

**IN THE MATTER OF**  
**THE REAL ESTATE ACT, C. R-1.3**  
**AND**  
**IN THE MATTER OF SHAHZAD AHMED**

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

**Commission File: #2010-35**

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Before: A Saskatchewan Real Estate Commission Hearing Committee  
comprised of the following:  
Randal C. Touet - Chairperson  
Larry Gingerich  
John Puderak

Appearances: Ed Miller, on behalf of the Investigation Committee  
Shahzad Ahmed, registrant

Hearing Date: December 14, 2010

Written Decision: January 14, 2011

The Mitigation Hearing was held December 14, 2010 at the Saskatoon Club, Saskatoon, Saskatchewan before a Hearing Committee (“the Committee”) of the Commission. The Statement of Facts and Admissions dated November 17, 2010 provided particulars of Shahzad Ahmed’s violation and admissions.

## **CHARGE and ADMISSION OF MISCONDUCT**

The registrant was charged with and has admitted, in the Statement of Facts and Admissions, to professional misconduct as follows:

- Contrary to Section 39(1)(c) of *The Real Estate Act* he breached Commission Bylaw 726(b)(c) in that between January 20 and April 20, 2010, both date inclusive, he advertised the Property in Saskatoon, Saskatchewan as having lot dimensions of 47 feet by 146 feet when such was not the case.

## **LEGISLATION**

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 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 726(b)(c) states: “Any advertisement or incentive or the offering of any incentive or the participation in an incentive program to the public as an inducement to trade in real estate undertaken or authorized by a registrant shall not be: (b) inaccurate; or (c) reasonably capable of misleading the recipient or intended recipient.”

## **FACTS**

In accordance with subsection 9(4) of *The Real Estate Regulations* (“the Regulations”), the Committee accepted Shahzad Ahmed’s Statement of Facts and Admissions, which include the following relevant points:

1. Mr. Ahmed has been continuously registered under the provisions of *The Real Estate Brokers Act, 1987* and *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since September 29, 2006.
2. He has taken the following real estate courses.
  - Real Estate as a Professional Career;
  - Residential Real Estate as a Professional Career;
  - Phase 1 - Real Estate as a Professional Career; and
  - completed the continuing professional development seminars each registration year since July 1, 2006.

3. Mr. Ahmed is presently registered under the provisions of *The Real Estate Act* as a salesperson with Re/Max Saskatoon and he knows and understands the rules and regulations governing advertising as set out in *The Real Estate Act* and Saskatchewan Real Estate Commission Bylaws.
4. On or about January 20, 2010, the Seller signed a MLS® Seller's Brokerage Contract for a property in Saskatoon, Saskatchewan (hereinafter called **the Property**) with Re/Max Saskatoon and Mr. Ahmed, the salesperson representative. The Seller's Brokerage Contract advertised a \$348,900 asking price and the Seller directed that the Seller's brokerage commission be equally split between the successful listing and buying brokerages.
5. As part of the listing process, Mr. Ahmed confirmed that the residence was new construction with immediate vacant possession possible. The Seller completed a Property Condition Disclosure Statement acknowledging that he had never resided in the property.
6. As part of his normal listing process, Mr. Ahmed secured information from the Seller and available sources, including the city of Saskatoon. Based on the Seller's responses and his enquiries and calculations Mr. Ahmed authorized the entry of the Seller's Brokerage Contract on the MLS® with lot dimensions of 47 by 146 feet on a corner, rectangular and irregular lot.
7. On January 30, 2010, the Buyers, as represented by a separate brokerage viewed the property and thereafter wrote a \$330,000 offer on a Residential Contract to Purchase and Sale form that Mr. Ahmed presented to the Seller. The Seller declined to accept that offer.
8. On February 18, 2010 and on their own, the Buyers approached Mr. Ahmed directly, for the purpose of negotiating a purchase of the property. Negotiations led to a conditionally accepted \$335,000 Residential Contract to Purchase and Sale form and a March 22, 2010 completion date. The conditionally accepted contract required mortgage financing by March 1, 2010 and the inclusion of the Property Condition Disclosure Statement, as part of the contract. The Buyers did not remove conditions on or before March 1, 2010.
9. On March 16, 2010, the Buyers and the Seller conditionally agreed to a different \$335,000 Residential Contract to Purchase and Sale form with condition removal required by March 22, 2010. The Buyers removed the mortgage financing condition on March 22, 2010 and the transaction completed March 26, 2010.
10. In June 2010, the Saskatchewan Real Estate Commission received a complaint from the Buyers alleging they were misled by Mr. Ahmed's representations as to the dimensions of the lot that contained the residence. The Buyers have further initiated a civil court process against Mr. Ahmed seeking damages for the misrepresented lot size; Mr. Ahmed reported the matter to the Real Estate Insurance Exchange (REIX). Before the

buyers complained to the Commission Mr. Ahmed had offered to buy back the property from them at the price they paid and the Buyers declined.

11. Since receiving the complaint Mr. Ahmed checked the MLS® and found two previous listings for the property:
  - a) MLS® with another brokerage showing the area of the lot at 5637 square feet; and
  - b) MLS® with that same brokerage showing lot size dimensions of 39.43 feet by 146.35 feet by 120 feet on the other side.
12. Mr. Ahmed made calculation errors regarding the dimensions of the lot when preparing the listing for his entry on the MLS®. He did enquire with Information Services Corporation to confirm title for the property. Mr. Ahmed disputes that the actual smaller lot size caused the Buyers financial harm.
13. Mr. Ahmed acknowledges one existing discipline matter before the Saskatchewan Real Estate Commission, File 2009-34. He appeared on that matter before the Deputy Superintendent of Real Estate on March 23, 2010 and awaits the written decision.

## **REPRESENTATIONS**

The Investigation Committee representative, Ed Miller, stated that Mr. Ahmed has been registered as a salesperson since 2006. In this instance, Mr. Ahmed incorrectly converted metres to feet, leading to the error in advertising. Mr. Miller acknowledged that this was a new construction property and the Seller had never occupied the Property. Mr. Ahmed had received his information from the Seller and the City of Saskatoon.

Mr. Miller confirmed that Mr. Ahmed has been cooperative and admitted his error in the investigation process. Mr. Miller further acknowledged that this was a different charge from Mr. Ahmed's earlier offence. He had offered to buy the Property back from the Buyers, but they had declined. Mr. Miller said that Mr. Ahmed had made reasonable searches.

Mr. Miller felt that specific deterrence was required for Mr. Ahmed to understand the consequences of misrepresenting the lot size in his material. He felt that general deterrence was required for the industry and the public to know that the Commission properly supervises the registrants in Saskatchewan.

Mr. Miller referred the Hearing Panel to the Lou Doderai case (2009-17) where Mr. Doderai received a \$2,000.00 fine for relying on historical data on house size which was inaccurate. He also mentioned the Martin Blonski case (2008-75) where Mr. Blonski relied on the verbal representations of the seller, which were wrong. Mr. Blonski received a fine of \$500.00. The last case was that of Dan Torwalt (2009-51) which Mr. Miller said was most on point. Mr. Torwalt received a fine of \$1,000.00 for unintentionally providing the wrong size of an acreage.

The Investigation Committee Representative recommended a fine of at least \$1,000.00 for breach of the Bylaw with a letter of reprimand for the offence.

Mr. Ahmed said that this was an unintentional mistake. There was no intent on his part to deceive or mislead anyone. He said that he usually physically measures a lot, but this was after a snow storm and he stated that he could not see the corners of the lot. Mr. Ahmed said he relied on the information from ISC, but he never rechecked the information. He confirmed that he had not checked the prior listings for the Property. Mr. Ahmed said that he often sells new properties and he recommends that his clients measure the size with him. He said that the Seller did not have the Surveyor's Certificate at the time of sale. Mr. Ahmed said this was a simple error in converting the lot size from metres to feet.

### **DECISION**

In accordance with the *The Real Estate Act*, Regulations and Bylaws, the Committee made the following orders:

- a) Shahzad Ahmed receive an order of reprimand for the violation of Bylaw 726;
- b) Shahzad Ahmed, prior to March 28, 2011, pay to the Saskatchewan Real Estate Commission, a \$1,500.00 fine for the said violation of the *Act*; and
- c) Shahzad Ahmed's registration shall be suspended if he fails to pay any portion of the fine within the said period of time.

### **RATIONALE**

The Committee, in considering the disciplinary action, considered Shahzad Ahmed's previous sanction history and the length of time he has been in the real estate industry.

The Hearing Committee felt this was a clear error on the part of Mr. Ahmed. He had the opportunity to properly deal with the lot size including a period of two months after the listing to the sale to determine the proper size of the lot. The error was approximately 20% of the lot size. He had the time to locate the Surveyor's Certificate before the transaction closed, which would have allowed the parties to clarify the lot dimensions.

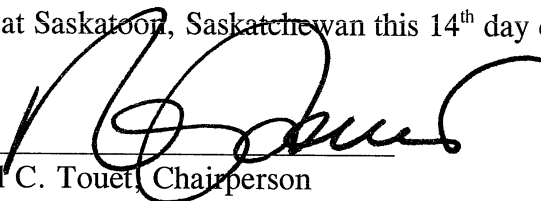
In this circumstance, Mr. Ahmed was acting for both sides to the transaction. He must take great care to exercise caution and care to make sure that there are no errors and both sides are properly represented. In this case, the error may have been unintentional, but it did lead to harm as the Buyers did not receive the Property they thought they were buying. It was much smaller than they were advised by Mr. Ahmed.

It is important that the registrants verify the accuracy of all information they are putting out regarding the properties they are involved in. The public relies on their professionalism and they should not have to take independent steps to verify the information provided to them by registrants. The error in conversion should not have happened and a double check of the information would have shown the error. Mr. Ahmed has done many such conversions and should know what the procedure is for such conversion.

This Bylaw is for the protection of the public. The sanctions imposed in this matter are intended to reflect the seriousness of the breach. They must also give the public confidence that advertising has to comply with the Act so as not to confuse the public. All registrants must feel confident that such a breach will be dealt with seriously.

The Hearing Committee reminds all registrants that advertising rules must be adhered to or there will be serious sanctions imposed. In this matter the Committee felt a higher sanction is required as this is the second offence in a short period of time for Mr. Ahmed. He has to realize the importance of being more careful in his advertising as it may lead to potential harm to the public and affects the reputation of the real estate industry as a whole.

Dated at Saskatoon, Saskatchewan this 14<sup>th</sup> day of January, 2011.



Randal C. Touet, Chairperson