

**IN THE MATTER OF**  
***THE REAL ESTATE ACT C.R-2.1***  
**AND**  
**IN THE MATTER OF DWAYNE KOK**

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**DECISION OF THE SUPERINTENDENT OF REAL ESTATE**

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Before: J. M. Hall, Superintendent of Real Estate

Appearances: Dwayne Kok (self-represented)  
Rod Spence, Vice President of Century 21 Conexus Realty Ltd.  
Ed Miller, on behalf of the Saskatchewan Real Estate Commission

Hearing Date: December 10, 2008

Decision Date: January 30, 2012

DECISION OF THE SUPERINTENDENT OF REAL ESTATE

**Background**

Dwayne Kok was charged with professional misconduct contrary to clause 39(1)(c) of *The Real Estate Act* (the “Act”) for breaching clause 730(f) of the Saskatchewan Real Estate Commission Bylaws (the “Bylaws”).

Clause 39(1)(c) of the Act States:

39(1) 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:

...

(c) it is a breach of this Act, the regulations or the bylaws or any terms or restrictions to which the registration is subject;

...

Clause 730(f) of the Bylaws states:

**MANDATORY FORMS**

**730** - The following approved forms, provided by the Association of Saskatchewan REALTORS®, shall be mandatory:

...

(f) Disclosure of Interest in Trade;

...

The gist of the breach of clause 730(f) of the Bylaws is that Mr. Kok personally wrote a Residential Contract of Purchase and sale form on June 11, 2007 and did not prepare or deliver a mandatory written Statement of Disclosure to the sellers on or before presenting his offer on June 11, 2007.

A hearing was held before the Hearing Committee of the Saskatchewan Real Estate Commission (the “Hearing Committee”) on May 9, 2008 and the Hearing Committee rendered its written decision on June 10, 2008.

The Hearing Committee determined the facts as set out in paragraphs a) to j) of its decision. The following is a summary of the Hearing Committee's findings:

1. During the course of the hearing the Hearing Committee heard testimony from Mr. Kok, Mr. Kok's broker, the seller of the property and the seller's real estate agent.
2. The seller testified that she was aware that Mr. Kok was a real estate agent at the time of seeing the residential contract of purchase and sale based on her reading of the contract. The documents indicate the seller accepted Mr. Kok's offer on June 12, 2007 but the sale did not ultimately close.
3. The seller's real estate agent testified that he never received a Statement of Disclosure form from Mr. Kok. He agreed however that on June 12, 2007 Mr. Kok told him he had forgotten the Statement of Disclosure form and he would get back to the seller's real estate agent. The seller's real estate agent said this form was never received in his office.
4. Mr. Kok's broker testified that a Statement of Disclosure form is a requirement when an agent is trading in real estate on behalf of themselves or their family. Mr. Kok's broker believed that the form was prepared and faxed but not acknowledged. Mr. Kok's broker was not able to show that the form was ever faxed and he had no record of the form going back to June or July of 2007.
5. A Statement of Disclosure form was produced in evidence by Mr. Kok dated June 12, 2007 and signed by Mr. Kok. The acknowledgement of receipt of the form was not signed by the seller and nor was there any evidence led to show that the form was ever provided to the seller.
6. Mr. Kok testified that he had sent the Statement of Disclosure form to the seller's real estate agent on June 12, 2007 but was not aware it was not received until after an investigation was commenced by the Saskatchewan Real Estate Commission (the "Commission").
7. Mr. Kok stated that he would probably be found guilty of the offence as charged but felt no harm had occurred to the seller because of lack of delivery of this document.

At pages 5 and 6 of its decision the Hearing Committee stated the following:

"The breach of the Bylaw 730(f) in the circumstances of this case is abundantly clear. The Statement of Disclosure form must be presented before the offer is presented not done afterwards. On June 12, 2007 even had the form been presented, it was still a breach of the *Act*. The onus is on the registrant to ensure delivery takes place.

The purpose of the disclosure document is more than just to advise the parties that the prospective purchaser is a REALTOR. It also indicates the amount of commission the party is receiving, what specific use they will be making of the property and if there is any special knowledge to be had by the REALTOR in making the offer. It is important that this information be presented to the prospective seller before he/she decides whether to accept the offer. This form is for the protection of the public and for real estate agents to ensure there is no misunderstanding between the parties.

The registrant [Mr. Kok] was somewhat concerned that this was essentially a technical breach of the *Act*. He was looking at the integrity of the people involved and felt he was trying to do the best in the circumstances. The fact that the Statement of Disclosure did not get delivered was not harmful to the parties in the transaction. The Hearing Committee does not accept that argument and feels it is a breach of the *Act* and these mandatory forms must be used whether or not the registrant felt it was harmful to the parties. Mr. Kok was concerned that this was almost a form of entrapment as this would not have occurred if the agent for the sellers had not allowed it to have been done. He argued that everyone was aware that he was a REALTOR. The obligation is on Mr. Kok to provide the Statement of Disclosure whether or not the other agent asks for it. Mr. Kok also felt all matters had been done in good faith and the hearing committee took no issue with that statement.

...

Mr. Kok also indicated that he needed a forum in which to have his case heard. He felt he was a good person and it was not the failure to provide the Statement of Disclosure that had to do with the transaction falling apart.

The Hearing Committee was concerned that this form must be used. It is an important form to provide disclosure to the parties of an interest by a REALTOR in the purchase and the document is simply mandatory. The use of a mandatory form cannot be relieved by the other registrant indicating that it is okay. It is not a discretionary matter but one which is mandatory. The Commission is hearing of more infractions of this type and wish to stress that the forms are indeed mandatory, not discretionary.

The Hearing Committee also wished to reassert that when a registrant is involved in a transaction more care, not less care, is required. The registrants must comply with all technical requirements. They are important and mandatory. All documentation must be completed properly.

...

The Hearing Committee also noted that all parties were aware that Mr. Kok was a REALTOR and there was no potential gain to him in not providing the Statement of Disclosure as it was clear in the face in the Residential Contract of Purchase & Sale form. However, Mr. Kok is an experienced REALTOR and he knows that the Statement of Disclosure must be sent before the offer is present.

...

The Hearing Committee was somewhat concerned that Mr. Kok, while in the course of his evidence, indicated that he knew he was to be found guilty as the form was not presented in a timely fashion but he wanted the forum to discuss this matter. The costs were therefore assessed against him in the amount of \$2,500. It is not appropriate simply to have this matter come before the Commission in order to vent your concerns. This matter could have been dealt with in a mitigation hearing without the significant costs associated, that are well in excess of \$3,000.”

The Hearing Committee found Mr. Kok guilty of professional misconduct by failing to provide the mandatory Statement of Disclosure form to the sellers on or before presenting his offer on June 11, 2007. The Hearing Committee ordered the following sanctions against Mr. Kok:

1. For the violation of Section 39(1)(c) of *Act* and a breach of Bylaw 730(f):
  - a) Pursuant to clause 38(1)(f) of the *Act*, that Dwayne Kok receive an order of reprimand;
  - b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Dwayne Kok, prior to September 1, 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)(a)(ii) of the *Act*, Dwayne Kok pay costs of the Hearing in the amount of \$2,500.00 prior to September 1, 2008; and
  - d) Pursuant to clause 38(2)(b) of the *Act*, that Dwayne Kok’s registration shall be suspended if he fails to pay any portion of the fine within the said period of time.

## **The Appeal**

On July 10, 2008, Mr. Kok faxed a letter to the Deputy Superintendent of Real Estate (the “Deputy Superintendent”) of his intent to appeal the decision of the Hearing Committee.

In his letter Mr. Kok states:

“This is to inform you of my intent to appeal not so much the decision but the fines and court cost that were charged against me. Let this serve also as a request to stay the decision pending appeal. I intend to represent myself if it is necessary, although I believe a hearing is not necessary and the appeal could be mitigated.

As indicated, I am not appealing the decision, but the costs and the fine. I was offered to sign a statement of facts which were incorrect and contained falsehoods or go to a formal hearing. I had no choice, now I am be charged the costs which is unacceptable. In the statement from the chairperson he indicated that I could have dealt with this manner at a mitigation hearing, which I was not offered, ever.

This problem arises because of the process taken by the lead investigator, the complaint from which this arose I was found innocent of, and then fined on a completely different matter. The commission never absolves the registrant from the complaint, thereby feeling like you still are on the defense, then charges me with something else that could have been mitigated if that issue was isolated but it never was. Then charges me saying I knew I was guilty, and levies the costs against me.

I request that the costs of the hearing be dropped and the fine reduced to \$1000.00 as had been the norm for similar convictions.”

On July 22, 2008, the Registrar of the Saskatchewan Real Estate Commission advised the Deputy Superintendent that he did not object to a stay of proceedings pending the appeal. Mr. Kok’s request for a stay of proceedings pending the appeal was granted by the Deputy Superintendent on July 30, 2008.

The appeal before the Superintendent of Real Estate (the “Superintendent”) was heard on December 18, 2008. Mr. Kok represented himself at the appeal. Rod Spence, Vice President of Century 21 Conexus Realty Ltd. attended with Mr. Kok.

At the outset Mr. Kok said he was appealing the fine of \$1,500 and the costs of the hearing before the Hearing Committee in the amount of \$2,500, which he was ordered by the Hearing Committee to pay by September 1, 2008.

However, during the course of the appeal before me Mr. Kok spent considerable time talking about the original complaint against him brought by the sellers of the property that did not go to completion.

At page 8 of the appeal transcript Mr. Kok stated:

“So I was never found innocent, and then if you read the actual then judgment, a decision by the person, they agree once again that I am innocent of that and yet they charge me for the appeal.”

At page 9 of the appeal transcript Mr. Kok stated:

“So how -- I won the appeal. How can I be charged the costs when I won the appeal based on what I complained to?”

At page 10, Mr. Kok stated:

“The hearing found the registrant guilty of professional misconduct to provide a mandatory disclosure statement. I’m innocent of all the rest. I’m not guilty of anything else. I had to appeal that to get that.

How can I be charged these costs when I was found innocent of the complaint?”

At the hearing before me I pointed out to Mr. Kok that the sole issue before the Hearing Committee and on which the Hearing Committee ordered a reprimand, a fine and costs was his failure to provide a Statement of Disclosure to the sellers as required by clause 730(f) of the Bylaws on or before presenting his offer on June 11, 2007. There were no other issues before the Hearing Committee. I referred Mr. Kok to a Notice of Hearing dated March 19, 2008 marked as Exhibit A-1 before the Hearing Committee, which detailed the charge against him. Mr. Kok stated that the Notice of Hearing was not sent to him.

Mr. Kok then referred to a Statement of Facts and Admissions that was presented to him on November 16, 2007 asking that if he wanted to admit to the breach of clause 730(f) of the Bylaw the matter could be dealt with by way of a Mitigation Hearing rather than a formal hearing.

At pages 19 and 20 of the appeal transcript Mr. Kok stated:

“You’re [the Superintendent] doing the same thing that they [the Hearing Committee] did is you want to get in -- in the bureaucratic circle of this is process that we took you in. I’m telling you, I was given a choice to either sign a Statement of Facts and Admissions or go to an appeal, and in the Statement of Facts and Admissions, it wasn’t true about the stuff that they were saying, what I was being found guilty of, which is what the complaint was originally about, if you read the complaint. I’ve been found innocent of that. I’ve only been found guilty of this, but that’s not what it said when the thing to -- as well, they sent me a letter stating, you’re innocent of the complaint --

You know what I mean? I’m just getting frustrated because I’m trying to explain to you what does a registrant go through, and you need to understand because we -- I understand what I did was wrong and I made a mistake, but I didn’t get to this point where I’m just fighting about nothing. I’m fighting about the complaint which I’m innocent of because I’m a good person and I didn’t do anything wrong in the transaction.”

At pages 22 and 23 of the appeal transcript Mr. Kok stated:

“But I was never given the opportunity to mitigate it, and that’s the part that’s doing it to as well, is if they send me a letter saying, you are absolved of the complaint and you were innocent, however, when doing our investigation, we found out that you submitted this form wrong and we suggest, you know, a letter of reprimand, a \$500 fine, I’d sign that in a heart beat. Why would I be here? I -- you can’t -- it’s idiotick [sic] to do it.

I’m at this appeal in the first place at the Commission defending the complaint. I was sent -- when I was given the option, I -- you get sent a Statement of Facts and Admissions. You can sign it, and then they will make a decision and then you go with it or you can appeal it. So as a registrant who has been found innocent by Marlene Williamson in a letter that was sent to me, I choose to appeal because I’m innocent and she’s already told me I’m innocent.”

The Statement of Facts and Admissions was not marked as an exhibit before the Hearing Committee. However it was referred to on numerous occasions by Mr. Kok at the hearing before me. Accordingly, I marked it for identification purposes as H-1.

H-1 consists of a letter signed by Marlene Williamson, dated November 16, 2007 which advises Mr. Kok that he has the option of proceeding by way of a mitigation hearing or a formal hearing and that he has the right to appear with or without counsel.

The letter goes on to state that the mitigation hearing allows Mr. Kok the opportunity to plead guilty to the violation and speak to any sanction that might be imposed on him at the time.

A Statement of Facts and Admissions is attached to H-1 which sets out the sole charge against Mr. Kok as follows:

“I, Dwayne Kok, plead guilty to a charge of professional misconduct contrary to Section 39(1)(c) of *The Real Estate Act* in that I breached Commission Bylaw 730(f) which states: ‘The following approved form, provided by the Saskatchewan Real Estate Association, shall be mandatory: Statement of Disclosure.’

I, Dwayne Kok, violated this bylaw by personally writing a Residential Contract of Purchase and Sale form on June 11, 2007 and did not prepare or deliver a written Statement of Disclosure to the sellers on or before presenting my offer.”

The Statement of Facts and Admissions (the “Statement”) then lists a number of statements about Mr. Kok’s registration history and the background to the transaction which led to the complaint against Mr. Kok.

Paragraphs 7 and 8 of the Statement are as follows:

“7. I acknowledge that on or about June 11, 2007, I wrote a Residential Contract of Purchase and Sale form on behalf of myself with three other buyers: Jana Kok – my wife; and David Ouelett and Denise Ouelett (copy attached as Appendix A”). Our contract proposed a \$1,286,000 purchase price; a \$50,000 deposit; another \$50,000 payable upon removal of conditions; a balance of cash of \$1,186,000.

8. I acknowledge that in error, I did not deliver to the sellers the Saskatchewan Real Estate Commission’s mandatory, Statement of Disclosure form on or before writing the offer; I did fax the form to Richard Jeanneau on or about June 12, 2007 (copy attached as Appendix “B”). Further, it remains my contention that at all times material to the transaction, the sellers knew of my registrant status and my wife’s associate status from verbal representations I gave to Richard Jeanneau.”

Mr. Kok declined to sign the Statement and in an undated letter to Marlene Williamson, marked as Exhibit (E)5 stated:

“Dear Investigation Committee,  
I cannot sign the statement of facts and admissions as I feel that I have given full disclosure to the Vendors Agent and the Vendors themselves. The complaint brought before you was regarding my offer to purchase and them being disappointed that I did not complete the transaction. They fully admit and were aware that I was a realtor. The Vendors agent said it was ok to deliver the document the following day and that was done, they have seemed to “misplaced” they’re document, although our conveyencing secretary had it on file when the investigators requested copies of all the documents. The Disclosure was delivered prior to acceptance at 5:00 p.m. on June 12<sup>th</sup>/2007.

It is the mission statement of the Commission to protect the public interest, in cases such as mine where it should never have gone this far, there was no misrepresentation in any way (and I remind you that my name was on the offer to purchase as the buyer as well as the realtor . . . , not hidden as some numbered company that could be confusing), that when the investigators try to entrap and find fault where there is none it lends to an overall lack of integrity in the system. I appreciate the fact that finally after several lengthy letters and phone conversations with Mr. Miller that you quickly disregarded the first charge that was utterly baseless and lead to my extreme frustration with this system. However, now what is left is the ‘witchhunt’, ie., what else could we get him for attitude if we don’t really have a case. My time has been wasted, my productivity has been stifled, and my income affected greatly due to Mr. Miller’s handling of my case.

So now I must waste more valuable time of mine and yours, and request a formal hearing regarding this last matter. Mr. Miller has requested that I prove I faxed the document, I made a request to the secretaries at our office, and they only had records back to the beginning of September.

If you would like to resolve this matter prior to an Investigation hearing please feel free to contact me at 306- 222-5111.

Sincerely,  
Dwayne Kok”

Marlene Williamson recommended to the Commission in a memorandum dated February 21, 2008, marked as Hearing Committee Exhibit (F)1, that a hearing be held:

“The Investigation Committee recommends that this matter proceed to a hearing for a determination of the allegation that Dwayne Kok is guilty of professional misconduct contrary to Section 39(1)(c) of *The Real Estate Act* by breaching Commission Bylaw 730(f) which states: “The following approved form, provided by the Saskatchewan Real Estate Association, shall be mandatory: Statement of Disclosure.”

- Dwayne Kok, violated this bylaw by personally writing a Residential Contract of Purchase and Sale form on June 11, 2007 and did not prepare or deliver a written Statement of Disclosure to the sellers on or before presenting his offer.

Dwayne Kok has requested a hearing.

In accordance with Section 35(2)(a) of *The Real Estate Act*, the Investigation Committee recommends that the Saskatchewan Real Estate Commission hear and determine this formal complaint.”

Reviewing Exhibits H-1, (E)5 and (F)1 it is clear to me that the only issue that was before the Hearing Committee was whether Mr. Kok violated Bylaw 730(f) by failing to deliver the required Statement of Disclosure before presenting his offer to purchase on June 11, 2007.

The fact that Mr. Kok was not prepared to admit this fact and sign the Statement necessitated a formal hearing before the Hearing Committee together with the attendance of several witnesses testifying to the sequence of events.

The costs incurred by the Commission for the formal hearing totaled \$3,360.76 and have been identified as follows:

Hearing Committee	
Per Diems	\$ 750.00
Mileage/Hotel	\$ 791.49
Witness expenses	\$ 0.00
Hearing expenses	\$ 59.27
Legal Services	\$ 1,400.00
Service of Subpoena(s)	\$ 150.00
Court Reporter	\$ 210.00
 TOTAL EXPENSES:	 \$3,360.76

Despite the letter from Marlene Williamson to Mr. Kok, dated November 16, 2007, contained in Exhibit H-1 in the hearing before me, and the clear language of the Notice of Hearing dated March 19, 2008 contained in Hearing Committee Exhibit (A)1, Mr. Kok has maintained that he has been the object of a witchhunt. He has been unable to comprehend that the sole issue was in respect of his failure to comply with Bylaw 730(f), by delivering the required disclosure before presenting his offer to purchase on June 11, 2007. Mr. Kok does not seem able to comprehend that delivering the disclosure on June 12, 2007 does not comply with Bylaw 730(f). The requirement in the Bylaw is mandatory and cannot be met by late delivery after an offer has been presented.

Mr. Kok wanted a formal hearing to clear his name. While the sellers had made a broader complaint against Mr. Kok regarding his decision to not complete the purchase of their property, this was not the issue before either the Hearing Committee or me.

It was evident at the outset of this matter that Mr. Kok did not provide the required Statement of Disclosure before he presented his offer on June 11, 2007. By his own admission he only attempted to provide the Statement of Disclosure on June 12, 2007. As the Hearing Committee stated on page 5 of its decision:

“On June 12, 2007 even had the form been presented, it was still a breach of the *Act*. The onus is on the registrant to ensure delivery takes place.”

Despite Mr. Kok’s contention to the contrary I find that Mr. Kok had at least 2 opportunities to make this admission and save himself and everyone else involved in this matter a lot of time and expense.

Firstly, when presented with Marlene Williamson’s letter of November 16, 2007 Mr. Kok could have either signed the Statement or indicated which parts of the Statement were acceptable to him and which parts were not accurate. I believe if Mr. Kok had responded in this fashion, an acceptable Statement could have been drawn up.

Secondly, when he received the Notice of Hearing dated March 19, 2008, Mr. Kok could have admitted the breach of Bylaw 730(f) and the hearing would then have only been about any sanction for the breach and not the extended hearing that took place. The testimony of witnesses would have not been necessary and the hearing would have been considerably shorter, all resulting in presumably considerably less costs.

In the end, Mr. Kok has gone through a full hearing before the Hearing Committee and an appeal before the Superintendent over an issue he could have easily resolved at the outset. If Mr. Kok had obtained advice before proceeding down this path, two hearings and the attendant costs could have been avoided or at least substantially reduced.

Mr. Kok wants the fine of \$1,500 reduced to \$1,000 and the award of costs of \$2,500 against him struck down.

I am not prepared to reduce the fine or strike down the costs of \$2,500. I find that both amounts are reasonable in the circumstances.

Accordingly, I dismiss Mr. Kok's appeal and confirm the Hearing Committee orders, amended as follows:

For the violation of 39(1)(c) of the Act and a breach of Bylaw 730(f):

- a) Pursuant to clause 38(1)(f) of the Act, that Dwayne Kok receive an order of reprimand;
- b) Pursuant to subclause 89(2)(a)(i) of the Act, that Dwayne Kok, prior to March 16, 2012, pay to the Saskatchewan Real Estate Commission a \$1,500 fine for the said violation of the Act;
- c) Pursuant to subclause 38(2)(a)(ii) of the Act, Dwayne Kok pay costs of the hearing in the amount of \$2,500 prior to March 16, 2012; and
- d) Pursuant to clause 38(2)(b) of the Act, that Dwayne Kok's registration shall be suspended if he fails to pay any portion of the fine or the costs of the hearing within the said period of time.

Dated at the City of Regina, in the Province of Saskatchewan, this 30<sup>th</sup> day of January, 2012.



J. M. Hall  
Superintendent of Real Estate