

**IN THE MATTER OF**  
**THE REAL ESTATE ACT, C. R-1.3**  
**AND**  
**IN THE MATTER OF MAUREEN HUMENIUK**

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

**Commission File: #2008-64**

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**Before:** A Saskatchewan Real Estate Commission Hearing Committee  
comprised of the following:  
Phillip Mack - Chairperson  
Donnett Elder  
John Puderak  
Wayne White

**Appearances:** Ed Miller, on behalf of the Investigation Committee  
Maureen Humeniuk, Registrant

**Hearing Date:** April 16, 2009

**Written Decision:** May 20, 2009

The Mitigation Hearing was held April 16, 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 January 8, 2009 provided particulars of Maureen Humeniuk’s violation and admissions.

For the record, Maureen Humeniuk appeared via telephone conference for this mitigation hearing.

### **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:**

Maureen Humeniuk plead guilty to professional misconduct contrary to Section 39(1)(c) of *The Real Estate Act* by breaching Commission Bylaw 702 as follows:

Between September 28, 2007 and March 26, 2008 (both dates inclusive) Maureen Humeniuk:

- obtained a seller’s brokerage contract in the name of one of the three sellers, c/o this sellers’ two daughters who were also owners of the property without verifying the contract with the third seller; and
- accepted verbal representations from the seller’s daughters that they could sign contracts on behalf of the third seller.

#### **Count #2:**

Maureen Humeniuk plead guilty to professional misconduct contrary to Section 39(1)(c) of *The Real Estate Act* by breaching Commission Bylaw 714 as follows:

Between September 28, 2007 and March 26, 2008 (both dates inclusive) Maureen Humeniuk:

- failed to obtain a seller’s brokerage contract from all of the persons named on the certificate of title; and
- failed to obtain a copy of the actual power-of-attorney verification from the persons claiming to have said power-of-attorney.

### **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 702 states: “A registrant shall protect and promote the interests of his or her client. This primary obligation does not relieve the registrant from the obligation of dealing fairly with all other parties to the transaction.”

Bylaw 714 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 Maureen Humeniuk’s Statement of Facts and Admissions, which include the following relevant points:

1. Maureen Humeniuk has been continuously registered as a salesperson under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since January 31, 2001.
2. Maureen Humeniuk has taken the following real estate courses:
  - Fundamentals of Real Estate
  - Principles of Mortgage Financing
  - Principles of Real Estate Appraisal
  - Principles of Real Property Law
3. Maureen Humeniuk completed the continuing professional development seminars each registration year since 2001-2002.
4. Maureen Humeniuk is presently registered under the provisions of *The Real Estate Act* as a salesperson with Hawryluk Agency Inc.
5. On or about September 26, 2007, Maureen Humeniuk commenced working with the two daughters of the other seller in the marketing of a residential property in Kamsack, Saskatchewan. Maureen Humeniuk had known the family for a number of years and knew that the one seller was a senior citizen in the community.
6. The two daughters of the other seller verbally represented to Maureen Humeniuk that they possessed a Power-of-Attorney allowing them to sell the property. Maureen Humeniuk’s broker conducted an Information Services Corporation check and confirmed for Maureen Humeniuk that the two daughters of the other seller appeared on title along with the other seller.
7. The 364 day MLS Exclusive Seller’s Brokerage contract commenced September 28, 2007 with a \$37,900 asking price with a 5% commission to be equally split between the successful buying and selling brokerages.
8. In the beginning of March 2008, a buyer from British Columbia contacted Maureen Humeniuk’s brokerage by way of telephone and Internet as a result of the brokerage’s website and marketing of the property.
9. Between March 15 and 18, 2008, the buyer and the two daughters of the other seller negotiated a \$32,000 Residential Contract of Purchase and Sale for the property with a

May 1, 2008 completion date. Maureen Humeniuk used all the mandatory and required forms and facilitated a home inspection at the property that resulted in buyer and the two daughter sellers agreeing to split the \$800 cost to purchase and install a new water heater.

10. The buyer and Maureen Humeniuk met for the first time in late April 2008 when he arrived for the purpose of taking possession of the property.
11. Maureen Humeniuk provided the buyer with the names of three local law firms and D & M Accounting as businesses that she knew that conducted land transfers for buyers and sellers.
12. After possession, Maureen Humeniuk learned that the sellers' family was going through the guardianship process and could not transfer title to the buyer.
13. After the proposed completion date, the buyer retained a lawyer in Yorkton to complete the transfer of title. To Maureen Humeniuk's knowledge, the sellers received their purchase proceeds and the buyer eventually received title to the property.
14. In retrospect, Maureen Humeniuk acknowledged that she should have required the two daughters of the other seller to provide her brokerage with a copy of the bona fide Power-of-Attorney and/or had the other seller sign the relevant real estate documents. This experience taught Maureen Humeniuk the importance of having all owners sign sale documentation and/or have a valid Power-of-Attorney on file to confirm who may act for whom.

## **REPRESENTATIONS**

The Investigation Committee representative, Ed Miller, confirmed that Maureen Humeniuk has been a registrant since March 2004 and this was her first time before the Commission.

Paragraphs 5 and 6 of the Statement of Facts and Admissions outlined how Maureen Humeniuk came to work with the two daughters as sellers. Maureen Humeniuk acknowledged that she only dealt with the two daughters as owners and never with the other seller who did not sign the seller's brokerage contract. Mr. Miller stated that no Power-of-Attorney was ever presented to Maureen Humeniuk. The registrant's brokerage did verify that the daughters' names appeared jointly on title along with the third seller.

The daughters signed a fully co-operating 364-day seller's brokerage contract. The buyer's searches via the Internet and all dealings occurred with him through e-mail and fax. Mr. Miller stated that Maureen Humeniuk used all the mandatory Commission forms. At the suggestion of Maureen Humeniuk, a home inspection took place that saved the buyer the cost of a new water heater.

The buyer used D & M Accounting Services and a Notary Public to handle the transfer of title. After possession, the buyer learned that there was a guardianship process in place and title could not transfer immediately. The buyer hired a lawyer and eventually title transferred.

Mr. Miller stated that the Investigation Committee considered Section 38 of *The Real Estate Act* and recommended that the Hearing Panel issue:

- orders of reprimand as a result of Maureen Humeniuk's admitted professional misconduct;
- an order that Maureen Humeniuk pay minimum of a \$1,000 fine for violating Commission Bylaw 702;
- an order that Maureen Humeniuk pay a fine of \$1,000 for violating Commission Bylaw 714; and
- that Maureen Humeniuk's registration be suspended if she failed to pay the assessed fines within 60 days of the written decision.

Mr. Miller stated that the Investigation Committee was not recommending any educational upgrading. In addition, the Investigation Committee did not recommend a suspension or cancellation.

Mr. Miller indicated that the hearing decision should ensure public confidence in the industry through specific and general deterrence. Specific deterrence to ensure that Maureen Humeniuk understands the importance and consequences for not meeting the fiduciary component to a seller and not making the basic enquiries of a prudent registrant when taking on the obligation of a seller's brokerage contract.

General deterrence to ensure that industry members view the sanction imposed by the Commission as a statement of your expectations and ability to properly supervise the conduct of its members in a consistent and fair manner.

Mitigating factors to consider are that this is Maureen Humeniuk's first offense; she fully cooperated during the investigation; admitted asking if there was a Power-of-attorney; however, she did not get the copy which would have identified the guardianship issue. There was no indication that the siblings disagreed with listing the property. This transaction occurred in Kamsack, Saskatchewan where Maureen Humeniuk knew the sellers and had no first-hand knowledge of the buyer.

Mr. Miller stated that Maureen Humeniuk, in addition to the two daughters' signatures, needed the other seller's signature on the sale documents or proof of a Power-of-Attorney. It was noted that the broker asked if there was a Power-of-Attorney and he was told that there was; however, no document was provided. All individuals involved in this trade wanted it to complete and in time, with a lawyer's help, the buyer received title to the property.

In justifying the requested sanction, Mr. Miller stated that agency is the key component to Bylaw 702. Registrants must know who they work for. It was the Investigation Committee's submission that a minimum \$1,000 fine per violation was needed to send the appropriate message.

Mr. Miller referred to the hearing panel to the following previous hearing decisions:

2005-13; Darrell Dick received a \$3,000 fine for violating Bylaw 702. This was Darrell Dick's second offense and is more serious than Maureen Humeniuk's offense. In the Darrell Dick matter, the seller client manipulated the process and information for his benefit. Darrell Dick believed that a Power-of-Attorney existed; however, no copy was received prior to undertaking transaction.

2006-13, 2006-14 In two separate files and violations, Carol Merriman, as a first time offender, received \$750 fines per charge. Carol Merriman allowed signing of documents on behalf of her clients that turned out to potentially harm clients. Carol Merriman thought all parties agreed to the signing of documents; however, they did not.

2008-09 The Quinn Tait files is very similar to this of Maureen Humeniuk. Both cases have identical charges and circumstances.

Maureen Humeniuk stated that she has been a registrant since 2001. This was her first offence. She knew the family with whom she was dealing and was familiar with the situation in that the one seller was being cared for by her daughters.

In listing the property for sale, Ms. Humeniuk did inquire about a Power-of-Attorney but admitted that she erred in not asking to see a copy of that document. Ms. Humeniuk agreed that had she known that there was not a proper Power-of-Attorney in place; the proper steps could have been taken that would have prevented complications in transferring title at the close of the transaction. She now understands the importance of proper documentation and is encouraging others in her brokerage to ensure that proper documentation is in place at all times.

## **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 Maureen Humeniuk receive an order of reprimand for the violation of Commission Bylaw 702;
- b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Maureen Humeniuk, by July 24, 2009, pay to the Saskatchewan Real Estate Commission, a \$500 fine for violating Commission Bylaw 702; and
- c) Pursuant to clause 38(2)(b) of the *Act*, that Maureen Humeniuk's registration shall be suspended if she 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 Maureen Humeniuk receive an order of reprimand for the violation of Commission Bylaw 714;

- b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Maureen Humeniuk, by July 24, 2009, pay to the Saskatchewan Real Estate Commission, a \$1,000 fine for violating Commission Bylaw 714; and
- c) Pursuant to clause 38(2)(b) of the *Act*, that Maureen Humeniuk's registration shall be suspended if he fails to pay any portion of the fine within the said period of time.

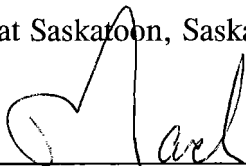
**RATIONALE**

The Hearing Committee, in considering the disciplinary action, considered Maureen Humeniuk's lack of previous sanction history and the short length of time she has been in the real estate industry.

The Hearing Committee is concerned that registrants understand that they must verify the facts as presented to them. In the circumstances of the knowledge of the family, it is not an excuse not to fully perform your obligations as a registrant. If Maureen Humeniuk had asked for and obtained the Power of Attorney; this matter may never have come before the Commission. This is not an onerous task to be performed, but is a basic element of a sale transaction. All registrants must know who they act for. Simple steps would have avoided this situation.

It is important for all registrants to know that their actions or, as in this case, their inactions can have serious consequences for all parties to the transaction. Do not assume things are as your clients advise you; check out the facts for yourself.

Dated at Saskatoon, Saskatchewan this 20<sup>th</sup> day of May, 2009.

  
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Phillip Mack, Chairperson