

IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3  
AND  
IN THE MATTER OF CARMEN CARTIER

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DECISION OF THE  
SASKATCHEWAN REAL ESTATE COMMISSION

Commission File: #2009-17

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

Appearances: Ed Miller, on behalf of the Investigation Committee  
Carmen Cartier, Registrant

Hearing Date: September 17, 2009

Written Decision: October 13, 2009

The Mitigation Hearing was held September 17, 2009 at the Saskatoon Club, 417 - 21<sup>st</sup> Street East, Saskatoon, Saskatchewan before a Hearing Committee (“the Committee”) of the Commission. The Hearing was held jointly with the Hearing for Lou Doderai. The Statement of Facts and Admissions dated July 20, 2009 provided particulars of Carmen Cartier’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:

That contrary to Section 39(1)(c) of *The Real Estate Act* Ms. Cartier breached Commission Bylaw 715 which states: “Prior to obtaining an offer to purchase on a property from a client, a registrant shall take reasonable steps to discover facts pertaining to the property that a prudent registrant would take in order to fulfil the obligation to avoid error, misrepresentation or concealment of pertinent facts.”

- Ms. Carmen Cartier breached this section on or about March 22, 2008 when she represented the Buyer in the purchase of the Property and she did not physically measure the property to determine the square footage but rather relied on incorrect feature sheet, MLS and anecdotal information.

### **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 a breach of this *Act*, the regulations or the bylaws or any terms or restrictions to which the registration is subject.”

Bylaw 715 states: “Prior to obtaining an offer to purchase on a property from a client, a registrant shall take reasonable steps to discover facts pertaining to the property that a prudent registrant would take in order to fulfil the obligation to avoid error, misrepresentation or concealment of pertinent facts.”

### **FACTS**

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

1. Ms. Cartier has been continuously registered as a salesperson in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since July 1, 2003.
2. She has taken the following real estate courses:
  - Fundamentals of Real Estate

- Principles of Mortgage Financing
  - Principles of Real Estate Appraisal and
  - Principles of Real Property Law.
3. Ms. Cartier completed the continuing professional development seminars each registration year since 2003-2004.
  4. She is presently registered under the provisions of *The Real Estate Act* as a salesperson with Re/Max P.A. Realty.
  5. Ms. Cartier partners her real estate business with Lou Doderai, a salesperson with Re/Max P.A. Realty. Lou Doderai has been friends with the Seller for many years and listed the Property in the winter of 2008. Although Ms. Cartier is shown as Listing Agent 2 for the property, Lou Doderai exclusively dealt with the Seller.
  6. Ms. Cartier did not measure the Property at the time that Lou Doderai obtained the seller's brokerage contract for the Property or at any time during the term of the contract.
  7. On March 22, 2008, Ms. Cartier assisted the Buyer to write a successful \$45,000 Residential Contract of Purchase and Sale to buy the Property.
  8. As part of her research into the Property, Ms. Cartier obtained a City of Prince Albert Field Sheet; reviewed previous MLS listings for the property; and obtained the feature sheet for the property as created by Lou Doderai. Her research led her to believe that the property was 716 square feet. As part of the purchase process the Buyer hired Pillar to Post to do a home inspection. Ms. Cartier was led to believe that the buyer was happy with the report and removed all subject to conditions by April 1, 2008.
  9. Ms. Cartier recalls visiting the Property at least 2 and perhaps 3 times with the Buyer between March 22<sup>nd</sup> and the completion date. At all times that she attended the property with the Buyer, he never questioned the size of the rooms or the square footage of the Property.
  10. The transaction completed on or about April 28, 2008.
  11. Ms. Cartier acknowledges that her real estate training instructed her to personally verify dimensions with outside measurements. In this transaction, she measured the inside rooms and her calculations did not cause her to question the advertised square footage of the property. Ms. Cartier now always personally verifies advertised square footage with outside measurements.
  12. Ms. Cartier acknowledges receiving, as part of this investigation, a copy of a letter from the Assessment Appraiser for the City of Prince Albert confirming that they recently inspected the Property and corrected the exterior measurements to show 516 square feet.

## REPRESENTATIONS

The Investigation Committee representative, Ed Miller, confirmed that Ms. Cartier is a first time offender under the *Act*. He stressed that registrants must recognize the importance of verifying the facts related to their trade in real estate. They cannot simply rely on third party information. In this matter, there was deep snow around the home, so Ms. Cartier relied solely on historical information. Mr. Miller suggested this does not meet the standard of service and due diligence that the public is entitled to rely on from registrants.

Mr. Miller confirmed that Ms. Cartier was cooperative in the investigation and admitted her mistake. She relied on the City of Prince Albert documentation that proved to be incorrect. He confirmed there was no intention to deceive the Buyers or the Seller. Mr. Miller stated there is no evidence of quantum of loss. He felt that this was a serious situation requiring a serious sanction.

The Investigation Committee recommended a letter of reprimand and a fine of \$1,500.00 for breach of Bylaw 715.

Mr. Miller referred the Committee to the Bill Spezowka case (2003-59) where he received a fine of \$4,000.00 for providing inaccurate tax information; the Reg Kotlar case (2006-52) where he received a fine of \$500.00 for advertising violations; the Martin Blonski case (2008-75) for accepting the seller's representations about a new boiler (a fine of \$2,000.00); and the Edna Vanderberg case (2005-22) where a fine of \$1,500.00 was imposed for relying on the square footage in earlier MLS information with no independent verification.

Ms. Cartier told the Committee that this was her mistake. She was completely forthcoming and honest. She understands the seriousness of the charge and knows better than to not verify the information herself. Ms. Cartier accepted responsibility for the mistake; she had visited the Property many times.

## DECISION

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


- a) That Carmen Cartier receive an order of reprimand for the violation of Bylaw 715;
- b) That Carmen Cartier, prior to December 15, 2009, pay to the Saskatchewan Real Estate Commission, a \$2,000.00 fine for the said violation of the *Act*; and
- c) Carmen Cartier's registration shall be suspended if she fails to pay any portion of the fine within the said period of time;

## RATIONALE

The Committee, in considering the disciplinary action, considered Carmen Cartier's lack of previous sanction history and the length of time she had been in the real estate industry.

The Committee confirms that it is the responsibility of the registrants to verify all of the facts related to the property with which they are dealing. There was a significant error in the square footage reported. A difference of 200 square feet (716 to 516 square feet) is a major difference in the property being purchased. This was a situation which was easy to remedy. The measurement of the outside of the property was their responsibility to the buyer and the seller, yet neither Ms. Cartier nor Mr. Doderai took the time to do so. The Committee feels this requires a serious sanction. While Ms. Cartier relied on Mr. Doderai, the Buyer relied on her and she failed the Buyer. The sanction must reflect the seriousness of the situation and ensure the public understands that a breach of the registrant's responsibility to their client must be dealt with. If a registrant relies on others to provide information, it does not take away the liability they have to their client. The registrant must check the information themselves.

Dated at Saskatoon, Saskatchewan this 13<sup>th</sup> day of October, 2009.



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Randal C. Touet, Chairperson