

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

Eckart (*Re*), 2022 SKREC 10

Date: November 10, 2022
Commission File: 2022-21

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF CINDY ECKART**

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

Jeffrey P. Reimer - Chairperson

Cliff Iverson

Anne Parker

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. Eckart breached Commission Bylaw 726(b) by creating an advertisement that was inaccurate.

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 726(b) states:

“Any advertisement or incentive or the offering of any incentive or the participation in an incentive program to the public as an inducement to trade in real estate undertaken or authorized by a registrant shall not be:

(b) inaccurate;”

FACTS:

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

[5] Ms. Eckart 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 November 29, 2012.

[6] Ms. Eckart has taken the following real estate courses:

- Phase 1 - Real Estate as a Professional Career;
- Residential Real Estate as a Professional Career; and
- Farm Real Estate as a Professional Career.

[7] Ms. Eckart has completed the continuing professional development seminars each registration year since 2012-2013.

[8] Ms. Eckart is presently registered under the provisions of *The Real Estate Act* as a Salesperson with Royal LePage Hallmark.

[9] On Thursday June 2, 2022, the Seller signed a Seller’s MLS® Brokerage Contract listing the Property for sale.

[10] Ms. Eckart acted as the listing agent.

[11] The listing was submitted to the MLS® at approximately 2:00 p.m. on June 2. Although the Property was being listed on Thursday, the Seller had requested that showings begin the next day at 9:00 a.m. Ms. Eckart added a comment about the delayed showings to the REALTOR® comments and to the red special message line.

[12] MLS® Listing SK896785 was created with respect to the Property.

[13] The Agent Remarks in MLS® Listing SK896785 originally included the following: “Showings to begin Friday, June 3 starting at 9:00 a.m. Call or text to book an appointment.”

- [14] A friend of one of the Seller's neighbours called Ms. Eckart to ask if he could view the Property and she initially arranged to show the Property to him at 5:45 p.m. on Friday June 3, 2022.
- [15] Ms. Eckart was contacted by a colleague around 2:30 p.m. on June 2, 2022, who asked if he could view the Property that day. Ms. Eckart explained that showings were starting the next morning, but the colleague asked if there was any way to see the Property that day as he was out showing with clients. Ms. Eckart called the Seller to see if he would make an exception and he agreed to do so. A showing was booked for 5:15 p.m. on June 2. The Seller advised that he would allow a couple more showings around the same time.
- [16] Ms. Eckart immediately deleted the red special message line from the MLS® listing, but completely forgot to amend the REALTOR® comments to remove the reference to showings beginning at 9:00 the next morning.
- [17] Ms. Eckart called the neighbour's friend back to advise that the Seller had agreed to a couple of showings that evening and arranged a showing for him at 6:00 p.m.
- [18] Ms. Eckart received a call from another registrant about the Property. She advised the other agent that he could show the Property that evening between the 5:15 and 6:00 p.m. appointments.
- [19] The Property was shown three times on June 2, 2022 and two offers were received. Ms. Eckart told the Seller that he could wait until the next day to respond, but he decided not to wait and accepted an offer to purchase the Property. There were a lot of agents who wanted to show the Property, some of whom had already made appointments for the next day.
- [20] On June 2, 2022, clients of Registrant A asked to view the Property, but he and his clients pushed plans to view properties to Friday because they believed that the notice of delayed showings in MLS® Listing SK896785 meant that they could not get in to see the Property that night.
- [21] Registrant A texted Ms. Eckart at or around 8:46 p.m. on June 2, 2022 to set up a viewing of the Property between 6:00 and 7:00 p.m. the next day.
- [22] Ms. Eckart replied with: "it's conditional. We accepted an offer tonight."
- [23] Registrant A texted Ms. Eckart to ask how the Property had been conditionally sold if showings were not starting until the next day as per the listing.
- [24] Ms. Eckart replied: "Omgosh, my seller changed his mind and I removed it from one spot but not from the comments. I feel terrible. I'm so sorry."

[25] Registrant A replied to say that that was going to be a problem.

[26] Ms. Eckart revised the listing comments to remove the reference to showings beginning the next day as soon as she learned of her error. Ms. Eckart's failure to remove the reference to the delayed showings on the comments was not intentional and it was human error.

REASONS:

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

Mitigating Factors

[28] Ms. Eckart has no previous sanction history.

[29] Ms. Eckart was cooperative with the investigation.

[30] Ms. Eckart did amend the listing to remove one reference to the delayed showings but forgot to remove the other.

Aggravating Factors

[31] Some potential buyers may have missed an opportunity to view the Property the day it was listed because the listing inaccurately indicated that showings would not begin until the following day.

Prior Decisions & Other Considerations

[32] 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.

[33] 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.

[34] Ms. Eckart listed the Property for sale on June 2, 2022. At the Seller's instruction, the MLS® Listing indicated that the Property would not be available to be shown until June 3, 2022. Later in the day on June 2, 2022, the seller changed his mind and decided to allow some showings of the Property that day. In error, Ms. Eckart amended the MLS® Listing to remove only one of two references to the delayed showings. It was not until another registrant questioned her that Ms. Eckart realized that the MLS® Listing continued to indicate that showings would begin on June 3, 2022 and corrected the listing.

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

[35] Ms. Eckart was the only registrant involved in her breach of the legislation.

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

[36] There is no evidence to suggest that Ms. Eckart enjoyed a benefit or suffered a loss as a result of the breach.

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

[37] The complainant and his clients relied on the information included in Ms. Eckart's listing.

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

[38] Specific deterrence is needed to remind Ms. Eckart of the importance of accuracy in advertising and that she is responsible for ensuring that the advertisements she creates are correct and remain so for the duration of the listing.

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

[39] General deterrence is needed to remind all registrants of their ongoing obligation to ensure advertising for which they are responsible is accurate.

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

[40] Members of the public must be confident that the information they are receiving from registrants through advertising is accurate and can be relied upon.

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

[41] Ms. Eckart'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. Eckart's breach of Bylaw 726(b)?

- [42] There are no previous hearing decisions that bear much factual similarity to the case at hand, but there are decisions that provide some relevant principles.
- [43] In *Schmid (Re)*, 2019 SKREC 33 (file #2019-19A) ("*Schmid*"), Jenna Schmid was issued an order of reprimand and a \$1,000 fine for her breach of Bylaw 726(b). Ms. Schmid drafted an MLS® Data Input Form stating that the property had a concrete basement when, in fact, the basement walls were made of wood. A previous listing of the property specified wood walls in the basement and a portion of the wood basement walls were visible outside the house. A potential buyer wrote an offer to purchase the property, believing the basement walls were concrete. The home inspection revealed the wood walls. The transaction ultimately collapsed, but the buyer had already sold her home on the basis of her offer to purchase the property.
- [44] Ms. Schmid was cooperative with the investigation and had no prior sanction history. The misconduct was an honest mistake and there was no evidence of an intent to defraud or deceive. The seller signed off on the MLS® Data Input Form and the buyer was compensated by Ms. Schmid and her brokerage for the price of the home inspection.
- [45] Ms. Schmid had access to a prior listing of the property that indicated that the basement walls were made of wood and a small wood section of the basement was visible from the exterior. Registrants must take reasonable steps to discover information about the properties they are listing for sale.
- [46] Ms. Eckart's breach of Bylaw 726(b) is similarly serious to that of the registrant in *Schmid*. Both registrants were cooperative with the investigation and had no prior sanction history. There was no evidence suggesting that either registrant's error was a deliberate attempt to defraud or deceive rather than an honest mistake.
- [47] In *Kramm (Re)*, 2017 SKREC 10 (file #2016-18) ("*Kramm*"), Susan Kramm was issued an order of reprimand and a \$2,500 fine for her breach of Bylaw 726(b). Ms. Kramm and another party listed a property for sale with her brokerage. Ms. Kramm acted as the listing agent and created an MLS® Listing which stated that the property was built in 2010. Ms. Kramm also represented the buyer in his purchase of the property. After taking possession of the property, the buyer learned that the property had been built in 2008, not in 2010 as advertised. The building permit for the property was issued in 2007, but the property was vacant until 2010 and the final inspection was completed that year. The statement in the MLS® Listing that the property was built in 2010 was a typographical error that was not caught on review.
- [48] Ms. Kramm had no previous sanction history and was co-operative with the investigation. The statement in the MLS® Listing that the property was built in 2010 was a typographical error, not a deliberate attempt to deceive potential buyers. She offered to sell the property for the buyer and find him another house.

She told the buyer she would make sure he got back the original purchase price by adjusting commission rates, making up the difference or purchasing the property back within a reasonable amount of time.

- [49] Ms. Kramm was an owner of the property. Registrants are under a heightened obligation to ensure the information they provide is accurate and that they are acting in accordance with their professional obligations when they are personally involved in a transaction. Ms. Kramm also represented the buyer in the transaction, so there was no other agent to question or independently verify the information Ms. Kramm provided. A member of the public relied on the information Ms. Kramm provided.
- [50] Ms. Eckart's breach of Bylaw 726(b) is less serious than that of the registrant in *Kramm*. While neither registrant's error was rooted in a deliberate attempt to deceive, Ms. Kramm was personally involved in the transaction and she also represented the purchaser.
- [51] 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.
- [52] An order of reprimand and a \$1,250.00 fine are appropriate sanctions for Ms. Eckart's breach of Bylaw 726(b).
- [53] As Ms. Eckart has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [54] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Ms. Eckart, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [55] 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 726(b):
- a. Ms. Eckart shall receive an order of reprimand for the violation of Bylaw 726(b);

- b. Ms. Eckart shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$1,250.00 fine for the said violation of the *Act*, and
- c. Ms. Eckart's registration shall be terminated if she fails to make payment as set out above.

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

Dated at Regina this 10th day of November 2022.

Jeffrey P. Reimer
Hearing Committee Chairperson