

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

Puterbaugh (*Re*), 2023 SKREC 6

Date: November 21, 2023
Commission File: 2023-55

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF NICOLE PUTERBAUGH**

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

Randal C. Touet - Chairperson

Kayla McQueen

Dean Staff

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. Puterbaugh breached:

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

Count 2:

That, contrary to section 39(1)(c) of *The Real Estate Act*, Ms. Puterbaugh breached:

- Section 58(1)(a) and (3) of the *Act* by presenting verbal offers and acceptance of an offer.

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 723 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] Section 58(1)(a) the Act states:

“An offer to purchase obtained by a registrant: (a) subject to the regulations, is to be in writing, dated and signed by the buyer in the presence of a witness”

[5] Section 58 (3) of the Act states:

“(3) Where a registrant presents an offer mentioned in subsection (1) and the offer is accepted:

(a) subject to the regulations, the acceptance is to be in writing, and to be dated and signed by the seller in the presence of a witness who shall also sign the acceptance;

*(b) the registrant shall leave one copy of the acceptance with the seller;
and*

(c) the registrant shall immediately deliver a copy of the acceptance to the buyer.”

FACTS:

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

[7] Ms. Puterbaugh was registered as a salesperson from September 24, 2014, to October 30, 2017. Thereafter she was registered as an associate broker from October 30, 2017, to July 9, 2020, and from August 19, 2020, to April 7, 2021. She has been registered as a broker under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate

Commission from July 9, 2020, to August 18, 2020, and continuously to date since April 7, 2021.

- [8] Ms. Puterbaugh 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; and
 - Real Estate Office Management & Brokerage.
- [9] Ms. Puterbaugh has completed the continuing professional development seminars each registration year since 2014 – 2015;
- [10] Ms. Puterbaugh is presently registered under the provisions of *The Real Estate Act* as a broker with Hub International Manitoba Limited o/a Cottenie and Gardner Real Estate.
- [11] At all relevant times, the “sellers” were the owners of a cabin (the “property”).
- [12] On June 25, 2023, the sellers signed an In-House Exclusive Seller’s Brokerage Contract with Cottenie and Gardner Real Estate, listing the Property with an asking price of \$439,900.
- [13] Ms. Puterbaugh was at all relevant times the salesperson representing the Sellers Property.
- [14] On July 24, 2023 , the first purchaser (the “first purchaser”) met with Ms. Puterbaugh at the property at 9:30am for a viewing.
- [15] At this time, the first purchaser and Ms. Puterbaugh discussed making an offer for \$380,000 and Ms. Puterbaugh advised that she would call the sellers.
- [16] At 10:25 on July 24, 2023, Ms. Puterbaugh sent the following text to the first purchaser:
- Hi....., the sellers said they will accept your offer of \$380,000. While you’re still here at the lake, would you like to meet up and sign the official offer? I would need to know what possession day you want, and also will need a deposit by August 5th (when they will be here to sign the acceptance.) Typical deposit for this price point is around \$5000. It can be cash or cheque.
- [17] On July 24, 2023, at 1:30pm, the first purchaser signed an offer to purchase for \$380,000, with a condition for financing and a possession date of September 14, 2023. The offer named Ms. Puterbaugh and Cottenie and Gardner Real Estate as representatives of the first purchaser.

- [18] A Limited Dual Agency Acknowledgement form was signed at the same time as the offer.
- [19] The sellers lived 4 hours away in Saskatoon and were in their 90's, so Ms. Puterbaugh called them with the offer - they indicated to Ms. Puterbaugh that they would accept the offer, but because they didn't use a computer, they wanted to sign the acceptance when they planned to be back in Kamsack on the weekend of August 5th.
- [20] The sellers told Ms. Puterbaugh that this was the only way they could review and sign the offer, and if the deadline for acceptance was sooner, they could not and would not sign.
- [21] Ms. Puterbaugh explained this to the first purchaser and suggested making the offer open for acceptance until August 7th when the sellers could come in person to sign the contract.
- [22] The first purchaser agreed to the timeline. The offer was left open for acceptance until 10:00am August 7th.
- [23] Ms. Puterbaugh congratulated the first purchaser on the purchase of the cabin, but she did not tell him that "the deal was done" or that this was a completed sale, as the contract was not yet signed by both parties.
- [24] On August 5, 2023, the sellers had a walk through with the first purchaser to show him around the cabin and answer any questions.
- [25] The day prior to the walk through, the sellers advised Ms. Puterbaugh that they were having second thoughts and did not want to sign the offer yet. Ms. Puterbaugh advised the sellers that they had until 10:00am on August 7th to sign the acceptance or the offer would expire.
- [26] Ms. Puterbaugh advised the first purchaser when he arrived for the walk through that the sellers were not prepared to sign the contract yet. The first purchaser said that was fine.
- [27] On August 6, 2023, 7:30 pm, the second purchasers (the "second purchasers") signed an unconditional offer to purchase the Property for \$400,000 with a possession date of September 1st, 2023. The offer named Ms. Puterbaugh and Cottenie and Gardner Real Estate as the registrants representing the second purchasers. The offer was open for acceptance until 5pm August 7th.
- [28] The sellers instructed Ms. Puterbaugh to inform the first purchaser that they had received a second offer and to give him an opportunity to revise his offer.

- [29] At 5:45pm on August 6, 2023, Ms. Puterbaugh sent the following text to the first purchaser:
- Hi....., the sellers have been dealing with another set of buyers for several months, and they just put in an offer. Because the sellers haven't signed/formally accepted your offer yet, they are free to consider this other offer. Would you like to submit a new offer or are you comfortable with your current offer?
- [30] On August 7, 2023, Ms. Puterbaugh followed up with the first purchaser and was able to reach him via text message to ask what he would like to do with his offer.
- [31] The first purchaser asked what the other offer was. Ms. Puterbaugh replied that she could not tell him how much the other offer was but that it was higher than his offer.
- [32] At 9:00am, the first purchaser advised Ms. Puterbaugh to increase his offer to \$405,000.
- [33] On August 7, 2023, at 2:30pm the sellers signed acceptance of the second purchasers' offer. A Limited Dual Agency Acknowledgement form was signed in conjunction with the offer and acceptance.
- [34] At 2:49pm, Ms. Puterbaugh advised the first purchaser that the sellers accepted the competing offer.
- [35] Ms. Puterbaugh did not, at any point in time, advise the first purchaser that she was also acting for a competing buyer.
- [36] The second purchasers first contacted Ms. Puterbaugh in February 2023 to inquire about cabins for sale at Madge Lake.
- [37] Ms. Puterbaugh advised the second purchasers that there were two cabins for sale at that time, the property subject of this complaint and one other cabin.
- [38] The second purchasers viewed the Property on April 21, 2023, following which they made a verbal offer that the sellers declined without a counter.
- [39] The second purchasers said they would continue to look and discuss the property as well as other cabins.
- [40] On or around August 3, 2023, the second purchasers contacted Ms. Puterbaugh to arrange a viewing of another cabin at Madge Lake. At the viewing, the second purchasers advised they preferred the property. They had noticed it still had a for sale sign and asked to view it again.

- [41] Ms. Puterbaugh advised the second purchasers that there was an offer that had been verbally accepted, but that she would contact the sellers to find out if they would allow a viewing.
- [42] Ms. Puterbaugh called the sellers and they wanted her to show the cabin again.
- [43] The second purchasers called Ms. Puterbaugh on August 5, 2023, and advised that they wanted to make an offer on the property.
- [44] Ms. Puterbaugh advised the second purchasers that she would need to ask the sellers if they would consider another offer as they had already verbally accepted an offer and were set to sign the papers that weekend.
- [45] One of the sellers advised Ms. Puterbaugh that he was he was having reservations about the first purchaser's offer, that he didn't feel comfortable with the price and with the fact that there was a financing condition on the offer.
- [46] One of the sellers told Ms. Puterbaugh that he hadn't signed the acceptance and if the second purchasers wished to make an offer, that he wanted Ms. Puterbaugh to present it.
- [47] Ms. Puterbaugh advised the seller that this was an awkward situation because she had already relayed to the first purchaser that the sellers were going to accept his offer.

REASONS:

- [48] The Investigation Committee and Ms. Puterbaugh considered the following as relevant in agreeing to the within consent order:

Mitigating Factors

- [49] Ms. Puterbaugh was co-operative with the investigation.

- [50] Ms. Puterbaugh has no previous sanction history.

Aggravating Factors

- [51] Ms. Puterbaugh has been registered as an associate broker or broker since October 30, 2017, and prior to that as a salesperson since September 24, 2014.
- [52] Ms. Puterbaugh represented two competing buyers without disclosing her conflict of interest.

[53] Ms. Puterbaugh was representing the sellers as well as the buyers as a limited dual agent. Registrants must be even more diligent when there are no other registrants involved in a transaction to ensure the paperwork is properly completed and the transaction is managed properly.

Prior Decisions & Other Considerations

[54] 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.

[55] 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.

[56] Ms. Puterbaugh represented competing buyers without making her buyer clients aware that she was in a conflict of interest.

[57] Ms. Puterbaugh utilized verbal offers multiple times to her seller clients from both prospective buyers, as well as relaying a verbal acceptance to one of her buyer clients

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

[58] Ms. Puterbaugh had an obligation to advise her buyer clients that she was in a conflict of interest.

[59] Ms. Puterbaugh 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.*
[60] There is no evidence that Ms. Puterbaugh suffered a gain or a loss.

4. *The impact of the breaches on complainants or others.*
[61] There is a significant potential for harm to the public when a registrant does not notify his or her clients when he or she is in a potential or actual conflict of interest.

[62] Further, as a result of Ms. Puterbaugh's breaches her client, the first purchaser, suffered consumer harm as he lost out on the purchase of a cabin.

5. *The need for specific deterrence to protect the public.*
[63] It must be made clear to Ms. Puterbaugh that she must notify her clients in the event a conflict of interest develops. A client can consent to a registrant continuing to represent them despite the existence of a conflict of interest, but the client must be made aware of the existence of the conflict and provided with sufficient information to provide his or her informed consent to the continued representation.

[64] Ms. Puterbaugh must be made aware of the importance of committing all offers and acceptances in writing, especially when acting in a limited dual agency capacity.

6. *The need for general deterrence to protect the public.*
[65] General deterrence is needed to ensure that all registrants in Saskatchewan are reminded that clients must be notified in the event a conflict of interest develops. It must be made clear to registrants that, while a client can consent to a registrant continuing to represent them despite the existence of a conflict of interest, the client must first be made aware of the existence of the conflict and provided with sufficient information to give his or her informed consent to the continued representation.

[66] Registrants must also be reminded that the *Act* requires that all offers and acceptance of offers must be made in writing.

7. *The need to maintain the public's confidence in the integrity of the profession.*
[67] Members of the public must be confident that the registrants they engage to assist them in trades in real estate will make them aware in the event a conflict of interest develops. Clients must be assured that their informed consent to the registrant continuing to represent them while in a conflict of interest is being sought and obtained in all cases.

[68] Members of the public must be assured that offers and acceptance of offers are properly committed in writing so they can rely on the representation from a registrant that their offer has been accepted and their purchase will proceed.

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

[69] Ms. Puterbaugh's conduct falls below the standard expected of registrants, and it was egregious because it caused harm to her client.

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

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

[70] While there are many previous decisions under Bylaw 702, none of them are entirely similar to the case at hand. The following three decisions relate to issues with a registrant's representation of multiple clients.

[71] In *Bailey (Re)*, [2018 SKREC 24](#) (file #2016-26) Chad Bailey was issued an order of reprimand and ordered to pay a \$1000 fine for assisting two competing buyers in writing offers to purchase the same property without advising either of the buyers that he was presenting offers for competing buyers.

[72] At the time of the transaction, Mr. Bailey and his broker believed that he was not allowed to advise his clients that there were multiple offers without written permission from the seller.

[73] Mr. Bailey was advised that neither of his buyer clients' offers had been accepted. At that time, he advised his clients that he had taken multiple offers. Both buyers were satisfied with Mr. Bailey's handling of their offers to purchase the Property and continue to be his clients.

[74] Mr. Bailey did not have a previous sanction history and had been registered for less than six months at the time of the transaction. Mr. Bailey and his broker believed that registrants could not disclose the fact that there were multiple offers to purchase a property to any person without written consent from the seller. There is no evidence that Mr. Bailey acted with malice or ill intent when he failed to advise his buyer clients that he represented competing buyers. Both of Mr. Bailey's clients were satisfied with his handling of their offers to purchase the property and continued to work with him. Mr. Bailey was co-operative with the investigation and signed Consent Order acknowledging his error.

[75] Ms. Puterbaugh's breach of Bylaw 702 is more serious than that of the registrant in *Bailey*. While they both presented offers for competing buyers without properly informing their clients, Ms. Puterbaugh was also acting for the Sellers and was the only registrant involved in the transactions.

[76] Further, while Mr. Bailey had been registered as a salesperson for less than six months at the time of his breach, Ms. Puterbaugh has been registered for nine years and is also a Broker.

- [77] In *Swartz (Re)*, [2017 SKREC 6](#) (file #2013-31) (“*Swartz*”), Kelly Swartz was issued an order of reprimand and ordered to pay a \$1,000 fine for a breach of Bylaw 702. Ms. Swartz was engaged as a limited dual agent in a transaction for a residential property. The Property Condition Disclosure Statement completed by the sellers stated they were not aware of any roof leaks or unrepaired water damage, but that the roof needed shingling. The buyer did not request, nor was she provided with, the PCDS. 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. Ms. Swartz did advise the buyer that the roof needed attention. The buyer did not view the property prior to purchase; the buyer looked at the MLS® Listing relating to the property, but this did not include photos of the second floor. The buyer did not request a home inspection or any other professional assessment of the property. After taking possession of the property, the buyer complained that: the roof was in extremely poor condition, 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.
- [78] The Hearing Committee stated that registrants must be extra careful to protect and promote the interests of the client when they are acting as a limited dual agent. The Committee considered the fact 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.
- [79] While Ms. Puterbaugh’s limited dual agency is not the source of her conflict of interest in the case at hand, it is reasonable to extend the Committee’s comments about the need for extra care to protect and promote the interests of the clients when they are in limited dual agency to any situation in which registrants are representing multiple clients in any sort of conflict of interest. The Hearing Committee in *Swartz* advised extra caution for registrants in limited dual agency because of the inherent difficulty in balancing the competing interests of a buyer and seller in a single transaction. The same difficulty exists when one registrant represents competing buyers. As when a registrant is acting as a limited dual agent, a registrant representing competing buyers is also restricted in the information he or she can provide to each client and success for one buyer client necessarily means defeat for another. The interests of each buyer client stand in opposition to one another and the registrant representing them must find a way to protect and promote each client’s interests to the best of his or her ability within the limitations of the registrant’s obligations to the other buyer.
- [80] Ms. Puterbaugh’s breach of Bylaw 702 is similarly serious to that of the registrant in *Swartz*. There was evidence of actual harm to the buyer in *Swartz*. Ms. Puterbaugh’s failure to properly advise the first purchaser left that buyer’s offer vulnerable to further offers. Ms. Puterbaugh represented the second purchasers who presented the competing offer that ultimately caused the first purchaser to lose the purchase he believed was an accepted and firm deal.

- [81] Ms. Swartz was successfully sued by the buyer and ordered to pay damages. At the time the Consent Order was signed, Ms. Swartz had paid the judgment ordered against her. The fact that Ms. Swartz had been penalized for her actions in another forum was considered a mitigating factor.
- [82] In *Thiessen (Re)*, [2015 SKREC 5](#) (file #2012-10) ("*Thiessen*"), Corey Thiessen was issued an order of reprimand and a \$2,000 fine for failing to protect and promote the interests of his clients and to deal fairly with all other parties to the transaction. Mr. Thiessen represented Seller A and Seller B, who were selling a property that formed part of their mother's estate. Mr. Thiessen obtained a handwritten note stating that Seller A authorized Seller B to act on his behalf for the sale of their mother's home. This document was a direct instruction to deal predominantly with Seller B, but Mr. Thiessen ignored this instruction and continued to communicate with Seller A and have him sign documents without Seller B. Mr. Thiessen's wife wrote an offer to purchase the property. Mr. Thiessen completed the appropriate disclosures at that time, but failed to advise his clients when he was later added to the transaction as a buyer.
- [83] Mr. Thiessen did not have a previous sanction history and was co-operative with the investigation. He signed a Statement of Facts and Admissions acknowledging his error. There is no evidence to suggest that Mr. Thiessen deliberately withheld the fact of his inclusion as a buyer from the sellers, nor is there evidence of consumer harm arising out of Mr. Thiessen's breaches of the legislation, although Seller B was dissatisfied with the sale of the property. Mr. Thiessen had moved to a new brokerage before the Consent Order was signed. He stated that his new broker had been reviewing all of his documentation and that he believed the quality of his documentation was above industry standard.
- [84] The Hearing Committee noted that, at the time of the transaction giving rise to the complaint, Mr. Thiessen had been a registrant for eleven years. The Committee stated that registrants should be especially careful with disclosure and keeping their clients informed when they are personally involved in the transaction as a buyer or seller.
- [85] Although Ms. Puterbaugh was not personally involved in the transaction at hand, the Hearing Committee's comment in *Thiessen* that registrants must be especially careful with disclosure and keeping clients informed when personally involved in a transaction is relevant to the consideration of the case at hand. When a registrant is personally involved in a transaction, the registrant is in a conflict of interest whereby he or she must try to balance the protection of a client's interests with the advancement of his or her own interests. In these situations, there is an inherent risk to the client, whose interests now stand in opposition to the interests of the registrant he or she has engaged as an agent. It is because of this risk that the client must be advised that the conflict exists and provided with sufficient information to ensure that the client is aware of the risk to his or her interests and is able to evaluate the situation and determine whether or

not he or she wants to engage a different agent to ensure his or her interests are adequately represented.

- [86] While the risk to a client's interests is greater when the client's agent is personally involved in the transaction, there is still a risk to a buyer client whose agent is representing another buyer who is competing to purchase the same property. For this reason, it is reasonable to say that registrants must be especially diligent with disclosure and keeping their clients informed when they are representing competing buyers.
- [87] Ms. Puterbaugh's breach of Bylaw 702 is not as serious as that of the registrant in *Thiessen* because Ms. Puterbaugh was not personally involved in the transaction.
- [88] Further to the above mentioned decisions, it must also be noted that Ms. Puterbaugh is 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. Ms. Puterbaugh was also representing the sellers and both buyers in limited dual agency. Registrants in limited dual agency must be especially diligent in protecting and promoting the interest of their clients, as there is no other registrant involved in the transaction to ensure adherence to the legislation.
- [89] An order of reprimand and a \$2,000 fine are appropriate sanctions for Ms. Puterbaugh's breach of Bylaw 702.
- [90] As Ms. Puterbaugh has agreed to sign this consent order, there will be no order as to costs.

B. What is an appropriate sanction for Ms. Puterbaugh's breach of Section 58(1)(a) and (3)?

- [91] While there are no decisions under Section 58(3) that are similar, there are several previous decisions under Section 58(1)(a) that apply equally to both subsections as they both provide the same requirement that the transaction be in writing.
- [92] In *Lovell (Re)*, [2018 SKREC 26](#) (file #2017-71), Nicole Lovell received a \$2,000 fine and a letter of reprimand for breaching s. 58(1)(a) by communicating a verbal offer and counter-offer via text messages while representing both the buyers and the sellers as a limited dual agent. Ms. Lovell ultimately completed a written offer on behalf of her buyer clients.
- [93] Ms. Lovell had no previous sanction history and was co-operative with the investigation. She signed a Consent Order acknowledging her error.

- [94] Ms. Lovell was representing both parties as a limited dual agent. Registrants must be even more diligent when there are no other registrants involved in a transaction to ensure the paperwork is properly completed and the transaction is managed properly.
- [95] Ms. Puterbaugh's breaches of s. 58(1)(a) and (3) is more serious than that of the registrant in *Lovell*. Both Ms. Lovell and Ms. Puterbaugh communicated verbal offers between buyers and sellers and ultimately completed written offers. However, Ms. Puterbaugh conveyed verbal offers to her sellers on multiple occasions and from two competing buyers. Further, Ms. Puterbaugh also conveyed a verbal acceptance which was relied upon by her one of her buyer clients to his detriment.
- [96] In *Hammel (Re)*, [2018 SKREC 3](#) (file #2016-02) ("*Hammel*"), Frank Hammel received a \$1,500 fine and a letter of reprimand for breaching s. 58(1)(a) by communicating verbal offers between a buyer and seller via email. The buyer's offer was not reduced to writing until the buyer engaged a registrant from another brokerage to represent him.
- [97] Mr. Hammel had no previous sanction history and was co-operative with the investigation. He had been registered since 2001 and signed a Statement of Facts and Admissions acknowledging his misconduct.
- [96] Mr. Hammel communicated two verbal offers to the seller and a verbal counter offer to the buyer. The buyer's offer was not committed to writing until the buyer was represented by another registrant.
- [97] Ms. Puterbaugh's breaches of s. 58(1)(a) and (3) are more serious than those of the registrant in *Hammel*. Both Ms. Puterbaugh and Mr. Hammel conveyed multiple verbal offers. While Ms. Puterbaugh did complete written offers on behalf of her buyers, she was communicating verbal offers on behalf of two competing buyers and also communicated a verbal acceptance which ultimately fell through.
- [98] In *Lorenz (Re)*, [2018 SKREC 2](#) (file #2015-79) ("*Lorenz*"), Wally Lorenz received a \$1,500 fine and a letter of reprimand for breaching s. 58(1)(a) by carrying several verbal offers and counter offers between a buyer and seller. Mr. Lorenz was representing both parties as a limited dual agent. He did assist the buyer in completing a written offer to purchase the property.
- [99] Mr. Lorenz had no previous sanction history and was co-operative with the investigation. The contract of purchase and sale between Mr. Lorenz's buyer and seller clients was ultimately reduced to writing.
- [100] Ms. Puterbaugh's breaches of s. 58(1)(a) and (3) are more serious to that of the registrant in *Lorenz*. Both Ms. Puterbaugh and Mr. Lorenz communicated verbal offers between buyers and sellers before a written offer was ultimately completed. Further, both Ms. Puterbaugh and Mr. Lorenz were acting as limited

dual agents. However, Ms. Puterbaugh conveyed multiple verbal offers for two competing buyers as well as a verbal acceptance that her seller clients did not follow through.

- [101] As with the breach of Bylaw 702, it is important to continue to be mindful of the fact that Ms. Puterbaugh was representing the sellers and both buyers in limited dual agency. She was the only registrant involved in the transactions, and she is a registered broker and must be held to a higher standard of conduct.
- [102] Registrants in limited dual agency must be especially diligent in protecting and promoting the interest of their clients, as there is no other registrant involved in the transaction to ensure adherence to the legislation.
- [103] An order of reprimand and a \$2,000 fine are appropriate sanctions for Ms. Puterbaugh's breach of Section 58(1)(a) and (3) of *The Real Estate Act*.
- [104] As Ms. Puterbaugh has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [105] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Ms. Puterbaugh and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [106] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Commission Bylaw 702:
- a. Ms. Puterbaugh shall receive an order of reprimand for the violation of Commission Bylaw 702;
 - b. Ms. Puterbaugh shall, within 60 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$2,000.00 fine for the said violation of the Bylaw; and
 - c. Ms. Puterbaugh's registration shall be terminated if she fails to make payment as set out above.
- [107] With respect to Count 2, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Section 58(1)(a) and (3) of the *Act*:
- a. Ms. Puterbaugh shall receive an order of reprimand for the violation of Section 58(1)(a) and (3) of the *Act*;
 - b. Ms. Puterbaugh shall, within 60 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$2,000.00 fine for the said violation of the *Act*; and

- c. Ms. Puterbaugh's registration shall be terminated if she fails to make payment as set out above.

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

Randal C. Touet
Hearing Committee Chairperson