

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

Stuart (*Re*), 2024 SKREC 5

Date: March 21, 2024
Commission File: 2022-47

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF LOUISE STUART**

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

RANDAL C. TOUET- 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* in that, Ms. Stuart breached Commission Bylaw 714 by failing to take reasonable steps to discover facts pertaining to a property that a prudent registrant would take in order to fulfill the obligation to avoid error, misrepresentation, or concealment of pertinent facts.

Count 2:

- That, contrary to section 39(1)(c) of *The Real Estate Act* in that, Ms. Stuart breached Commission Bylaw 727 by failing to obtain the necessary written authorization prior to advertising a property for sale.

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 714 states:

“A registrant shall take reasonable steps to discover facts pertaining to every property for which the registrant accepts an agency agreement that a prudent registrant would take in order to fulfil the obligation to avoid error, misrepresentation or concealment of pertinent facts.”

[4] 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:

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

[6] Ms. Stuart was registered as a salesperson from July 1, 2006, to March 14, 2012. Thereafter, she was registered as an associate broker from March 14, 2012, to May 2, 2012, and registered as a branch manager from May 2, 2012, to March 14, 2013. She has been registered as a broker under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission continuously to date since March 18, 2013.

[7] Ms. Stuart has taken the following real estate courses:

- Real Estate as a Professional Career
- Residential Real Estate as a Professional Career
- Farm Real Estate as a Professional Career
- Principles of Real Estate Appraisal
- Principles of Real Property Law
- Commercial Real Estate as a Professional Career
- Real Estate Office Management & Brokerage
- Property Management as a Professional Career

- [8] Ms. Stuart has completed the continuing professional development seminars each registration year since 2006-2008.
- [9] Ms. Stuart is presently registered under the provisions of *The Real Estate Act* as a broker with Lake & Country Realty Ltd.
- [10] Ms. Stuart acted as the listing agent for a property located at Turtle Lake, Saskatchewan (the "Property").
- [11] The Property consisted of a cabin located on leased land.
- [12] Owner 1 and Owner 2 (the "Owners") were the named owners of the cabin located on the Property.
- [13] The Owners were the named lessees of the Property's leased land.
- [14] The Owners were common law spouses.
- [15] Ms. Stuart acted on behalf of Owner 1 with respect to the sale of the Property.
- [16] Owner 2 passed away prior to the Property being listed for sale.
- [17] Owner 2 is survived by her daughter (the "Daughter").
- [18] The Daughter is Owner 1's stepdaughter.
- [19] Owner 1 advised Ms. Stuart that Owner 2 had died in 2018 and he was ready to sell his cabin on a leased lot.
- [20] Owner 1 advised Ms. Stuart that he was dying of cancer and wanted to sell the Property quickly before he passed.
- [21] Owner 1 advised Ms. Stuart that the Daughter had nothing to do with the sale of the Property and to simply ignore her.
- [22] On May 11, 2022, Owner 1 signed a listing contract with Ms. Stuart's brokerage for the sale of the Property.
- [23] Owner 1 also signed an MLS® Data Input Form respecting the Property.
- [24] Ms. Stuart created an MLS® listing for the Property.
- [25] The lease was to be assigned to the successful purchaser.

- [26] The MLS® Listing prepared by Ms. Stuart notes that the lot is a leasehold but does not contain any information about the need for an assignment or assumption of the lease.
- [27] On May 16, 2022, the Daughter e-mailed Ms. Stuart asking where she needed to sign on behalf of Owner 2's estate.
- [28] Ms. Stuart replied stating that the land was leased, so did not need to be signed off on.
- [29] Ms. Stuart believed the lease itself was only in Owner 1's name, so the Daughter's signature was not needed on that part.
- [30] Ms. Stuart provided a copy of the lease agreement to the Commission.
- [31] The Owners are the named lessees in the lease agreement.
- [32] The lease was signed by Owner 2.
- [33] The lease was to run from February 24, 2018, until February 24, 2023.
- [34] The lease was to "be binding on the parties hereto and their respective heirs, executors, administrators and assigns."
- [35] The lease references the lessees' assigns but does not grant the lessees a unilateral right to assign the lease. The lease did not authorize the lessees to advertise the property as being available for lease.
- [36] The Daughter contacted Ms. Stuart again on June 6, 2022, to inquire about where she should sign on behalf of Owner 2.
- [37] The Daughter sent Ms. Stuart a copy of Owner 2's Last Will and Testament on June 9, 2022, as Ms. Stuart had requested proof that the Daughter was the named executor.
- [38] The Last Will and Testament of Owner 2 indicates that the Daughter was appointed sole Executor and Trustee of the Will.
- [39] Owner 2's Will indicates that 50% of the cabin located at the Property is to go into her estate.
- [40] On June 10, 2022, Ms. Stuart asked if the Daughter had a copy of the lease agreement with Owner 2's name on it.
- [41] On August 12, 2022, the Daughter e-mailed advising that she had sent a copy of Owner 2's Will but had not received anything back.

- [42] The Daughter asked what else she needed and requested a copy of the documents to sign in relation to the sale of the Property.
- [43] The Daughter confirmed that Ms. Stuart was selling the cabin and not the leased land and that Owner 2's name was on the cabin with Owner 1's.
- [44] The Daughter confirmed that her intention was not to stop or hold up a potential sale as they were all on board with selling, but that she was simply doing her due diligence as executor of Owner 2's estate.
- [45] The Daughter requested that, going forward, Ms. Stuart fill her in with all that was going on with the latest listing, showings, contracts, and changes in relation to the Property.
- [46] On August 13, 2022, Ms. Stuart responded to The Daughter stating that she only had what was on the current lease for names to use and suggested that the Daughter talk to Owner 1 and maybe her lawyer about how to proceed.
- [47] On August 13, 2022, the Daughter forwarded a copy of the lease agreement containing Owner 2's name to Ms. Stuart.
- [48] The Daughter asked Ms. Stuart if there was anything further she required from her and again inquired about where she needed to sign on behalf of Owner 2's estate.
- [49] Ms. Stuart spoke to Owner 1 about the lease and followed his direction on this transaction.
- [50] On August 15, 2022, the Daughter sent a letter advising that the cabin was on cribbing and not a fixed asset, so would not transfer with the leased land. As such, the sales agreement must have her signature as executor for Owner 2.
- [51] The Daughter' letter noted that if the sale progresses and the estate does not receive its portion of the proceeds, Ms. Stuart would be held liable and sued.
- [52] On August 16, 2022, the Purchasers (the "Purchasers") wrote an offer to purchase the Property for \$110,000.
- [53] The offer identified the Property as the legal description where the cabin is located.
- [54] The offer states that, unless otherwise stated herein, Owner 1 represents and warrants to the Purchasers that he has the legal right to sell the Property.
- [55] The offer was made subject to the Purchasers having the transfer of the lease completed at the time of the sale.

- [56] Owner 1 signed to accept the offer on August 16, 2022.
- [57] On August 26, 2022, the Daughter' lawyer (the "Lawyer"), sent a letter to Ms. Stuart.
- [58] The letter advises that the Daughter is the executor of Owner 2's estate and notes the following:
- a) The cabin is not affixed to the land at the Property;
 - b) Owner 2's rights to the lease were willed to her children;
 - c) Owner 1 does not have the right or legal ability to sell the Property without the consent of the Daughter as Owner 2's Executor;
 - d) The Daughter did not wish to stand in the way of the sale, but needed to be a signatory to any acceptable offer and be able to instruct the selling lawyer with respect to the distribution of funds from the sale; and
 - e) If Ms. Stuart chose to proceed without involving the Daughter, she will be named as a defendant in any litigation that the Daughter and her siblings may choose to bring should they suffer financial loss as a result.
- [59] The Lawyer also expressed his concern for the Purchasers of the Property as they would not be receiving a valid transfer of the lease or rights to ownership of the cabin on the leased land.
- [60] The Daughter states that her father later advised her that the Property sold and the new owners moved in on August 31, 2022.
- [61] Ms. Stuart does not believe she has done anything wrong.
- [62] Owner 1's lawyer does not believe Ms. Stuart has done anything wrong, either.
- [63] Ms. Stuart did not seek to obtain her own legal advice as to whether Owner 1 could sell the cabin and transfer or assign the lease on his own.
- [64] Ms. Stuart spoke to the Daughter' lawyer and to Owner 1's lawyer, but never retained her own lawyer.

REASONS:

Mitigating Factors

- [65] Ms. Stuart has no previous sanction history.
- [66] Ms. Stuart was co-operative with the investigation.
- [67] Ms. Stuart has been continuously registered since 2006.

Aggravating Factors

- [68] Ms. Stuart is a broker. As the individual responsible for overseeing other registrants and ensuring compliance, she must be held to a higher standard of conduct.
- [69] Ms. Stuart had copies of the lease which showed two named lessees and was contacted by the Daughter, executor for the deceased lessee, but failed to follow-up on this information.

Prior Decisions & Other Considerations

- [70] 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.
- [71] 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.*
- [72] When listing the Property for sale, Ms. Stuart was aware that one of the owners had passed away several years ago, but failed to take steps to inform herself of the impact the death of the owner could have on any sale of the Property.

2. *The role of the offending member in the breaches.*
- [73] Ms. Stuart 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.*
- [74] There is no evidence to suggest that Ms. Stuart enjoyed any benefits or suffered any losses as a result of her breach of the legislation. However, we are advised that the Property did sell while Ms. Stuart was the listing agent. Meaning, Ms. Stuart presumably was paid a commission on this transaction.
4. *The impact of the breaches on complainants or others.*
- [75] Due to Ms. Stuart's failure to ensure she was dealing with the proper owners, she failed to obtain the necessary signatures from the complainant, who was the representative of the deceased owner's estate. Further, the complainant did not receive any update regarding the property or proceeds from Ms. Stuart as a result.
5. *The need for specific deterrence to protect the public.*
- [76] Ms. Stuart must be reminded that, as a registrant, she is expected to have sufficient information about real estate in Saskatchewan to properly advise her clients or identify and seek out the information she does not have.
6. *The need for general deterrence to protect the public.*
- [77] Registrants must be reminded that they are expected to have sufficient knowledge of real estate in Saskatchewan to properly advise clients, or to recognize when they are lacking some important information and seek out that information from appropriate sources.
7. *The need to maintain the public's confidence in the integrity of the profession.*
- [78] Members of the public must be confident that the registrants they have engaged to represent them in trades in real estate are sufficiently knowledgeable about real estate in Saskatchewan to provide proper advice and assistance to their clients, or to recognize the information they do not have and seek it out.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [79] Ms. Stuart'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. Stuart's breach of Bylaw 714?

- [80] There are several previous decisions dealing with breaches of Bylaw 714 that are similar to the case at hand.

- [81] In *Harbottle (Re)*, [2018 SKREC 16](#) ("*Harbottle*"), June Harbottle was issued an order of reprimand and a \$1,250 fine when she failed to take the necessary steps to determine who the proper owner was of the Property she had listed for sale.
- [82] At the time of the listing, the property was owned by Owner 1 and Owner 2. Owner 1 had passed away several years prior, but remained on title, and Owner 2 passed away a few months after the property was listed for sale. Ms. Harbottle continued to deal with the children of Owner 2 who had been named as executors of Owner 2's estate. Ms. Harbottle believed that a copy of Owner 2's death certificate and the page of Owner 2's will that named his children as executors were sufficient authority to proceed with the listing and sale of the property.
- [83] Ms. Harbottle also represented the buyers. She did not tell her buyer clients that Owner 2 had passed away or that the property would have to go through probate before they signed the offer to purchase the property. Ms. Harbottle did not know that the property was in probate until after the buyers had removed conditions and the paperwork was sent to the lawyers. Two days before the scheduled possession date, the buyers were sent a Tenancy at Will Agreement which they were required to sign in order to take possession of the property.
- [84] Like Ms. Stuart, Ms. Harbottle had no previous sanction history and was cooperative with the investigation. However, there was actual consumer harm in *Harbottle* as the buyers' purchase of the property was complicated by the legal consequences of the death of an owner of the property and the Buyers were not made aware of the death or its potential impact in a timely manner. Ms. Harbottle's breach occurred while she was representing both parties as a limited dual agent. Registrants in limited dual agency must be especially diligent in protecting and promoting the interests of their clients, as there is no other registrant involved in the transaction to notice or correct any errors.
- [85] Ms. Harbottle did review title to the property before proceeding with the listing, but she failed to understand the impact the death of one of the owners on title could have on the listing and sale process. Ms. Harbottle did not realize the potential implications of the death of an owner and so did not reach out to another registrant, her broker or the Commission for advice on how to proceed. This led to further problems when the remaining owner on title passed away. Ms. Harbottle did not grasp the impact the testator's death would have on the transaction and so did not take immediate steps to mitigate the situation.
- [86] Ms. Stuart's misconduct is similarly as serious as that of the registrant in *Harbottle*. While Ms. Stuart was not acting as a limited dual agent, she is a broker and in charge of supervising other registrants to ensure compliance. Further, Ms. Stuart was specifically told that the Daughter would need to sign off on any sale or disposition of the Property.

- [87] In *Humeniuk (Re)*, [2009 SKREC 11](#) ("*Humeniuk*"), Maureen Humeniuk was issued a letter of reprimand and a \$1,000 fine for failing to obtain a seller's brokerage contract signed by all persons named on title and failing to obtain a copy of the alleged Power of Attorney. After possession, Ms. Humeniuk learned that the family was going through the guardianship process and could not transfer title to the buyer immediately. Title did ultimately transfer to the buyer.
- [88] Ms. Humeniuk did not have a previous sanction history and she had only been in the real estate industry for about six years at the time of the transaction.
- [89] The Hearing Committee was concerned that registrants understand their obligation to verify the facts as presented to them. Knowledge of the family is not an excuse not to fully perform your obligations as a registrant. The Hearing Committee noted that all registrants must know who they act for and that it was important for all registrants to know that their actions or inactions can have serious consequences for all parties to the transaction.
- [90] In *Tait (Re)*, [2008 SKREC 14](#) ("*Tait*"), Quinn Tait was issued a letter of reprimand and a \$1,000 fine for obtaining a brokerage contract from a person other than the seller named in the contract without obtaining a copy of the alleged Power of Attorney and failing to conduct an ISC title search that would have identified other owners on title. Mr. Tait dealt with the person he believed was the sole owner of a property and this person's daughter. He was advised that the owner's daughter had a Power of Attorney, but did not ask to see a copy, nor did he conduct a title search. After the property sold, Mr. Tait learned that a son and second daughter of the owner, both of whom were named on title, had refused to execute land transfers and the buyer commenced a court action to force the sale.
- [91] Mr. Tait did not have a previous sanction history and had only been in the real estate industry a short time. The Hearing Committee felt that the actions of the family may have given Mr. Tait some reason for his belief that any sibling could sign the documents.
- [92] The Hearing Committee was concerned that registrants understand they must verify the facts as presented to them. The Committee found that a review of the Power of Attorney would have made it clear that the owner's daughter did not have authority to sell the property and that a title search would have revealed the additional owners. Searching title, obtaining a copy of a Power of Attorney and confirming the agreement of the other siblings named on title are not onerous tasks to be performed, but basic elements of a sale transaction. The Committee noted that simple steps could have avoided the situation.
- [93] While the facts in *Harbottle*, *Humeniuk* and *Tait* are not exactly the same as the facts in the case at hand, they do involve registrants' failures to take appropriate steps to determine who owned a particular property and who had authority to list and sell a particular property.

- [94] Ms. Harbottle's breach of Bylaw 714 is more serious than that of the registrants in *Humeniuk* and *Tait*. Ms. Humeniuk and Mr. Tait understood the basis on which the parties they were dealing with claimed to have authority to sign documents dealing with a property, they simply failed to take steps to verify the accuracy of the information they received. In contrast, Ms. Stuart had documentary proof that her client's directions were in contrast with the lease agreement and still proceeded to follow his instructions to ignore his deceased co-owner's executor. Further, both Ms. Humeniuk and Mr. Tait had only been in the industry for a short period of time. In contrast, Ms. Stuart has been in the industry for multiple decades and is a broker. Meaning, she is in charge of supervising other registrants.
- [95] In *Byman (Re)*, [2019 SKREC 16](#) ("*Byman*"), Susanne Byman was issued an order of reprimand and a \$1,000 fine when she failed to have sufficient knowledge of the geographic area in which she was trading in real estate and failed to alert the buyers to the concerns regarding the flooding in the Quill Lakes region so they could decide if additional inquiries were needed.
- [96] Ms. Byman had listed a property for sale. She and her seller client did not discuss the Quill Lakes, but they did discuss concerns of flooding on the property caused by the body of water that emptied into the nearby Little Quill Lake. The seller told Ms. Byman the creek would come up in the spring and go down during the summer. Ms. Byman understood that there were flooding issues in the Big Quill Lake area, specifically around Dafoe, which is a 45-minute drive from the property. She understood that creeks running into Little Quill Lake caused flooding in some areas of the east side of the lake for short periods of time during the spring.
- [97] During a showing of the property, Ms. Byman and her buyer clients discussed the creek that ran along the property. She told the buyers that the two Quill Lakes were virtually one now, but that the lake visible from the property was Little Quill Lake. The creek was fairly full at the time of the showing. Ms. Byman advised that the property boundaries were beginning to flood, but cattle would walk across the creek in the fall. She did not discuss the general flooding in the Quill Lakes region with the buyers because her concern was the creek which ran along the side of the property. The buyers purchased the property and took possession. Upon arriving at the property, the buyers observed that the creek was flooding to the point where the property boundaries were beginning to flood and the residence was only a couple of feet above the shore. There has been a significant issue with flooding in the Quill Lakes region for some time. This flooding has been the subject of a Flood Mitigation Report by the SK Water Security Agency and a series of articles published by the CBC.
- [98] Like Ms. Stuart, Ms. Byman had no previous sanction history and was cooperative with the investigation. Unlike Ms. Stuart, Ms. Byman had been registered for less than three years at the time of the transaction. However, Ms. Byman was also representing both parties as a limited dual agent. Registrants in

limited dual agency must be especially diligent in protecting and promoting the interests of their clients, as there is no other registrant involved in the transaction to notice or correct any errors. While Ms. Stuart was not acting as a limited dual agent in the transaction at hand, she is a broker. Brokers, like limited dual agents, must be especially diligent and are held to a higher standard as they are the ones in charge of supervising other registrants and ensuring compliance.

- [99] Ms. Stuart's breach of the legislation is similarly as serious as that of the registrant in *Byman*. Both Ms. Stuart and Ms. Byman failed to have sufficient knowledge on a topic. While Ms. Byman's was in relation to a geographical area, Ms. Stuart's was in relation to the owner, or representative thereof, of a property she had listed for sale. The severity of Ms. Byman's breach was aggravated by the fact she was acting as a limited dual agent at the time of the breach. Similarly, the severity of Ms. Stuart's breach is aggravated by the fact that she is a broker and in charge of supervising registrants.
- [100] In May of 2020, the provincial legislature amended section 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 from \$25,000 up to \$1000,000 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.
- [101] On the basis of the above, an order of reprimand and a fine of \$2,000 are appropriate sanctions for Ms. Stuart's breach of Bylaw 714.
- [102] As Ms. Stuart has agreed to sign this consent order, there will be no order as to costs.

B. What is an appropriate sanction for Ms. Stuart's breach of Bylaw 727?

- [103] In *Rempel (Re)*, [2018 SKRE 42](#) ("*Rempel*"), David Rempel was issued an order of reprimand and a \$2,000 fine when he failed to obtain the signatures of all owners on a listing agreement.
- [104] Mr. Rempel was contacted by Owner A to list her parents' property for sale. There were four owners on title. Owner B told Mr. Rempel that he and Owner C were the owners and could sell the property. Owner B requested that the listing contract only name him and Owner C as owners. Mr. Rempel accommodated Owner B's request and prepared a brokerage contract that named only Owner B and Owner C as owners of the property. Neither Owner A nor Owner D signed

the listing contract. Shortly thereafter, Owner B passed away. Owner C and Owner A (who held an Enduring Power of Attorney naming her as Power of Attorney for Owner C) signed an amendment to the brokerage contract removing Owner B from the listing and adding Owner A. Owner C and Owner A signed a cancellation of the listing contract. Owner D did not learn that the property had been listed for sale until some months later.

- [105] Like Ms. Stuart, Mr. Rempel had been registered since the early 2000s and had no previous sanction history. He was co-operative with the investigation and there was no evidence of consumer harm.
- [106] Ms. Stuart's conduct is more serious than that of Mr. Rempel's. Ms. Stuart was informed on numerous occasions by the Daughter and her lawyer that the Daughter was the representative of the deceased owner's estate, and her signature was required on the listing and sale documents. Ms. Stuart chose to ignore the Daughter and instead blindly followed her seller client's instructions.
- [107] Further, unlike Mr. Rempel, Ms. Stuart is a broker. As the people in charge of supervising agents and ensuring their compliance with the legislation, brokers are held to a higher standard of conduct.
- [108] In *Thiessen (Re)*, [2015 SKREC 5](#), Cory Thiessen was issued an order of reprimand and a \$1,000 fine when he advertised a property for sale without obtaining the written authorization of both sellers.
- [109] Seller A contacted Mr. Thiessen about selling a property that formed part of his mother's estate. Mr. Thiessen took on the listing. The sellers were listed as Seller A and Seller B, however only Seller A signed the contract. Mr. Thiessen witnessed Seller A's signature on the contract, but no one signed as witness to Mr. Thiessen's signature.
- [110] Mr. Thiessen did not obtain documentation confirming that either Seller A and/or Seller B were executors of their mother's will, personal representatives for her estate, or in any way responsible for and in a position to sell the Property. Mr. Thiessen obtained a handwritten note stating that Seller A authorized Seller B to act on his behalf for the sale of their mother's home. Thereafter, an amendment to the listing agreement was only signed by Seller A.
- [111] Mr. Thiessen's wife ultimately purchased the property. Mr. Thiessen was later advised that transfer documents would need to be amended to include him as a second buyer. Mr. Thiessen did not amend the Residential Contract of Purchase and Sale to reflect the fact that he had been added to the transaction as a buyer.
- [112] The majority of Mr. Thiessen's dealings with respect to the property were verbal and with Seller A who, he understood, forwarded information along to Seller B.

- [113] Although Seller A signed a document giving Seller B authority to sign documents on his behalf, Mr. Thiessen continued to communicate primarily with Seller A and did not obtain Seller B's signature on all necessary documents. Mr. Thiessen had been a registrant for approximately eleven years at the time of the transaction.
- [114] Like Ms. Stuart, Mr. Thiessen had no sanction history, he cooperated with the investigation, and there was no evidence of consumer harm. However, unlike Mr. Thiessen, Ms. Stuart is a broker and in charge of supervising other registrants and ensuring compliance with legislative standards.
- [115] As such, Ms. Stuart's breach is more serious than that of the registrant in *Thiessen*.
- [116] Given the change to the legislation in May of 2020, as outlined previously, the fines suggested in this sanction recommendation will be higher than those found in the precedents that pre-date this legislative amendment.
- [117] On the basis of the above, an order of reprimand and a fine of \$2,000 are appropriate sanctions for Ms. Stuart's breach of Bylaw 727.
- [118] As Ms. Stuart has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [119] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Ms. Stuart and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [120] 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 714:
- a. Ms. Stuart shall receive an order of reprimand for the violation of Bylaw 714;
 - b. Ms. Stuart 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. Ms. Stuart's registration shall be terminated if she fails to make payment as set out above.
- [121] With respect to Count 2, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Bylaw 727:
- a. Ms. Stuart shall receive an order of reprimand for the violation of Bylaw 727;
 - b. Ms. Stuart 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. Ms. Stuart's registration shall be terminated if she fails to make payment as set out above.

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

Dated at Saskatoon, Saskatchewan, this 21st day of March, 2024.

Randal C. Touet
Hearing Committee Chairperson