

IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3
AND
IN THE MATTER OF JUDY FORSTER

DECISION OF THE
SASKATCHEWAN REAL ESTATE COMMISSION

Commission File: #2007-100

Before: A Saskatchewan Real Estate Commission Hearing Committee
comprised of the following:
Randal C. Touet - Chairperson
Donnett Elder
Phillip Mack
Terry Powell

Appearances: Judy Forster, Registrant, by telephone

Ed Miller, on behalf of the Investigation Committee

Hearing Date: May 8, 2008

Written Decision: June 10, 2008

The Mitigation Hearing was held May 8, 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 April 10, 2008 provided particulars of Judy Forster’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 contrary to Section 39(1)(c) of *The Real Estate Act* in that she breached Commission Bylaw 727 as follows:

- a) Judy Forster breached this bylaw on or about July 6, 2007 when she authorized and created a pamphlet entitled *The Resort Review* without written permission of the owners of properties listed with brokerages other than Forster Realty Inc.

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 727 states: “A registrant shall only advertise properties for sale or lease, or properties sold or leased, when written authorization has been obtained from the owner or the owner’s lawful representative. The advertisement shall be in accordance with the lawful instructions of the owner or his or her lawful representative.”

FACTS

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

1. Judy Forster has been continuously registered under the provisions of *The Real Estate Brokers Act, 1987* and *The Real Estate Act* in the Province of Saskatchewan since August 22, 1978.
2. Judy Forster has taken the following real estate courses.
 - Pre-March 1976 Licensing Course
 - Real Estate 150 Law Review
 - Principles of Real Property Law
 - Principles of Mortgage Financing
 - Principles of Real Estate Appraisal

- Real Estate Office Management
 - Working Within *The Real Estate Act*
3. Judy Forster completed the continuing professional development seminars each registration year since July 1, 2001.
 4. Judy Forster is presently registered under the provisions of *The Real Estate Act* as a broker with Forster Realty Inc.
 5. On or about July 6, 2007 Ms. Forster authorized her support staff to create a Forster Realty Inc. pamphlet entitled *The Resort Review*.
 6. The purpose of this pamphlet was to show to clients and/or customers some properties that were for sale as at July 6, 2007.
 7. Forster Realty Inc. did not have the written permission from all the owners or their brokerage representatives to reproduce the information as identified in *The Resort Review*.
 8. Ms. Forster did not in every case; identify the full names of brokerages whose seller's brokerage contracts were included in Forster Realty Inc.'s pamphlet of July 6, 2007.
 9. For properties advertised in the July 6, 2007 pamphlet, Forster Realty Inc. did not obtain written authority from owners of properties listed with other brokerages.
 - h) Ms. Forster has a prior discipline matter with the Commission involving a sanction for breach of Bylaw 708 regarding an exclusive non-cooperating seller's contract.

REPRESENTATIONS

The Investigation Committee representative, Ed Miller, stated that the charges are very straightforward. The Sellers may have been under contract elsewhere and Ms. Forster admits that she did not have any permission to advertise the sale of these properties.

Mr. Miller felt that a fine was necessary to provide specific deterrence to Ms. Forster and to ensure public confidence in the Commission to show that breaches of the *Act* will be appropriately dealt with.

Mr. Miller referred the Hearing Committee to the Ivan Toledo case (07-37) where he received a \$2,500.00 fine for listing property from a non-owner. This case is presently under appeal, but Mr. Miller feels the circumstances for Ms. Forster are less serious. Also, the Brian Walz case from six years ago where he received a \$500.00 fine regarding similar circumstances, which case is quite old and the Re/Max Keystone case (03-15) where there was a breach of Bylaw 727 and a fine of \$1,000.00 was imposed.

Therefore, the Investigation Committee recommended that the Commission make an order of reprimand pursuant to clause 38(1)(f) of the *Act* for the breach, a fine of \$1,000.00 pursuant to subclause 38(2)(a)(i) of the *Act* for the violation of Bylaw 727.

Ms. Forster acknowledged that she did not have the permission of the Sellers or their brokers. She says that she works in a resort community and people would ask her what was available in the area. She would hand out listing sheets initially, but felt that a brochure would be more effective. The brochure was well received by her clients and she thought the MLS logo was clear.

Ms. Forster said that the brochure did not say it was all her listings. She understood that the Regina agents were happy to have the brochure. She felt she was helping the Regina agents. Ms. Forster did not think she was doing anything wrong. Once notified of this requirement, she amended the brochure and only includes her listings. She did not understand the difference between a brochure and handing out individual listings. Ms. Forster thought she was providing a service for the people in the area.

DECISION

In accordance with clause 9(4)(a) of the Regulations and clauses 38(1)(f) and 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 Judy Forster receive an order of reprimand for the violation of Section 39(1)(c) of the *Act* and Bylaw 727 of the *Act*;
- b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Judy Forster, prior to September 1, 2008, pay to the Saskatchewan Real Estate Commission, a \$1,500.00 fine for the said violation of the *Act*; and
- c) Pursuant to clause 38(2)(b) of the *Act*, that Judy Forster'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 determining the disciplinary action, considered Ms. Forster's previous sanction history and the length of time she has been in the real estate industry.

The Hearing Committee wants to make it clear that there is a significant distinction between an advertising brochure and showing individual MLS listing information to her clients. She has no right to advertise properties without the permission of the owners. This is clearly not allowed by the Bylaw and is an infringement on the rights of the owners. It is a reasonable possibility that the person viewing the brochure would be misled into thinking that the listings were those of Forster Realty Inc. In addition, this brochure has the potential of being self-serving.

The fact that Ms. Forster works in a resort community does not provide a reason for not following the rule of practice. The Bylaw is clear that permission of the owner must be

granted before you can advertise. Failure to do so may lead to potential confusion and may well be contrary to the wishes of the owners. It is not for the registrant to assume what the owner wants. Obtaining the owner's permission is mandatory.

The Hearing Committee notes that this is the second offence for Ms. Forster. As well, the Committee is concerned that the public must know that owners' rights are protected by the *Act* and that a breach is seriously dealt with. The registrants must be made aware that this is an important issue and owners are the ones who decide whether advertising of their property is to take place.

The Committee felt that the previous case law is quite old and the seriousness of this case warrants a higher fine than before. The potential for misleading the public is significant and the need for owners' permission to advertise must be protected.

Dated at Saskatoon, Saskatchewan this 10th day of June, 2008.



Randal C. Touet, Chairperson