

IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3
AND
IN THE MATTER OF WILLARD LARSON

DECISION OF THE
SASKATCHEWAN REAL ESTATE COMMISSION

Commission File: #2008-26

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

Appearances: Christopher Mason, on behalf of the Investigation Committee
Willard Larson, Registrant
Keith Short, Registrant

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 January 08, 2009 provided particulars of Willard Larson’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* by breaching Section 58(1)(b)(iii) of the *Act* in that:

- Willard Larson failed to include the second advertised and adjacent lot in a proposed residential contract of purchase and sale form.

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

Section 58(1)(b)(iii) of *The Real Estate Act* states: “An offer to purchase obtained by a registrant is to clearly show, prior to execution by the buyer: the street address or legal description of the real estate.”

FACTS

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

1. Willard Larson has been continuously registered under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since April 22, 1992.
2. He successfully completed the Real Estate 150 salesperson’s course.
3. Mr. Larson completed the continuing professional development seminars each registration year since 2001-2002.
4. Willard Larson is presently registered under the provisions of *The Real Estate Act* as a salesperson with Century 21 Conexus Realty Ltd.
5. Willard Larson viewed a Saskatchewan MLS Data Input Form in which the advertised listing narrative states: ...”Single garage, fenced yd. Vacant lot to the south Lot 4 Block 214 Plan Old 33 included in price, separate titles gives 50’ frontage,....”

6. In April 2008, Willard Larson showed the Buyer the listed property in Regina, Saskatchewan (hereinafter referred to as "the Property". The Residential Contract of Purchase and Sale only describes the property as Lot 3 Block 214 Plan Old 33 with a civic address of 1408 Athol Street and a completion date of the June 12, 2007.
7. On April 12, 2007 Willard Larson completed a Residential Contract of Purchase and Sale on behalf of the Buyer to the Seller to purchase 1409 Athol Street, Regina, Saskatchewan (hereinafter called the property).
8. The complainant stated "the house is situated on the North half of what I believed at the time to be one large lot, with only one title. It later became evident that what I thought was one large lot, was actually two single lots with separate titles. Both lots were surrounded by a fence."
9. Willard Larson believes that he was misled, as the listing advertisement was written unclearly and he inadvertently failed to include Lot 4 Block 214 Plan Old 33. When viewing the property, both lots were surrounded by a single fenced area; this fact, coupled with the narrative in the advertisement, "stated" that Lot 4 Block 214 Plan Old 33 was included.
10. Notwithstanding what he believed, Willard Larson failed to include Lot 4 Block 214 Plan Old 33 in the Residential Contract of Purchase and Sale and he failed to confirm this with his client.

REPRESENTATIONS

The Investigation Committee representative, Christopher Mason, stated that Mr. Larson had been a registrant for 17 years. This situation arose because of his failure to pay attention to detail in the offer. Mr. Mason felt that the sanction should provide a specific deterrent to Mr. Larson not to make the same error again and to ensure that other registrants learn from his mistake as well. During the investigation, Mr. Larson was co-operative, honest and forthright. This is his first offence before the Commission.

Mr. Mason does not feel Mr. Larson has shown any contrition for his actions and he simply was relying on the listing agent for the accuracy of the description of the Property. This is a serious offence and one which creates potential liability for his brokerage as well as putting the parties to the transaction at risk. He did not feel there was any assurance from Mr. Larson that it would not happen again. Mr. Mason stressed the importance of registrants paying attention to the details of the transactions they are working on. The Buyer was relying on the registrant's expertise, which failed him in this purchase.

The Investigation Committee recommended a letter of reprimand and a fine of \$1,000.00.

Mr. Larson and his broker admitted his mistake, but stated that registrants generally take the legal description and other information off of the listing. This is his first time before the Commission. Mr. Larson simply did not realize that the other lot was included in the transaction. They said that the fence line is not a proper indication of the property included in the transaction.

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 Willard Larson 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 Willard Larson, prior to March 31, 2009, pay to the Saskatchewan Real Estate Commission, a \$750.00 fine for the said violation of the *Act*; and
- c) Pursuant to clause 38(2)(b) of the *Act*, that Willard Larson'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 Willard Larson's lack of previous sanction history and the length of time he has been in the real estate industry.

The Hearing Committee believes this was a genuine mistake by Mr. Larson. However, the Committee stresses that Mr. Larson should have carefully read the entire listing information and the paragraph in the narrative which showed that lot 4 was included to make it a 50' frontage. Had this been noticed, the whole situation would have been averted and the second lot would have been included in the offer. There was harm created by Mr. Larson's lack of attention to detail and review on behalf of his client.

It is not satisfactory that registrants simply rely on the information provided by the listing agent. They have a duty to look out for the interests of their client and to reasonably ensure that the facts are correct. The only fact in this situation which militated against a higher sanction is the improper manner in which the listing was presented. The proper legal description including both lots should have been put under the heading "Legal Description" rather than the second lot included in the paragraph under "General Information". This poor description led to Mr. Larson's error.

It is important that all registrants know they must review all the information before them before completing the offer. Once it is signed, a contractual relationship has been created which may not always be corrected once the mistaken information has been found. The onus is on the registrant to act professionally for their clients, who rely on that professionalism.

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



Randal C. Touet, Chairperson