

**IN THE MATTER OF**  
**THE REAL ESTATE ACT, C. R-1.3**  
**AND**  
**IN THE MATTER OF MARTIN BLONSKI**

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

**Commission File: #2008-75**

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Before: A Saskatchewan Real Estate Commission Hearing Committee  
comprised of the following:  
Randal C. Touet - Chairperson  
Larry Gingerich  
Richard Jeanneau  
Terry Powell

Appearances: Christopher Mason, on behalf of the Investigation Committee

Hearing Date: May 21, 2009

Written Decision: June 11, 2009

The Mitigation Hearing was held May 21, 2009 at the Saskatoon Club, 2<sup>nd</sup> Floor, 417 - 21<sup>st</sup> Street East, Saskatoon, Saskatchewan before a Hearing Committee (“the Committee”) of the Commission. The Statement of Facts and Admissions dated April 27, 2009 provided particulars of Martin Blonski’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:

#### **Count #1:**

Mr. Blonski plead guilty to professional misconduct contrary to Section 39(1)(c) of *The Real Estate Act* by breaching Commission Bylaw 714 between March 10, 2008 and June 4, 2008 (both dates inclusive) in advertising or causing to be advertised that the property had a new boiler in 2006, when in fact the building’s boiler was the original one and a new boiler was required.

#### **Count #2:**

Mr. Blonski plead guilty to a charge of professional misconduct contrary to Section 39(1)(c) of *The Real Estate Act* by breaching Commission Bylaw 726(a) between March 10, 2008 and June 4, 2008 (both dates inclusive) in advertising or causing to be advertised that the property had a new boiler in 2006, when in fact the building’s boiler was the original one and a new boiler was required.

### **LEGISLATION**

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 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.”

Commission Bylaw 726 (a) 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: (a) false.”

## **FACTS**

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

1. Martin Blonski has been continuously registered under the provisions of *The Real Estate Act* in the Province of Saskatchewan since January 5, 2006.
2. Martin Blonski has taken the following real estate courses:
  - Real Estate as a Professional Career
  - Residential Real Estate as a Professional Career
  - Principles of Real Estate Appraisal
  - Principles of Real Property Law
3. Martin Blonski has completed the continuing professional development seminars each registration year since 2005-2006.
4. Martin Blonski is presently registered under the provisions of *The Real Estate Act* as a salesperson with Re/Max Crown Real Estate Ltd.
5. On or about March 10, 2008 Mr. Blonski prepared and submitted a Saskatchewan MLS Data Input Form. The narrative states in part “the building has a new boiler in 06”.
6. Prior to publication, Mr. Blonski never confirmed or verified the information in paragraph 5 with anyone in authority to do so.
7. Mr. Blonski caused the advertising narrative to be included in the listing that everyone could view by accessing the Internet thereby constituting a public forum. He did so by advertising or causing to be advertised between March 10 and June 4, 2008 that the “building has a new boiler in 06.” It was learned after the purchase by the Buyer that the building’s boiler was the original one installed in 1959 and that a new one is required.
8. Mr. Blonski recognized and agreee to be true that in the letter of complaint, the Buyer stated that 13 days after purchasing the condo he attended a general meeting and to his surprise found out the boiler in the building is the original (1959) and needed to be replaced”.

9. Mr. Blonski, upon discussion with the Property Manager, subsequently learned and believed to be true that the boiler did not need to be replaced
10. On June 3, 2008 Mr. Blonski submitted an amendment (after possession) so as to not mislead other registrants about this property should they use the details of this sale in future “comparables.”

## **REPRESENTATIONS**

The Investigation Committee representative, Christopher Mason, stated that the actions of Mr. Blonski were a problem due to his failure to pay attention to detail, not due to any malice on the part of Mr. Blonski. He suggested that Mr. Blonski's failure to apologize to the Buyer for his actions is an aggravating factor in the sentence. Mr. Mason was concerned that Mr. Blonski relied on the knowledge of his friend, the Seller, rather than his own verification of the situation. The Buyer suffered harm and Mr. Blonski did not appear to show any contrition. He felt there was no assurance that this would not occur again with Mr. Blonski.

Mr. Mason acknowledged that Mr. Blonski was cooperative, honest and forthright in the investigation. Upon learning of the error, Mr. Blonski took reasonable attempts to correct the advertising error. In further mitigation of the sentence, this was Mr. Blonski's first offence and he has only had a short real estate career.

Mr. Mason stressed that the public and other agents expect that all registrants must pay attention to details and be thorough in their knowledge of their listings. In this case, the Buyer relied on Mr. Blonski's actions to his detriment.

Mr. Mason, on behalf of the Investigation Committee, recommended a letter of reprimand on both counts and a fine of \$2,500.00 or more for the breach of Bylaw 714 and a fine of \$1,500.00 or more for the breach of Bylaw 726(a).

Mr. Mason stressed that the public expects diligence on behalf of the registrants and the real estate industry requires diligence on the part of its members.

In relation to the breach of Bylaw 714, Mr. Mason referred the Committee to the Manton decision where the registrant did not determine that the water heater was a rental and received a \$500.00 fine for breach of Bylaw 715. For the breach of Bylaws 714 and 726(a), the Committee was referred to the Spezowka case where the registrant advertised false taxes and failed to take reasonable steps to discover all tax levy information relating to the property listed by his brokerage. Mr. Spezowka received a \$2,000.00 fine for Bylaw 714 and a \$1,000.00 fine for Bylaw 726(a). Had there been any evidence of consumer harm in his case, there would have been a suspension and increased fines.

Mr. Blonski acknowledged his oversight. The Seller was and is his best friend for twenty years. Otherwise he said he would have ensured that the proper due diligence was taken. This matter took place in the middle of a hot real estate market. He noted that he was the Seller's

agent, not the Buyer's agent. When he was contacted by the Buyer, he contacted the Buyer's agent to deal with the matter. He knew he couldn't deal directly with the Buyer or he would be in breach of agency.

Mr. Blonski noted that he did take steps to ensure the problem would not reoccur for this property. He states that this will never happen again to him and he has been very thorough since this came to light.

## **DECISION**

In accordance with the *Act* and Regulations, the Committee made the following orders:

### Count #1:

- a) Pursuant to clause 38(1)(f) of the *Act*, that Martin Blonski receive an order of reprimand for the violation of Bylaw 714;
- b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Martin Blonski, prior to August 15, 2009, pay to the Saskatchewan Real Estate Commission, a \$2,000.00 fine for the violation;
- c) Pursuant to clause 38(2)(b) of the *Act*, that Martin Blonski's registration shall be suspended if he fails to pay any portion of the fine within the said period of time;

### Count #2

- a) Pursuant to clause 38(1)(f) of the *Act*, that Martin Blonski receive an order of reprimand for the violation of Bylaw 726(a);
- b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Martin Blonski, prior to August 15, 2009, pay to the Saskatchewan Real Estate Commission, a \$500.00 fine for the said violation;
- c) Pursuant to clause 38(2)(b) of the *Act*, that Martin Blonski's registration shall be suspended if he fails to pay any portion of the fine within the said period of time.

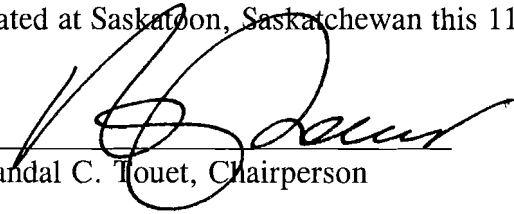
## **RATIONALE**

The Hearing Committee, in considering the disciplinary action, considered Martin Blonski's lack of sanction history and the short length of time he has been in the real estate industry.

It is clear that registrants must ensure that Bylaw 714 is followed. The public is relying on them to know their properties. That is an important reason why people want to have registrants involved, so they can trust that the information has been confirmed and they are not simply relying upon the Sellers who, of course, have a vested interest in the transaction and may not be objective. This failure to do the necessary due diligence reflects on the real estate industry as a whole and the message must be made to all registrants that it is essential that they must take reasonable steps to know the property. It is not satisfactory that they simply rely on the word of the seller when they can reasonably determine the truth themselves. The sellers may not be intentionally misleading the registrants, but they may either not understand the meaning of the question or may have faulty memory of the facts. In either situation, the registrant should look into the details of the property. It is important that registrants do not become complacent in doing their jobs.

The Committee was pleased with the quick corrective action taken by Mr. Blonski and believe that this action will not reoccur. Were it not for that, the fine for the false advertising would have been higher. It is also noted that the action of Mr. Blonski in not replying directly to the Buyer in this matter was the correct manner in which to react in an agency situation. It was correct for him to address the matter with the Buyers' agent.

Dated at Saskatoon, Saskatchewan this 11<sup>th</sup> day of June, 2009.



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Randal C. Touet, Chairperson