

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

Royal LePage Regina Realty (*Re*), 2022 SKREC 6

Date: July 20, 2022
Commission File: 2021-69

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF ROYAL LEPAGE REGINA REALTY**

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

David Chow, Q.C. - Chairperson

Allan Myers

Dean Staff

CHARGE and ADMISSION OF MISCONDUCT:

[1] The brokerage 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*, in that it breached s. 33(1)(a) of the *Act* by failing to notify the Commission in writing within five days of a change in the address of the main office of the brokerage.

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 33(1)(a) states:

*“A brokerage shall notify the Commission in writing no later than five days after the occurrence of any of the following:
(a) a change in the address of its main office or a change in the address of a branch office;”*

FACTS:

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

[5] In October of 2021, a member of the Commission staff was corresponding with the Office Manager for Royal LePage Regina Realty about a registrant of the brokerage. The staff member noted a graphic in the Office Manager’s email signature that said, “We’ve moved!” and gave the following address: 2160 Victoria Avenue E, Regina, SK.

[6] The staff member followed up and, on October 21, 2021, the Office Manager indicated that the move had taken place on or about August 10, 2021.

[7] Commission staff contacted Mike Duggleby, the broker for Royal LePage Regina Realty, who confirmed that the brokerage had moved to the Victoria Avenue address.

[8] The Commission was not provided with written notice of the change in the address of the main office of the brokerage within five days of the same.

[9] When contacted about the change of address, Mr. Duggleby indicated that he had done most of the work involved in the move himself because the brokerage and sales staff had been extremely busy over the summer and he didn’t want to take them away from their work. The brokerage was downsizing significantly, meaning there was a lot of leftover furniture to deal with, and the move had to be done in two stages due to incomplete renovations. He acknowledged that the notice was not provided and that he had not prioritized the notification to the Commission while dealing with the moving process.

REASONS:

[10] The Investigation Committee and Royal LePage Regina Realty considered the following as relevant in agreeing to the within consent order:

Mitigating Factors

[11] The brokerage was co-operative with the investigation.

[12] Mr. Duggleby admitted his error when contacted by Commission staff.

Aggravating Factors

[13] Mr. Duggleby is registered as a broker. As the people responsible for ensuring that the registrants and employees of the brokerage are complying with the requirements set out in the legislation, brokers are held to a higher standard of conduct.

[14] The location of the office out of which a brokerage is trading in real estate is fundamental information that the Commission must have at all times.

[15] Mr. Duggleby has a previous sanction history for failing to provide notice to the Commission as required by the legislation. In *Duggleby (Re)*, [2019 SKREC 19](#) (file #2019-03) ("*Duggleby*"), Mr. Duggleby was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 723(c) by failing to notify the Commission within five days of the commencement of civil proceedings against his brokerage with respect to a trade in real estate and of a settlement entered into as a result of those proceedings.

Prior Decisions & Other Considerations

[16] 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.

[17] 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.*
[18] Mr. Duggleby is the broker for Royal LePage Regina Realty. In August of 2021, the brokerage relocated its main office, but Mr. Duggleby failed to provide the Commission with written notification of the move. The Commission learned of the move by chance several months later.
2. *The role of the offending member in the breaches.*
[19] As the broker responsible for the brokerage's compliance with the legislation, Mr. Duggleby 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.*
[20] There is no evidence to suggest that the brokerage 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.*
[21] There is no evidence of actual consumer harm arising out of the brokerage's breach of the legislation.
5. *The need for specific deterrence to protect the public.*
[22] Specific deterrence is needed to remind Mr. Duggleby and the brokerage of the importance of complying with the notification requirements set out in the legislation, particularly since this is the second time Mr. Duggleby has been charged with a failure to do so.
6. *The need for general deterrence to protect the public.*
[23] General deterrence is needed to remind all registrants of the importance of understanding and complying with the notification requirements placed upon them by the legislation.
7. *The need to maintain the public's confidence in the integrity of the profession.*
[24] Members of the public must have confidence in the ability of the Commission to properly regulate the real estate industry and registrants. Registrant conduct that challenges the Commission's oversight, such as failure to provide notice of specified events, damages that consumer confidence.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
[25] The brokerage'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 Royal LePage Regina Realty's breach of s. 33(1)(a)?

- [26] There are no previous hearing decisions dealing with violations of s. 33 of the *Act*, but there are relevant principles that can be drawn from decisions involving breaches of the additional notice requirements set out in Bylaw 723.
- [27] In *Duggleby*, Mr. Duggleby was issued an order of reprimand and a \$1,000 fine for failing to notify the Commission of the commencement of civil proceedings against his brokerage and a subsequent settlement of the same. In February of 2018, Commission staff contacted Mr. Duggleby to advise that the Commission had learned of the claim made against his brokerage and to remind him of obligation to notify the Commission within five days of a claim settling, judgment being issued or other termination of the claim. In October of 2018, Mr. Duggleby entered into a settlement agreement with the plaintiff, but failed to notify the Commission of the same.
- [28] Mr. Duggleby had no previous sanction history and had been a registrant since 2002. He was cooperative with the investigation.
- [29] Mr. Duggleby 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. An article on the topic of a registrant's reporting obligations under Bylaw 723 was published in the February 2015 Register, and a reminder was published in the November 2015 Register. A discipline decision against a registrant for failing to comply with Bylaw 723 and a decision against his broker for failing to ensure his compliance were published in the August 2015 Register. Mr. Duggleby was specifically reminded of his obligation to notify the Commission in the event of a settlement or judgment.
- [30] The current breach of s. 33(1)(a) of the *Act* is more serious than Mr. Duggleby's previous breach of Bylaw 723. This is the second time Mr. Duggleby has engaged in similar conduct. After the decision in *Duggleby*, Mr. Duggleby should have acquainted himself with the notice obligations placed on him as a registrant and as a broker and been more diligent about ensuring he was compliant with the same. As this is the second time Mr. Duggleby has failed to provide the requisite notice to the Commission, a more substantial penalty is warranted. The failure to ensure that the Commission is aware of the office location out of which a brokerage is trading in real estate is a serious lapse.
- [31] In *Dodman (Re)*, [2019 SKREC 9](#) (file #2017-85) ("*Dodman*"), Dale Dodman was issued an order of reprimand and a \$1,000 fine for failing to notify the Commission of her conviction for violations of several federal tax laws. In December of 2014, Commission staff was made aware of several charges against Mrs. Dodman under federal tax laws. Over the course of several months, Mrs. Dodman was asked to provide several updates on the proceedings, which she did provide. On February 23, 2017, Mrs. Dodman pled guilty to, and was convicted of, charges under the *Income Tax Act* and *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. She did not advise staff 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.

- [32] Mrs. Dodman's sentence required her to pay a \$1,000 fine to the court for each of the four counts on which she was convicted.
- [33] 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.
- [34] The brokerage's breach of s. 33(1)(a) of the *Act* is more serious than Mrs. Dodman's breach of Bylaw 723. While Mrs. Dodman had been in regular contact with Commission staff for several months about the charges that had been laid against her, the penalty she was required to pay as a result of her convictions under federal tax laws mitigated against a more serious sanction. Additionally, the location of a brokerage's main office is fundamental information that the Commission must have at all times.
- [35] 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.
- [36] An order of reprimand and a \$2,500.00 fine are appropriate sanctions for Royal LePage Regina Realty's breach of s. 33(1)(a) of the *Act*.
- [37] As Mr. Duggleby has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

[38] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Royal LePage Regina Realty, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:

[39] 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. 33(1)(a):

- a. Royal LePage Regina Realty shall receive an order of reprimand for the violation of s. 33(1)(a);
- b. Royal LePage Regina Realty shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$2,500.00 fine for the said violation of the *Act*; and
- c. Royal LePage Regina Realty's registration shall be terminated if it fails to make payment as set out above.

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

Dated at Moose Jaw, in the province of Saskatchewan, this 20th day of July 2022.

“David M. Chow”,
Hearing Committee Chairperson