

**IN THE MATTER OF**  
**THE REAL ESTATE ACT, C. R-1.3**  
**AND**  
**IN THE MATTER OF SLADE DESROCHERS**

---

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

**Commission File: #2008-12**

---

**Before:** A Saskatchewan Real Estate Commission Hearing Committee  
comprised of the following:  
Phillip Mack - Chairperson  
Cheryl Elliott  
Richard Jeanneau

**Appearances:** Slade Desrochers, Registrant  
Wayne Zuk, Broker, Realty Executives Saskatoon  
Ed Miller, on behalf of the Investigation Committee

**Hearing Date:** November 28, 2008

**Written Decision:** January 14, 2009

The Mitigation Hearing was held November 28, 2008 at the offices of the Saskatchewan Real Estate Commission, 237 Robin Crescent, Saskatoon, Saskatchewan before a Hearing Committee (“the Committee”) of the Commission. The Statement of Facts and Admissions dated August 26, 2008 provided particulars of Slade Desrochers’ 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 contrary to Section 39(1)(c) of *The Real Estate Act* in that he breached Commission Bylaw 726(c) as follows:

- Slade Desrochers, breached this bylaw between December 4 and 11, 2007 (both dates inclusive) when he advertised a property for sale with underground parking when no underground parking existed in relation to the property.

## **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 726(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 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 Slade Desrochers’ Statement of Facts and Admissions, which include the following relevant points:

1. Slade Desrochers has been continuously registered as a salesperson under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since February 23, 2000.
2. Slade Desrochers completed the following real estate courses:
  - Fundamentals of Real Estate
  - Principles of Real Estate Appraisal
  - Principles of Real Property Law; and
  - Principles of Mortgage Financing.

3. Slade Desrochers completed the continuing professional development seminars each registration year since 2002-2003.
4. Slade Desrochers is presently registered under the provisions of *The Real Estate Act* as a salesperson with Realty Executives Saskatoon.
5. In May 2007, Slade Desrochers purchased 2401 – 311 – 6<sup>th</sup> Avenue North, Saskatoon, Saskatchewan (hereinafter called **the property**). After using the property as a source of revenue for approximately six months, Slade Desrochers listed the property for sale with his brokerage on an MLS Exclusive Seller's Brokerage contract with an asking price of \$219,900.
6. On December 11, 2007, the buyer (represented by another brokerage's registrant) and Slade Desrochers agreed to a \$219,900 Residential Contract of Purchase and Sale for the property.
7. The buyer's agent and her client stated that the underground parking advertisement on the MLS led them to make a full price offer on the property.
8. As part of the purchase agreement, the buyer and the buyer's agent received from the property management brokerage a Form Z – Estoppel Certificate. From the time Slade Desrochers purchased the unit until the time he sold the unit, the property management brokerage implemented a policy whereby they no longer warranted parking spots for units.
9. Notwithstanding that Slade Desrochers' MLS advertising stipulated underground parking, Slade Desrochers submitted that paragraph #17 of the Estoppel Certificate outlined that there was no guarantee as to what parking was assigned.
10. The contract completed on or about December 28, 2007 and Slade Desrochers received the full purchase price as contracted. Slade Desrochers acknowledged that some days thereafter he learned that the buyer of the property received notification that a fellow condominium owner possessed the underground parking stall as assigned to the property.
11. Slade Desrochers acknowledged that his advertising could possibly have misled a recipient or intended recipient to believe that underground parking existed with the advertised condominium unit when such was not the case.

## **REPRESENTATIONS**

The Investigation Committee representative, Ed Miller, stated that this was Slade Desrochers' first offence and has been registered since February 2000.

Slade Desrochers listed for sale through his brokerage a condominium that he himself owned. The listing stated that the condominium unit included underground parking when in fact it did not. A buyer successfully negotiated the purchase of this condominium unit paying the purchase price believing that underground parking was included. Even though the disclosure in the

estoppel certificate indicated that there was a dispute regarding parking allocation the buyer completed the purchase of the condo.

Slade Desrochers admitted that the information he provided to the MLS system was indeed incorrect and potentially misleading. Slade Desrochers stated that the misleading information was a result of simply checking the wrong box on the listing form. Slade Desrochers claimed that there was never any malicious intent and that he took steps to correct his error by re-sending the parking schematic to the buyer's agent.

Mr. Miller stated that Slade Desrochers co-operated fully with the Investigation Committee.

With regard to Bylaw 726(c), the Investigation Committee recommended a fine of \$1,000 and that Slade Desrochers receive a reprimand.

This is required to restore public confidence in the actions of registrants and to provide a specific deterrent to Slade Desrochers to ensure that he understands the importance and consequences for factually incorrect advertising. It is also to provide a general deterrence to the industry who view the sanctions as an illustration of the fair supervision of the real estate industry.

Mr. Miller confirmed that Slade Desrochers clearly admitted his error, was fully cooperative and accepted responsibility for his actions. Slade Desrochers has no previous sanction history with the Commission.

Regarding Bylaw 726(c), Mr. Miller referred the Committee to the Reg Kotlar file (2006-52), where Reg Kotlar received a \$500 fine for advertising 400 more square feet than the actual size of the property. Mr. Miller felt that case was significantly less serious than Slade Desrochers' situation because in the Reg Kotlar case, he actually saw what he was getting. He also referred to the Linda Boxall file (2007-61). In that situation, Linda Boxall advertised conditionally sold's as SOLD to the possible detriment of her sellers. Ms. Boxall received a \$750 fine on appeal to the Superintendent. Mr. Miller stated that he felt the Linda Boxall case was less serious than that of Slade Desrochers.

Mr. Miller also referred the Committee to the Andy Schmidt and Tracy Main file (2006-51). These two registrants bought a revenue property, rented it for a period of time, completed some upgrades and advertised it for sale on MLS approximately a year later. The original sellers returned and discovered that her old residence was being advertised with new shingles being installed during the time that she had owned the property. This was not true. During the investigation, Andy Schmidt claimed that he had personally installed new shingles. Traci Main claimed that she trusted Andy Schmidt's representations. Mr. Schmidt received a \$3,000 fine and Traci Main a \$2,000 fine plus \$300 investigational costs. Mr. Miller stated that this was a more serious matter than that of Slade Desrochers because of the wanton recklessness by Andy Schmidt and Traci Main.

Slade Desrochers acknowledged that he erred in stating that the property had underground parking when in fact no underground parking came with this particular condominium unit. He did understand that such a statement would be misleading to a potential buyer but he took what

he felt to be adequate measures to point out to the buyer that the parking was not underground prior to the sale completing.

### **DECISION**

In accordance with clause 9(4)(a) of the Regulations and clauses 38(1)(f), 38(2)(b) and subclause 38(2)(a)(i) of the *Act*, the Committee made the following orders:

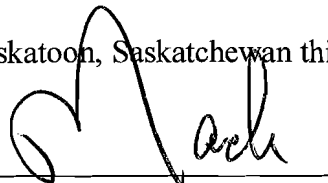
- a) Pursuant to clause 38(1)(f) of the *Act*, that Slade Desrochers receive an order of reprimand for the violation of Bylaw 726(c) ;
- b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Slade Desrochers, prior to February 27, 2009, pay to the Saskatchewan Real Estate Commission a \$500 fine for the violation of Bylaw 726(c); and
- c) Pursuant to clause 38(2)(b) of the *Act*, that Slade Desrochers' 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 Slade Desrochers' lack of previous sanction history.

The Hearing Committee is concerned that registrants understand that information that they provide when listing a property for sale must be concise and accurate. The public and their agents are depending on the accuracy of listing information when making buy/sell decisions regarding real estate. This is especially important when an agent is dealing with his own property. This fine is also required to assure the public that registrants who place false information before them will be seriously dealt with and they should be able to rely on the advertising to be factually correct.

Dated at Saskatoon, Saskatchewan this 14<sup>th</sup> day of January 2009.



Phillip Mack, Chairperson