

IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3
AND
IN THE MATTER OF PAUL GARAND

DECISION OF THE
SASKATCHEWAN REAL ESTATE COMMISSION

Commission File: #2008-49

Before: A Saskatchewan Real Estate Commission Hearing Committee
comprised of the following:
Randal C. Touet - Chairperson
Cheryl Elliott
Rich Jeanneau
Terry Powell

Appearances: Paul Garand, Registrant
Chris Mason, on behalf of the Investigation Committee

Hearing Date: June 18, 2009

Written Decision: July 17, 2009

The Mitigation Hearing was held June 18, 2009 at the Saskatoon Club, Saskatoon, Saskatchewan before a Hearing Committee (“the Committee”) of the Commission. The Statement of Facts and Admissions dated March 20, 2009 provided particulars of Paul Garand’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 he breached Section 61(1)(b) of the *Act* as follows:

By facilitating and permitting a non-registrant, between June 18 and June 30, 2008 to trade in real estate by:

- signing a Seller’s Brokerage contract as a salesperson on behalf of Garand Agencies Ltd.;
- preparing and witnessing a Residential Contract of Purchase and Sale form; and
- receiving a trust deposit and thereafter delivering the documents and the deposit to Garand Agencies Ltd.

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*.”

Section 61(1)(b) of the *Act* states: “No brokerage shall employ, appoint, authorize or permit: a person to trade in real estate who is not registered.”

FACTS

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

1. Paul Garand 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 December 12, 1961.
2. Paul Garand completed the pre-licensing course on October 9, 1963.
3. Paul Garand completed the continuing professional development seminars each registration year since July 1, 2001.
4. Paul Garand is presently registered under the provisions of *The Real Estate Act* as a broker with Garand Agencies Ltd.
5. While still registered in May of 2007, a different registrant (hereinafter referred to as the “Former Registrant”) left Canada and visited Portugal, returning in November of 2007.

In January 2008, the Former Registrant then left for Vancouver returning 3½ months later in April 2008.

6. Paul Garand was informed by the Former Registrant and verily believed the same to be true that when he returned from Vancouver, a client of his called to ask about a property, believing he was registered. The Former Registrant found some property to his client's satisfaction and completed a Residential Contract of Purchase and Sale on June 18, 2008.
7. On June 25, 2008 the Saskatchewan Real Estate Commission received a complaint regarding the Former Registrant of Garand Agencies Ltd. During the normal course of review, it was learned that the Former Registrant conducted a trade in real estate on June 18, 2008.
8. Paul Garand was contacted by the Former Registrant on June 23, 2008 and they met and Paul Garand accepted the "paperwork and the (deposit) cheque" from the Former Registrant.
9. On June 25, 2008 Paul Garand dutifully deposited the \$5,000.00 deposit cheque into his brokerage's trust account.
10. Paul Garand met with Review Officer, Christopher Mason, on July 15, 2008 and confirmed that the Former Registrant has been continuously registered as a salesperson under the provisions of *The Real Estate Brokers Act, 1987* and *The Real Estate Act* in the Province of Saskatchewan as follows:
 - April 15, 1985 to July 17, 1987
 - September 25, 1981 to January 12, 1991
 - January 22, 1991 to April 22, 1991
 - April 24, 1991 to June 30, 2002
 - April 21, 2003 to June 30, 2007
 - July 1, 2008 to present.
11. Paul Garand believed or thought that at all times the Former Registrant was in fact registered with the Saskatchewan Real Estate Commission, but he was mistaken and did not confirm the Former Registrant's registration status prior to accepting the deposit cheque and relevant paperwork during their June 25, 2008 meeting.

REPRESENTATIONS

The Investigation Committee representative, Chris Mason, stated Mr. Garand has been a registrant for 48 years and a broker for 39 years. His registration expires on June 30, 2009 and Mr. Garand has not renewed his license. This matter was a complete oversight, but it put all the parties at risk. Mr. Garand did not have a mechanism at the brokerage to prevent such an error from occurring.

Mr. Mason noted that Mr. Garand is 78 years of age and is retiring from the real estate industry. He was co-operative and there was no malice in his actions. Mr. Garand was honest

and forthcoming during the investigation. This is his first offence in 5 decades and he had been relying on the Former Registrant to renew his license.

He notes that while there was no harm, there was a risk of harm. There is the need to ensure public confidence in the review of registrants who have breached sections of the *Act*.

The Investigation Committee recommends a letter of reprimand. This is required to restore public confidence in the actions of registrants.

Mr. Garand indicated that he had just moved to Rosthern where he was keeping his records. He had just had a basement flood and all his papers were in boxes in a shed. He had assumed that the Former Registrant had renewed his license, but clearly he was wrong. Otherwise, he states he never would have accepted the trade from the Former Registrant.

DECISION

In accordance with the Act and the Regulations, the Committee in their discretion declined to make any sanction order in this matter.

RATIONALE

The Committee, in considering the disciplinary action, considered Paul Garand's 48 year lack of previous sanction history.

The Hearing Committee feels that in the circumstances it is not appropriate to reprimand or fine Mr. Garand. He has had many years of good service to the real estate industry in Saskatchewan and is retiring. While the Committee does not condone non-registrants trading in real estate, it was not unreasonable for Mr. Garand to rely on an experienced former registrant to renew their license without having been checked up by him. There is no need for specific deterrence for Mr. Garand and the Committee lets all registrants know that they cannot condone trades in real estate by non-registrants. The specific circumstances of this case are the only reason a sanction has not been imposed.

Dated at Saskatoon, Saskatchewan this 17th day of July, 2009.


Randal C. Touet, Chairperson