

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

Yu (*Re*), 2024 SKREC 13

Date: May 2, 2024  
Commission File: 2023-20

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF FANGLIANG “LINDA” YU**

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

Jeffrey P. Reimer - Chairperson

Kayla McQueen

Tim Hammond

**CHARGE and ADMISSION OF MISCONDUCT:**

[1] The registrant is charged with and is admitting to professional misconduct as follows:

**Count 1:**

Commission Bylaw 702 by failing to protect and promote the interests of her client; and

**Count 2:**

Commission Bylaw 709 by communicating directly with an exclusively represented seller without consent of the seller's agent.

**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] Commission 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.”*

[4] Commission Bylaw 709 states:

*“Negotiations concerning exclusively listed property or negotiations with any party who is exclusively represented shall be carried on with the client's agent and not with the client directly, except with the consent of the client's agent.”*

### **FACTS:**

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

[6] Ms. Yu has been continuously registered as a broker under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since April 1, 2021, and registered as a salesperson since November 19, 2015.

[7] Ms. Yu 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
- Real Estate Office Management & Brokerage
- Property Management as a Professional Career

[8] Ms. Yu has completed the continuing professional development seminars each registration year since 2015.

[9] Ms. Yu is presently registered under the provisions of *The Real Estate Act* as a broker with Aspaire Realty Inc.

[10] The Seller (the “Seller”) was the corporate owner of the Property (the “Property”).

[11] Registrant A (“Registrant “A”), a registrant with Brokerage A (“Brokerage A”), is the salesperson that represented the Seller.

[12] Ms. Yu represented the corporate buyer (the “Buyer”).

- [13] On July 27, 2022, the Seller signed a Seller's MLS® Brokerage Contract (the "Listing Agreement") listing the Property for sale with Brokerage A with an asking price of \$999,000.
- [14] The MLS® Listing (the "MLS® Listing") states: "Industrial Building for sale including paint room, body shop, paint booth, lifts and equipment." The MLS® Listing also stated: "This building offers showroom, reception, office area with mezzanine."
- [15] The Seller and Ms. Yu have a mutual friend and business partner (the "Colleague"), who speaks with the Seller regularly. The Colleague communicated to Ms. Yu what she understood to be a request from the Seller to contact the Seller directly.
- [16] Ms. Yu contacted the Seller directly on November 14, 2022. Registrant A tried to phone Ms. Yu but she did not answer. Registrant A then texted Ms. Yu asking Ms. Yu to call her back, but she did not.
- [17] The Seller and Ms. Yu exchanged several text messages.
- [18] Ms. Yu states she did not contact the Seller directly to discuss the sale of the Property, but they had a conversation about leasing. Ms. Yu did not obtain Registrant A's permission because the conversation was not about the sale of the Property.
- [19] On November 14, 2022, the Buyer wrote an offer to purchase the Property for \$880,000, the offer did not set out any chattels or unattached goods that were to be included in the sale price pursuant to paragraph 4 of the offer ("Offer 1").
- [20] Ms. Yu sent Offer 1 directly to the Seller at 12:43pm on November 15, 2022, and then to Registrant A at 12:44 the same day. Ms. Yu sent a copy of Offer 1 directly to the Seller because he requested she do so.
- [21] On November 15, 2022, the Seller wrote a Counter Offer for \$950,000 ("Counter Offer 1").
- [22] On November 15, 2022, the Buyer wrote a new offer to purchase the Property for \$900,000, the offer did not set out any chattels or unattached goods that were to be included in the sale price pursuant to paragraph 4 of the offer ("Offer 2").
- [23] On November 16, 2022, the Seller wrote a Counter Offer ("Counter Offer 2") that, among other things, stated "This Sale is only for Real Estate, but the business is not included."
- [24] Ms. Yu did not realize that the clause on Counter Offer 2 meant that no equipment would be included in the sale. Ms. Yu did not follow up to clarify the meaning of the clause.

- [25] The Buyer accepted Counter Offer 2 on the same day.
- [26] Following the removal of conditions, the Buyer wanted to view the equipment as the equipment was an important aspect of the sale for Ms. Yu's client.
- [27] On December 13, 2022, Ms. Yu texted the Seller directly to ask for an equipment list.
- [28] The Seller is an accounting/immigration client of Ms. Yu's and they had a conversation about other matters, and it was during this conversation that Ms. Yu asked about the equipment list. Ms. Yu admits this was an oversight on her part and she understands she should not have asked the Seller for the list directly. She did also communicate with Registrant A about the equipment list.
- [29] When Ms. Yu asked Registrant A about the specifics of the equipment, Registrant A advised that the equipment would not be included and that Counter Offer 2 stated the sale was for the real estate, not the business.
- [30] Registrant A stated that the Seller only intended to include the equipment in the sale of the Property if the agreed-upon price was acceptable. Registrant A further stated that in Counter Offer 1 there is no mention of "real estate only" as the Seller would have been content with that price, but that Counter Offer 2 stated that it was for "real estate only" to reflect the lower price.
- [31] The Buyer then brought up the issue of square footage. Once conditions were released and the Buyer started showing prospective tenants the space, the Buyer noticed that 1000 of the 5200 listed square feet of the building is a mezzanine. The Buyer realized she would not be able to obtain the monthly rental she had anticipated.
- [32] The Seller contacted Ms. Yu directly through WeChat on December 23, 2022, and requested an update on the transaction and whether the possession date was going to change.
- [33] Ms. Yu replied that she would ask the Buyer, and she replied to the Seller on January 12, 2023, when she received a response from her client. Ms. Yu responded that per instructions from her client, the Buyer would proceed if the purchase price was reduced by \$75,000 on account of the square footage issue.
- [34] Following these two issues, the Buyer lost complete trust in the process.
- [35] The sale ultimately fell apart because of the discrepancy in square footage and the Buyer backed out of the sale.
- [36] The Seller took the position that the Buyer backed out of the deal without valid reason and forfeited the deposit.

## REASONS:

### Mitigating Factors

- [37] Ms. Yu has no previous sanction history.
- [38] Ms. Yu was cooperative with the investigation and acknowledged her error in communicating with an exclusively listed seller.

### Aggravating Factors

- [39] Ms. Yu has been continuously registered as a broker from April 1, 2021, and prior to that as a salesperson since November 19, 2015.
- [40] Ms. Yu filed a complaint against the seller's agent instead of acknowledging her own failure to incorporate into the contract the equipment her client wanted included in the purchase.

### Prior Decisions & Other Considerations

- [41] 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.
- [42] 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.*
- [43] Ms. Yu's client wanted equipment to be included in the contract of purchase and sale but Ms. Yu did not include a list of unattached goods and chattels to be incorporated into the contract.
- [44] Ms. Yu communicated directly with an exclusively represented seller regarding details of the transaction and also delivered transaction documents directly to the exclusively represented seller.
2. *The role of the offending member in the breaches.*
- [45] Ms. Yu was the only registrant involved in her 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 Ms. Yu enjoyed a benefit or suffered a loss as a result of her breaches.
4. *The impact of the breaches on complainants or others.*
- [47] In part because of the issue with the equipment, the Buyer backed out of the deal after conditions were removed and as a result forfeited their deposit.
- [48] The complainant is the registrant who represented the Seller, as a result of the transaction falling through she also suffered the loss of a commission from the transaction.
- [49] Registrant conduct that undermines the agency relationship between the seller and the listing agent has the potential to damage public confidence in the concept of the agency relationship and the reputation of the real estate industry as a whole.
5. *The need for specific deterrence to protect the public.*
- [50] Specific deterrence is needed to ensure that Ms. Yu understands the importance of ensuring her client's wishes are properly reflected in the contract for purchase and sale, and that as the Buyer's agent it was fully her responsibility to incorporate unattached goods and chattels into the contract.
- [51] Specific deterrence is needed to ensure Ms. Yu is aware that her actions have the potential to undermine the principles of the agency relationship between clients and brokerages.
6. *The need for general deterrence to protect the public.*
- [52] All registrants must understand the importance of incorporating all of their client's wishes into the contract of purchase and sale, that chattels referred to in the listing are not automatically included in the purchase and any unattached goods and chattels their client wants included in the purchase must be specifically incorporated or listed in the contract for purchase and sale. Registrants must further understand they cannot pass off a failure of their own responsibility to the other registrant involved in a transaction.

[53] All registrants must be reminded of the importance of the agency relationship between members of the public and brokerages and that it is not appropriate for registrants to engage in conduct that damages or undermines these relationships.

7. *The need to maintain the public's confidence in the integrity of the profession.*  
[54] Members of the public must be confident that the registrants they engage are competent and will properly represent them by protecting and promoting their interests, and ensuring those interests are reflected in contracts drafted on their behalf.

[55] Members of the public must be reassured that the importance of the agency relationship between clients and brokerages is recognized and protected. Registrant conduct that undermines these agency relationships runs the risk of damaging consumer confidence in the real estate industry.

8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*  
[56] Ms. Yu's conduct falls below the standard expected of registrants, and it was egregious because not only did she fail to incorporate her client's wishes in the contract of purchase and sale that she drafted, she then filed a complaint against the registrant representing the other party to the transaction blaming the other registrant for her own failure. Further, as a broker in charge of supervising other registrants she is to be held to a higher standard and ought to know that her actions discussing the transaction with, and sending documents directly to the represented party were completely inappropriate.

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

#### **A. What is an appropriate sanction for Ms. Yu's breach of Bylaw 702?**

[57] Bylaw 702 is very broad and there is an extensive library of previous sanctions covering a wide range of breaches. The following two decisions are the ones most relevant to the current matter.

[58] In *Harvey (Re)*, [2022 SKREC 8](#) (file #2022-08) "*Harvey*", Mariel Harvey was issued an order of reprimand and a \$3,000 fine for failing to include the financing condition on the Notice to Remove Conditions form.

[59] Ms. Harvey represented a buyer client. Ms. Harvey's buyer client had written an offer to purchase a property that was made subject to several conditions, including that the buyer obtain financing on or before March 4, 2022. There were some delays in arranging for financing, but the buyer ultimately received confirmation from the mortgage broker that she had been approved for financing on March 4. Ms. Harvey drafted a Notice to Remove Conditions for the buyer to sign. However, Ms. Harvey mistakenly failed to include the financing condition on

this form. The form was signed and sent to the listing agent and Ms. Harvey texted the buyer to advise that she had just bought a house. On March 7, 2022, the listing brokerage's conveyancing department reviewed the removal of conditions and noticed that the financing condition had not been removed. The buyer's purchase of the property collapsed and a previously-accepted back-up offer came into place.

- [60] Ms. Harvey did not have a previous sanction history with the Commission and she was cooperative with the investigation. She acknowledged her error and apologized to her client.
- [61] The buyer's purchase of the property collapsed due to Ms. Harvey's error.
- [62] Ms. Yu's breach of Bylaw 702 is more serious than that of the registrant in *Harvey*, she failed to include terms in the contract of purchase and sale that would incorporate the equipment her client wanted to have included in the purchase. However, rather than acknowledge her error as the registrant in *Harvey* did, Ms. Yu instead filed a complaint against the registrant representing the seller alleging that the equipment issue was the fault of the other registrant. Also, Ms. Yu is a broker and as the people responsible for ensuring that the registrants and employees under their supervision are complying with the legislation, brokers are held to a higher standard of conduct.
- [63] In *Morrison (Re)*, [2019 SKREC 35](#) (file #2019-02) ("*Morrison*"), Justin Morrison was issued an order of reprimand and ordered to pay a fine of \$1,500 for omitting to properly incorporate terms into the contract of purchase and sale.
- [64] Mr. Morrison represented the buyer of a property. A home inspection identified several items that required repair. At his buyer client's instruction, Mr. Morrison discussed these items with the listing agent and the seller agreed to fix the items set out in the inspector's list. As the seller had agreed to do the repairs right away, Mr. Morrison did not take any steps to incorporate the seller's obligation to repair these items into the contract of purchase and sale. One of the issues the seller was supposed to repair continued to cause problems for the buyer after she took possession of the property.
- [65] Mr. Morrison was co-operative with the investigation.
- [66] At the time of the breach, Mr. Morrison had been a registrant for almost 10 years. The buyer was extremely upset with Mr. Morrison's conduct. Mr. Morrison had been sanctioned by the Commission in 2016 and 2017 for failing to properly fill out forms.
- [67] Ms. Yu's breach of Bylaw 702 is similarly serious to that of the registrant in *Morrison*. Ms. Yu also failed to incorporate necessary terms into the contract of purchase and sale to reflect her buyer client's wishes. While the buyer in *Morrison* suffered harm as a result of unfixed issues with the property, Ms. Yu's



buyer ultimately backed out of the deal after removal of conditions forfeiting the deposit. Unlike the registrant in *Morrison*, Ms. Yu does not have a previous history of sanctions, however she is a broker and brokers are held to a higher standard of conduct.

- [68] 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. Consideration must be given to the fact that the decision in *Morrison* was rendered prior to this amendment coming into effect.
- [69] An order of reprimand and a fine of \$3,000 are appropriate sanctions for Ms. Yu's breach of Bylaw 702.
- [70] As Ms. Yu has agreed to sign this consent order, there will be no order as to costs.

#### **A. What is an appropriate sanction for Ms. Yu's breach of Bylaw 709?**

- [71] While there are seven previous decisions dealing with a breach of Bylaw 709, the two that follow are the most relevant to the current matter.
- [72] In *Moser (Re)*, [2019 SKREC 32](#) (file #2019-25) ("*Moser*"), Christopher Moser was issued an order of reprimand and ordered to pay a fine of \$2,000 for sending a blind carbon copy of an offer to purchase to the represented seller when he emailed it to the listing agent.
- [73] Mr. Moser represented a buyer who was interested in a property that was owned by a bank. Registrant A represented the seller bank and Mr. X was Registrant A's contact at the bank. Mr. Moser's clients wrote an offer to purchase the property, but Registrant A advised that he had not heard back from Canada Mortgage and Housing Corporation and that they would have to let the offer lapse. He said he would let Mr. Moser know when he heard back from CMHC.
- [74] Mr. Moser was surprised at how long it was taking to get an answer. Mr. Moser's seller clients wrote another offer to purchase the property. Mr. Moser sent this to the listing agent via email, but also blind carbon copied Mr. X on the email. The property was ultimately sold to a different buyer. Mr. Moser was not happy with how the transaction played out and was concerned that his clients had not been given a fair opportunity to purchase the property.

- [75] Mr. Moser had no previous sanction history and was co-operative with the investigation.
- [76] Ms. Yu's breach of Bylaw 709 was slightly more serious than that of the registrant in *Moser*. While Ms. Yu sent copies of the transaction documents directly to the represented Seller as well as the registrant, she also engaged in direct communication with the Seller about other aspects of the deal.
- [77] In *Rempel (Re)*, [2010 SKREC 7](#) (file #2009-57) ("*Rempel*"), Leonard Rempel was issued an order of reprimand and ordered to pay a fine of \$1,000 for contacting a buyer who was represented by a registrant at another brokerage.
- [78] Mr. Rempel contacted a buyer who was already involved in an exclusive relationship with another brokerage. Mr. Rempel asked negotiation questions of the buyer rather than contacting the buyer's agent. The Investigation Committee acknowledged that Mr. Rempel's conversation with the buyer was very short, but stated that it should not have happened in these circumstances.
- [79] The Commission considered that Mr. Rempel had no previous sanction history. They stated that having been in the real estate industry for such a long time, he should have known that his actions were inappropriate. Mr. Rempel was angry and did not express remorse for his actions. He felt that since the other agent had tried to call his client, he would call her client directly.
- [80] The Committee stated that Mr. Rempel's actions were inappropriate and contrary to the *Act*. Although the conversation was brief, it was made and that was wrong. Mr. Rempel knew his actions were wrong before he made the call. The call was blatant disregard for the provisions of the Act and could not be condoned by the Commission. Registrants must have respect for other registrants and their clients. Clearly, when someone is represented by another registrant, registrants must communicate through the other registrant. If a registrant feels the other registrant is acting improperly, the remedy is not to also act improperly.
- [81] The Hearing Committee stressed that this was not a small matter. The proper protocol must be followed by Mr. Rempel in the future and all registrants must be reminded not to contact the clients of their fellow registrants.
- [82] Ms. Yu's breach of Bylaw 709 is slightly more serious than that of the registrant in *Rempel*. Ms. Yu had multiple communications with the represented Seller; she not only discussed aspects of the deal with the Seller but directly sent transaction documents to the Seller as well. Ms. Yu had an existing relationship with the Seller unrelated to the transaction and admits that during a text conversation on unrelated matters she requested an equipment list from the Seller. Ms. Yu admits this was an oversight on her part and acknowledges she should not have done so.

- [83] The Hearing Committee in *Rempel* took a firm position, making it clear that direct communications of any kind with an exclusively represented party are not to be tolerated by the Commission.
- [84] In determining an appropriate sanction for Ms. Yu's breach of Bylaw 709, consideration must be given to Ms. Yu's responsibility as a registered broker. As the people responsible for ensuring that the registrants and employees under their supervision are complying with the legislation, brokers are held to a higher standard of conduct.
- [85] Consideration must also be given to the fact that both of the decisions referred to above were rendered prior to the May 2020 amendments to s. 38 of *The Real Estate Act* increasing the maximum fines that can be ordered against registrants found guilty of professional misconduct or professional incompetence.
- [86] An order of reprimand and a fine of \$3,000 are appropriate sanctions for Ms. Yu's breach of Bylaw 709.
- [87] As Ms. Yu has agreed to sign this consent order, there will be no order as to costs.

#### **CONSENT ORDER:**

- [88] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Ms. Yu and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [89] 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. Ms. Yu shall receive an order of reprimand for the violation of Bylaw 702;
  - b. Ms. Yu shall, within 60 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. Ms. Yu's registration shall be terminated if she fails to make payment as set out above.
- [90] 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 709:
- a. Ms. Yu shall receive an order of reprimand for the violation of Bylaw 709;
  - b. Ms. Yu shall, within 60 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. Ms. Yu's registration shall be terminated if she fails to make payment as set out above.

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

Dated at Regina, Saskatchewan, this 2<sup>nd</sup> day of May, 2024.

Jeffrey P. Reimer  
Hearing Committee Chairperson