

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

Borines (*Re*), 2024 SKREC 6

Date: March 21, 2024
Commission File: 2023-15

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF RONALD BORINES**

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*, Mr. Borines breached Section 65(4)(c) of the *Act* by trading in real estate in which he had a material interest and failing to disclose information within his knowledge that could materially affect the value of the real estate.

LEGISLATION:

[2] Section 39(1)(c) of *The Real Estate Act* states:

“Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act, if...it is a breach of this Act, the regulations or the bylaws or any terms or restrictions to which the registration is subject.”

[3] Section 65(4)(c) of *The Real Estate Act* states:

“Where a brokerage or an associate of a brokerage trades in real estate owned by the brokerage or by the associate, or where a brokerage or an associate of a brokerage trades in real estate in which the brokerage or the associate has a material interest, the brokerage or the associate, as the case may be, shall disclose, in writing, to a buyer prior to receiving an offer to purchase... any information within the knowledge of the brokerage or associate that could materially affect the value of the real estate.”

FACTS:

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

[5] Mr. Borines 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 August 22, 2016.

[6] Mr. Borines 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. Borines has completed the continuing professional development seminars each registration year since 2016.

[8] Mr. Borines is presently registered under the provisions of *The Real Estate Act* as a salesperson with Realty One Group Dynamic.

[9] Mr. Borines was the owner of a Property (the “Property”).

[10] Mr. Borines completed a renovation of the Property which included a non-conforming basement suite.

- [11] Mr. Borines did approximately 75% of the renovation work himself and had someone else do approximately 25% of the work. He did not take out permits for the work.
- [12] On December 16, 2022, Mr. Borines listed the Property for sale and filled out a Disclosure of Interest in Trade form.
- [13] The listing for the Property included the following statements:
- “Non regulation suite in basement. No PCDS. Seller is a registrant and has never lived in the home”;
 - “Sutherland newly renovated bungalow with three bedrooms up + two bedroom non-conforming basement suite.”; and
 - “Great set up for owner occupied with extended family or mortgage helper in the basement. Separate entrances with shared laundry.”
- [14] The Buyers (the “Buyers”) were advised of the listing on December 16, 2022.
- [15] The Buyers viewed the Property on December 17, 2022, and submitted an offer to purchase on the same day. The offer was for \$324,000 with a possession date of January 2, 2023, and subject to home inspection.
- [16] On December 17, 2022, the Buyers also completed an Ancillary Services form requesting a home inspection, but did not request a municipal compliance report.
- [17] On December 18, 2022, the Buyers submitted a second offer to purchase, in the amount of \$327,000, with a possession date of January 2, 2023, and subject to home inspection.
- [18] On December 28, 2022, the Buyers signed an Amendment to Residential Contract of Purchase and Sale, providing a list of items to be fixed and changing the possession date to January 15, 2023.
- [19] On December 30, 2022, the Buyers signed a Notice to Remove Conditions.
- [20] On January 15, 2023, the Buyers took possession of the Property.
- [21] On January 17, 2023, Mr. Borines received a letter from the City of Saskatoon, dated January 12, 2023, requiring a zoning inspection of the Property as a result of a complaint.
- [22] Mr. Borines had no idea anyone had complained or that the City of Saskatoon had started an investigation until after possession.
- [23] Mr. Borines checks his community mailbox once every week, or two in the winter, and he does not believe a letter dated Thursday, January 12, 2023, would have

been delivered to his mailbox before the Sunday January 15, 2023, possession date. He does not know when the letter was postmarked or delivered.

- [24] On February 9, 2023, the City of Saskatoon sent a letter to the Buyers requesting to schedule a required inspection of the Property.
- [25] Mr. Borines did not advise the Buyers when he received the letter because it was after the possession date and he assumed the City of Saskatoon would also send them a letter.
- [26] Registrant A (“Registrant A”), a registrant with Brokerage A (Brokerage “A”) represented the Buyers on this transaction. By text message prior to conveying the offer, Registrant “A” ensured “Did you use the property as a rental before”. Mr. Borines replied, “No”. That and the listing constitutes the entirety of any discussion or representations relating to the basement suite.
- [27] The Buyers went through the inspection with the City and were left with the choice of either extra costs to make the suite legal or extra costs to get rid of the suite by removing the stove.
- [28] The Buyers completed the work as required by the inspection report to make the suite legal, and successfully applied for an Occupancy Permit from the City.
- [29] On June 28, 2023, Commission Staff sent an email to Mr. Borines asking whether there was an existing basement suite in the Property when he purchased it or if he added the suite to the basement.
- [30] On July 7, 2023, Mr. Borines provided the following response:
- “No basement suite, just bedrooms, bathroom and living room.”
- [31] On July 10, 2023, Commission Staff sent a follow up email to Mr. Borines asking whether he obtained any permits for the work done and requesting he provide a detailed account of the renovations he completed or had completed by someone else.
- [32] On July 27, 2023, Mr. Borines sent the following response:
- “Basement was listed as non-conforming. Basement was mostly done by someone else.”
- [33] On August 21, 2023, Mr. Borines provided the following further response:
- “No permits was taken for the renovations except I think for the electrical panel when electrician changed it from 70amp to 100amp. I hired a contractor for basement reframing, flooring, drywalling, mudding and painting. Mainfloor painting and flooring was also done by the contractor. I installed new kitchen on

the main floor and the basement. I added more fiberglass insulation on the basement. Backyard was also cleaned and graded by someone else. Changed all lighting and electrical fixtures. Bathroom on the mainfloor was renovated by me. Nothing was done in the basement bathroom. No windows were changed. Exterior doors were changed by me.”

[34] On September 20, 2023, Mr. Borines provided the following further response:

1. No permits was taken (except I think for the electrical panel).

2. Done by myself:

Mainfloor bathroom - new tub, vanity and toilet

Mainfloor new kitchen cabinets

Installed new light fixtures, switches and outlets

Installed kitchen cabinets in basements

Added more attic insulation

Done by a contractor:

Framing in the basement

Flooring for the whole house

Drywalling for the whole basement

Mudding and finishing of the drywall

Painting for the whole house

Door and window trims (including baseboard)

Grading and cleaning of front and backyard

Electrical panel upgrade

REASONS:

Mitigating Factors

[35] Mr. Borines has no previous sanction history.

Aggravating Factors

[36] Mr. Borines has been continuously registered as a salesperson since August 22, 2016.

[37] Mr. Borines’ breach resulted in financial consequences for the Buyers.

Prior Decisions & Other Considerations

[38] 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.

[39] 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.

[40] Mr. Borines failed to disclose information within his knowledge that could materially affect the value of the property he was selling, of which he was the owner.

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

[41] Mr. Borines 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.

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

[43] Mr. Borines may have gained a benefit by way of the sale price he received for his property as a result of his breach. Had he provided full disclosure, the lack of permits for the renovations he undertook to create the basement suite may have resulted in a lower sale price.

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

[44] Mr. Borines breach resulted in financial consequences to the complainant.

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

[45] Mr. Borines must be made aware of the disclosure obligations required of him as both a registrant and an owner when selling a property he owns.

6. *The need for general deterrence to protect the public.*
- [46] Registrants must be reminded that as a result of section 65 of *The Real Estate Act*, when selling their own properties they have a more stringent obligation to disclose information than a private seller. As a registrant with knowledge of information that could materially affect the value of their property they are fully obligated to disclose such information.
7. *The need to maintain the public's confidence in the integrity of the profession.*
- [47] Members of the public must have the confidence in the industry that registrants are not exempt from regular disclosure obligations when they are selling their own property. Members of the public must be able to rely on registrants to properly disclose known information that could materially affect the value of a property owned by the registrant in the same way any public seller is obligated to disclose such information.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [48] Mr. Borines' 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. Borines' breach of Section 65(4)(c) of the Act?

- [49] While there are no previous sanctions with respect to s. 65(4)(c) of the *Act*, there are a few decisions under Bylaw 730(e) involving issues with the Disclosure of Interest in Trade that we can draw reference from.
- [50] In *Zareh (Re)*, [2019 SKREC 5](#) (file #2013-61) ("*Zareh*") was issued an order of reprimand and a \$4,000 fine for his breach of Bylaw 730(e).
- [51] Mr. Zareh owned or had a material interest in several rental properties. During the time Mr. Zareh owned or had a material interest in the properties, all of them were rented or leased out to tenants. Mr. Zareh did not complete a Disclosure of Interest in Trade form with respect to any of the properties, nor did he otherwise disclose in writing to the tenants that he owned or had a material interest in each property or that, although he was a registrant, the *The Real Estate Act* did not apply to the lease or rental agreement.
- [52] Mr. Zareh had no previous sanction history and was co-operative with the investigation. His failure to complete the appropriate forms was an oversight, not a deliberate omission.
- [53] Mr. Zareh did not provide a Disclosure of Interest in Trade form to any of the tenants of any of the properties he owned or in which he had an interest.

- [54] Mr. Borines' breach is more serious than that of the registrant in *Zareh*. As the owner of the property, and having created the non-compliant suite, Mr. Borines had knowledge that permits were not obtained for the modifications done. Further, Mr. Borines attempted to use a vague statement that the suite was non-compliant as disclosure of any and all issues that may arise as a result of non-compliance. Mr. Borines' vague statement does not release him from his obligation to disclose specific known information.
- [55] In *Elenko (Re)*, [2019 SKREC 2](#) (file #2016-34) ("*Elenko*") was issued an order of reprimand and a \$1,250 fine for his breach of Bylaw 730(e).
- [56] The sellers had listed the property for sale with Registrant A. Mr. Elenko contacted Registrant A's brokerage to assist him in searching for a home to rent. The sellers ultimately entered into a rental agreement with Mr. Elenko. Mr. Elenko agreed to a one-year lease of the property on the understanding that it would be listed for sale again the following spring. The listing expired in June. In December, Mr. Elenko and his wife wrote an offer to purchase the property. The offer did not name a salesperson or brokerage representing either the buyers or the sellers. The offer did not go through Mr. Elenko's brokerage or any brokerage. There was no deposit to be held in trust and Mr. Elenko did the paperwork himself. Mr. Elenko believes the sellers were aware he was a registrant, but he did not provide the sellers with a Disclosure of Interest in Trade form. Mr. Elenko and his wife signed a Notice to Remove Conditions Precedent rather than the mandatory Notice to Remove Condition(s) on Residential Contract of Purchase and Sale.
- [57] Mr. Elenko had no previous sanction history and was co-operative with the investigation. He signed a consent order acknowledging his errors.
- [58] Mr. Elenko was personally involved in the transaction. A registrant's personal involvement places a higher onus on that registrant to ensure that all necessary documents are properly completed.
- [59] Mr. Borines' breach was more serious than that of the registrant in *Elenko* in that Mr. Borines failed to disclose information that had the potential to materially affect the value of the property.
- [60] In *Meckelborg (Re)*, [2018 SKREC 33](#) (file #2018-13) ("*Meckelborg*"), Kelli Meckelborg was issued an order of reprimand and a \$1,000 fine for her breach of Bylaw 730(e).
- [61] Ms. Meckelborg put her grandmother's condo up for sale in September of 2017. Ms. Meckelborg also represented the buyers as a limited dual agent, but did not advise the buyers that she was the seller's granddaughter. She did not complete a Disclosure of Interest in Trade form. The buyers wrote an offer to purchase the property; the seller wrote a counter offer. A Property Condition Disclosure Statement completed by the seller indicated that the seller was not aware of any

special assessments proposed but not yet voted on. The estoppel package indicated no extraordinary contributions had been levied on the unit. In fact, throughout the fall and winter of 2017/2018, the condo board was aware of moisture damage to the siding that would require replacement of the entire exterior of the building, which would result in a significant cost to all owners.

- [62] Ms. Meckelborg was co-operative with the investigation and had no previous sanction history. She did not withhold information about her relationship with the seller with the intention of misleading or deceiving her buyer clients.
- [63] Mr. Borines' breach is more serious than that of the registrant in *Meckleborg*. As owner of the property, Mr. Borines had knowledge of information that could materially affect the value of the property and failed to disclose that information.
- [64] 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.
- [65] All three of the above referenced sanctions were issued prior to the May 2020 legislative change.
- [66] An order of reprimand and a \$4,000 fine are appropriate sanctions for Mr. Borines' breach of Section 65(4).
- [67] As Mr. Borines has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [68] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Borines and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [69] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Section 65(4)(c) of the *Act*:
- a. Mr. Borines shall receive an order of reprimand for the violation of Section 65(4)(c) of the *Act*;

- b. Mr. Borines shall, within 6 months of the date of this order, pay to the Saskatchewan Real Estate Commission a \$4,000 fine for the said violation of the *Act*; and
- c. Mr. Borines' registration shall be terminated if he fails to make payment as set out above.

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

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

Randal C. Touet
Hearing Committee Chairperson