

**IN THE MATTER OF**  
**THE REAL ESTATE ACT, C. R-1.3**  
**AND**  
**IN THE MATTER OF AL FUCHS**

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

**Commission File: #2008-72**

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

Appearances: Ed Miller, on behalf of the Investigation Committee

Hearing Date: February 19, 2009

Written Decision: March 3, 2009

The Mitigation Hearing was held February 19, 2009 at the Saskatoon Club, 2<sup>nd</sup> Floor, 417 - 21<sup>st</sup> Street East, Saskatoon, Saskatchewan before a Hearing Committee (“the Committee”) of the Commission. The Statement of Facts and Admissions dated December 30, 2008 provided particulars of Al Fuchs’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:

Count #1:

Mr. Fuchs plead guilty to professional misconduct contrary to Section 39(1)(c) of *The Real Estate Act* by breaching Commission Bylaw 709 between July 28, 2008 and August 24, 2008 (both dates inclusive) in providing written documentation relevant to a real estate transaction to someone other than the Seller or the Seller’s registrant representative.

Count #2:

Mr. Fuchs plead guilty to a charge of professional misconduct contrary to Section 39(1)(a) of *The Real Estate Act* between July 28, 2008 and August 24, 2008 (both dates inclusive) by not notifying the Seller or the Seller’s registrant representative that his Buyer client had not delivered the deposit as contracted.

**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 harmful to the best interests of the public, the registrants or the Commission.”

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 709 states:

“Negotiations concerning exclusively listed property or negotiations with any party who is exclusively represented shall be carried on with the client's agent and not with the client directly, except with the consent of the client's agent.”

## FACTS

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

1. Al Fuchs 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 August 12, 1977.
2. Al Fuchs has taken the following real estate courses.
  - Real Estate 100
  - Real Estate 200
  - Real Estate 300
3. Al Fuchs completed the continuing professional development seminars each registration year since July 1, 2001.
4. Al Fuchs is presently registered under the provisions of *The Real Estate Act* as a Broker/Owner with Formula 1 Real Estate Service.
5. Al Fuchs came to work with the Buyer through a mutual acquaintance on or about July 18, 2008. The Buyer was not personally known to Al Fuchs; however, he had earlier managed the property for the Buyer’s sister.
6. On July 17, 2008 Al Fuchs showed the Buyer the Property in Swift Current, Saskatchewan. Thereafter, the Buyer signed a Residential Contract of Purchase and Sale form with a possession date of August 29, 2008.
7. On July 27, 2008 the Buyer told Al Fuchs that he did not have a cheque book handy or any cash and the Buyer undertook to forward the deposit to Al Fuchs’ brokerage by money order upon acceptance by the Seller of the Residential Contract of Purchase and Sale form.
8. The Seller signed acceptance of the offer on July 28, 2008. The Buyer did not provide to Al Fuchs’ brokerage the \$1,000 deposit as agreed to in the Residential Contract of Purchase and Sale form on July 28, 2008 or any date thereafter.
9. Al Fuchs and the Buyer had various email and fax communications leading up to the Buyer’s signing the Notice to Remove Conditions form on August 8, 2008. Al Fuchs acknowledged that he had not received from the Buyer on August 8, 2008 or any date thereafter, the \$1,000 deposit as required in the accepted Residential Contract of Purchase and Sale form.
10. On August 12, 2008 Al Fuchs personally prepared a letter of instruction and delivered it to the Buyer’s lawyer’s office, which letter stated that the deposit was yet to be received by his brokerage.

11. At no time between July 28, 2008 and August 24, 2008 (both dates inclusive) did Al Fuchs verbally notify or provide written documentation to the Seller or the Seller's registrant representative that the Buyer had yet to provide the \$1,000 deposit as contracted.
12. On August 25, 2008 Al Fuchs notified the Seller's representative and the Seller's lawyer that he had yet to receive from the Buyer the \$1,000 deposit as contracted. Al Fuchs concluded that the Buyer was not an honourable man in that he failed to meet his contractual obligations even after verbally promising Al Fuchs that he would do so.
13. Al Fuchs acknowledged that the lesson for him and his fellow registrants from this unfortunate event was that wherever possible, never accept offers without deposits. Further, if a case arises where no deposit exists, place a condition within the contract stating a specific date for receipt of the deposit and remove that condition in writing via a Notice to Remove Conditions form.

## **REPRESENTATIONS**

The Investigation Committee representative, Ed Miller, stated that it was clear that Mr. Fuchs failed to notify the listing agent or the Seller of the failure to receive the deposit. Mr. Fuchs is a long time registrant of over 30 years. He is the broker/owner of his real estate agency. The breach of Bylaw 709 is concerning negotiating with parties who are represented by another registrant, which was the case with the Seller in this matter. Mr. Miller was concerned that the Seller and his representative were not notified of the lack of deposit. The only persons who were aware that there was no deposit before August 25, 2008, were the lawyer for the Buyer and the Seller, Mr. Fuchs and the buyer.

Mr. Miller acknowledged that it is clear from the paperwork on the file that the deposit was not there when the offer was written. However, from July 28<sup>th</sup> until August 12<sup>th</sup>, when the lawyer was notified, only Mr. Fuchs and the buyer were aware of the lack of deposit. Only on August 25<sup>th</sup> was the Sellers' agent notified of the lack of deposit.

Mr. Miller, on behalf of the Investigation Committee, recommended a letter of reprimand on both counts and a fine of \$1,500.00 for the breach of Bylaw 709 and a fine of \$1,000.00 for the breach of Section 39(1)(a) of the *Act*.

Mr. Miller stressed the need to have specific deterrence for Mr. Fuchs to understand the importance of communicating with the brokerage and a general deterrence to all registrants to ensure they communicate properly with the other registrants. Mr. Miller confirmed that Mr. Fuchs was co-operative in the investigation and he admitted his breaches of the *Act* and bylaws. Mr. Miller stated that Mr. Fuchs was embarrassed at having been lied to by his client and he was somewhat remorseful of his actions. However, Mr. Fuchs is a senior practitioner and there was the potential for harm to the Seller as the transaction fell through and the Property may have been listed again for part of the time when no one else knew of the failure of deposit.

Mr. Miller referred the Committee to the Howsam decision where there were direct negotiations with the Seller, which led to a 30 day suspension. As well, the Fox decision where there was

contact with the seller and a \$1,000.00 fine was imposed. For the 39(1)(a) count, the Committee was referred to the Ron Ashton case where there was trading outside the brokerage; the Hincks case where an offer was not presented; and the Didur case where there were two NSF deposit cheques that were not disclosed to the seller. All of these cases are acknowledged to be more serious than the one before the hearing committee.

Mr. Fuchs chose to provide the Hearing Committee with a letter dated February 08, 2009 and did not appear in person before the Committee. He said he had learned from his mistakes and there was little chance of this breach occurring in the future. He said he had learned his lesson. He noted that the same lawyer represented the Buyer and the Seller and thought he would work with the Buyer to deal with the deposit. Mr. Fuchs stated that the Sellers' brokerage did not contact him to inquire about the deposit for three weeks and they did not impose a deadline for the deposit to be made.

Mr. Fuchs also noted that his wife had passed away in December 2007 and this had affected his ability to focus and pay proper attention to detail. He expressed that he was sorry for any stress and pain caused to the parties due to his inaction.

## **DECISION**

In accordance with the *Act* and Regulations, the Committee made the following orders:

### Count #1:

- a) Pursuant to clause 38(1)(f) of the *Act*, that Al Fuchs receive an order of reprimand for the violation of Bylaw 709;
- b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Al Fuchs, prior to April 30, 2009, pay to the Saskatchewan Real Estate Commission, a \$500.00 fine for the said violation of the bylaw;
- c) Pursuant to clause 38(2)(b) of the *Act*, that Al Fuchs's registration shall be suspended if he fails to pay any portion of the fine within the said period of time;

### Count #2

- a) Pursuant to clause 38(1)(f) of the *Act*, that Al Fuchs 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 Al Fuchs, prior to April 30, 2009, pay to the Saskatchewan Real Estate Commission, a \$3,500.00 fine for the said violation of the *Act*;
- c) Pursuant to clause 38(2)(b) of the *Act*, that Al Fuchs'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 Al Fuchs's lack of recent sanction history and the long length of time he has been in the real estate industry.

The Hearing Committee had sympathy for Mr. Fuchs in the passing of his spouse. While it is acknowledged that this may affect your attention, it is important that the clients and the public are properly protected and represented. The deposit is a fundamental part of the trade in real

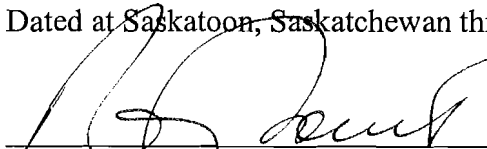
estate. When it is not there, all parties must be immediately advised in order that a determination of their legal and practical actions can be made.

The Committee felt the first count was somewhat mitigated by the technical nature of the breach. Mr. Fuchs did not deal directly with the sellers, but he should have notified the Sellers' agent or brokerage first. Therefore, a small fine was imposed to ensure registrants do deal only with the representatives of the other parties.

The failure to notify the Sellers' brokerage for almost a month is not to be condoned. This was not done until 4 days before the possession date and the deposit should have been there no later than July 30, 2008 two days after the acceptance of the offer. This was not in place and the onus was on Mr. Fuchs to advise the Sellers' brokerage at that time. It is not up to the Sellers' brokerage to check on the deposit. The offer said that the deposit was "to be forwarded to Formula 1 Real Estate Service, via money order upon acceptance of this offer." Mr. Fuchs is the one who was aware that it had not been received and he should have so notified the other side.

Mr. Fuchs is a senior registrant and the inaction on his part created the potential of significant harm to the sellers. The Committee wants to stress again to all registrants that the failure of the deposit is fundamental to a trade in real estate. The one learning of the failure is the buyers' agent and they and their brokerage must notify the sellers' brokerage immediately when the deposit is not received at the time it is due. The public relies on the professionalism of the registrants to deal with these situations and it is incumbent on the Commission to ensure it takes place. Failure to protect the parties to the transaction will be dealt with seriously and with significant sanctions in order to ensure the actions (or inactions) do not reoccur and to provide the public with the assurance that their interests are being protected.

Dated at Saskatoon, Saskatchewan this 3<sup>rd</sup> day of March, 2009.



Randal C. Touet, Chairperson