges laid against Mrs. Dodman under federal tax laws. Over the course of several months, Mrs. Dodman was asked to provide updates on the proceedings, which she did. On February 23, 2017, Mrs. Dodman pled guilty to charges under the *Income Tax Act* and the *Excise Tax Act*. She did not notify the Commission of these convictions. Between February and December of 2017, Mrs. Dodman continued to correspond with Commission staff about the charges that had been laid against her, but she did not advise of her guilty pleas or convictions. On December 6, 2017, Mrs. Dodman was advised that Commission staff had

contacted the court and been advised that she had been sentenced on February 23 with respect to the charges at issue.

- [83] Mrs. Dodman's sentence for her violations of the tax legislation required her to pay a \$1,000 fine to the court for each of the four counts on which she was convicted.
- [84] Mrs. Dodman had been corresponding with Commission staff about the charges against her for several months at the time of her conviction. She knew, or ought to have known, that she should have reported her conviction to Commission staff. Mrs. Dodman never notified Commission staff of the convictions. The information was obtained directly from the court. Mrs. Dodman had a previous sanction history, including a charge for failing to provide substantive answers to questions from a review officer.
- [85] Mr. Lang's breach of the *Regulations* is similarly serious to that of the registrant in *Dodman*. Although Mr. Lang does not have a previous sanction history, he failed to reply at all to several requests for information from Commission staff. Mrs. Dodman did reply to correspondence from Commission staff, though her responses omitted important information.
- [86] In *Schweitzer (Re)*, [2015 SKREC 11](#) (file #2014-27) ("*Schweitzer*"), Alvin Schweitzer was issued an order of reprimand and a \$2,500 fine for his breach of s. 8(4) of the *Regulations*. Mr. Schweitzer received a \$50,000 deposit from a buyer client. This money was deposited into the brokerage's business account rather than into the trust account and Mr. Schweitzer made several cash withdrawals from this money for unknown purposes. When the transaction ultimately collapsed, Mr. Schweitzer was only able to return \$30,000 of the deposit to the buyer. During the Commission's investigation, Mr. Schweitzer was asked to provide information on multiple occasions, but he failed to provide any substantive response.
- [87] The Hearing Committee noted that a registrant cooperating with the Commission is integral to the Commission's duty to investigate complaints and, by doing so, to provide protection to the public. Mr. Schweitzer's decision to ignore legitimate requests of the Commission for account information frustrated the necessary investigative work underway, causing a delay in the buyer's very reasonable request for redress of Mr. Schweitzer's conduct.
- [88] The Committee also noted that it would have levied a \$3,000 fine against Mr. Schweitzer for the breach, but that it was bound by the aggregate cap of \$15,000.
- [89] Mr. Lang's breach of the legislation is less serious than that of the registrant in *Schweitzer*. Mr. Lang did eventually respond to requests for information from Commission staff. However, the global sanction issued in *Schweitzer* capped the

fine at \$2,000 and likely mitigated against a higher fine for the breach of s. 8(4) of the *Regulations*.

- [90] In May of 2020, the provincial legislature amended s. 38 of The Real Estate Act to increase the maximum fines that can be ordered against registrants found guilty of professional misconduct or professional incompetence. The previous iteration of the legislation capped fines at \$5,000 for each finding up to a maximum of \$15,000 in the aggregate for all findings. The new maximum fine for each finding of professional misconduct or professional incompetence was increased to \$25,000 up to \$100,000 in the aggregate for all findings. While this legislative change does not invalidate the precedents to be found in previous hearing decisions, it must be taken as a strong signal from lawmakers that the fines ordered against registrants should be increased so as to ensure the protection of the public.
- [91] An order of reprimand and a fine of \$4,000 are appropriate sanctions for Mr. Lang's breach of s. 8(4) of the *Regulations*.
- [92] As Mr. Lang has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [93] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Lang, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [94] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of s. 8(4) of the *Regulations*:
- a. Mr. Lang shall receive an order of reprimand for the violation of s. 8(4) of the *Regulations*;
 - b. Mr. Lang shall, within 60 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$4,000.00 fine for the said violation of the *Regulations*; and
 - c. Mr. Lang's registration shall be terminated if he fails to make payment as set out above.
- [95] There shall be no order as to costs.

Dated at Saskatoon this 24th day of April 2023.

Randal C. Touet,
Hearing Committee Chairperson