

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

Boyes (Re), 2024 SKREC 7

Date: March 21, 2024
Commission File: 2023-62

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF JORDAN BOYES**

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. Boyes breached Commission Bylaw 714 by failing to take reasonable steps to discover facts pertaining to a property for which he accepted an agency agreement.

LEGISLATION:

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

“Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act, if...it is a breach of this Act, the

regulations or the bylaws or any terms or restrictions to which the registration is subject.”

[3] Bylaw 714 states:

“A registrant shall take reasonable steps to discover facts pertaining to every property for which the registrant accepts an agency agreement that a prudent registrant would take in order to fulfil the obligation to avoid error, misrepresentation or concealment of pertinent facts.”

FACTS:

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

[5] Mr. Boyes 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 May 21, 2015, and registered as a salesperson since January 19, 2010.

[6] Mr. Boyes 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; and
- Property Management as a Professional Career.

[7] Mr. Boyes has completed the continuing professional development seminars each registration year since 2010.

[8] Mr. Boyes is presently registered under the provisions of *The Real Estate Act* as a broker with Boyes Group Realty Inc.

[9] Seller 1 and Seller 2 (the “Sellers”) are the former owners of a property (the “Property”).

[10] The Sellers chose to list the Property for sale in May of 2023.

[11] Mr. Boyes acted as the listing agent for the sale of the Property.

[12] The neighbour (the “Neighbour”) is the owner of a property located next door to the Property (the “Neighbouring Property”).

[13] The Neighbour contacted Mr. Boyes on July 26, 2023. The Neighbour provided a phone bill evidencing a three-minute call to Mr. Boyes’ phone number.

- [14] Mr. Boyes does not recall this conversation.
- [15] The Neighbour states that, during this conversation, she advised Mr. Boyes that the driveway and fence of the Property encroach on the Neighbouring Property.
- [16] Mr. Boyes did not follow-up on these encroachment issues with the Sellers.
- [17] On August 8, 2023, Purchaser 1 and Purchaser 2 (the “Purchasers”) made an offer to purchase the Property for a purchase price of \$620,000.00.
- [18] On August 9, 2023, the Sellers made a counteroffer to the Purchasers for a purchase price of \$628,000.00.
- [19] The Sellers accepted the Purchasers counteroffer on the same day it was made.
- [20] On August 25, 2023, a Property Condition Disclosure Statement (“PCDS”) was executed by the Sellers and the Purchasers.
- [21] At paragraph 3(b) of the PCDS, the Sellers initialed “yes” to the question of whether they were aware of any encroachments or unregistered rights of way for the Property.
- [22] Under additional comments on the PCDS, the Sellers noted: “one little piece of driveway encroaches on neighbor been like that since original build.”
- [23] There was no disclosure of a fence encroachment in the PCDS.
- [24] The Neighbour phoned Mr. Boyes again on September 6, 2023, regarding the driveway and fence encroachments.
- [25] Mr. Boyes does not recall this conversation.
- [26] The Neighbour attempted to email Mr. Boyes documentation which evidenced the driveway and fence encroachments (the “Supporting Documents”).
- [27] Mr. Boyes never received the Neighbour’s e-mail forwarding the Supporting Documents.
- [28] The Supporting Documents indicate that both the Property’s driveway and fence encroach on the Neighbouring Property.
- [29] Mr. Boyes states that had he received the Supporting Documents from the Neighbour, he would have forwarded them to the Sellers, but he did not see them until he received notice of this complaint.

- [30] Mr. Boyes disagrees with the Neighbour's recollection of the events. However, he agreed to sign a Statement of Facts and Admissions in an act of good faith to get this matter settled and allow all parties to move forward.

REASONS:

Mitigating Factors

- [31] Mr. Boyes has no previous sanction history.
- [32] Mr. Boyes was co-operative with the investigation.

Aggravating Factors

- [33] Mr. Boyes is a broker.

Prior Decisions & Other Considerations

- [34] 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.
- [35] 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.*
- [36] Mr. Boyes breached Bylaw 714 for failing to take reasonable steps to discover facts pertaining to a property for which he accepted an agency agreement. This failure caused there to be a lack of disclosure on the transaction. Mr. Boyes was aware of a driveway encroachment that existed at the said property. This was

disclosed to the Purchasers. However, a fence encroachment also existed at the said property and was not disclosed.

- [37] Mr. Boyes was advised of both the driveway and the fence encroachments but did not take any steps to follow-up on these issues. The fence encroachment was never disclosed to the buyers.

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

- [38] Mr. Boyes was the sole perpetrator of these breaches of the legislation.

3. Whether the offending member suffered or gained as a result of the breaches.

- [39] There is no evidence to suggest that Mr. Boyes benefited significantly from his actions. However, as he represented the Sellers and the sale went through, he did receive a commission on this transaction.

- [40] Further, there is no evidence of a loss suffered in this case.

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

- [41] The Neighbour and her husband had ongoing disputes with Mr. Boyes' clients at the time the property was listed and sold. These disputes centered on the driveway and fence encroachments. They were in discussions with legal counsel about possible settlement, failing which the Neighbours were considering legal action.

- [42] The Purchasers of the property were completely unaware of these ongoing issues between the Neighbours and Mr. Boyes' clients. The Purchasers are now left to deal with a driveway and a fence that encroach on the Neighbours' property.

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

- [43] Specific deterrence is needed in this case to ensure Mr. Boyes understands that registrants are required to take reasonable steps to discover facts about the properties for which they accept agency agreements. This is especially important as Mr. Boyes was made aware of the driveway and fence encroachments and took no steps to follow-up on these issues.

- [44] When he was contacted by the Neighbour, Mr. Boyes ought to have taken reasonable steps to obtain further information regarding the alleged issues of the property he had listed for sale raised by the Neighbour. Most notably, he should have taken steps to discover the necessary facts about the fence encroachment to ensure it was properly disclosed.

6. The need for general deterrence to protect the public.

- [45] General deterrence is needed to ensure that other registrants know that they are required to take reasonable steps to discover facts about the properties for which they accept agency agreements, especially in situations where follow-up is required on information registrants receive regarding properties.

7. *The need to maintain the public's confidence in the integrity of the profession.*
- [46] The public must be reassured that registrants are aware of the obligations they owe to provide information not only to their clients, but to others as well and that registrants are satisfying these obligations. Further, the public must be reassured that when registrants are made aware of property issues, they are obligated to take reasonable steps to follow-up on these issues and ensure proper disclosure is provided to all involved parties.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [47] Mr. Boyes' 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. Boyes' breach of Bylaw 714?

- [48] There are several Hearing Committee decisions dealing with breaches of Bylaw 714 that are similar to the case at hand.
- [49] In *Harbottle (Re)*, [2018 SKREC 16](#), Ms. Harbottle was issued an order of reprimand and ordered to pay a \$1,250 fine when she failed to take reasonable steps to ascertain whether or not the people she was dealing with were legally authorized to sell the property which formed part of their father's estate and failed to inform her buyer clients that one of the owners on title to the property had passed away.
- [50] Ms. Harbottle listed the Property for sale. At the time of the listing, the Property was owned by Owner 1 and Owner 2. Owner 1 had passed away several years prior, but remained on title, and Owner 2 passed away a few months after the Property was listed for sale. Ms. Harbottle continued to deal with the children of Owner 2 who had been named as executors of Owner 2's estate. Ms. Harbottle believed that a copy of Owner 2's death certificate and the page of Owner 2's will that named his children as executors were sufficient authority to proceed with the listing and sale of the Property.
- [51] Ms. Harbottle also represented the Buyers. She did not tell her buyer clients that Owner 2 had passed away or that the Property would have to go through probate before they signed the offer to purchase the Property. Ms. Harbottle did not know that the Property was in probate until after the Buyers had removed conditions and the paperwork was sent to the lawyers. Two days before the scheduled possession date, the Buyers were sent a Tenancy at Will Agreement which they were required to sign in order to take possession of the Property.

- [52] However, unlike Ms. Harbottle, Mr. Boyes is a broker and in charge of supervising other registrants to ensure compliance. As such, Mr. Boyes misconduct is equally as serious as that of Ms. Harbottle.
- [53] Like Mr. Boyes, Ms. Harbottle had no previous sanction history and was co-operative with the investigation. However, unlike in Mr. Boyes' situation, actual consumer harm occurred as a result of Ms. Harbottle's misconduct as the Buyers' purchase of the Property was complicated by the legal consequences of the death of an owner of the Property and the Buyers were not made aware of the death or its potential impact in a timely manner. Further, Ms. Harbottle's breach occurred while she was representing both parties as a limited dual agent. Mr. Boyes was not acting as a limited dual agent.
- [54] In *Mahon (Re)*, [2018 SKREC 20](#), Ms. Mahon was issued an order of reprimand and ordered to pay a \$1,500 fine when she incorrectly advertised a property as being on two side-by-side lots, when in fact it was on two lots that were front-and-back. The lot located beside the property was a vacant lot that did not form part of the property. Ms. Mahon misunderstood and misidentified the property's boundaries.
- [55] Ms. Mahon listed a property for sale that was comprised of two lots. Ms. Mahon assumed that the Property was made up of two lots that were separated by a fence. One of the lots included a house with a garage in the back and the other lot was clear. She tried to contact the Town office, but could not get any information because there was no Administrator. She did not take any other steps to determine how the lots that made up the Property were split.
- [56] Ms. Mahon created an MLS® Listing that stated: "Great location on 2 lots. Corner lot has 1 bedroom house with single garage, other lot is clear."
- [57] The Buyer contacted Ms. Mahon because she was interested in purchasing the Property. Ms. Mahon told the Buyer that the Property included the lot with the "For Sale" sign on it that was surrounded by a fence and the vacant lot next to it. The Buyer purchased the Property, brought in her recreational camper and placed it on the vacant lot.
- [58] A Bylaw Officer contacted the Buyer and advised that she would have to remove the camper from the vacant lot because the vacant lot was Town property. After she was contacted by the Buyer, Ms. Mahon measured the lot and discovered that her initial assumption was incorrect and that the Property only extended to the fence. The vacant lot on the other side of the fence was not part of the Property.
- [59] Mr. Boyes misconduct is equally as serious as that of Ms. Mahon.
- [60] Like Mr. Boyes, Ms. Mahon had no previous sanction history and was co-operative with the investigation. While Ms. Mahon acted as a limited dual agent

in the transaction and Mr. Boyes did not, he is a broker and oversees other registrants to ensure compliance. Both roles are aggravating factors.

- [61] In *Thiessen (Re)*, [2015 SKREC 5](#), Mr. Thiessen was issued an order of reprimand and a \$1,000 fine when he failed to take reasonable steps to ascertain whether or not the people he was dealing with were legally authorized to sell the property which formed part of their mother's estate.
- [62] Seller A contacted Mr. Thiessen about selling a property that formed part of his mother's estate. Mr. Thiessen took on the listing. The sellers were listed as Seller A and Seller B, however only Seller A signed the contract. Mr. Thiessen witnessed Seller A's signature on the contract, but no one signed as witness to Mr. Thiessen's signature. Mr. Thiessen did not obtain documentation confirming that either Seller A and/or Seller B were executors of their mother's will, personal representatives for her estate, or in any way responsible for and in a position to sell the Property. 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. Thereafter, an amendment to the listing agreement was only signed by Seller A. Mr. Thiessen's wife ultimately purchased the property. Mr. Thiessen was later advised that transfer documents would need to be amended to include him as a second buyer. Mr. Thiessen did not amend the Residential Contract of Purchase and Sale to reflect the fact that he had been added to the transaction as a buyer. The majority of Mr. Thiessen's dealings with respect to the property were verbal and with Seller A who, he understood, forwarded information along to Seller B.
- [63] While both registrants failed to take reasonable steps to discover pertinent facts about a property for which they accepted an agency agreement, Mr. Thiessen's misconduct involved failing to confirm the proper owner of a property or failing to properly disclose personal involvement in a trade. This is serious. While Mr. Boyes' misconduct itself was not as serious as that of Mr. Thiessen's, Mr. Boyes is a broker and oversees other registrants to ensure compliance. This is an aggravating factor.
- [64] Like Mr. Boyes, Mr. Thiessen had no sanction history and co-operated with the investigation. Again, like Mr. Boyes, there was no evidence Mr. Thiessen deliberately withheld information and there was no evidence of consumer harm.
- [65] Mr. Boyes' misconduct is equally as serious as Mr. Thiessen's.
- [66] In *Renneberg (Re)*, [2020 SKREC 4](#), Mr. Renneberg was issued an order of reprimand and a \$1,500 fine when he listed a property for sale and described it as being approximately 1,060 sqft. when in fact it was just under 960 sqft.
- [67] Mr. Renneberg and his co-listing agent listed a property for sale and described the property as being 1,060 sqft. Mr. Renneberg did not recall if he measured the property or what process was used to conduct the measurement. It is possible his co-listing agent measured the property. While the property was listed by Mr.

Renneberg, another registrant was interested in purchasing the property and arranged to view it. This other registrant began to doubt the square footage set out in the listing and took his own measurements, which did not agree with the square footage set out in the listing. He contacted Mr. Renneberg via text message to advise of the discrepancy, but the statement of square footage remained the same in Mr. Renneberg's listing. Mr. Renneberg did not recall having received the text message. Buyers purchased the property and listed it for sale again some years later. Their listing agent measured the property and determined that it was approximately 1,000 sqft. less set out in Mr. Renneberg's listing.

- [68] It was noted as a mitigating factor in Mr. Renneberg's case that at the time, the coronavirus pandemic had had a significant and largely negative impact on the real estate market and on registrants' incomes generally.
- [69] Like Mr. Boyes, Mr. Renneberg had no previous sanction history. However, unlike Mr. Renneberg who had no aggravating factors, Mr. Boyes is a broker and oversees other registrants to ensure compliance. This is an aggravating factor for Mr. Boyes.
- [70] As such, Mr. Boyes conduct is slightly more serious than that of Mr. Renneberg.
- [71] In May of 2020, the provincial legislature amended section 38 of *The Real Estate Act* to increase the maximum fines that can be ordered against registrants found guilty of professional misconduct or professional incompetence. The previous iteration of the legislation capped fines at \$5,000 for each finding up to a maximum of \$15,000 in the aggregate for all findings. The new maximum fine for each finding of professional misconduct or professional incompetence was increased from \$25,000 up to \$10,000.00 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.
- [72] On the basis of the above, an order of reprimand and a \$2,000 fine are appropriate sanctions for Mr. Boyes' breach of Bylaw 714.
- [73] As Mr. Boyes has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

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

[75] 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 714:

- a. Mr. Boyes shall receive an order of reprimand for the violation of Bylaw 714;
- b. Mr. Boyes shall, within 30 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. Mr. Boyes' registration shall be terminated if he fails to make payment as set out above.

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

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

Randal C. Touet
Hearing Committee Chairperson