

IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3
AND
IN THE MATTER OF LOU DODERAI

DECISION OF THE
SASKATCHEWAN REAL ESTATE COMMISSION

Commission File: #2009-17

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
Lou Doderai, Registrant

Hearing Date: September 17, 2009

Written Decision: October 13, 2009

The Mitigation Hearing was held September 17, 2009 at the Saskatoon Club, 417 - 21st Street East, Saskatoon, Saskatchewan before a Hearing Committee (“the Committee”) of the Commission. The Hearing was held jointly with the Hearing for Carmen Cartier. The Statement of Facts and Admissions dated July 23, 2009 provided particulars of Lou Doderai’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* Mr. Doderai breached Commission Bylaw 714 which 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.”

- Mr. Lou Doderai breached this section on or about January 6, 2008 when he signed an MLS Exclusive Seller’s Brokerage Contract for the Property in Prince Albert and did not physically measure the square footage of the property but rather relied on historical and incorrect 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 714 which 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.”

FACTS

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

1. Lou Doderai has been continuously registered as a salesperson in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since April 19, 2000.
2. Lou Doderai 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. Lou Doderai has completed the continuing professional development seminars each registration year since 2001-2002.
 4. Lou Doderai is presently registered under the provisions of *The Real Estate Act* as a salesperson with Re/Max P.A. Realty.
 5. Mr. Doderai partners his real estate business with Carmen Cartier, a salesperson with Re/Max P.A. Realty. Mr. Doderai has been friends with the Seller for many years and listed the Property in Prince Albert, Saskatchewan in the winter of 2008. Although Carmen Cartier is shown as Listing Agent 2 for the property, Mr. Doderai exclusively dealt with the Seller.
 6. Mr. Doderai did not measure the exterior of the Property at the time that he obtained the January 6, 2008 seller's brokerage contract for the Property as the snow was very deep outside the property. To confirm dimensions at the property, Mr. Doderai took inside measurements of the rooms and he relied on previous listing information for the property that he had from 2003 and from a 2007 seller's brokerage contract that Mr. Doderai had on the property. He also possessed a City of Prince Albert Field Sheet for the property that represented 716 as the square footage for the property.
 7. On March 22, 2008, Carmen Cartier represented both the Buyer and the Seller to write a \$45,000 Residential Contract of Purchase and Sale to buy the Property.
 8. The transaction completed on or about April 28, 2008.
 9. Mr. Doderai acknowledges that his real estate training instructed him to personally verify dimensions with outside measurements. In this transaction he measured the inside rooms and his calculations did not cause him to question the advertised square footage of the property. Mr. Doderai now always personally verifies advertised square footage with outside measurements.
 10. Mr. Doderai 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 Mr. Doderai is a first time offender under the *Act*. He stressed that registrants must recognize the importance of verifying the facts related to their trades in real estate. They cannot simply rely on third party information. In this matter there was deep snow around the home, so Mr. Doderai relied solely on historical information in his possession. Mr. Miller suggested that 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 Mr. Doderai was cooperative in the investigation and admitted his mistake. Mr. Doderai relied on the City of Prince Albert documentation and prior listing information in his possession that proved to be incorrect. He confirmed there was no intention to deceive the Buyers or the Seller. Mr. Miller stated there was 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 714.

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 previous MLS information regarding square footage with no independent verification.

Mr. Doderai told the Committee that this was his mistake. He was completely forthcoming and honest. Mr. Doderai understands the seriousness of the charge and knows better than to not verify the information himself. He said that it was common practice to measure the property before and after a sale; and he failed to do so in this case. Mr. Doderai said that he was conscientious and wants to protect his clients' interests. He sits on various boards and committees for real estate and is an advocate of doing a good job. Mr. Doderai takes full responsibility for this error.

DECISION

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

- a) That Lou Doderai receive an order of reprimand for the violation of Bylaw 714;
- b) That Lou Doderai, 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) Lou Doderai'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 Lou Doderai's lack of previous sanction history and the length of time he 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 Mr. Doderai relied on historical information, Ms. Cartier relied on him, the Buyer relied on Ms. Cartier 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 13th day of October, 2009.



Randal C. Touet, Chairperson