

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

Kumar (Re), 2024 SKREC 3

Date: February 6, 2024
Commission File: 2022-43

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF NIRANJAN KUMAR**

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. Kumar breached section 39(1)(a) of the Act by failing to notify the listing agent that a deposit had not been collected from the buyer.

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 39(1)(a) 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 harmful to the best interests of the public, the registrants or the Commission.”

FACTS:

[4] Mr. Kumar 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 6, 2019.

[5] Mr. Kumar has taken the following real estate courses:

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

[6] Mr. Kumar has completed the continuing professional development seminars each registration year since 2019-2020.

[7] Mr. Kumar is presently registered under the provisions of *The Real Estate Act* as a salesperson with Brokerage 1.

[8] In the summer of 2022, 177 From Crescent (the “Property”) was listed for sale with Brokerage 2.

[9] “Listing Agent” acted as the listing agent.

[10] On July 23, 2022, T.F. and A.B. (the “Buyers”) wrote an offer to purchase the Property. The offer named Mr. Kumar and Brokerage 1 as the registrants representing the Buyers. The offer stated that a \$5,000 deposit was to be received by the brokerage on or before July 29, 2022, and deposited within two business days of acceptance of the offer. The offer was made subject to several conditions which were to be removed on or before August 5, 2022. The offer was left open for acceptance until 11:00 a.m. on July 24, 2022.

[11] At 10:03 a.m. on July 24, 2022, the sellers wrote a Counter Offer changing the possession date and the purchase price. The Counter Offer was left open for acceptance until 9:00 p.m. on July 24, 2022.

[12] The Listing Agent let me know about the Counter Offer immediately.

- [13] Mr. Kumar sent the Counter Offer to the Buyers, who needed some time to think. At 5:00 p.m. on July 24, the Buyers let Mr. Kumar know that they were going to accept the offer. Mr. Kumar sent the Counter Offer to the Buyers to sign at 6:48 p.m. on July 24, but the Buyers were not able to sign before the expiry due to technical difficulties.
- [14] At 8:39 p.m. on July 24, 2022, the Listing Agent texted Mr. Kumar to ask if his clients were accepting the counter. The Listing Agent texted Mr. Kumar again at 8:45 p.m. to remind him that there were only 15 minutes left to accept the counter. Mr. Kumar replied at 8:50 p.m. to advise that the Buyers had accepted the counter, but he later advised that he was mistaken and that he was thinking of another deal. Mr. Kumar did not contact the Listing Agent any further that night.
- [15] The Buyers signed acceptance of the Counter Offer at 10:58 p.m. on July 24, 2022.
- [16] The Listing Agent texted Mr. Kumar at 8:55 a.m. on July 25, 2022, to ask for news on the Counter Offer. Mr. Kumar replied at 9:34 a.m. to advise that the Buyers had signed it, but that it was not signed until after the deadline for acceptance had expired. The Listing Agent asked Mr. Kumar to send her the signed Counter Offer and said that, if everyone was in agreement, they could adjust the deadline for acceptance to 11:00 p.m. on July 24, 2022, and have the parties initial the change.
- [17] Mr. Kumar sent the Counter Offer back to the Listing Agent on July 25, 2022, but he had not changed the deadline for acceptance to 11:00 p.m. or had the Buyers sign to confirm the change.
- [18] The Listing Agent amended the deadline for acceptance on the Counter Offer and had her seller clients initial the change. She sent the amended document to Mr. Kumar at 7:59 p.m. on July 25, 2022.
- [19] Mr. Kumar asked the Buyers to initial the Counter Offer, but they did not do so.
- [20] Mr. Kumar advised the Buyers that the deposit needed to be deposited into trust on or before July 29, 2022.
- [21] Mr. Kumar acknowledges that the deposit was not received on or before July 29, 2022. Mr. Kumar did not advise the Listing Agent that he had not received a deposit from the buyers. The buyers had not initialled the Counter Offer.
- [22] Mr. Kumar texted the Listing Agent at 6:46 a.m. on July 29, 2022, requesting permission to access the Property again so the Buyers could show it to a relative. The Listing Agent confirmed the showing and asked Mr. Kumar once again to send the initialled Counter Offer. Mr. Kumar did not provide the requested document.

- [23] Mr. Kumar tested positive for COVID-19 on July 30, 2022. His health suffered and he was physically immobile for some period of time.
- [24] Mr. Kumar had little communication with the Listing Agent after July 29, 2022. Mr. Kumar's assistant tried to contact the Buyers about the deposit and the financing, but they were unable to communicate.
- [25] The Listing Agent emailed Mr. Kumar at 5:34 p.m. on August 1, 2022, to remind him that his buyer clients needed to initial the amended Counter Offer. Mr. Kumar replied at 7:06 p.m. that day, but he sent another copy of the original signed Counter Offer, not the initialled, amended Counter Offer. The Listing Agent emailed Mr. Kumar again at 9:06 p.m. to advise that she needed the initialled copy of the Counter Offer. Mr. Kumar did not respond.
- [26] The Listing Agent emailed Mr. Kumar again at 11:33 a.m. on August 5, 2022, and told Mr. Kumar that she needed the initialled Counter Offer that day.
- [27] On August 5, 2022, the Buyers initialled the amendment to the deadline of acceptance for the Counter Offer.
- [28] Mr. Kumar sent the initialled Counter Offer to the Listing Agent via email at 6:25 p.m. on August 5, 2022.
- [29] The Listing Agent texted Mr. Kumar at 9:25 p.m. on August 5, 2022, to ask for an update. Mr. Kumar replied to say that he hadn't heard from the Buyers or their mortgage broker.
- [30] On August 6, 2022, Mr. Kumar explained to the Listing Agent that he was ill and that this was why he had not been answering her calls, texts or emails and he apologized.
- [31] The Listing Agent requested another update at 1:55 p.m. on August 6, 2022. Mr. Kumar replied at 2:17 p.m. to advise that he had just sent the fall through to the Buyers to sign and that he would send it to her as soon as he got it back.
- [32] On August 8, 2022, the Buyers signed a Notification Conditions Have Not Been Satisfied or Removed in Writing. The document indicated that no deposit was being held by Brokerage 1.
- [33] The Listing Agent texted Mr. Kumar at 1:05 p.m. on August 8, 2022, demanding that he provide the signed fall through. Mr. Kumar did not respond. The Listing Agent texted Mr. Kumar again at 7:45 p.m. Mr. Kumar did not respond, but he sent the signed fall through document to the Listing Agent via email at 8:59 p.m. on August 8, 2022.
- [34] The Listing Agent texted Mr. Kumar at 7:08 p.m. on August 10, 2022, to ask if he had made a mistake, as the offer stated that a \$5,000 deposit was to have been received by July 29, 2022. Mr. Kumar did not respond.

- [35] The Listing Agent contacted Mr. Kumar's brokerage on August 12, 2022 to check to see if the \$5,000 deposit had ever been received.
- [36] An employee of Brokerage 1 checked the brokerage's records and advised the Listing Agent that the brokerage had not received a deposit.
- [37] Mr. Kumar did not collect a deposit on the transaction.

REASONS:

Mitigating Factors

- [38] Mr. Kumar has no previous sanction history.

Aggravating Factors

- [39] None.

Prior Decisions & Other Considerations

- [40] 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.
- [41] 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.

[42] Mr. Kumar wrote an offer to purchase a property that called for the Buyers to deliver a \$5,000 deposit to his brokerage on or before July 29, 2022. Mr. Kumar did not receive a deposit from the Buyers and did not advise the listing agent that no deposit had been received. It was not until she was given notice that the Buyers would not be proceeding with the transaction that the listing agent learned that no deposit had been collected.

At one point in the transaction, Mr. Kumar became ill and was unable to work. He did not advise the listing agent or his brokerage of his illness or arrange to have his broker or a colleague cover his files while he was unavailable.

Mr. Kumar did not deliver the transaction documents respecting the sale of the Property to his brokerage.

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

[43] Mr. Kumar was the only registrant involved in his breach of the legislation. As he did not deliver the transaction documents to his brokerage, it appears that the brokerage was unaware of the transaction until contacted by the listing agent after the transaction collapsed.

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

[44] There is no evidence that Mr. Kumar 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.

[45] There is no evidence of actual consumer harm arising out of Mr. Kumar's actions, but there is a significant risk to the public when registrants fail to handle transaction documents properly, collect deposits as required by contracts of purchase and sale, and ensure that someone is available to manage their ongoing files when they are unavailable.

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

[46] Specific deterrence is needed to remind Mr. Kumar of his professional obligations. His responses to Commission staff suggest that he does not understand that his actions amount to a failure to meet his professional obligations and that such actions can result in harm to his clients and other members of the public.

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

[47] General deterrence is needed to remind all registrants of the importance of carrying on a real estate practice diligently and in compliance with the professional obligations set out in the legislation. It must be emphasized to all registrants that the collection of a deposit and the delivery of transaction documents to the brokerage are fundamental aspects of a registrant's obligations. Registrants who are unable to manage ongoing transactions due to

illness or travel must make arrangements with their broker or a colleague to ensure that their clients are properly represented and that transactions are not derailed by undue delay.

- [48] General deterrence against registrants failing to notify colleagues that deposits have not been collected in accordance with the contract of purchase and sale is of particular importance. Three registrants have been disciplined for this kind of breach of the legislation in just over a year: *Antonini (Re)*, [2022 SKREC 7](#) (file #2022-07); *Sharma (Re)*, [2022 SKREC 1](#) (file #2021-30); and *Amit (Re)*, [2021 SKREC 9](#) (file #2020-78).

- [49] *7. The need to maintain the public's confidence in the integrity of the profession.* Members of the public place a great deal of trust in the registrants they engage to represent them in trades in real estate. They rely on registrant to handle documents and deposits appropriately and to ensure that their interests are protected throughout a transaction. Broker supervision of the registrants of a brokerage is an important aspect of maintaining public trust in the industry. Registrant conduct that undermines the supervisory role of a brokerage is not acceptable.

- [50] *8. The degree to which the breaches are regarded as being outside the range of acceptable conduct.* Mr. Kumar's conduct falls well below the standard expected of registrants. In the course of a single transaction, he fell short of his professional obligations on multiple occasions.

9. The range of sanction in similar cases.

A. What is an appropriate sanction for Mr. Kumar's breach of Section 39(1)(a) of the Real Estate Act?

- [51] In *Antonini (Re)*, [2022 SKREC 7](#) (file #2022-07) ("*Antonini*"), Michael Antonini was issued an order of reprimand and a \$1,750 fine for breaching s. 39(1)(a) of the *Act* by failing to collect a deposit in accordance with a contract of purchase and sale. Mr. Antonini represented the purchaser of a property. The contract of purchase and sale called for a deposit of \$10,000, but the cheque delivered to Mr. Antonini was only for \$7,000. Mr. Antonini did not notice that the amount on the cheque did not match the deposit listed on the contract of purchase and sale. The day after conditions were removed, the conveyance department at Mr. Antonini's brokerage reviewed the file and discovered the shortfall. This was brought to Mr. Antonini's attention and he collected the balance of the deposit from his client shortly thereafter.
- [52] Mr. Antonini had no previous sanction history and had been a registrant since 1986. He was cooperative with the investigation. He notified the listing agent of the shortfall in the deposit once he was notified of the same and the shortfall was addressed quickly once it was identified.

- [53] The shortfall in the deposit was not noticed until after conditions had been removed.
- [54] Mr. Kumar's breach of s. 39(1)(a) of the *Act* is more serious than that of the registrant in *Antonini*. Mr. Antonini did collect a deposit from the buyer, though it was not in the agreed-upon amount, and he notified the listing agent of the shortfall in the deposit shortly after it was brought to his attention.
- [55] In *Sharma (Re)*, [2022 SKREC 1](#) (file #2021-30) ("*Sharma*"), Guatam Sharma was issued an order of reprimand and a \$1,000 fine for breaching s. 39(1)(a) by failing to provide timely notice to a listing agent that a deposit and a deposit increase had been received late. 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, no deposit had been received. The initial deposit was not received until April 6, 2021. The contract called for the buyer to increase the deposit upon the removal of conditions. 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 possession when Mr. Sharma sent the listing agent an Amendment for the sellers to sign that purported to change the dates by which the deposit and deposit increase were to have been received.
- [56] 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.
- [57] Mr. Sharma failed to notify the listing agent that both the initial deposit and the deposit increase were several days late.
- [58] Mr. Kumar's breach of s. 39(1)(a) of the *Act* is more serious to that of the registrant in *Sharma*. Mr. Sharma failed to notify the listing agent that both the initial deposit and the deposit increase were several days late, but he did ultimately collect the deposit and deposit increase from his client in accordance with the contract of purchase and sale, while Mr. Kumar did not.
- [59] In *Amit (Re)*, [2021 SKREC 9](#) (file #2020-78) ("*Amit*"), Kumar Amit was issued an order of reprimand and a \$1,500 fine for breaching s. 39(1)(a) of the *Act* by failing to notify the listing agent that he had not collected a deposit. Mr. Amit drafted an offer to purchase that stated that a \$5,000 deposit had been received by the brokerage, but that also indicated that the deposit was to be delivered to the brokerage upon removal of conditions. The seller signed acceptance of the offer believing that the deposit had been received by the buyer's brokerage. The buyer removed conditions, but did not provide Mr. Amit with the deposit cheque as required. 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.

- [60] Mr. Amit was cooperative with the investigation and did not have a previous sanction history.
- [61] 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.
- [62] Mr. Kumar's breach of s. 39(1)(a) of the *Act* is less serious than that of the registrant in *Amit* because there was evidence of actual consumer harm arising out of Mr. Amit's actions. Mr. Kumar's buyer client collapsed the transaction before conditions were removed while the buyer in *Amit* technically forfeited his deposit to the seller by backing out of the transaction after he had removed conditions.
- [63] As there have been several recent instances of a registrant being disciplined for issues surrounding the collection of deposits, the need for general deterrence to ensure that the industry as a whole understands the issue is of particular importance. The deposit is an integral aspect of a real estate transaction and it is critical that the registrants representing the buyer are handling the deposit appropriately. As it is the buyer's brokerage that typically collects and holds the deposit on a transaction, the buyer's brokerage must be held responsible for notifying the registrants representing the seller of the status of that deposit. The importance of the proper handling of the deposit and information surrounding the deposit must be stressed to the industry.
- [64] An order of reprimand and a fine of \$3,000 are appropriate sanctions for Mr. Kumar's breach of s. 39(1)(a).
- [65] As Mr. Kumar has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [66] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Kumar and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [67] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of section 39(1)(a) of the *Act*:
- a. Mr. Kumar shall receive an order of reprimand for the violation of section 39(1)(a) of the *Real Estate Act*;
 - b. Mr. Kumar shall, within 60 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$3,000 fine for the said violation of the *Act*; and

- c. Mr. Kumar's registration shall be terminated if he fails to make payment as set out above.

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

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

Jeffrey P. Reimer
Hearing Committee Chairperson