

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

Antonini (*Re*), 2022 SKREC 7

Date: October 19, 2022
Commission File: 2022-07

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF MICHAEL ANTONINI**

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

Randal C. Touet - Chairperson

Lori Patrick

Bob Volk

CHARGE and ADMISSION OF MISCONDUCT:

[1] The registrant is charged with and is admitting to professional misconduct as follows:

Count 1:

That Mr. Antonini breached section 39(1)(a) of the *Real Estate Act* by engaging in conduct that is harmful to the best interests of the public by failing to realize in a timely manner that he had not collected the deposit specified in the contract of purchase and sale from his buyer client.

LEGISLATION:

[2] Section 39(1)(a) 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:

(a) it is harmful to the best interests of the public, the registrants or the Commission;”

FACTS:

- [3] In accordance with subsection 9(4) of The Real Estate Regulations (“the Regulations”), the Hearing Committee accepts Mr. Antonini’s Statement of Facts and Admissions, which includes the following relevant points:
- [4] Mr. Antonini has been continuously registered as a salesperson under the provisions of *The Real Estate Brokers Act, The Real Estate Brokers Act, 1987,* and *The Real Estate Act* in the Province of Saskatchewan with the Superintendent of Insurance and the Saskatchewan Real Estate Commission since April 4, 1986.
- [5] Mr. Antonini has taken the following real estate courses:
- Real Estate 150
- [6] Mr. Antonini has completed the continuing professional development seminars each registration year since 2001-2002.
- [7] Mr. Antonini is presently registered under the provisions of *The Real Estate Act* as a salesperson with Century 21 Dome Realty Inc.
- [8] The Sellers were the owners of the Property.
- [9] In March of 2022, the Property was listed for sale with Broker A.
- [10] Salesperson A acted as the listing agent.
- [11] On February 22, 2022, the Buyer wrote an offer to purchase the Property. The offer stated that a \$10,000 deposit was to be received within 72 hours of acceptance. The offer named Mr. Antonini and Century 21 Dome Realty Inc. as the registrants representing the Buyer.
- [12] Mr. Antonini received the initial deposit from his client via personal cheque on February 24, 2022. The cheque was for \$7,000. Mr. Antonini delivered the deposit cheque to his brokerage.
- [13] On March 8, 2022, the Buyer and the Sellers signed an Amendment that changed the purchase price and included the following: “Seller’s Brokerage Commission (only) to be reduced by \$1,000.00.”
- [14] On March 8, 2022, the Buyer and the Sellers signed a Notice to Remove Conditions removing the conditions on the Buyer’s purchase of the Property.

- [15] On or about March 9, 2022, the conveyance department at Mr. Antonini's brokerage reviewed the file and discovered the shortfall in the deposit. This was brought to Mr. Antonini's attention, and he contacted Salesperson A that day to advise that, due to miscommunication between himself and his buyer client, only \$7,000 of the original \$10,000 deposit had been received. Mr. Antonini apologized to Salesperson A.
- [16] The Buyer initially requested an additional 10 days to deposit the remaining \$3,000 with Mr. Antonini's brokerage, but the Sellers were not receptive to the request.
- [17] On March 10, 2022, Mr. Antonini contacted Salesperson A to advise that the Buyer would have the remaining \$3,000 of the deposit before the end of the day.
- [18] On March 10, 2022, the Buyer and the Sellers signed an Amendment that included the following: "Seller acknowledges that deposit for purchase received by Century 21 Dome Realty Inc. for the Property was \$7,000.00. Seller is aware this was \$3,000.00 less than stated on original offer documents. Seller accepts that Century 21 Dome Realty Inc. will receive \$3,000.00 by business days end of March 10, 2022; and deposit into Trust thereafter."

REASONS:

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

Mitigating Factors

- [20] Mr. Antonini has no previous sanction history with the Commission.
- [21] Mr. Antonini has been a registrant since 1986.
- [22] Mr. Antonini was cooperative with the investigation.
- [23] Mr. Antonini notified the listing agent of the shortfall in the deposit as soon as he became aware of the same.
- [24] The shortfall in the deposit was addressed quickly once it was identified.

Aggravating Factors

- [25] The shortfall in the deposit was not noticed until after conditions had been removed.

Prior Decisions & Other Considerations

[26] 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.

[27] 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.

[28] Mr. Antonini represented the purchaser of a property. The contract of purchase and sale indicated that the buyer was to deliver a \$10,000 deposit to the buyer’s brokerage. Mr. Antonini received the deposit cheque from his client on February 24, 2022 but did not notice that the cheque was for only \$7,000. The discrepancy between the deposit stated on the offer and the deposit received was only noticed by Mr. Antonini’s brokerage on March 9, 2022, after conditions had been removed.

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

[29] Mr. Antonini 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.

[30] There is no evidence to suggest that Mr. Antonini 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.

[31] There is no evidence of consumer harm arising out of Mr. Antonini’s breach of the legislation, but there is a possibility of real harm arising out of transactions in which the buyer’s brokerage is not holding a deposit as set out in the contract of purchase and sale.

5. *The need for specific deterrence to protect the public.*
- [32] Specific deterrence is needed to ensure that Mr. Antonini understands the importance of the deposit to a real estate transaction and that registrants have an obligation to ensure that the deposit received accords with the deposit stated in the contract of purchase and sale.
6. *The need for general deterrence to protect the public.*
- [33] General deterrence is needed to emphasize the importance of the deposit to all registrants and to remind them of their obligation to ensure that the deposit stated in the contract of purchase and sale has been received.
7. *The need to maintain the public's confidence in the integrity of the profession.*
- [34] Members of the public rely on registrants to collect deposits on real estate transactions and hold them in trust for the protection of the parties. The parties relying on registrants to receive and hold deposits must be confident that the registrants are sure that the deposit collected corresponds with the deposit set out in the contract of purchase and sale.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [35] Mr. Antonini'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. Antonini's breach of s. 39(1)(a) of the Act?

- [36] In *Sharma (Re)*, 2022 SKREC 1 (file #2021-30) ("*Sharma*"), Guatam Sharma was issued an order of reprimand and a \$1,000 fine for his breach of s. 39(1)(a) of the Act. On April 2, 2021, Mr. Sharma drafted an offer that indicated that a deposit had been received by the buyer's brokerage when, in fact, the buyers had not provided a deposit when the offer was written. The sellers wrote a counter offer that called for a deposit increase upon removal of conditions. The initial deposit was not received until April 6, 2021. Conditions were removed on April 14, 2021, but the deposit increase was not received until April 19, 2021. Mr. Sharma did not advise the listing agent of either of these delays. The buyers took possession of the property on May 15, 2021 and on May 25, 2021, the buyers signed an amendment purporting the change the timeline for receipt of the initial deposit and the deposit increase. The amendment sent to the listing agent on May 25, 2021 was the first he learned of the delays.
- [37] Mr. Sharma was cooperative with the investigation and had no previous sanction history. He had only been registered for about a year and a half at the time of the breach.

- [38] Mr. Sharma failed to notify the listing agent that both the initial deposit and the deposit increase were several days late.
- [39] Mr. Antonini's breach of s. 39(1)(a) of the *Act* is less serious than that of the registrant in *Sharma*. While Mr. Antonini failed to confirm that the deposit received from his buyer client matched his client's obligation pursuant to the contract of purchase and sale, Mr. Sharma was aware that the deposit and deposit increase had not been received on time, but failed to share this information with the listing agent until after the transaction closed. There are more mitigating factors at play in the case at hand.
- [40] In *Amit (Re)*, 2021 SKREC 9 (file #2020-78) ("*Amit*"), Kumar Amit was issued an order of reprimand and a \$1,500 fine for his breach of s. 39(1)(a) of the *Act*. Mr. Amit wrote an offer on behalf of a buyer client that indicated that a \$5,000 deposit had been received by the brokerage. The seller signed acceptance of the offer believing that the initial deposit had been received. The buyer removed conditions, but did not provide Mr. Amit with the deposit cheque as required by the contract. Mr. Amit did not advise the listing agent that the deposit had not been received for four days after conditions were removed. The buyer ultimately backed out of the deal.
- [41] Mr. Amit was cooperative with the investigation and did not have a previous sanction history.
- [42] 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.
- [43] Mr. Antonini's breach of s. 39(1)(a) of the *Act* is less serious than that of the registrant in *Amit*. While Mr. Antonini was unaware that his brokerage was not holding the full deposit set out in the contract of purchase and sale, Mr. Amit knew that his buyer client had not delivered the deposit to the brokerage but failed to advise the listing agent of the same. There were fewer mitigating factors at play in *Amit*.
- [44] 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.

[45] An order of reprimand and a \$1,750.00 fine are appropriate sanctions for Mr. Antonini's breach of s. 39(1)(a) of the *Act*.

[46] As Mr. Antonini has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

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

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

- a. Michael Antonini shall receive an order of reprimand for the violation of section 39(1)(a);
- b. Michael Antonini shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$1,750.00 fine for the said violation of the *Act*; and
- c. Michael Antonini's registration shall be terminated if he fails to make payment as set out above.

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

Dated at Saskatoon, SK this 19th day of October, 2022.

Randal C. Touet
Hearing Committee Chairperson