

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

Aldous (*Re*), 2022 SKREC 11

Date: December 14, 2022
Commission File: 2022-31

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF CATHERINE ALDOUS**

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

David M. Chow - Chairperson

Cameron Bristow

Dean Staff

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. Aldous breached s. 58(1)(b)(v) of the *Act* by drafting an offer that did not clearly show, prior to execution by the buyer, the amount of deposit, if any, made at the time of the offer.

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 58(1)(b)(v) states:

58(1) An offer to purchase obtained by a registrant:

(b) is to clearly show, prior to execution by the buyer:

(v) the amount of deposit, if any, made at the time of the offer and whether or not that deposit is to form part of the price;

FACTS:

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

[5] Ms. Aldous 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 April 16, 2008.

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

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

[7] Ms. Aldous has completed the continuing professional development seminars each registration year since 2006-2008.

[8] Ms. Aldous is presently registered under the provisions of *The Real Estate Act* as a salesperson with 101288656 Saskatchewan Ltd. O/A Re/Max of the Battlefords.

[9] On April 8, 2022, the Buyers wrote an offer to purchase Property A. The offer stated that a \$20,000 deposit was to be received upon the removal of conditions.

[10] The offer named Ms. Aldous and Re/Max of the Battlefords as the registrants representing both the Buyers and the sellers.

[11] The sellers of Property A signed acceptance of this offer that same day.

[12] Writing an offer with a deposit to be received upon removal of conditions was new to Ms. Aldous as her previous practice had been to request the deposit within five business days of acceptance of the offer.

[13] On April 19, 2022, the Buyers and the sellers signed an Amendment extending conditions on the purchase of Property A to April 27, 2022.

- [14] The Buyers decided not to complete the purchase of Property A after the home inspection was completed.
- [15] On April 25, 2022, the Buyers signed a Notification Conditions Have Not Been Satisfied or Removed in Writing requesting the return of their deposit on Property A.
- [16] In fact, the Buyers had not delivered a deposit to Re/Max of the Battlefords because conditions had not been removed.
- [17] On April 25, 2022, the Buyers wrote an offer to purchase Property B. The offer stated that a \$20,000 deposit had been received by the Buyer's Brokerage to be deposited within two business days of acceptance.
- [18] Things were very busy at the time and Ms. Aldous forgot that she had not collected a deposit on the Buyers' offer to purchase Property A. She wrote the new offer thinking that the deposit had been received on the previous transaction and could simply be transferred to Property B.
- [19] On April 27, 2022, the sellers of Property B wrote a Counter Offer increasing the purchase price.
- [20] The Buyers signed acceptance of the Counter Offer that same day.
- [21] On April 28, 2022, it was discovered that no deposit had been received from the Buyers.
- [22] On April 28, 2022, Employee 1 of Re/Max of the Battlefords texted Ms. Aldous about the Property B offer. Employee 1 stated: "Hey on that deal you're talking about, you put the deposit in 1.2b which means you already have it. That needs to be changed to 1.2 E and specified that it is the deposit to come in, within a certain amount of days. Thanks."
- [23] Ms. Aldous replied: "I did yes.. I thought I had it already from my previous deal. And it was just going to transfer over..Chris informed me I didn't".
- [24] Ms. Aldous did not amend the contract of purchase and sale at this time. It was a very busy time because the sellers of Property A were very disappointed that the sale had fallen through and the Buyers had been desperate to find another property quickly. The Buyers had to scramble to get the deposit into the brokerage once it was discovered no deposit had been retained from the previous offer. Ms. Aldous read the text message from Employee 1, but subsequently forgot about it.
- [25] Ms. Aldous' now former broker had been aware of the situation at the time and advised that she'd "take care of it".

- [26] On April 29, 2022, the Buyers obtained a bank draft in the amount of \$20,000.
- [27] This bank draft was delivered to Re/Max of the Battlefords.
- [28] On May 4, 2022, the Buyers and sellers signed an Amendment setting the possession date for Property B to May 20, 2022.
- [29] On May 4, 2022, the Buyers and sellers signed a Notice to Remove Conditions removing the conditions on the Buyers' purchase of Property B.
- [30] The Buyers took possession of Property B on or about May 20, 2022.
- [31] On May 24, 2022, Employee 1 contacted Ms. Aldous again about changing the offer on Property B to move the deposit from paragraph 1.2(b) to paragraph 1.2(e) because it had not been received at the time the offer was written. Ms. Aldous told her that she did not feel comfortable changing the contract after it had been sent to the lending bank and the lawyers handling the transaction and after possession had already changed hands.

REASONS:

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

Mitigating Factors

- [33] Ms. Aldous was co-operative with the investigation.
- [34] The deposit was collected from the Buyers shortly after their offer was accepted.

Aggravating Factors

- [35] Ms. Aldous' error was drawn to her attention shortly after the contract of purchase and sale was drafted, but she failed to take steps to correct it before the transaction closed several weeks later.
- [36] Ms. Aldous has a previous sanction history with the Commission. In *Aldous (Re)*, 2018 SKREC 10 (file #2016-19), Ms. Aldous was found guilty of breaching s. 57(1) of the *Act* by creating an agency agreement that was not signed by the parties to the agreement and Bylaw 701(a) by making or permitting to be made a document required by the *Act*, the regulations or the bylaws that contained an untrue statement of a material fact, in that she allowed her client to backdate his signature accepting an offer to purchase his property.

Prior Decisions & Other Considerations

[37] 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.

[38] 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.

[39] Ms. Aldous drafted an offer to purchase a property that stated that a deposit had been received by the buyers when, in fact, no deposit had been received. The error was discovered shortly thereafter and, while the deposit was collected and deposited into the brokerage’s trust account, the contract of purchase and sale was not amended to accurately reflect the receipt of the deposit.

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

[40] Ms. Aldous drafted the contract of purchase and sale and was responsible for the contents of the document. Although Ms. Aldous’ broker was also made aware of the error, Ms. Aldous had a responsibility to follow up and correct the issue, but she did not.

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

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

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

[42] There is no evidence of actual consumer harm arising out of Ms. Aldous’ breach of the legislation, but the risk posed to the public by a registrant’s improper documentation of trust funds is significant.

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

[43] Specific deterrence is needed to reiterate the importance of accurate documentation to Ms. Aldous. This is of particular importance given Ms. Aldous' previous sanction history involving improperly handled paperwork.

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

[44] General deterrence is needed to remind all registrants of the importance of creating accurate documentation of the trades in real estate in which they are involved.

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

[45] Members of the public must be reassured that the documents they receive from registrants accurately reflect the circumstances of the transaction and do not include any errors.

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

[46] Ms. Aldous' 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. Aldous' breach of s. 58(1)(b)(v) of the Act?

[47] There are two recent hearing decisions dealing with breaches of s. 58(1)(b)(v) of the Act.

[48] 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. 58(1)(b)(v) 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. A subsequent counter offer calling for a deposit increase upon removal of conditions was accepted by the buyers on April 3, 2021. 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 until after the transaction closed on May 15, 2021.

[49] 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.

[50] Mr. Sharma failed to notify the listing agent that both the initial deposit and the deposit increase were several days late.

[51] Ms. Aldous' breach of s. 58(1)(b)(v) of the Act is more serious than that of Mr. Sharma. Although Mr. Sharma failed to collect the initial deposit and the deposit

increase in a timely manner, there were more mitigating factors at play in *Sharma* and Ms. Aldous has a previous sanction history involving inaccurate documentation. Additionally, Ms. Aldous' error was brought to her attention shortly after the offer was accepted, but she failed to correct it.

- [52] In *Amit (Re)*, 2021 SKREC 9 (file #2020-78) ("*Amit*"), Kumar Amit was issued an order of reprimand and a \$1,000 fine for his breach of s. 58(1)(b)(v) of the *Act*. Mr. Amit drafted an offer for a client. Paragraph 1.2(b) of the offer stated that a \$5,000 deposit cheque had been received by the brokerage, while paragraph 1.2(e) did not include an amount, but noted "Deposit made on removal of condition". 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.
- [53] Mr. Amit was cooperative with the investigation and did not have a previous sanction history.
- [54] 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.
- [55] Ms. Aldous' breach of s. 58(1)(b)(v) of the *Act* is more serious than that of the registrant in *Amit*. Ms. Aldous was specifically advised of the error shortly after the offer was accepted, but failed to take steps to correct it at that time. Ms. Aldous has a previous sanction history relating to her completion of documentation.
- [56] 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.
- [57] An order of reprimand and a \$2,000.00 fine are appropriate sanctions for Ms. Aldous' breach of s. 58(1)(b)(v) of the *Act*.
- [58] As Ms. Aldous has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

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

[60] 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. 58(1)(b)(v) of the *Act*:

- a. Ms. Aldous shall receive an order of reprimand for the violation of s. 58(1)(b)(v) of the *Act*;
- b. Ms. Aldous shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$2,000.00 fine for the said violation of the *Act*; and
- c. Ms. Aldous' registration shall be terminated if she fails to make payment as set out above.

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

Dated at Moose Jaw, SK this 14th day of December 2022.

David M. Chow
Hearing Committee Chairperson