

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

Harvey (*Re*), 2022 SKREC 8

Date: October 19, 2022
Commission File: 2022-08

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF MARIEL HARVEY**

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, contrary to section 39(1)(c) of *The Real Estate Act*, Ms. Harvey breached Commission Bylaw 702 failing to protect and promote the interests of her buyer client by failing to ensure a condition precedent to the buyer's purchase of a property was removed.

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 702 states:

“A registrant shall protect and promote the interests of his or her client. This primary obligation does not relieve the registrant from the obligation of dealing fairly with all other parties to the transaction.”

FACTS:

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

[5] Ms. Harvey 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 September 7, 2016.

[6] Ms. Harvey 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] Ms. Harvey has completed the continuing professional development seminars each registration year since 2016-2017.

[8] Ms. Harvey is presently registered under the provisions of *The Real Estate Act* as a salesperson with Realtyone Real Estate Services Inc.

[9] In the spring of 2022, the Property was listed for sale with Brokerage A. The Property was being sold by the Seller pursuant to foreclosure proceedings.

[10] Registrant A acted as the listing agent.

[11] On February 18, 2022, the Buyer wrote an offer to purchase the Property that was made subject to financing, a home/sewer inspection and a gas line encroachment check on or before March 4, 2022.

[12] The offer named Ms. Harvey and Realtyone Real Estate Services Inc. as the registrants representing the Buyer.

[13] The Seller signed to accept the Buyer’s offer on February 18, 2022.

- [14] On February 22, 2022, the Buyer and the Seller signed an Amendment stating that the deposit was to be in trust on or before February 24, 2022.
- [15] The Buyer was planning to do a purchase with improvements, so Ms. Harvey was waiting for full approval from the Buyer's mortgage broker.
- [16] At 1:30 p.m. on March 3, 2022, Ms. Harvey forwarded a message from the Buyer's mortgage broker requesting an extension of the financing condition to Registrant A. Ms. Harvey advised that the mortgage broker was asking for an extension to Thursday and asked that Registrant A let her know if that worked so she could write up an amendment.
- [17] Registrant A replied to advise that the bank did not want to extend the financing condition.
- [18] On March 4, 2022, the Seller accepted a back-up offer from another buyer that was to come into force in the event the sale of the Property to the Buyer collapsed. Ms. Harvey was not advised of this before the sale collapsed.
- [19] At 9:41 a.m. on March 4, 2021, Registrant A texted Ms. Harvey to ask where they were.
- [20] At 11:58 a.m. on March 4, 2022, Ms. Harvey received the approval letter for the Buyer's purchase of the Property. Ms. Harvey texted the Buyer to let her know and asked if she was ready to remove conditions. The Buyer replied that whatever Ms. Harvey needed to do was fine.
- [21] Ms. Harvey texted Registrant A at 1:03 p.m. to say they would remove conditions.
- [22] Ms. Harvey texted the Buyer to advise that she had sent the removal of conditions to finalize the sale.
- [23] At 4:00 p.m. on March 4, 2022, the Buyer signed a Notice to Remove Conditions removing the home/sewer inspection and gas line encroachment conditions.
- [24] Ms. Harvey texted the Buyer: "Congratulations! You just bought a house".
- [25] At 4:13 p.m. on March 4, 2021, Ms. Harvey texted Registrant A to advise that she had sent him the removal.
- [26] Registrant A replied: "Thanks, can you send me your buyers lawyer".
- [27] On March 7, 2022, the conveyancing department at Registrant A's brokerage reviewed the Notice to Remove Conditions and noticed that only two of the three conditions had been removed.

- [28] At 9:28 a.m. on March 7, 2021, Registrant A texted Ms. Harvey and asked her to call him.
- [29] Ms. Harvey called Registrant A and he told her that there was a problem. Registrant A said that a back-up offer had come in on Thursday and that, because the Buyer had not removed her financing condition, her offer was bumped and did not go through. He said the Property was now sold. Ms. Harvey was in utter disbelief because she believed that all conditions had been removed. Ms. Harvey asked Registrant A how they could fix it, but he said there was nothing he could do as he did not know how it had happened.
- [30] Ms. Harvey called the Buyer at 10:15 a.m. on March 7, 2022, to explain what had happened. Ms. Harvey was extremely remorseful, apologized profusely, and accounted for her mistake. The Buyer was upset and told her to fix it. Ms. Harvey told the Buyer that she was not sure if it was possible to fix it at that point, but that she would try her best. Ms. Harvey advised the Buyer to seek legal advice.
- [31] On March 7, 2022, Ms. Harvey texted Registrant A to ask if his buyer would sell the Property.
- [32] Registrant A's buyer client buyer client was ultimately not willing to sell the Property.
- [33] Ms. Harvey gave the Buyer her broker's phone number and offered to compensate the Buyer for the cost of the inspection.
- [34] On March 7, 2022, the Buyer signed a Notification Conditions Have Not Been Satisfied or Removed in Writing requesting the return of her deposit.
- [35] Ms. Harvey fully accounts and takes responsibility for omitting the final condition of financing which would have finalized the sale. The omission, although regrettable, was not by design but rather an oversight attributed to human error. Ms. Harvey did in no manner profit from her error. Ms. Harvey is sorry.

REASONS:

- [36] The Investigation Committee and Ms. Harvey considered the following as relevant in agreeing to the within consent order:

Mitigating Factors

- [37] Ms. Harvey does not have a previous sanction history with the Commission.
- [38] Ms. Harvey was cooperative with the investigation.
- [39] Ms. Harvey acknowledged her error and apologized to her client.

Aggravating Factors

[40] The Buyer's purchase of the Property collapsed due to Ms. Harvey's error.

Prior Decisions & Other Considerations

[41] 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.

[42] 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.

[43] Ms. Harvey represented the purchaser of a property. There was a contract of purchase and sale in place that included, among other things, a financing condition. Although the Buyer's financing had been approved, Ms. Harvey mistakenly failed to include the financing condition on the Notice to Remove Conditions and the transaction collapsed.

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

[44] Ms. Harvey was the only registrant involved in her breach of the legislation. While the listing agent did initially fail to realize that the Notice to Remove Conditions he had received did not remove the financing condition, Ms. Harvey was the registrant responsible for drafting the document and for protecting and promoting the interests of the Buyer.

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

[45] There is no evidence to suggest that Ms. Harvey enjoyed a benefit or suffered a loss as a result of her breach of the legislation.

4. *The impact of the breaches on complainants or others.*
- [46] As a result of Ms. Harvey's error, the Buyer's purchase of the Property collapsed and, because of a back-up offer that was in effect, the Property was ultimately sold to someone else.
5. *The need for specific deterrence to protect the public.*
- [47] Specific deterrence is needed to ensure that Ms. Harvey understands the serious consequences to clients when documentation is not carefully drafted.
6. *The need for general deterrence to protect the public.*
- [48] General deterrence is needed to remind all registrants of the importance of careful drafting and the potential consequences to clients when documents are not completed properly.
7. *The need to maintain the public's confidence in the integrity of the profession.*
- [49] Members of the public place their trust in registrants to assist them in completing a real estate transaction. Clients must be confident that the registrants representing them are taking care to ensure all documents completed in the course of a transaction accurately reflect the deal the parties intended to make.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [50] Ms. Harvey'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 Ms. Harvey's breach of Bylaw 702?

- [51] In *Morrison (Re)*, 2019 SKREC 35 (file #2019-02) ("*Morrison*"), Justin Morrison was issued an order of reprimand and a \$1,500 fine for his breach of Bylaw 702. Mr. Morrison represented the purchaser of a property. A home inspection identified several items that required repair and the buyer and seller agreed that the seller would fix the items set out in the home inspector's list. As the seller had agreed to do the repairs right away, Mr. Morrison did not take any steps to incorporate the seller's obligation to repair the items into the contract of purchase and sale. One of the issues the seller was supposed to repair continued to cause problems for the buyer after she took possession of the property.
- [52] Mr. Morrison was cooperative with the investigation.
- [53] At the time of the breach, Mr. Morrison had been a registrant for almost 10 years and he had been sanctioned by the Commission in 2016 and 2017. The buyer was extremely upset with Mr. Morrison's conduct.

- [54] Ms. Harvey's breach of Bylaw 702 is more serious than that of the registrant in *Morrison*. While Ms. Harvey did not have a previous sanction history with the Commission, her error led to the collapse of her client's purchase of the Property.
- [55] In *Ziegeman (Re)*, [2019 SKREC 13](#) (file #2016-41) ("*Ziegeman*"), Larry Ziegeman was issued an order of reprimand and a \$1,500 fine for his breach of Bylaw 702. Mr. Ziegeman's seller client told him that she did not want to be in the position of selling her home without having purchased another property. The seller had entered negotiations to purchase another property when an offer to purchase the seller's property was received. Mr. Ziegeman wrote a counter offer on the seller's behalf that did not make the sale of the seller's property subject to the seller purchasing another property as he did not believe such a condition was necessary given the status of the seller's negotiations to purchase another property. The buyers accepted the counter offer and the seller subsequently advised Mr. Ziegeman that she wanted to back out of her purchase of the other property. The buyers removed conditions on their purchase of the seller's property, but the seller advised Mr. Ziegeman that she was upset about having sold her property without having purchased another and that she was going to back out of the contract with the buyers. The seller did ultimately complete the sale of her property to the buyers and the purchase of another property.
- [56] Mr. Ziegeman had no previous sanction history and was cooperative with the investigation. As a result of this situation, Mr. Ziegeman lost a longstanding relationship with a family he had known for more than 30 years.
- [57] Mr. Ziegeman was acting as a limited dual agent for the seller and the buyers. Registrants must be even more diligent when there are no other registrants involved in a transaction to ensure the paperwork is properly completed and the transaction is managed properly. Mr. Ziegeman's seller client was very upset that she had sold her home without having purchased another one.
- [58] Ms. Harvey's breach of Bylaw 702 is more serious than that of the registrant in *Ziegeman*. Ms. Harvey's error led to the collapse of her client's purchase of the Property.
- [59] In *Campbell (Re)*, [2019 SKREC 8](#) (file #2018-41) ("*Campbell*"), Carmen Campbell was issued an order of reprimand and a \$1,250 fine for her breach of Bylaw 702. Ms. Campbell represented buyers who had written a conditional offer to purchase a property. The offer included an option clause which gave the buyers 48 hours to remove all conditions in the event the seller accepted another offer. Ms. Campbell had taken some time off work to be with her father who had just been diagnosed with a terminal illness. The listing agent sent an email to Ms. Campbell to which he attached a completed X-Hour Notice form advising that the sellers had accepted another offer and that the buyers had 48 hours to remove conditions. Ms. Campbell did not see this email, nor did she see any of the listing agent's follow up emails until after the buyers' 48-hour window had expired. The

buyers' purchase of the property collapsed and they initiated civil proceedings against Ms. Campbell and the brokerage.

- [60] Ms. Campbell had no previous sanction history and was cooperative with the investigation. She was experiencing significant stress in her personal life at the time of the breach.
- [61] As they had not been made aware that the sellers had accepted another offer on the property, Ms. Campbell's clients did not realize that their 48-hour window to remove conditions on their purchase had begun. Ms. Campbell's clients did not remove conditions and their contract of purchase and sale with the sellers collapsed.
- [62] Ms. Harvey's breach of Bylaw 702 is slightly more serious than that of the registrant in *Campbell*. In both instances, the registrant's error led to the collapse of the client's purchase of the property. However, Ms. Campbell was experiencing significant stress in personal life at the time of her breach of the bylaw.
- [63] In *Pederson (Re)*, [2015 SKREC 9](#) (file #2013-11) ("*Pederson*"), Rob Pederson was issued an order of reprimand and a \$2,500 fine for his breach of Bylaw 702. Mr. Pederson represented the seller of a property. The seller had already accepted a conditional offer to purchase the property when a second offer was written by two other potential buyers. Mr. Pederson allowed the seller to sign this second offer without ensuring that it was made subject to the seller being released from all obligations under the first contract of purchase and sale. Upon being notified of the second offer, the first buyers removed all conditions on their purchase of the property. After seeking legal advice, the second buyers also removed conditions on their purchase of the property and registered an interest on title.
- [64] Mr. Pederson was reasonably cooperative in the investigation and had no prior sanction history. He verbally advised the registrant representing the second buyers that the seller had already accepted a conditional offer to purchase the property and that the second buyers would be writing a back-up offer. He did not receive any commission on the transaction.
- [65] Mr. Pederson was a broker who had been working as a registrant for just over 10 years at the time of the breach. The second buyers registered an interest on title, which a solicitor representing the sellers offered to remove if the seller paid the second buyers \$30,000. There was significant and ongoing harm to Mr. Pederson's client, as the legal dispute dragged on. There had been harm to the industry as a whole as the second buyers were left with a very negative impression of registrants.
- [66] Ms. Harvey's breach of Bylaw 702 is less serious than that of the registrant in *Pederson*. Mr. Pederson was registered as a broker and his error ultimately

prevented the primary transaction from closing and resulted in protracted legal proceedings for his client.

- [67] 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 per finding 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.
- [68] An order of reprimand and a \$3,000.00 fine are appropriate sanctions for Ms. Harvey's breach of Bylaw 702.
- [69] As Ms. Harvey has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [70] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Ms. Harvey, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [71] 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 702:
- a. Ms. Harvey shall receive an order of reprimand for the violation of Bylaw 702;
 - b. Ms. Harvey shall, within 60 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$3,000.00 fine for the said violation of the *Act*; and
 - c. Ms. Harvey's registration shall be terminated if she fails to make payment as set out above.
- [72] There shall be no order as to costs.

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

Randal C. Touet
Hearing Committee Chairperson