

IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3
AND
IN THE MATTER OF LEONARD EVA

DECISION OF THE
SASKATCHEWAN REAL ESTATE COMMISSION

Commission File: #2008-38

Before: A Saskatchewan Real Estate Commission Hearing Committee
comprised of the following:
Randal C. Touet - Chairperson
Richard Jeanneau
Scott Musgrave
John Puderak

Appearances: Ed Miller, on behalf of the Investigation Committee
Leonard Eva, Broker
Randy Sandbeck, Solicitor for Leonard Eva

Hearing Date: January 15, 2009

Written Decision: February 5, 2009

The Mitigation Hearing was held January 15, 2009 at the Saskatoon Club, 2nd Floor, 417 - 21st Street East, Saskatoon, Saskatchewan before a Hearing Committee (“the Committee”) of the Commission. The Statement of Facts and Admissions dated December 12, 2008 provided particulars of Leonard Eva’s violation and admissions.

CHARGE and ADMISSION OF MISCONDUCT

Leonard Eva, plead guilty to a charge of professional misconduct contrary to Section 39(1)(c) of *The Real Estate Act* in that he breached Commission Bylaw 711 which states: “A broker or branch manager shall adequately supervise the activities of the registrants and other personnel for whom he or she is responsible. In determining the adequacy of the supervision, the Commission will consider the following factors, but will not be limited to making a determination on these factors alone:

- (a) whether the broker or branch manager was physically available to supervise;
- (b) whether the broker or branch manager had established written policies and procedures;
- (c) whether the broker or branch manager held regular staff meetings to determine that policies or procedures were properly implemented;
- (d) whether the broker or branch manager had undertaken all reasonable steps to ensure compliance by all salespersons and other personnel; and
- (e) whether the broker or branch manager took corrective and remedial action when a violation by a salesperson or other personnel was discovered.”

- Leonard Eva breached this bylaw as the broker of Regency Property Management in that he failed to take an active role to ensure that Regency Property Management followed written direction received from the Saskatchewan Real Estate Commission regarding the maintenance and use of property management interest bearing trust accounts and pooled trust operating accounts.

LEGISLATION

Section 39(1)(a) 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 711 of *The Real Estate Act* states: “A broker or branch manager shall adequately supervise the activities of the registrants and other personnel for whom he or she is responsible. In determining the adequacy of the supervision, the Commission will consider the following factors, but will not be limited to making a determination on these factors alone:

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- (d) whether the broker or branch manager had undertaken all reasonable steps to ensure compliance by all salespersons and other personnel; and

- (e) whether the broker or branch manager took corrective and remedial action when a violation by a salesperson or other personnel was discovered.”

FACTS

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

1. Leonard Eva 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 April 2, 1982.
2. Leonard Eva has taken the following real estate courses.
 - Real Estate 100;
 - Real Estate 200;
 - Property Management Course; and
 - the mandatory continuing professional development seminars each registration year since July 1, 2001.
3. Leonard Eva is presently registered under the provisions of *The Real Estate Act* as a broker with Regency Property Management.
4. Regency Homes Corporation commenced operation in October of 2003 for the purpose of managing its own holdings. In October 2003 Regency Homes Corporation became registered with the Saskatchewan Real Estate Commission operating as Regency Property Management (hereinafter referred to as **RPM**).
5. Commencing October 15, 2003 through February 18, 2008, Leonard Eva was the registered broker with RPM and entrusted the day-to-day operations to his step-daughter in-law, Katherine Berner.
6. RPM’s business focused on quality service to clients and to his knowledge during the time that RPM was registered with the Saskatchewan Real Estate Commission, no clients complained about their service or processing of client information.
7. On October 22, 2004, Ed Miller (a Review Officer with the Saskatchewan Real Estate Commission) conducted an audit of the books and records of RPM and thereafter provided a letter of direction to the brokerage. The letter directed the brokerage to not pay suppliers from the property management trust account but rather use the designated pooled operating account once the terms of trust were met.
8. Notwithstanding the contents of Ed Miller’s October 22, 2004 audit letter, Leonard Eva failed to ensure that RPM followed the Saskatchewan Real Estate Commission’s written direction.
9. RPM submitted its 2007 Annual Financial Report to the Saskatchewan Real Estate Commission in March 2008. The report showed that as of December 28, 2007 RPM’s

reconciled balance for the property management trust account stood in a negative position at \$17,287.15; while the actual bank statement showed a positive balance of \$65,452.80.

10. The difference between the reconciled bank balance and the actual bank balance resulted from outstanding cheques issued from the property management trust account rather than the pooled operating account or security deposit account.
11. Leonard Eva did not take an active part but rather delegated responsibility for monthly reconciliations of RPM's property management trust account, pooled operating account and security deposit account to Katherine Berner.
12. Commencing late May 2008 through July 2008, Saskatchewan Real Estate Commission investigators audited the brokerage and Leonard Eva re-registered as the broker commencing May 30, 2008.
13. RPM has now initiated checks and balances to ensure that: only property management trust funds are deposited into the property management trust account; the security deposit account remains fully funded based on security deposits received; and the pooled operating account remains the sole source of money to pay bills and expenses on behalf of owners whose properties are managed by RPM.

REPRESENTATIONS

The Investigation Committee representative, Ed Miller, confirmed that Mr. Eva has been a registrant since 1982 and this was his first time before the Commission. Regency Property Management is a family operation, but the charge stems from them using the trust account as an operating account.

Mr. Miller said that since Mr. Eva assumed broker duties in May 2008, RPM had been in compliance with the accounting requirements of the Saskatchewan Real Estate Commission.

The Investigation Committee recommended a letter of reprimand and a fine of \$5,000.00. This is to provide specific deterrence to Mr. Eva to ensure that he follows proper accounting processes in the future and will provide general deterrence to the other property managers that proper accounting procedures take place and that brokers provide proper supervision of their trust accounts.

Mr. Miller referred the Committee to the D & D Property Management file where there was an absentee broker and a fine of \$1,000.00 was imposed in 2002. He suggested a higher fine would be appropriate today, because of the increased values. He also referenced the Porter decision, where there were two breaches, one each of Bylaw 607 and 608. Mr. Porter received fines of \$2,500.00 for each breach.

Mr. Sandbeck provided written and oral presentations to the Committee. He stressed that this was an act of omission, not commission by Mr. Eva. He did not take active steps to create the situation, but rather did not see that the funds were dealt with according to the Commission procedures. There was no evidence of deception or deceit in his actions. The reporting was

done by RPM which led to the charge, but the information was placed before the Commission by the company. Mr. Sandbeck provided the Hearing Committee with testimonial letters from clients of RPM which shows their confidence and respect for the company. He said that nothing would have come to Mr. Eva's attention from the clients because they had no concerns or problems with the manner in which the property management was taking place.

Mr. Sandbeck confirmed that once Mr. Eva became aware of the problem, the accounting was corrected and the appropriate checks and balances as recommended by the Commission are now in place. This differs from the Porter decision in which he submits is a much more serious situation and also differs from the Toledo decision where there was delay in removing an improper listing. In that case, a fine of \$2,500.00 was imposed. He suggested there was no need for specific deterrence as Mr. Eva corrected the situation in a timely manner.

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 Leonard Eva receive an order of reprimand for the violation of Section 39(1)(a) of the *Act*;
- b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Leonard Eva, prior to March 31, 2009, pay to the Saskatchewan Real Estate Commission, a \$3,000.00 fine for the said violation of the *Act*; and
- c) Pursuant to clause 38(2)(b) of the *Act*, that Leonard Eva's registration shall be suspended if he fails to pay any portion of the fine within the said period of time.

RATIONALE

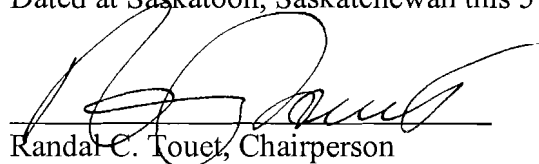
The Hearing Committee, in considering the disciplinary action, considered Mr. Eva's lack of previous sanction history and his lengthy experience in the real estate industry.

The Hearing Committee wants to ensure that lack of supervision by the brokers is a very serious matter. The Bylaws of the Commission are very clear that adequate supervision must take place. When property management is involved, the issues become even larger as there are a significant number of financial transactions taking place on a monthly basis. These involve monies held in trust for the clients of the property management company and there are clear procedures to be followed in dealing with them. It is the obligation of the broker to ensure the mechanisms for supervision and accountability must be in place.

In this matter there are some mitigating factors which come to bear. This was and is a family operation. It has expanded rapidly in the past few years and the procedures were not set up appropriately at the start. The clientele of RPM appears to be happy with the management and there have been no complaints to the Commission. There is no allegation of fraud or any type of defalcation. However, the Hearing Committee wants to be clear that if you are taking on property management then you must do the job properly and proper use of the trust account is mandatory, not discretionary. The improper accounting had been going on for some time in this matter. It should not have taken a Commission audit to bring it to light before it was corrected.

Therefore, a significant fine of \$3,000.00 was imposed to send a message to the industry that proper supervision of the trust account and accounting procedures must be taking place. This would certainly have been more significant had any element of intentional misbehaviour been found.

Dated at Saskatoon, Saskatchewan this 5th day of February, 2009.

A handwritten signature in black ink, appearing to read 'R. Touet', is written over a horizontal line. The signature is fluid and cursive.

Randal C. Touet, Chairperson