

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

Knapp (*Re*), 2024 SKREC 2

Date: February 6, 2024
Commission File: 2022-67

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF KYLE KNAPP**

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*, Mr. Knapp breached Commission Bylaw 702 by failing to protect and promote the interests of his buyer client and deal fairly with all parties.

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

[5] Mr. Knapp 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 February 22, 2017.

[6] Mr. Knapp 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
- Commercial Real Estate as a Professional Career

[7] Mr. Knapp has completed the continuing professional development seminars each registration year since 2017.

[8] Mr. Knapp is presently registered under the provisions of *The Real Estate Act* as a salesperson with Platinum Realty Specialists Inc.

[9] In September of 2022, a prospective Purchaser (the “Purchaser”) inquired with Mr. Knapp about a property located in Regina, Saskatchewan (the “Property”) via realtor.ca.

[10] Mr. Knapp was the listing agent for the Property.

[11] The Property is one half of a duplex. The Purchaser was not interested in the other half of this duplex (the “Adjacent Property”).

[12] At the time of her inquiry, the Purchaser was living in Victoria, British Columbia. She was looking to purchase a home in Regina as soon as possible.

[13] Mr. Knapp performed a virtual walkthrough of the Property with the Purchaser on FaceTime video call.

- [14] During the virtual walkthrough, Mr. Knapp answered all of the Purchaser's questions about the condition of the Property and provided her with his opinion and knowledge of the Property to the best of his ability.
- [15] Mr. Knapp advised the Purchaser on numerous occasions that he strongly recommended she complete her own due diligence if she was interested in purchasing the Property.
- [16] Mr. Knapp represented to the Purchaser that the Property had received many upgrades and was move-in ready. Mr. Knapp maintains that it was.
- [17] Mr. Knapp strongly recommended to the Purchaser that she obtain a home and sewer inspection.
- [18] On September 30, 2022, the Purchaser signed an Ancillary Services form declining all inspections and reports.
- [19] On September 30, 2022, the Purchaser wrote an offer to purchase the Property for a purchase price of \$55,000. This offer was made subject to financing and included the fridge, stove, washer, dryer, dishwasher (portable), floating shelves, and tv mounts as viewed on September 28, 2022.
- [20] The Seller signed to accept the Purchaser's offer on the same day it was made.
- [21] The parties signed a Limited Dual Agency Agreement.
- [22] On October 6, 2022, the Seller completed a Property Condition Disclosure Statement that did not disclose any issues with the plumbing or electrical systems at the Property.
- [23] The Purchaser signed to confirm receipt of the Property Condition Disclosure Statement that same day.
- [24] On October 6, 2022, the parties signed an Amendment setting possession for 10:00 a.m. on October 19, 2022.
- [25] On October 7, 2022, the Purchaser signed a Notice to Remove removing the financing condition.
- [26] Mr. Knapp maintains that the Purchaser purchased a great home for the price she paid and that performing her own due diligence could have avoided this situation.
- [27] When the Purchaser asked about the Adjacent Property, Mr. Knapp advised he did not know anything about the owners and had not personally met them. He told her he would ask the Seller.

- [28] The Seller advised Mr. Knapp that the neighbours in the Adjacent Property were a nice younger family with kids who were interested in the play structures left behind.
- [29] On September 28, 2022, prior to the Purchaser making an offer to purchase the Property, Mr. Knapp sent the Purchaser an e-mail stating: “a young family is currently living in the opposite side.”
- [30] The Purchaser states Mr. Knapp never told her that this information was obtained from the Seller. She states that all he told her was that a nice young family bought the Adjacent Property and would be fixing it up.
- [31] Mr. Knapp told the Purchaser to remain mindful of the fact that it was not unusual for homes in the neighbourhood to have frequent owner and tenant changes or for homes to appear vacant or abandoned for random reasons or timeframes.
- [32] The Purchaser states that upon taking possession of the Property, she discovered that the Adjacent Property was vacant.
- [33] The Purchaser states she would not have purchased the Property if she knew the other half of the duplex was vacant.
- [34] The Purchaser states the Adjacent Property and the issues it has caused her is a significant source of stress to her and that this stress is further amplified now that she may lose her home.
- [35] Commission staff spoke with the City of Regina building official who is in charge of the file for the Adjacent Property (the “Building Official”).
- [36] I am advised and believe it to be true that the Building Official confirmed the Adjacent Property is vacant.

REASONS:

Mitigating Factors

- [37] Mr. Knapp has no previous sanction history.
- [38] Mr. Knapp was co-operative with the investigation.
- [39] The Purchaser significantly contributed to her own losses when she chose to purchase the property sight unseen and without obtaining any form of professional inspection.

Aggravating Factors

- [40] Mr. Knapp represented both parties as a limited dual agent. Registrants must be extra careful to protect and promote the interests of their clients when they are acting as a limited dual agent.
- [41] The Purchaser did not view the Property prior to the purchase except via FaceTime on one occasion, nor did she undertake any inspections. The Purchaser relied entirely on Mr. Knapp's representations and the information Mr. Knapp provided to her. Mr. Knapp was aware of these facts and the Purchaser's reliance.

Prior Decisions & Other Considerations

- [42] 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.

- [43] 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.*
- [44] Mr. Knapp breached Bylaw 702 for failing to protect and promote the Purchaser's interests. He knew that the Purchaser had never seen the property in person, did not request any inspections of the property, and was relying on the information she received from Mr. Knapp. Despite this, Mr. Knapp did not ensure that the representation he made to the Purchaser about the adjacent property being occupied was accurate.

2. *The role of the offending member in the breaches.*
[45] Mr. Knapp was the sole perpetrator of these breaches of the legislation.
3. *Whether the offending member suffered or gained as a result of the breaches.*
[46] There is no evidence to suggest that Mr. Knapp benefited significantly from his actions. However, as he represented both parties as a limited dual agent on this transaction, he received both the buyer's and the seller's commission. Further, there is no evidence of a loss suffered in this case.
4. *The impact of the breaches on complainants or others.*
[47] The Purchaser took possession of the property and found that the adjacent property was vacant even though Mr. Knapp had told her it was occupied. This vacancy has caused significant stress for the Purchaser and the adjacent property is now at risk of being demolished, which places the Purchaser's property at risk as well given that the properties are attached.
5. *The need for specific deterrence to protect the public.*
[48] Specific deterrence is needed in this case to ensure Mr. Knapp understands that registrants have a heightened obligation to provide information to their clients when they are acting as a limited dual agent, when the client is purchasing a property sight unseen and when the client is purchasing a property without having any inspections done.
6. *The need for general deterrence to protect the public.*
[49] General deterrence is needed to ensure that other registrants know that there is a heightened obligation to provide information to their clients when they are acting as a limited dual agent, when the client is purchasing a property sight unseen and when the client is purchasing a property without having any inspections done.
7. *The need to maintain the public's confidence in the integrity of the profession.*
[50] The public must be reassured that registrants are aware of the obligations they owe to provide information to their clients and that registrants are satisfying these obligations.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
[51] Mr. Knapp's conduct falls below the standard expected of registrants, but it was not egregious as there is no evidence to suggest that Mr. Knapp purposefully misrepresented to the Purchaser that the adjacent property was occupied.

9. *The range of sanction in similar cases.*

A. What is an appropriate sanction for Mr. Knapp's breach of Bylaw 702?

- [52] There are several Hearing Committee decisions dealing with breaches of Bylaw 702 that are similar to the case at hand.
- [53] In *Merriman (Re)*, [2006 SKREC 13](#) ("*Merriman*"), the registrant was fined \$750 and issued an order of reprimand for failing to represent the buyers' wishes regarding well water testing on the final offer she prepared and failing to ensure information provided by the seller was complete and accurate. Ms. Merriman prepared two offers for her buyer clients that were made subject to the satisfactory results of water testing. Although the buyers had not been provided with a water analysis report, the third and final offer Ms. Merriman wrote on the buyers' behalf did not include this condition. After possession, the buyers complained of issues with the quality and quantity of water on the property. Ms. Merriman was aware that the area in which the property was located was known for having different water conditions and she had always advised testing water quality and quantity. After taking possession of the property, the buyers became aware of a large hole in the basement floor that had previously been covered by an old stove. The seller had repaired the eaves and downspouts prior to possession but had forgotten about the hole in the basement floor.
- [54] The Hearing Committee in *Merriman* noted that it is a concern that a registrant has properly viewed the property and knows that there are no issues of concern for the parties. The decision states that it is incumbent on the registrant to take reasonable steps to ensure that the facts provided to them by a seller are correct. The Committee stated that these considerations are made more important when a registrant is acting for both sides of a transaction.
- [55] Neither Mr. Knapp nor Ms. Merriman had any previous sanction history. Unlike Mr. Knapp, Ms. Merriman did not obtain a signed Ancillary Services form showing that her clients were aware of the consequences of electing not to have the water tested. Both Mr. Knapp and Ms. Merriman were representing the buyer and seller as a limited dual agent. However, Ms. Merriman's misconduct was more serious than Mr. Knapp's as Ms. Merriman, in addition to making a negligent misrepresentation to her buyer clients, failed to include a condition in the Residential Contract of Purchase and Sale that her buyer clients expressly stated they wanted included.
- [56] The amount of the fine ordered in *Merriman* does not seem to accord with contemporaneous decisions of the Hearing Committee for breaches of Bylaw 702. The \$750 fine ordered in *Merriman* is much lower than the fines ordered in other cases that were decided around the same time even though Ms. Merriman's misconduct was not substantially less serious than that of the other registrants. There is nothing in the facts of the case or in the stated rationale that

would explain this discrepancy. It appears that *Merriman* is something of an aberration in the sanction history for breaches of Bylaw 702.

- [57] Additionally, *Merriman* was decided in 2006. Since that time, there has been a significant increase in the value of real property in Saskatchewan. This change in the market, combined with general inflation, has led to a proportional increase in the value of commissions registrants can expect to make on the purchase or sale of a property. Sanctions ordered against registrants for professional misconduct must keep pace with the rise in commissions or fines may become a “cost of doing business”.
- [58] In *Humeniuk (Re)*, [2009 SKREC 11](#) (“*Humeniuk*”), Ms. Humeniuk was issued an order of reprimand and a \$500 fine for failing to verify the facts presented to her by her seller client.
- [59] Ms. Humeniuk was approached by two daughters to act as the seller’s agent. The owners of the property were the two daughters and a senior citizen. The two daughters claimed to possess a Power of Attorney allowing them to sell the Property. Ms. Humeniuk’s broker conducted a title search that confirmed that the two daughters and senior citizen appeared on the title together. However, Ms. Humeniuk did not ask nor was she ever presented with a copy of the Power of Attorney.
- [60] An out-of-province Buyer contacted Ms. Humeniuk upon seeing the listing for the Property. Ms. Humeniuk then acted as a dual agent and helped the Buyer and Sellers complete the transaction. Upon the arrival of the Buyer for the purpose of taking possession, Ms. Humeniuk became aware that the Seller’s family was going through the guardianship process and could not transfer title to the Buyer. To Ms. Humeniuk’s knowledge, the Sellers ultimately received their purchase proceeds and the Buyer eventually received title.
- [61] The Hearing Committee felt that Ms. Humeniuk failed to fully perform her obligations as a registrant. The Committee noted that registrants must understand that they have a duty to verify the facts as presented to them. By not obtaining a copy of the Power of Attorney, Ms. Humeniuk failed to protect and promote the interests of her client’s.
- [62] Like Mr. Knapp, Ms. Humeniuk acted as a limited dual agent, had no previous sanction history and was co-operative with the investigation. Ms. Humeniuk had only been in the real estate industry for a short length of time. However, Ms. Humeniuk’s misconduct was more serious than Mr. Knapp’s as her failure to verify facts was with regards to the owner of a property, not the state of an adjacent property.
- [63] Ms. Humeniuk also received a reprimand for a breach of Bylaw 714 and was ordered to pay a fine of \$1,000.

- [64] In *Swartz (Re)*, [2017 SKREC 6](#) (“*Swartz*”), Ms. Swartz received a reprimand and was fined \$1,000 for negligently misrepresenting to her buyer client that the roof of the property did not leak.
- [65] Ms. Swartz was engaged as a limited dual agent in a transaction for a residential property. Ms. Swartz advised the buyer that the roof did not leak yet, but that it needed attention, and stated that she thought it would last through the winter. The out of province buyer did not view the property prior to purchase. The buyer did not request a home inspection or any other professional assessment of the property. The buyer did not request, nor was she provided, the Property Condition Disclosure Statement. Ms. Swartz was aware of the obvious water stains on the walls and ceilings of the second floor, but did not discuss them with the sellers or with the buyer.
- [66] After several months of occupying the property, the buyer complained that the roof was in extremely poor condition on arrival, sagging in many places and leaking after rainfall, that most of the windows did not open, and that there was mold in the walls and ceilings. The buyer ultimately abandoned the property and moved away from the province. The buyer filed a statement of claim against the sellers and Ms. Swartz. Ms. Swartz was found to have made a negligent misrepresentation in stating that the roof did not leak yet and paid the judgment against her.
- [67] Ms. Swartz represented both parties to the trade. The Hearing Committee specifically noted: “Registrants must be extra careful to protect and promote the interests of the client when they are acting as a limited dual agent.” It is especially important to be diligent when obtaining information about the property. The Hearing Committee also considered that the buyer did not view the property or undertake any inspections prior to purchase, but relied entirely on information and representations from Ms. Swartz. Ms. Swartz also received a reprimand for a breach of Bylaw 715 and was ordered to pay a fine of \$1,500.
- [68] Like Mr. Knapp, Ms. Swartz had no previous sanction history and was cooperative with the investigation. Ms. Swartz also acknowledged her misconduct by signing a Statement of Facts and Admissions. When the extent of the property damage was discovered, she offered to assist the buyer at no cost in selling the property. Ms. Swartz also paid the civil judgment against her, which was for 25% of the buyer’s losses (\$1,439.25).
- [69] Mr. Knapp’s conduct is comparable to that of the registrant in *Swartz*. Both registrants were acting as limited dual agents and made negligent misrepresentations to their buyer clients. As in *Swartz*, our investigation did not produce evidence that Mr. Knapp’s misrepresentation was part of a deliberate attempt to mislead his buyer client. However, Ms. Swartz had more mitigating factors in her favour, including a judgment against her that she had paid. A slightly higher fine would be appropriate in the case at hand. As *Swartz* was

decided over six years ago, it is important to adjust the amount of the fine so as to account for inflation.

- [70] In *Byman (Re)*, [2019 SKREC 16](#) (“*Byman*”), Ms. Byman was issued an order of reprimand and a \$1,000 fine for failing to have sufficient knowledge of the geographical area in which she was trading in real estate and failing to alert her buyer clients to the concerns regarding the flooding in the Quill Lakes region so they could decide if additional inquiries were needed before purchasing a property there.
- [71] Ms. Byman had listed the 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.
- [72] 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.
- [73] Like Mr. Knapp, Ms. Byman has no previous sanction history and was cooperative with the investigation. She had been registered for less than three years at the time of the transaction.
- [74] Both Mr. Knapp and Ms. Byman were representing both parties as a limited dual agent. The Hearing Committee specifically noted that 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.
- [75] 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.

[76] An order of reprimand and a fine of \$2,500 are appropriate sanctions for Mr. Knapp's breach of Bylaw 702.

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

CONSENT ORDER:

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

[79] 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. Knapp shall receive an order of reprimand for the violation of Bylaw 702;
- b. Mr. Knapp shall, within 6 months of the date of this order, pay to the Saskatchewan Real Estate Commission a \$2,500 fine for the said violation of the *Act*; and
- c. Mr. Knapp's registration shall be terminated if he fails to make payment as set out above.

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

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

Jeffrey P. Reimer
Hearing Committee Chairperson