

**IN THE MATTER OF**  
**THE REAL ESTATE ACT, C. R-1.3**  
**AND**  
**IN THE MATTER OF ANNETTE KATCHAN**

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**DECISION OF THE**  
**SASKATCHEWAN REAL ESTATE COMMISSION**

**Commission File: #2007-33**

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**Before:** A Saskatchewan Real Estate Commission Hearing Committee  
comprised of the following:  
Randal C. Touet - Chairperson  
Donnett Elder  
Phillip Mack  
Richard Jeanneau

**Appearances:** Ed Miller, Investigation Committee Representative  
Annette Katchan, Registrant  
Neil Tulloch of Willows Tulloch, Registrant's solicitor

**Hearing Date:** September 10 and 11, 2008  
Regina, Saskatchewan

**Written Decision:** October 27, 2008

The Formal Hearing was held September 10 and 11, 2008 at the Cossack Room, Ramada Inn, Regina, Saskatchewan before a Hearing Committee ("the Committee") of the Commission.

## CHARGES

The Registrant was charged with professional misconduct in the following counts:

- 1) It is alleged that Ms. Annette Katchan breached Section 39(1)(a) of *The Real Estate Act* by doing one or more of the following:
  - a) Overstating actual expenses on an owner's Financial Statements;
  - b) Reporting and/or representing disbursements on owner's Financial Statements without supplying invoices and/or supporting documentation; and
  - c) Making written representations of favourable independent home inspections to out-of-country buyers/clients without conducting said inspections. The home inspection representatives are alleged to have caused the out-of-country buyers/clients to remove satisfactory inspection conditions on the properties sight unseen.
  
- 2) It is alleged that Ms. Katchan breached Section 39(1)(b) of *The Real Estate Act* between July 2005 and May 2007, inclusive, by doing one or more of the following:
  - a) Failing to correctly account to clients for trust funds received;
  - b) Charging a client more for advertising costs than the client received; and
  - c) Engaging in conduct or business that misled a client as to the value of real estate services rendered.
  
- 3) It is alleged that Ms. Katchan breached Section 39(1)(c) of *The Real Estate Act* by violating Commission Bylaw 607 between December 2005 and May 2007, inclusive, by failing to ensure that all records, books, and accounts were kept up-to-date and by not making a full accounting to the corporate client and/or the owner of \$200.00 in cash in trust funds received at the brokerage.
  
- 4) It is alleged that Ms. Katchan breached Section 39(1)(c) of *The Real Estate Act* by violating Commission Bylaw 608 between December 2005 and May 2007, inclusive, by failing to ensure that all trust funds received on behalf of a corporation or the owner were properly deposited pursuant to the requirements of Section 71(1)(b) of *The Real Estate Act*.
  
- 5) It is alleged that Ms. Katchan breached Section 39(1)(c) of *The Real Estate Act* by violating Commission Bylaw 618 between December 2005 and May 2007, inclusive, while under a written Property Management Agreement with a corporation by failing to produce continuous monthly statements to the owner as contemplated in the Agreement.
  
- 6) It is alleged that Ms. Katchan breached Section 39(1)(c) of *The Real Estate Act* by violating Commission Bylaw 717 between January 2005 and May 2006, inclusive, by

advertising properties for rent in the Regina Leader Post under Regina 4 Rent.com rather than Charan Property Management Inc. as indicated in her Certificate of Registration.

## LEGISLATION

Section 39(1)(a) of the *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 harmful to the best interests of the public, the Registrants, or the Commission.”

Section 39(1)(b) of the *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 fraudulent.”

Section 39(1)(c) of the *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.”

Commission Bylaw 607 states:

“The Broker or, where applicable, the Branch Manager, shall ensure that all records, books and accounts are kept up-to-date. The Broker or Branch Manager shall remain accountable and responsible for all trust funds until the funds have been disbursed in accordance with the trust conditions and a full accounting has been made to the parties to the trade.”

Commission Bylaw 608 states:

“It is the responsibility of the Broker/Branch Manager to ensure that all trust funds received by a Broker, Branch Manager, or Salesperson at the Brokerage are properly deposited pursuant to the requirements of Clause 71(1)(b) of the *Act*.”

Commission Bylaw 618 states:

“A Brokerage shall prepare monthly statements with respect to each property management client.”

Commission Bylaw 717 states:

“No broker, branch manager, associate broker or salesperson shall trade in real estate under any name other than the name on his or her Certificate of Registration.”

## **FACTS**

Annette Katchan has been a Registrant as a Salesperson since August 28, 1987 and as a Broker since July 27, 1992. She is a fifty (50%) percent owner and sole director of Charan Property Management Inc. Ms. Katchan was so registered at the time of the matters alleged herein.

The Hearing Committee heard from four Investigation Committee witnesses and two Registrant witnesses. In addition, there was an Exhibit Book which was adopted as full exhibits with certain exceptions, being the first 88 of 119 pages of Leader Post invoices and advertisements, all of Exhibit H, Exhibit R3, being the Respondent's documents, and Exhibits R5 to 9.

The facts in this matter were determined from the witnesses and the documentation provided to the Hearing Committee during the course of this Hearing.

The Complainant and his partner were residing in the United States. They were looking for potential investment properties in Canada and determined that Regina was a good location to purchase such properties. In June 2005, the Complainant and his partner came to Saskatchewan where they hired a different registrant to purchase property in Indian Head, Saskatchewan. They were looking for a real estate agent and property manager and ended up interviewing Ms. Katchan. Subsequent to this meeting, they met with a Regina solicitor to set up a corporate entity for looking after and managing their properties.

They had previously searched properties on the Internet and were concerned that the properties were of a certain condition, in a good neighbourhood and had revenue potential. Ultimately offers were made on two rental properties in the City of Regina. The Complainant did not attend in Regina but dealt with the matter by fax and e-mail prior to possession on September 1, 2005. The Complainant, was residing in the Seattle, Washington area at the time of removal of conditions on the Offers; however, he had gone to the eastern United States to visit his father who was dying. Communication was made directly with him at that time.

The purchase of the properties closed on September 1, 2005 and thereafter Charan Property Management Inc. acted as Property Manager for the Complainant's corporation to look after these two rental properties. In May of 2006, the services of Charan Property Management Inc. were terminated by the Complainant and his corporation.

## **DECISION**

With regard to Count Number 1 in the charges, it was alleged that there were overstated expenses on the owner's Financial Statements. The evidence of the parties was that regular and

frequent Financial Statements were provided by the Registrant and her management company to the Complainant and his company. While on occasion these statements were not as detailed or as well presented as they may have been, the ultimate allegation was that advertising in the Regina Leader Post was overstated. A fair degree of e-mail correspondence was presented back and forth between the parties and it is ultimately the finding of the Hearing Committee that, while the costs could have been more clearly set forth, the evidence was not sufficient to show that a percentage of the pooling costs for advertising was an actual overstatement. It was also alleged that disbursements on the Financial Statements were provided without supplying invoices and/or supporting documentation. In the Management Agreement, there was no obligation to provide the invoices or other supporting documentation and a failure to do so is not an offence under the *Act* or Bylaws.

The last allegation under Count 1 is that of making written representation of favourable independent home inspections to the clients without conducting inspections. Ultimately, the evidence was not clear as to whether or not home inspections were prepared. An invoice for a furnace inspection was acknowledged to have been received and done prior to possession. However, although a home inspection was a condition of the Offers to Purchase, this condition was waived by the Complainant at a time when he could have requested a copy of the alleged report. It should be noted that there was also an unconditional offer on the property which may have led to the conditions being waived. In any event, there was no evidence of a written representation made by the Registrant with regard to independent home inspections. The closest document provided was the Waiver of Conditions which was signed by the Complainant.

With regard to Count 2, the allegation was that of fraud. The allegations involved failing to correctly account to clients for trust funds received. It was apparent from the course of the evidence that the sole basis for this allegation was a \$200.00 rent payment received in cash and a receipt prepared in December of 2005. These funds were not deposited to the trust account but the evidence was that they were deposited to the wrong account, namely a general account of the Registrant. The evidence of the accounting expert for the Registrant was clear that for this to be the sole allegation of mis-accounting over two years of audited Financial Statements was, while incorrect, a rather minor error, given the number of transactions. In order to find the Registrant guilty of a serious complaint of fraud, the evidence must be strong and unequivocal that they have intentionally done an act which can be deemed to be fraudulent. The incident in question was a receipt received by an employee of the Registrant who deposited the funds into the wrong account. A receipt was prepared and given to the tenant. There was no indication of fraudulent intent in this action.

The second allegation under this Count was that of charging a client more for advertising costs than the client received. These allegations again relate to advertising done at the Regina Leader Post and it was the finding of the Hearing Committee that there was no basis to indicate there was a charge for other than advertising which the client received. In addition, there was no evidence presented which indicated a fraudulent intent on behalf of the Registrant in any of her advertising charges.

The third allegation under this heading was that of engaging in conduct or business that misled a client as to the value of real estate services received. This allegation is too diffuse and there was no evidence to back it up.

The allegation in Count Number 3 was that the Brokerage failed to ensure that the records were kept up-to-date and did not make a full accounting to the Complainant or his corporation of a \$200.00 cash trust receipt. The evidence indicated that the records had been up-to-date. This again relates to the \$200.00 rent receipt received in December 2005. The Hearing Committee found the Registrant not guilty of this charge. The evidence from the expert accountant shows that such an error as was made was not unreasonable and there was insufficient evidence of the accounting or audit to show that there has been a breach of this section. The onus is on the Investigation Committee to show, on a balance of probabilities; there has been a breach of this section. The Hearing Committee did not find there was such evidence.

With regard to Count Number 4, it is clear that the Registrant did not deposit the \$200.00 rent payment into trust as was a requirement pursuant to the *Act*. Therefore, a finding of guilty was determined by the Hearing Committee for Count Number 4.

With regard to Count Number 5, this charge was withdrawn at the end of the two days of evidence. It is hoped in the future that, where charges are to be dropped, this could be dealt with prior to the beginning of the Hearing and entering of evidence.

With regard to Count Number 6, this charge was of advertising under the wrong corporate name, being Regina 4 Rent rather than Charan Property Management Inc. The Registrant advised the Hearing Panel that she would plead guilty to this offence at the time of the Hearing.

## **SANCTION**

In accordance with clauses 38(1)(f) and 38(2)(b) and subclause 38(2)(a)(i) of the *Act*, the Committee made the following orders:

1. For the violation of Section 39(1)(c) of *Act*, Breach of Commission Bylaw 608:
  - a) Pursuant to clause 38(1)(f) of the *Act*, that Annette Katchan receive an order of reprimand;
  - b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Annette Katchan, prior to December 31, 2008, pay to the Saskatchewan Real Estate Commission a \$1,500.00 fine for the said violation of the *Act*;
  - c) Pursuant to subclause 38(2)(b) of the *Act*, Annette Katchan's registration shall be revoked if she fails to pay any portion of the fine within the said period of time.
  
2. For the violation of Section 39(1)(c) of the *Act*, Breach of Commission Bylaw 717:
  - a) Pursuant to clause 38(1)(f) of the *Act*, that Annette Katchan receive an order of reprimand;

- b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Annette Katchan, prior to December 31, 2008, pay to the Saskatchewan Real Estate Commission a \$500.00 fine for the said violation of the *Act*;
- c) Pursuant to subclause 38(2)(b) of the *Act*, Annette Katchan's registration shall be revoked if she fails to pay any portion of the fine within the said period of time.

## RATIONALE

The Hearing Committee heard from a number of witnesses during the course of this two-day Hearing. These included the Investigation Committee Auditor, the partner of the Complainant, a CMA Accountant who had done certain work for the Registrant, a former receptionist/office manager for the Registrant, and the Complainant himself. The Registrant produced two expert witnesses, Mr. David Prost as an expert in audit accounting, being a chartered accountant with the Virtus Group in Regina and Mr. Ambrose Reschney, an expert in property management. These witnesses, together with the voluminous documents provided and agreed to, unfortunately did not provide a clear picture of the evidence required to establish the charges. What emerged from the evidence was that there were problems arising from the properties and tenants subsequent to the time of closing. Until a number of months after the date of closing, the allegations concerning either the failure to produce home inspections prior to closing and the concerns over advertising were not apparent concerns between the Complainant and the Registrant. The evidence was clear that a number of Financial Statements were provided by the management company to the Complainant and his corporation over the number of months subsequent to the date of closing when there were tenants in the properties.

The nature of the allegations was somewhat more of a dispute between the management company and the Complainant themselves. While the services rendered by the management company were alleged not to have been correct and properly completed, they were not in breach of sections of *The Real Estate Act* or Bylaws except as found guilty for Count Number 4 and Count Number 6. The allegations of fraud must show a serious intention on behalf of the Registrant to commit a fraudulent act within the meaning of *The Real Estate Act*. These are serious allegations and ones which deserve to be defended on behalf of the Registrant. In his submissions, Mr. Miller indicated the high costs for this two-day Hearing and felt some costs should be awarded due to the mixed result as two charges of the six resulted in a finding of guilt. It is the position of the Hearing Committee that where the serious allegations were defended and defended successfully and where the nature of the ultimate guilty findings were of a lesser degree, it is not justified that costs be awarded against the Registrant.

Ms. Katchan is a 22 year veteran Registrant and although she had one prior sanction with the Saskatchewan Real Estate Commission, this was for an offence during the same time period as these offences. Accordingly, Mr. Miller agrees Ms. Katchan should be treated as a first offender. It is also acknowledged that Ms. Katchan was cooperative throughout the investigation, providing information as she had over a long course of time.

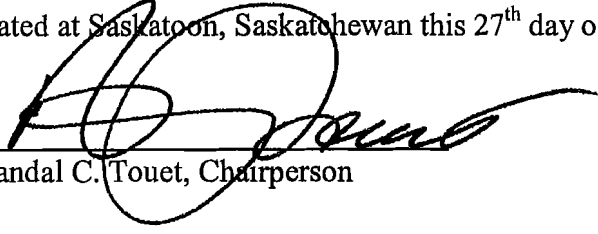
Mr. Tulloch in his representations indicated that with regard to Count Number 4, Ms. Katchan has an unblemished record as a real estate agent and has had only the one other conviction in her

twenty-some years as a real estate agent and broker. She is a committee volunteer and director of the Regina Real Estate Association and the charges in this circumstance are essentially an isolated incident in her practice.

With regard to Count Number 4, the Hearing Committee felt the failure to properly account for trust funds is a serious matter and is a fundamental issue in both property management and the general real estate industry. Trust funds must be properly accounted for and the failure to do so will be reflected in the fine imposed. In addition, there is no evidence brought before the Committee that the discrepancy was ever addressed and the funds properly moved to the trust account.

With regard to Count Number 6, the advertisement under the wrong name, while it was corrected as soon as it had been brought to her attention, it still is a matter which is of concern to the Commission when registrants file to properly advertise. A mitigating factor in this situation was that the offence took place two years ago and she immediately did stop the advertising.

Dated at Saskatoon, Saskatchewan this 27<sup>th</sup> day of October, 2008.

  
Randal C. Touet, Chairperson