

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

Peter (*Re*), 2023 SKREC 1

Date: April 3, 2023  
Commission File: 2022-18

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF KEVIN PETER**

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

Jeffrey P. Reimer - Chairperson

Anne Parker

Cliff Iverson

**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. Peter breached Commission Bylaw 706 by publicly discrediting a competitor.

**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 706 states:

*“A registrant shall not publicly discredit a competitor. If a registrant's opinion is sought regarding a specific transaction, it shall be rendered with strict professional integrity and courtesy.”*

**FACTS:**

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

[5] Mr. Peter 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 from April 24, 2003 until May 28, 2006. Mr. Peter has been continuously registered as an associate broker since May 29, 2006.

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

- Fundamentals of Real Estate;
- Principles of Real Property Law;
- Principles of Real Estate Appraisal;
- Principles of Mortgage Financing;
- Working Within the Real Estate Act; and
- Real Estate Office Management.

[7] Mr. Peter has completed the continuing professional development seminars each registration year since 2002-2003.

[8] Mr. Peter is presently registered under the provisions of *The Real Estate Act* as an associate broker with Diversified Realty Inc. O/A Realty Executives Diversified Realty.

[9] In May of 2022, the Property was listed for sale with Realty Executives Diversified Realty.

[10] Mr. Peter acted as the listing agent.

[11] On May 1, 2022, the Buyer wrote an offer to purchase the Property. The offer included a condition making the offer subject to the buyer receiving and being satisfied with a house and furnace inspection.

- [12] Registrant A and Brokerage A were named as the registrants representing the Buyer.
- [13] A home inspection was carried out and the inspector identified several items, including the furnace.
- [14] After the inspection was complete, Registrant A sent Mr. Peter two pages of the inspection notes which he forwarded to his client. The Seller was taken aback by some of the inspector's comments, so Mr. Peter suggested the Seller have a plumber Mr. Peter has used many times over the years conduct his own inspection of the furnace.
- [15] Registrant A advised Mr. Peter that the Buyer wanted a professional to service the furnace, effect any repairs required, and provide proof in the form of a paid invoice.
- [16] Registrant A texted Mr. Peter: "They want the furnace serviced and repaired if your client want to sell this. And if this deal doesn't go through your client will have to change the PCDS stating the furnace problem. Let me know what your clients says." Registrant A also provided the contact for the Buyers' home inspector so Mr. Peter could call him to check on his qualifications. Registrant A added: "My clients says without the furnace been serviced and repair I will be writing a fall through".
- [17] Mr. Peter arranged to have an HVAC professional attend at the Property to inspect the furnace. He found the furnace was very clean and said that it checked out.
- [18] Mr. Peter sent the paid bill and the inspector's comments to Registrant A.
- [19] On May 16, 2022, the Buyer signed a Notification Conditions Have Not Been Satisfied or Removed in Writing requesting the return of his deposit.
- [20] Mr. Peter received the fall through notice from Registrant A with no explanation for the fall through and no other communication. Mr. Peter was not happy with the fact that Registrant A did not contact him to provide an explanation of the Buyer's decision.
- [21] Mr. Peter was not able to contact Registrant A by telephone as Registrant A did not pick up his calls.
- [22] Mr. Peter made the Facebook post with the sole intent of reaching Registrant A. He then altered it to get more direct to her, not being aware that he was posting to everyone.
- [23] Mr. Peter created a post on Facebook that stated: "Due to fall through of unqualified buyer & through a home inspector that lacked qualification for a

furnace inspection from an arrogant inexperienced agent, although was cleared by Seller paying for Qualified Plumber to pass furnace inspection!". The post included a link to the listing of the Property. The post did not identify the agent to whom Mr. Peter was referring. Six people reacted to the post, one person shared it and there were two comments.

- [24] Mr. Peter later edited the post to include a reference to Registrant A.
- [25] The edited post noted that Mr. Peter was "at [Registrant A] – [Brokerage A]".
- [26] According to the Edit History of the Facebook post, Mr. Peter initially edited the post to include a link preview. Three hours later, Mr. Peter edited the post to add a location. This is how Registrant A's name was added to the post, as Mr. Peter "checked in" at Registrant A's Facebook profile.
- [27] Within a few hours, Mr. Peter received a call from his broker saying that the post would likely be construed as having a negative edge and should be removed or edited. Mr. Peter had difficulties taking the posting down as he is not very computer literate.

#### **REASONS:**

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

#### Mitigating Factors

- [29] Mr. Peter has no previous sanction history.

#### Aggravating Factors

- [30] Mr. Peter's comment about another registrant was posted publicly on Facebook.

#### Prior Decisions & Other Considerations

- [31] 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.

[32] 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.*

[33] Unhappy with how the collapse of a transaction in which he had been involved was handled, Mr. Peter created a Facebook post in which he identified the other registrant involved in the transaction as an "arrogant and inexperienced agent".

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

[34] Mr. Peter 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.*

[35] There is no evidence to suggest that Mr. Peter enjoyed a benefit or suffered a loss as result of the breach.

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

[36] There is no evidence of actual harm to the complainant, though she is concerned that Mr. Peter's post has caused harm to her reputation in the industry and the community. Additionally, registrants discrediting one another in a public forum does not reflect well on the professionalism of the industry overall.

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

[37] Specific deterrence is needed to ensure that Mr. Peter understands that his comments about the complainant were inappropriate and that disagreements between registrants are to be handled with decorum and professional courtesy.

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

[38] General deterrence is needed to remind all registrants that public posts about a fellow registrant's professional etiquette or competence are not an appropriate way to handle disagreements between colleagues.

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

[39] Registrant conduct that does not conform to standards of professional courtesy damages consumer confidence in the competence and professionalism of the registrants they engage to assist them in real estate transactions.

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

[40] Mr. Peter'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. Peter's breach of Commission Bylaw 706?**

- [41] In *Honch (Re)*, 2020 SKREC 11 (file #2018-18) ("*Honch*"), Jesse Honch was issued an order of reprimand and a \$1,000 fine for publicly discrediting a competitor. Mr. Honch showed a property to potential buyers. Due to a previous experience with Mr. Honch, the seller surreptitiously set up a recording device in the property and recorded a conversation Mr. Honch had with his client during the showing. Mr. Honch advised his clients that the property might be overpriced. He stated that he typically did not like to discount other agents, "but whenever you see a red sign on the lawn it typically means it is going to be overpriced". Mr. Honch also informed his clients that he had previously worked for the listing agent and that his philosophy was to "list 'em high, bully 'em down".
- [42] Mr. Honch had no previous sanction history and was cooperative with the investigation.
- [43] There were no aggravating factors.
- [44] Mr. Peter's breach of Bylaw 706 is more serious than that of the registrant in *Honch*. There were more mitigating factors at play in *Honch* and Mr. Peter's comment was posted to a public forum.
- [45] In *Lunde (Re)*, 2018 SKREC 13 (file #2015-50) ("*Lunde*"), Laurie Lunde was issued an order of reprimand and a \$2,000 fine for her breach of Bylaw 706. Ms. Lunde represented buyers who wrote an offer to purchase a property. The seller entered into a conditional contract of purchase and sale with another buyer and wrote a back-up offer to Ms. Lunde's clients. Ms. Lunde and her clients were not happy that they had not been made aware of any competing offers or with how the listing agent handled the multiple offer situation. Ms. Lunde advised her buyer clients that, if the correct protocols were implemented, they would have stood a much better chance of being the first choice. She told them that "many ethical and legal errors were committed" and "an Agent with 30 years in the business cannot play the 'dumb' card." She told her buyer clients that they were "deliberately omitted from having an opportunity to adjust [their] offer". She told them that "cheating is not acceptable".
- [46] Ms. Lund had no previous sanction history and was cooperative with the investigation. She signed a consent order acknowledging her error.
- [47] Ms. Lunde's discrediting statements were made in writing. The clients to whom she made these statements could have distributed her comments further, although they did not in this case. Ms. Lunde was registered as a branch

manager and, as such, should have been providing an example to other registrants on how to act properly as a registrant in Saskatchewan.

- [48] Mr. Peter's breach of Bylaw 706 is more serious than that of the registrant in *Lunde*. While Ms. Lunde was registered as a branch manager at the time of her breach of the bylaw, there were more mitigating factors at play in her case and her comments were directed to her clients.
- [49] In *MacFarlane (Re)*, 2015 SKREC 8 (file #2012-64) ("*MacFarlane*"), Shirley MacFarlane was issued an order of reprimand and a \$2,000 fine for her breach of Bylaw 706. Ms. MacFarlane sent several emails to her seller client that contained disparaging comments about registrants in Weyburn and about several individual agents. Ms. MacFarlane suggested that some previously interested buyers may have changed their mind about the seller's property because they "got talking to one of those other agents who perhaps discouraged them about [the] house". She also stated that "these Weyburn agents are a breed of their own" and that "you cannot stray from their fixed way of thinking if you are an agent in that town". Ms. MacFarlane stated that Registrant A "looks like a real liar and crook". She stated that Registrant B "has been trouble with other agents" and was "very tough to deal with". She stated that Registrant C was "really sounding almost goofy" and that he "needs to be fined" for leaving lights on and the door unlocked after showing the property. Ms. MacFarlane stated that she had "had enough of these silly agents in Weyburn". Ms. MacFarlane compared Registrant D to a "fish flopping on the ground since it has been caught" and stated that she didn't "think he [would] last long on his own, but there [seemed] to be so many weak agents".
- [50] The Hearing Committee noted that a registrant making disparaging comments about his or her colleagues harms public confidence in registrants and the reputation of the industry. Negative comments made by a registrant may be afforded more weight by a member of the public.
- [51] Ms. MacFarlane had been in the industry for 20 years and had no previous sanctions. She was cooperative in the investigation and accepted responsibility for her conduct. The seller was already predisposed against registrants, particularly those in Weyburn.
- [52] Ms. MacFarlane discredited four registrants and did so in writing, facilitating further public distribution of the remarks.
- [53] Mr. Peter's breach of Bylaw 706 is more serious than that of the registrant in *MacFarlane*. Although Ms. MacFarlane made multiple disparaging comments about several registrants, her comments were made directly to her client and there were more mitigating factors at play than in the case at hand.
- [54] In *Gabruch (Re)*, 2003 SKREC 15 (file #2003-10) ("*Gabruch*"), Donna Gabruch was issued an order of reprimand and a \$1,000 fine for her breach of Bylaw 706.

Ms. Gabruch told her clients that another registrant hated her and that, if anything went wrong, it would be with that other registrant.

- [55] There was no evidence of consumer harm and Ms. Gabruch was cooperative with the investigation. She stated that she had learned from her actions.
- [56] Ms. Gabruch had a previous sanction history. She had been in the industry for over 22 years at the time of the violation and should have known that registrants are prohibited from publicly discrediting a competitor.
- [57] Mr. Peter's breach of the bylaw is more serious than that of the registrant in *Gabruch*. Ms. Gabruch did have a previous sanction history, but her comments were made directly to her clients. Mr. Peter's comment was shared with a much broader audience.
- [58] The decision in *Gabruch* was 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 this decision was rendered.
- [59] 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.
- [60] An order of reprimand and a \$4,000.00 fine are appropriate sanctions for Mr. Peter's breach of Bylaw 706.
- [61] As Mr. Peter has agreed to sign this consent order, there will be no order as to costs.

#### **CONSENT ORDER:**

- [62] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Peter, and the Investigation Committee of



the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:

- [63] 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 706:
- a. Mr. Peter shall receive an order of reprimand for the violation of Bylaw 706;
  - b. Mr. Peter 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 *Act*; and
  - c. Mr. Peter's registration shall be terminated if he fails to make payment as set out above.

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

Dated at Regina this 3<sup>rd</sup> day of April 2023.

Jeffrey P. Reimer  
Hearing Committee Chairperson