

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

Kehoe (*Re*), 2023 SKREC 3

Date: April 24, 2023
Commission File: 2022-45

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF HEATHER KEHOE**

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

Randal C. Touet - Chairperson

Tim Hammond

Bob 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*, Ms. Kehoe breached Commission Bylaw 727 by advertising a property “for sale” or “sold” without authorization from the owner.

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 727 states:

“A registrant shall only advertise properties for sale or lease, or properties sold or leased when written authorization has been obtained from the owner or the owner’s lawful representative. The advertisement shall be in accordance with the lawful instructions of the owner or his or her lawful representative.”

FACTS:

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

[5] Ms. Kehoe 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 January 2, 2013.

[6] Ms. Kehoe 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.

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

[8] Ms. Kehoe is presently registered under the provisions of *The Real Estate Act* as a salesperson with Century 21 Fusion Realty Inc. O/A Century 21 Fusion.

[9] Ms. Kehoe listed the Property for sale for the Sellers in May 2020. While the Property was listed, someone took information from the MLS® Listings and posted the Property on Kijiji as part of a rental scam. The Sellers called Ms. Kehoe to advise that people were showing up at the Property inquiring about a rental ad. She also received a call from a member of the public who had unfortunately paid a damage deposit to the scammer. The caller had gone to the Property to view her potential new rental, but instead found a “For Sale” sign and was told by the Sellers that the Property was listed for sale, not for rent. Ms. Kehoe notified Kijiji that the advertisement was part of a scam and it was removed.

[10] On May 26, 2020, Ms. Kehoe created a Facebook post advertising the Property for sale. The post included the address of the Property, a detailed description of the home, and pictures of the interior.

- [11] The Buyer and his wife wrote an offer to purchase the Property on May 30, 2020, and conditions were removed in June 2020.
- [12] On June 9, 2020, Ms. Kehoe created a Facebook post featuring the Property. The post included the address of the Property, a picture of the kitchen and a description of the features.
- [13] On June 12, 2020, Ms. Kehoe created a Facebook post announcing that the Property had “Just Sold”.
- [14] In March of 2022, Commission staff reviewed the online advertising created by all registrants of several of the largest brokerages in Saskatchewan and compiled a list of the advertising infractions discovered. Staff then met with the broker of each of the brokerages to discuss the issue and provided the brokers with copies of the lists of infractions. Among other things, the brokers were specifically advised that social media posts advertising properties for sale could not be left up indefinitely and that these posts must be removed once the property sold or the listing expired. Brokers were advised that registrants should be reviewing their social media profiles to remove advertising related to expired listings so as to bring the brokerage into compliance with the legislation.
- [15] Century 21 Fusion was one of the brokerages visited. The list of advertising infractions by registrants from Century 21 Fusion included two entries regarding Ms. Kehoe’s advertising, including a Facebook post advertising a property for sale when the property was no longer listed for sale with her brokerage.
- [16] The Buyer states that, between August 12 and 14, 2022, groups of people came to the Property asking if it was for rent. He states that he determined that someone was using their address and pictures of the Property as part of a scam on Facebook.
- [17] The Buyer states that he searched Facebook and found a post from Ms. Kehoe dated May 26, 2020, that indicated that the Property was listed for sale and that included pictures.
- [18] The Buyer states that he contacted the Saskatchewan REALTORS® Association and they had Ms. Kehoe’s broker, Gary Busch, reach out to him. He states that Mr. Busch was able to get the May 26 post removed, but that he later found another post on Ms. Kehoe’s Facebook profile dated June 9, 2020, relating to the Property. He states that he spoke to Mr. Busch again, but that Mr. Busch said the post he found did not include the address of the Property or any other identifiable details. He states that this is not accurate as both the May 26 and June 9 posts included the address of the Property, the square footage and the number of rooms.
- [19] The Buyer contacted Mr. Busch on August 15, 2022, to explain the situation. Mr. Busch and Ms. Kehoe were told that this was the third time this had happened to

the Buyers since they had purchased the Property, but it was the first time Mr. Busch and Ms. Kehoe were made aware of it. Mr. Busch had the brokerage's marketing department look for the post, but they could not find it. The marketing department ultimately had to enter the physical address of the Property into the search bar on Facebook to find the pictures of the post from June 2020. The post was taken down and the Buyer was advised of the same.

- [20] Mr. Busch states that there were only a few pictures when they finally found the Facebook post.
- [21] On August 19, 2022, the Buyer advised Mr. Busch and Ms. Kehoe that he had found other pictures. These pictures were removed as well. These pictures had been posted by a third-party company and the company had been asked to take the post down previously, but the pictures remained.
- [22] On August 19, 2022, the Buyer filed a complaint with the Commission against Ms. Kehoe.
- [23] Ms. Kehoe understands the Buyer's frustration, but she and her brokerage are not part of this scam. Ms. Kehoe believes that the person who first attempted the scam in May of 2020 held onto the photos and used them to attempt the same scam in August of 2022.
- [24] The Buyer does not believe that Ms. Kehoe or anyone else at Century 21 Fusion is part of the scam. He states that he filed the complaint because of concerns of unprofessionalism that came up when they found the posts on Facebook. He states that the fact that the posts remained up over 2 years after the house had sold was unacceptable. He states that the May 26 and June 9 Facebook posts were visible on Ms. Kehoe's Facebook profile as recently as August of 2022.
- [25] On August 26, 2022, Commission staff confirmed that the June 12 Facebook post regarding the Property was still posted on Ms. Kehoe's profile.
- [26] In 2017 when Ms. Kehoe was the listing agent for the Property, her seller was subjected to the same rental scam that the Buyer was. Her seller notified her immediately, she called the police, notified kijiji and there were no further issues.
- [27] In 2022 the Buyer was the victim of the same rental scam where the perpetrators obviously used the same photos they used in 2017 to run the scam. The Buyer did not notify anyone until the 3rd time he experienced the rental scam when he then reported Ms. Kehoe to her broker Gary Busch. Gary asked the Buyer if he had ever contacted Ms. Kehoe about this and the Buyer said yes. Ms. Kehoe had never once heard from the Buyer and he later admitted to Gary Busch that he had never contacted Ms. Kehoe directly.

- [28] Ms. Kehoe had removed all photos of the Property from social media except one that was missed and dated back to 2017 when the house was originally sold to the Buyer.
- [29] Ms. Kehoe understands the Buyer is frustrated by the scam, as was her seller when it happened to him.
- [30] Ms. Kehoe understands that having the photo still on social media from 6 years ago is a violation on her part and for that she accepts responsibility. However, the perpetrator did not scroll through 6 years of her Facebook posts to find a photo from 2017 to use in a rental scam in 2022. These criminals either use active listing pictures or pictures they have used before in previous scams; they do not pick a random REALTOR® and scroll through their social media pages for hours with the hopes of finding a picture of a house to use as a scam.
- [31] Ms. Kehoe also feels that if the Buyer would have notified her or her broker after the first incident, this would have all been resolved immediately but he did not say anything until the 3rd time.

REASONS:

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

Mitigating Factors

- [33] Ms. Kehoe has no previous sanction history.
- [34] Ms. Kehoe was cooperative with the investigation.

Aggravating Factors

- [35] The issue advertisements relating to expired listings was specifically raised with Ms. Kehoe and her brokerage a few months before the outdated listings respecting the Property were discovered.

Prior Decisions & Other Considerations

- [36] 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.

[37] 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.

[38] In 2020, Ms. Kehoe created Facebook posts advertising the Property as being "for sale" and "sold". Ms. Kehoe did not take these Facebook posts down after the Property sold in June of 2020. Although Ms. Kehoe and her brokerage were put on notice in the spring of 2022 that outdated advertising had to be taken down as failing to do so could constitute a breach of the legislation, Ms. Kehoe did not take down the 2020 Facebook posts respecting the Property.

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

[39] Ms. Kehoe is responsible for the contents of her social media profiles.

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

[40] There is no evidence that Ms. Kehoe 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.

[41] There is no evidence of actual consumer harm arising out of Ms. Kehoe's breach of the legislation. Our investigation did not produce evidence sufficient to prove that the pictures of the Property Ms. Kehoe left up on Facebook were used as part of the Kijiji rental scam.

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

[42] Specific deterrence is needed to remind Ms. Kehoe that she is responsible for the contents of her social media and for ensuring that advertising relating to sold properties and expired listings is removed. This is of particular importance given that this issue was specifically raised with Ms. Kehoe and her brokerage before the complainant discovered the outdated advertising.

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

[43] General deterrence is needed to emphasize to all registrants that the bylaws do not allow them to leave advertisements respecting expired or sold listings up indefinitely without permission from the owner of the property or the owner's lawful representative.

7. *The need to maintain the public's confidence in the integrity of the profession.*
- [44] The public must be reassured that registrants are not advertising properties without written authorization from the property owner to do so.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [45] Ms. Kehoe'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. Kehoe's breach of Bylaw 727?

- [46] While there are no recent hearing decisions dealing with similar breaches of Bylaw 727, there are some previous hearing decisions which can be used as comparisons to arrive at an appropriate sanction for Ms. Kehoe's breach of the bylaw.
- [47] In *Hnatiuk (Re)*, [2019 SKREC 24](#) (file #2016-20) ("*Hnatiuk*"), Reagan Hnatiuk was issued an order of reprimand and a \$1,000 fine for his breach of Bylaw 727. Mr. Hnatiuk advertised a property for sale, but the owner had not signed an agency agreement or any other written instrument giving Mr. Hnatiuk permission to advertise the property for sale.
- [48] Mr. Hnatiuk advertised a property for sale, but the owner had not signed an agency agreement or any other written instrument giving Mr. Hnatiuk permission to advertise the property for sale.
- [49] Mr. Hnatiuk had no previous sanction history and was cooperative with the investigation. There was no evidence of consumer harm arising out of his breach of the legislation.
- [50] There were no aggravating factors.
- [51] Ms. Kehoe's breach of Bylaw 727 is more serious than that of the registrant in *Hnatiuk*. Although Ms. Kehoe had previously been authorized to advertise the Property for sale or sold, that authorization expired and she failed to take down the advertisements respecting the Property. The need to remove advertising relating to sold or expired listings had been specifically raised with Ms. Kehoe and her brokerage.
- [52] In *Kutsogiannis (Re)*, [2019 SKREC 23](#) (file #2018-54) ("*Kutsogiannis*"), Vasilios Kutsogiannis was issued an order of reprimand and a \$1,500 fine for his breach of the bylaw. In March of 2018, Mr. Kutsogiannis published an advertisement regarding a property. The advertisement did not include the address of the property, but it stated that an 18-suite apartment building in north Regina was for sale. Mr. Kutsogiannis did not have written authorization to advertise the property

for sale until a listing agreement was signed on May 30, 2018. Shortly after the listing expired, Mr. Kutsogiannis sent a copy of a brochure created with respect to the property to another registrant who had inquired about it.

- [53] Mr. Kutsogiannis had no previous sanction history and had been a registrant since 2002. He was cooperative with the investigation.
- [54] Mr. Kutsogiannis was registered as a broker. As the people responsible for ensuring that the registrants and employees under their supervision are complying with the legislation, brokers are held to a higher standard of conduct.
- [55] Ms. Kehoe's breach of Bylaw 727 is similarly serious to that of the registrant in *Kutsogiannis*. While Ms. Kehoe is not registered as a broker, the need to remove outdated advertising from a registrant's social media profile had been raised with her specifically and she failed to do so.
- [56] In *Pylychaty (Re)*, [2016 SKREC 1](#) (file #2013-07) ("*Pylychaty*"), Lorna Pylychaty was issued an order of reprimand and a \$1,000 fine for her breach of the bylaw. Ms. Pylychaty advertised a property for sale without written authorization from both the owners. Seller A and Seller B, both owners on title, entered into an agency agreement with Ms. Pylychaty's brokerage, but Seller A did not sign the brokerage contract or the attached MLS® Data Input Form.
- [57] Ms. Pylychaty's failure to have Seller A sign the agency agreement was an oversight and was not intentional. Ms. Pylychaty had been registered since 1999 and had no previous sanction history. She was cooperative with the investigation and admitted her misconduct. Ms. Pylychaty had discussed all the forms with Seller A, so he was aware of the contents of the documents and verbally consented.
- [58] Ms. Pylychaty was a broker at the time of the breaches. As the person responsible for compliance with the legislation, she should have known better than to proceed without all the requisite signatures. The document Seller A had not signed was integral to the agency relationship between the sellers and the brokerage.
- [59] Ms. Kehoe's breach of Bylaw 727 is more serious than that of the registrant in *Pylychaty*. While Ms. Pylychaty was registered as a broker, Ms. Kehoe and her brokerage had been made specifically aware of the need to remove advertising once a property is sold or the listing expires. There were more mitigating factors at play in *Pylychaty*.
- [60] 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.

- [61] An order of reprimand and a \$1,500.00 fine are appropriate sanctions for Ms. Kehoe's breach of Bylaw 727.
- [62] As Ms. Kehoe has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [63] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Ms. Kehoe, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [64] 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 727.
- a. Ms. Kehoe shall receive an order of reprimand for the violation of Bylaw 727;
 - b. Ms. Kehoe shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$1,500.00 fine for the said violation; and
 - c. Ms. Kehoe's registration shall be terminated if she fails to make payment as set out above.
- [65] There shall be no order as to costs.

Dated at Saskatoon this 24th day of April 2023.

Randal C. Touet,
Hearing Committee Chairperson