

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

Houston (Re), 2024 SKREC 9

Date: April 3, 2024
Commission File: 2023-45

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF ABBIE HOUSTON**

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

Jeffrey P. Reimer - Chairperson

Dean Staff

Cam Bristow

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*, Ms. Houston breached section 18(1)(d), by trading in real estate as a salesperson while she was not registered as a salesperson.

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 18(1)(d) of *The Real Estate Act* states:
“No person shall trade in real estate as a salesperson unless the person is registered as a salesperson”

FACTS:

- [4] In accordance with subsection 9(4) of The Real Estate Regulations (“the Regulations”), the Hearing Committee accepts Ms. Houston’s Statement of Facts and Admissions, which includes the following relevant points:
- [5] Ms. Houston has been registered as a salesperson under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission continuously from October 11, 2016. .
- [6] Ms. Houston has taken the following real estate courses:
- Phase 1 – Real Estate as a Professional Career;
 - Residential Real Estate as a Professional Career;
 - Commercial Real Estate as a Professional Career; and
 - Farm Real Estate as a Professional Career.
- [7] Ms. Houston has completed the continuing professional development seminars each registration year since 2016-2017.
- [8] Ms. Houston presently registered under the provisions of *The Real Estate Act* as a salesperson with Re/Max of Swift Current.
- [9] Ms. Houston’s 2022 – 2023 certificate of registration expired on June 30, 2023.
- [10] Ms. Houston neglected to renew her certificate of registration for the 2023 – 2024 year prior to the expiration of my 2022 – 2023 certificate.
- [11] On July 4, 2023, Ms. Houston renewed her certificate of registration for the 2023 – 2024 year.
- [12] Between July 1, 2023, and July 3, 2023, Ms. Houston continued to have active listings on MLS® and advertise on her social media profiles and professional website.
- [13] A review of Ms. Houston’s social media was carried out by Commission staff prior to her becoming re-registered and found:
- Facebook profile;
 - Business website;
 - Twitter profile;
 - Instagram profile;

- Active listings on MLS®; and
- Realtor.ca profile.

- [14] Ms. Houston's social media posts continued to run between July 1, 2023 – July 3, 2023, while her registration was expired. Ms. Houston advised that she uses a scheduling program that she loads 2 – 3 weeks in advance as it is set to run marketing ads at certain times and certain days. She states that if she had thought of it, she could have stopped the posts.
- [15] Ms. Houston has previously failed to renew her certificate of registration on time. Her certificate of registration for the 2021 – 2022 year expired on June 30, 2022, and she did not renew her certificate until July 5, 2022.
- [16] On August 11, 2022, Ms. Houston received an email from the Commission with the following notice and warning:

Pursuant to Commission Bylaw 315, unless suspended or cancelled earlier, every certificate of registration expires at midnight on June 30 next following the date of issuance.

As such, your certificate of registration expired at midnight on June 30, 2022. Since your certificate of registration had not been renewed prior to this point, you ceased to be registered with the Saskatchewan Real Estate Commission (the "Commission") to trade in real estate in Saskatchewan on June 30, 2022.

According to our records, you did not renew your registration until July 5, 2022.

This means that any trades in real estate that you did between July 1 and July 4, were done while you were not registered and constitute a breach of s. 18 of *The Real Estate Act*. Clause 2(bb) of the *Act* defines a "trade" in real estate as:

- (i) a disposition of, an acquisition of or a transaction in real estate by sale, purchase, exchange, option, lease or otherwise;
- (ii) an offering, advertising, listing or showing of real estate for sale, purchase, exchange, option, lease or otherwise;
- (iii) an offer to purchase;
- (iv) property management;
- (v) the solicitation, negotiation or obtaining of a contract, agreement or any other arrangements to advertise real estate for sale, exchange, option, lease or other disposition of the real estate, either directly or indirectly, through any medium of advertising;
- (vi) holding oneself out as trading in real estate;
- (vii) any conduct, act or negotiation, in the furtherance or attempted furtherance of any one or more of the things mentioned in this clause.

As such, any marketing of properties or negotiation of offers you took part in between July 1 and July 4, constitutes unregistered trading, as would any social media profiles that include your listings or identify you as a registrant, such as a

professional Facebook profiles or Instagram accounts, that were not taken down while you were unregistered.

REASONS:

Mitigating Factors

[17] Ms. Houston was co-operative with the investigation.

[18] Ms. Houston has no previous sanction history.

Aggravating Factors

[19] This is the second year in a row Ms. Houston has failed to renew her registration before it expired.

Prior Decisions & Other Considerations

[20] 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.

[21] 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.

[22] Ms. Houston failed to renew her certificate of registration and continued to trade in real estate while not registered to do so.

2. *The role of the offending member in the breaches.*
[23] Ms. Houston was the sole perpetrator of her breach of the legislation.
3. *Whether the offending member suffered or gained as a result of the breaches.*
[24] There is no evidence to suggest that Ms. Houston benefited from her actions, nor is there any evidence that she suffered a loss.
4. *The impact of the breaches on complainants or others.*
[25] There is no evidence to suggest that any other parties were harmed by Ms. Houston's actions.
5. *The need for specific deterrence to protect the public.*
[26] While it does appear to be the result of an oversight rather than a deliberate decision to trade while unregistered, specific deterrence is needed to reiterate to Ms. Houston that trading in real estate on behalf of other people is a serious undertaking that requires registration with the Commission.
6. *The need for general deterrence to protect the public.*
[27] General deterrence is needed to ensure that other registrants know that the Commission will not tolerate registrants continuing to trade in real estate after allowing their certificate of registration to lapse.
7. *The need to maintain the public's confidence in the integrity of the profession.*
[28] The public must be reassured that individuals trading in real estate are registered with the Commission to do so.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
[29] Ms. Houston's conduct falls outside the range of acceptable registrant conduct, but her breach of the legislation was not egregious.
9. *The range of sanction in similar cases.*

A. What is an appropriate sanction for Ms. Houston's breach of section 18(1)(d)?

- [30] There is only one previous decision dealing with a breach of s. 18(1).
- [31] In *Harvey (Re)*, [2017 SKREC 11](#) (file #2017-08) ("Harvey"), George Harvey was issued an order of reprimand and \$2,000 fine for neglecting to renew his certificate of registration.
- [32] Mr. Harvey is the broker and sole registrant of Wheatland Realty Ltd. His 2015-2016 certificate of registration expired on June 30, 2016. Mr. Harvey neglected to renew his certificate of registration for the 2016-2017 year. He did not realize that he had failed to renew his certificate of registration.

- [33] On October 6, 2016, the sellers signed a listing agreement with Wheatland Realty Ltd. listing the property for sale. An advertisement was created and published with respect to the property.
- [34] On November 24, 2016, and December 9, 2016, Ms. Gail Armstrong, the Registration and Office Administrator of the Saskatchewan Real Estate Commission, sent an email to Mr. Harvey, at the email address he provided to the Commission, to inquire if he was acting as a broker. On January 30, 2017, Ms. Armstrong sent an email to the same email address attaching a letter advising that Mr. Harvey was not registered and that she had attempted to contact him on two previous occasions. Mr. Harvey received this email and contacted Ms. Armstrong immediately. Mr. Harvey became registered on January 30, 2017.
- [35] Mr. Harvey was co-operative with the investigation and signed a Statement of Facts and Admissions acknowledging his misconduct. There was no activity in Mr. Harvey's trust account during the period of time during which he was not registered. The property was not sold while Mr. Harvey was not registered, nor did he receive any offers to purchase during that time. At the time he failed to renew his registration, Mr. Harvey was ill for two weeks and was also dealing with his sister in Washington D.C. who had been diagnosed with Alzheimer's disease. Mr. Harvey does very few transactions per year and there are no other registrants working out of his brokerage.
- [36] Mr. Harvey was unregistered for seven months. He failed to respond to several emails from the Commission regarding his registration status. The ramifications of non-registration are significant: no REIX coverage for negligence and no defalcation coverage in the event of trust account violations.
- [37] Ms. Houston's breach of the legislation is similarly serious to that of the registrant in *Harvey* although the details are different. While Mr. Harvey was unregistered for a lengthy period of time there were extenuating circumstances surrounding his failure to renew. Mr. Harvey was a broker, and the only registrant of his brokerage, and while he did list one property during that period, he was not otherwise involved in any trades in real estate. Ms. Houston was unregistered for just 3 days, but she continued to run her social media profiles indicating her status as a Realtor and had active listings. Further, having failed to renew her certificate on time the previous year, Ms. Houston had received prior notice from the Commission of the ramifications of allowing her registration to expire and was fully aware that continuing to hold herself out as a Realtor and advertise during this period is a breach of the legislation.
- [38] 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.

- [39] An order of reprimand and a \$3,000 fine are appropriate sanctions for Ms. Houston's breach of section 18(1)(d).
- [40] As Ms. Houston has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [41] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Ms. Houston and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [42] 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 18(1)(d):
- a. Ms. Houston shall receive an order of reprimand for the violation of section 18(1)(d);
 - b. Ms. Houston shall, within 6 months 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. Houston's registration shall be terminated if she fails to make payment as set out above.
- [43] There shall be no order as to costs.

Dated at Regina, Saskatchewan, this 3rd day of April, 2024.

Jeffrey P. Reimer
Hearing Committee Chairperson