

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

Morgan (*Re*), 2024 SKREC 1

Date: February 6, 2024
Commission File: 2022-33

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF DEREK MORGAN**

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

Jeffrey P. Reimer - Chairperson

Lori Patrick

Robert 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* in that, Mr. Morgan breached Commission Bylaw 702 by failing to deal fairly with all parties to a transaction.

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 Mr. Morgan’s Statement of Facts and Admissions, which includes the following relevant points:

[5] Mr. Morgan 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 March 21, 2005.

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

- Real Estate as a Professional Career;
- Residential Real Estate as a Professional Career;
- Principles of Real Estate Appraisal; and
- Principles of Real Property Law.

[7] Mr. Morgan has completed the continuing professional development seminars each registration year since 2004-2005.

[8] Mr. Morgan is presently registered under the provisions of *The Real Estate Act* as a salesperson with Carway Holdings Ltd. O/A Realty Executives Saskatoon.

[9] The Sellers (the “Sellers”) were the owners of a property in Saskatoon, Saskatchewan (the “Property”).

[10] In April of 2022, the Property was listed for sale with Realty Executives Saskatoon. Listing Agent 1 and Listing Agent 2 acted as the listing agents.

[11] The Buyers (the “Buyers”) wrote an offer to purchase the Property. The offer was made subject to several conditions, including a home inspection.

[12] The Buyers intended to purchase the Property and rent it out to tenants as a revenue property.

[13] Realty Executives Saskatoon and Mr. Morgan were named as the registrants representing the Buyers.

[14] The Sellers signed to accept the offer on April 11, 2022.

- [15] On or about April 20, 2022, Mr. Morgan contacted Listing Agent 2 to arrange a showing of the Property to potential tenants.
- [16] The Property was shown to potential tenants on April 21, 2022.
- [17] The home inspection was scheduled for Friday April 22, 2022.
- [18] One of the buyers told Mr. Morgan that he had booked another showing of the Property to potential tenants during the inspection. Mr. Morgan told the buyer that he could not show the Property without being present and that he was not available until it was time to meet the inspector to review the results of the inspection. He told the buyer that he would try to arrive 15 minutes early to facilitate the additional showing. He assumed the group of potential tenants would be arriving once he was there.
- [19] Mr. Morgan did not make any attempt to contact the listing agent to discuss additional showings during the inspection. When he contacted Listing Agent 2 about the Thursday showings, she told him to go ahead because the Property was vacant. Mr. Morgan realized that the Buyers should have gained separate permission for the other showings, but he did not think he was bothering the Sellers since the home was vacant and the inspection was happening anyways.
- [20] Starting at 9:20 a.m. on April 22, 2022, the Sellers received several nest cam notifications showing several people arriving at the Property.
- [21] One of the Buyers had created a Kijiji advertisement listing the Property for rent. The advertisement was posted prior to the Buyers taking possession of the Property.
- [22] The people arriving at the Property during the home inspection were potential tenants to whom one of the Buyers had arranged to show the Property.
- [23] When Mr. Morgan arrived at the Property at 11:45 a.m., he discovered that the Buyers had already shown the Property to potential tenants during the home inspection and were done by the time he arrived to go over the report.
- [24] On April 25, 2022, the Buyers signed a Notice to Remove Conditions removing conditions on their purchase of the Property.
- [25] On April 30 and May 2, 2022, the Buyers and the Sellers signed an Amendment moving possession to May 23, 2022.
- [26] The Buyers did ultimately complete their purchase of the Property.

REASONS:

Mitigating Factors

[27] Mr. Morgan has no previous sanction history.

Aggravating Factors

[28] None.

Prior Decisions & Other Considerations

[29] 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.

[30] 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. These factors have been consistently applied in Saskatchewan Real Estate Commission consent orders since September 2016.

1. The nature and gravity of the breaches of the Code of Ethics.

[31] Mr. Morgan agreed to meet his buyer client and a group of potential tenants at the Property during the home inspection to conduct a walkthrough. As the listing agent had given him permission to conduct a walkthrough for potential tenants the night before and he believed that the Property was vacant, Mr. Morgan did not make an attempt to contact the listing agent to discuss an additional showing of the Property during the home inspection.

2. *The role of the offending member in the breaches.*
[32] Mr. Morgan 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.*
[33] There is no evidence that Mr. Morgan 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.*
[34] There is no evidence of actual consumer harm arising out of Mr. Morgan's breach of the legislation.
5. *The need for specific deterrence to protect the public.*
[35] Specific deterrence is needed to remind Mr. Morgan of the trust that the public places in registrants and the damage that can be done to that trust when registrants permit unauthorized access to listed properties.
6. *The need for general deterrence to protect the public.*
[36] General deterrence is needed to emphasize the importance of the trust placed in registrants by members of the public and to remind all registrants of the damage that can be done to that trust when registrants allow third parties to access listed properties without obtaining proper permission from the owner or the listing agent.
7. *The need to maintain the public's confidence in the integrity of the profession.*
[37] Members of the public who list their properties for sale with registrants must be confident that registrants are obtaining permission to show listed properties to all persons in all cases.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
[38] Mr. Morgan'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. Morgan's breach of Commission Bylaw 702?

- [39] In *Welsh (Re)*, [2021 SKREC 6](#) (file #2020-66) ("*Welsh*"), Michael Welsh was issued an order of reprimand and a \$1,000 fine for showing a property without receiving confirmation of the appointment. Mr. Welsh represented buyers who were interested in viewing a property that was occupied by a tenant. Mr. Welsh contacted the listing agent with a request to view the property and the two discussed several options, but the listing agent did not confirm the time and date of a showing with Mr. Welsh. Mr. Welsh arrived at the property with his clients and realized that the listing agent had not gotten back to him to confirm that they were clear to view the property at that time. Mr. Welsh decided to enter the

property and show it to his client. The listing agent had not gotten in touch with the tenant to confirm the showing and the tenant was upset when he returned home, found Mr. Welsh's business card, and realized the property had been shown without his having been notified.

- [40] Mr. Welsh was cooperative with the investigation and had no previous sanction history. He did communicate with the listing agent in an attempt to schedule a showing of the property and did not initially realize that he had not received confirmation of the new appointment.
- [41] The lockbox system requires sellers to put a great deal of faith in registrants to follow the rules and to obtain permission from the seller or listing agent before using the lockbox to gain entry to a property.
- [42] Mr. Morgan's breach of Bylaw 702 is similarly serious to that of the registrant in *Welsh*. In both cases, a registrant agreed to a showing of the property without first obtaining permission from the listing agent or the seller to do so. While Mr. Welsh did not realize that he had not received confirmation of the showing until arriving at the property, Mr. Morgan chose to assume that he could show the Property to potential tenants after the home inspection because he had been authorized to show it the night before.
- [43] In *Woldu (Re)*, [2020 SKREC 6](#) (file #2020-03) ("*Woldu*"), Paul Woldu was issued an order of reprimand and a \$1,000 fine for his breach of the bylaw. Mr. Woldu represented the purchaser of a property. Mr. Woldu spoke to the home inspector the morning of the scheduled home inspection and was told that the inspector was headed to the property and would be there in 20 minutes. Believing the home inspector would be there shortly, Mr. Woldu decided to leave the keys, alarm code, and instructions for disabling the alarm system in the mailbox for the inspector.
- [44] Mr. Woldu was cooperative with the investigation. He had no previous sanction history and acknowledged his error.
- [45] The risks posed by an unauthorized person gaining access to the property were increased because the house was vacant.
- [46] Mr. Morgan's breach of Bylaw 702 is more serious than that of the registrant in *Woldu*. While Mr. Woldu did not take appropriate steps to control access to a property, the listing agent and seller had authorized the inspector to access the home in order to carry out the inspection. Mr. Morgan had obtained permission to access the Property for the purposes of the home inspection, but he had not obtained permission to facilitate another showing of the Property to a potential tenant.
- [47] There is a hearing decision that deals with a breach of a different provision of the legislation, but that offers some relevant principles.

- [48] In *Butler (Re)*, [2020 SKREC 8](#) (file #2020-22) ("*Butler*"), Michelle Butler was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 702.1 by failing to abide by a seller's instructions when showing a property to clients. Ms. Butler arranged to show a property to clients. There was a sign posted on the door advising that people could only enter the property if they were wearing gloves, a mask or a scarf. Ms. Butler learned that her clients had not brought personal protective equipment with them. The listing noted that "face coverings" were acceptable, so Ms. Butler and her clients agreed that the buyers would use their jackets to cover their faces and refrain from touching anything in the home because they did not have gloves.
- [49] Ms. Butler did not have a previous sanction history and she was cooperative with the investigation. She requested that her clients cover their faces with their jackets and refrain from touching anything. The coronavirus pandemic had a significant and largely negative impact on the real estate market.
- [50] There were no aggravating factors at play.
- [51] Although case at hand and *Butler* involve breaches of different bylaws, both cases emphasize the fact that listing a property for sale does not mean that the seller has given up his or her right to make decisions about who is permitted to access the property and on what conditions.
- [52] Mr. Morgan's breach of Bylaw 702 is similarly serious to the breach of Bylaw 702.1 in *Butler*. In both instances, a registrant decided to show a property in manner that did not adhere to the parameters of the authorization received from the seller and listing agent. Ms. Butler was authorized to show the property to clients provided they were wearing gloves and a mask, scarf or other face covering, but inaccurately assumed that having her clients use their jackets to cover their faces would be sufficient. Mr. Morgan was authorized to attend at the Property with his client to review the results of a home inspection, but he assumed that he could also take the opportunity to facilitate another showing of the Property to potential tenants.
- [53] 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.

[54] An order of reprimand and a fine of \$2,000 are appropriate sanctions for Mr. Morgan's breach of Bylaw 702.

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

CONSENT ORDER:

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

[57] 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. Mr. Morgan shall receive an order of reprimand for the violation of Bylaw 702;
- b. Mr. Morgan shall, within 60 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$2,000 fine for the said violation of the *Act*; and
- c. Mr. Morgan's registration shall be terminated if he fails to make payment as set out above.

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

Dated at Regina, Saskatchewan, this 6th day of February, 2024.

Jeffrey P. Reimer
Hearing Committee Chairperson