

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

Walchuk (*Re*), 2023 SKREC 4

Date: May 8, 2023  
Commission File: 2022-49

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF JOSH WALCHUK**

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

Jeffrey P. Reimer - Chairperson

Anne Parker

Alberta Mak

**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. Walchuk breached Commission Bylaw 702.1 by engaging in conduct that was unprofessional in the course of his practice.

**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 702.1 states:

*“A registrant shall not engage in conduct that is disgraceful, unprofessional or unbecoming of a registrant in the course of his or her practice.”*

**FACTS:**

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

[5] Mr. Walchuk 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 22, 2004.

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

- Fundamentals of Real Estate;
- Principles of Real Estate Appraisal;
- Principles of Real Property Law; and
- Principles of Mortgage Financing

[7] Mr. Walchuk has completed the continuing professional development seminars each registration year since 2003-2004.

[8] Mr. Walchuk is presently registered under the provisions of *The Real Estate Act* as a salesperson with ICR Brokerage Inc. and ICR Property Management Inc. O/A ICR Commercial Real Estate.

[9] On December 10, 2021, the Seller signed a Seller’s MLS® Brokerage Contract listing the Property for sale with Brokerage A. The listing contract was to be effective from December 10, 2021 until December 9, 2022.

[10] The Property was listed on the MLS® as SK878999.

[11] Registrant A is the broker for Brokerage A and acted as the listing agent.

[12] On February 15, 2022, the owner of the Property confirmed that the Property was listed with Registrant A.

[13] On May 5, 2022, the Property owner asked Mr. Walchuk to relist the Property. ICR listed the Property for sale on June 7, 2022.

[14] Another registrant toured clients through the Property sometime in August and asked why Registrant A had the Property posted on the MLS®. Mr. Walchuk

contacted the owner and was told that the Property was no longer listed with Registrant A and that the owner thought he had signed a 3-month listing.

- [15] On August 30, 2022, Mr. Walchuk texted Registrant A: “Hi..., please remove the Property from mls, it is listed with our brokerage.”
- [16] Registrant A states that, at the time she received Mr. Walchuk’s text message, the listing had not expired and she had not received any cancellation request from the client. She states that Mr. Walchuk acted unprofessionally when he told her to take down her rightful listing and was possibly trying to poach her client. She states that she ignored Mr. Walchuk’s request as she had not received anything from the client requesting that her listing be removed.
- [17] On September 21, 2022, Mr. Walchuk sent an email to Registrant A: “..., this is still advertised on mls. As per my text message on August 30th please remove it asap as it is listed with ICR. Acknowledge when you receive this.”
- [18] On October 3, 2022, Mr. Walchuk was advised by another registrant that the Property was still posted on the MLS®. Mr. Walchuk called the owner again and was told the owner would discuss it with Registrant A. The owner reiterated that the Property was no longer listed with Registrant A.

## **REASONS:**

- [19] The Investigation Committee and Mr. Walchuk considered the following as relevant in agreeing to the within consent order:

### Mitigating Factors

- [20] Mr. Walchuk does not have a previous sanction history.
- [21] Mr. Walchuk has been a registrant since 2004.
- [22] Mr. Walchuk was cooperative with the investigation.

### Aggravating Factors

- [23] Mr. Walchuk contacted Registrant A on two occasions to demand the removal of her listing of the Property without having conducted any due diligence to confirm that her listing had, in fact, expired.

### Prior Decisions & Other Considerations

- [24] 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.

[25] 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.*

[26] The Property had been listed for sale by Registrant A. The seller approached Mr. Walchuk about listing the Property for sale and claimed that the brokerage contract with Registrant A's brokerage had expired. Mr. Walchuk did not take any steps to confirm the expiration of Registrant A's listing before having the seller sign a listing contract with his brokerage and contacting Registrant A to request that she remove her listing of the Property.

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

[27] Mr. Walchuk 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.*

[28] There is no evidence to suggest that Mr. Walchuk suffered a loss or enjoyed a benefit as a result of his breach.

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

[29] There is no evidence of consumer harm arising out of Mr. Walchuk's breach of the legislation, but there is a risk that a seller who has signed listing contracts with multiple brokerages will be required to pay commission to each brokerage in the event the seller's property is sold.

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

[30] Specific deterrence is needed to remind Mr. Walchuk that he has an obligation to verify information he receives from his client and to assure himself that a previous listing of a property has expired before allowing a client to sign a listing respecting the same property with his brokerage. Mr. Walchuk should be mindful

of the manner in which he communicates with his colleagues and the importance of professional courtesy.

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

[31] General deterrence is needed to emphasize the importance of registrants taking steps to verify that properties they intend to list for sale are not currently listed for sale with another brokerage. Registrants should be mindful of the manner in which they are communicating with one another and the importance of professional courtesy.

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

[32] Members of the public must be reassured that the registrants they engage to assist them in trades in real estate are taking steps to independently verify the information the registrants are receiving from clients and other members of the public. The public is best protected when registrants are working together collegially and courteously as respectful dealings between registrants are less likely to result in miscommunications and disputes.

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

[33] Mr. Walchuk'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. Walchuk's breach of Bylaw 702.1?**

[34] There are no previous hearing decisions dealing with similar facts, but there are decisions from which relevant principles can be drawn.

[35] In *Stretch (Re)*, 2019 SKREC 30 (file #2019-26) ("*Stretch*") Darrel Stretch was issued an order of reprimand and a \$1,000 fine for his breach of the bylaw. Mr. Stretch made a very rude and inappropriate comment to another registrant during a disagreement about a showing.

[36] The facts in *Stretch* differ significantly from the case at hand, but the decision in *Stretch* makes it clear that a registrant's obligation to act professionally applies to a registrant's dealings with his or her colleagues.

[37] In *Bode (Re)*, 2019 SKREC 41 (file #2019-41) ("*Bode*"), Dennis Bode was issued an order of reprimand and a \$1,000 fine for his breach of the bylaw. Mr. Bode had represented clients in their purchase of a property. Some time later, the clients decided to sell the property and listed it for sale with Registrant A. The sellers came to regret their decision to list the property for sale with Registrant A's brokerage. One of the sellers attended at Mr. Bode's office and told Mr. Bode that the sellers wanted to cancel their listing, but that they did not want to speak directly to Registrant A about it. Mr. Bode decided to help the sellers and drafted

a cancellation of the brokerage contract between the sellers and Registrant A's brokerage. The sellers signed the cancellation form and Mr. Bode signed as a witness. He then sent a copy of the cancellation to Registrant A along with a text message stating that the sellers had asked him to send her a cancellation document. Ultimately, Registrant A and the sellers were not able to come to an agreement regarding the cancellation and the listing continued.

- [38] Mr. Bode had no previous sanction history and was cooperative with the investigation. He had been registered since 2010 and was terminated from his brokerage as a result of Registrant A's complaint.
- [39] There were no aggravating factors.
- [40] The decision in *Bode* demonstrates that registrant conduct that undermines an agency relationship between a brokerage and its clients constitutes a breach of a registrant's obligation to avoid unprofessional conduct.
- [41] In *Bhatia (Re)*, 2019 SKREC 25 (file #2017-47) ("*Bhatia*"), Gurpreet Bhatia was issued an order of reprimand and a \$1,250 fine for breaching the bylaw by failing to ensure that a buyer understood that he was not representing him in a transaction. Mr. Bhatia was approached by three men and asked to assist them with real estate purchases. Mr. Bhatia offered the three men buyer's brokerage contracts to sign, but all three declined. Mr. Bhatia referred the men to a home builder. He was present when the men signed construction contracts with the builder. He sent the Builder's Construction Agreement to one of the buyers via email and requested that the buyer return the document to him as soon as possible. He advised the buyer to call him at any time if he had any questions about the document. Mr. Bhatia sent other documentation to the buyer to be signed. When he learned that the buyer was not cooperating and that the deal was going to fall through, Mr. Bhatia contacted the buyer and tried to convince the builder to give the buyer more time to satisfy conditions. Mr. Bhatia did not specifically advise the buyer that they were not in an agency relationship and that Mr. Bhatia was not representing the buyer in his dealings with the builder.
- [42] Mr. Bhatia was cooperative with the investigation.
- [43] The Hearing Committee stated that the agency relationship between members of the public and the brokerage that represents them is a fundamental component of the real estate industry and that registrant conduct that undermines this relationship is not acceptable.
- [44] The decision in *Bhatia* reiterates the importance of the agency relationship as a foundational element of the real estate industry and makes clear that a registrant's obligation to avoid unprofessional conduct includes an obligation to refrain from conduct that undermines this vital component.

[45] An order of reprimand and a \$3,000.00 fine are appropriate sanctions for Mr. Walchuk's breach of Bylaw 702.1.

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

**CONSENT ORDER:**

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

[48] 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 702.1:

- a. Mr. Walchuk shall receive an order of reprimand for the violation of Bylaw 702.1;
- b. Mr. Walchuk shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$3,000.00 fine for the said violation of the *Act*, and
- c. Mr. Walchuk's registration shall be terminated if he fails to make payment as set out above.

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

Dated at Regina this 8<sup>th</sup> day of May 2023.

Jeffrey P. Reimer  
Hearing Committee Chairperson