

IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3
AND
IN THE MATTER OF RICK MIRON

DECISION OF THE
SASKATCHEWAN REAL ESTATE COMMISSION

Commission File: #2009-40

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
Rick Miron, Registrant
Calbert Notschaele, Associate Broker

Hearing Date: January 18, 2010

Written Decision: February 2, 2010

The Mitigation Hearing was held January 18, 2010 at the Saskatoon Club, 2nd Floor, 417 - 21st Street East, Saskatoon, Saskatchewan before a Hearing Committee (“the Committee”) of the Commission. With the consent of all parties, the Hearing was held jointly with the Mitigation Hearing for Re/Max Crown Real Estate Ltd, based on the same incident. The Statement of Facts and Admissions dated November 25, 2009 provided particulars of Rick Miron’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:

- He breached Section 39(1)(a) of *The Real Estate Act* between May 5, 2009 and May 31, 2009 when he did one or more of the following acts:
 - a) He assisted his Buyer to write a Residential Contract of Purchase and Sale that stated a \$10,000.00 deposit was received and would be deposited into trust within two business days of acceptance when the said deposit was not received.
 - b) Upon notification on or about May 20, 2009 that his Buyer’s \$50,000.00 deposit cheque had been returned un-cashed to his brokerage by a financial institution, he did not notify the listing agent or the seller until on or about the proposed completion date of June 1, 2009.

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.”

FACTS

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

1. Rick Miron 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 with the Saskatchewan Real Estate Commission since June 6, 1994.
2. Rick Miron successfully completed the Real Estate 150 salesperson’s course in May 1994 and all the continuing professional development seminars each registration year since 2001-2002.
3. Rick Miron is presently registered under the provisions of *The Real Estate Act* as a salesperson with Re/Max Crown Real Estate Ltd.

4. On or about April 13, 2009, Mr. Kirk Kozan of Re/Max Crown Real Estate Ltd. listed a residential property in Regina, Saskatchewan (hereinafter called **the property**) for the Seller.
5. During the late afternoon of May 5, 2009, Rick Miron showed the property to his Buyers and thereafter helped them to write a Residential Contract of Purchase and Sale form that offered to buy the property. The document offered a \$249,900 purchase price and acknowledged that a \$10,000 deposit cheque was received and would be deposited into Rick Miron's brokerage within two business days of acceptance.
6. During the early evening of May 5, 2009, the Buyers received, considered and signed acceptance to the Seller's Counter Offer to a Residential Contract of Purchase and Sale form that confirmed the purchase price; clarified that underground wiring from house to garage was not included in the offer; the microwave oven was included in the offer; and gas line encroachment report to be ordered and paid for by the seller before the completion date. At that point in time, Rick Miron had not received a \$10,000 deposit cheque from the Buyers.
7. Between May 5 and May 12, 2009 Rick Miron made many unsuccessful attempts to secure from his Buyers the \$10,000 deposit cheque. At the same time, the Buyers gave Rick Miron every indication of progressing with mortgage financing, ordering of a home inspection and completing the purchase on June 1, 2009.
8. On May 12, 2009 the Buyers and the Seller agreed to an Amendment to the Residential Contract of Purchase and Sale that extended the financing condition to May 14, 2009; and acknowledged a total deposit of \$50,000.
9. On May 12 and May 14, 2009 the Buyers completed Notice to Remove Condition(s) forms that effectively removed all subject to conditions to the Buyers' Residential Contract of Purchase and Sale.
10. Rick Miron first delivered the conditionally accepted contract over to the Re/Max Crown Real Estate Ltd.'s conveyance department on or about May 6, 2009 with a notation that he expected to immediately receive the \$10,000 deposit cheque and they should commence processing the transaction. Up until Rick Miron received and then delivered to the said conveyance department the \$50,000 deposit cheque on May 12, 2009, the Buyers had never delivered to him the initial \$10,000 deposit.
11. On May 19, 2009, the conveyance department at Re/Max Crown Real Estate Ltd. received the \$50,000 cheque via mail from a financial institution with a notation that the deposit would not go forward as a change had not been initialled. Rick Miron learned about the returned cheque on or about May 20, 2009 through discussion with the Re/Max Crown Real Estate Ltd.'s conveyance department. Between May 20 and May 31, 2009, Rick Miron and representatives of Re/Max Crown Real Estate Ltd. unsuccessfully attempted to locate the Buyers and secure and satisfactory replacement \$50,000 deposit cheque.

12. Rick Miron first spoke with Gary Cossette, broker/owner of Re/Max Crown Real Estate Ltd. on June 1, 2009 and provided Gary Cossette with a basic outline of the transaction. That same day Gary Cossette spoke to the named Buyer's solicitor and learned that the solicitor believed that the transaction might complete; ultimately, the transaction did not complete.
13. Re/Max Crown Real Estate Ltd. possesses a Policy and Procedures Manual giving direction on how to deal with the receipt and processing of deposit monies relating to trades in real estate. Rick Miron acknowledged that he should not have stated he had a \$10,000 deposit cheque when no deposit was received and that he should have immediately notified the listing agent upon learning that the original \$50,000 cheque was returned to his brokerage.

REPRESENTATIONS

The Investigation Committee representative, Ed Miller, stated that the complaint came from the Seller and the Seller's lawyer. It was clear that the \$10,000.00 deposit cheque was never received and the \$50,000.00 cheque never cleared the account and the Seller was not notified for some time. He stressed that Re/Max Crown Realty Ltd. was acting for both the Seller and the Buyer in this matter. Mr. Miller said that Rick Miron should have immediately notified the Seller of the returned cheque.

Mr. Miller indicated that Rick Miron was cooperative and honest in the investigation. Rick Miron accepted his responsibility for his actions or the lack thereof and said it would not happen again. Mr. Miller acknowledged that Rick Miron was embarrassed by this incident. This is a first time offence for an experienced realtor. Mr. Miller stated that Rick Miron had a stellar record and this was one bad judgment on his behalf. Mr. Miller's concern is for general deterrence for the registrants in the province.

Mr. Miller felt that the fact of the sale not going through and there not being a deposit for the Seller to rely upon was an aggravating factor in the sanction which should be imposed in this matter. He stated that deposits are a fundamental part of the trade in real estate and registrants must be aware of the true state of the funds held as a deposit.

Mr. Miller referred the Hearing Committee to the Christian Didur decision (2008-72) which dealt with a promised but undelivered deposit. Christian Didur was suspended for 30 days and received a \$3,500.00 fine. He also referred to the Al Fuchs decision (2008-72) where there was a failure to notify the Seller or their representative that the Buyer had not delivered the deposit as contracted. Al Fuchs received a reprimand and a fine of \$3,500.00.

In this matter, Mr. Miller, on behalf of the Investigation Committee recommended a letter of reprimand and a fine of at least \$3,500.00.

Rick Miron and his associate broker, Calbert Notshaele, both made representations to the Committee. Rick Miron said that he always believed the Buyer was sincere. He verbally told the Seller that the \$10,000.00 cheque was not received. The Buyer was to bring in the cheque the next day, but did not do so. Mr. Notschaele stressed that the initial, un-received deposit

was replaced by a larger cheque of \$50,000.00. He stressed the good record of Rick Miron and that the quick timing of the trade was a factor. Rick Miron always thought it would come together in the end.

DECISION

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

- a) That Rick Miron receive an order of reprimand for the violation of Section 39(1)(a) of the *Act*;
- b) That Rick Miron, prior to March 31, 2010, pay to the Saskatchewan Real Estate Commission, a \$3,500.00 fine for the said violation of the *Act*; and
- c) That Rick Miron'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 Rick Miron's lack of previous sanction history and the length of time he has been in the real estate industry.

The Hearing Committee understands that Rick Miron truly felt that the Buyer would come through and the sale would take place. However, it is essential that the deposit issues be clear to all parties. It is not appropriate for Rick Miron to state in the Offer to Purchase that there is a deposit cheque received when it has not been received. The Committee wants to let all registrants know that the document must reflect the truth of the transaction, not what the registrant wishes to take place. All parties viewing the contract must be able to rely on it. That is what the public expects and is what the Commission is obligated to enforce.

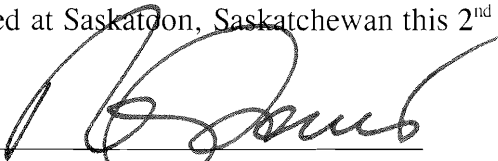
There is a high onus on a registrant to treat all parties fairly. In this matter, Rick Miron was aware that the deposit had not come through by the 20th of May. It is not right that he should know that the deposit has not been received and simply to place his faith in the Buyer to make it good. The Seller had a right to be informed of the situation immediately. In this instance the onus is even stronger as Rick Miron was covering for the absent Seller's agent at his brokerage. He was representing the Seller temporarily and still did not tell the Seller immediately that the deposit had not gone through. The Commission wants to be clear that this is not the proper response. Whether the registrant trusts or distrusts their client is not relevant. They must inform the other side of the transaction immediately that the funds are not there for them to rely upon to secure the sale.

Deposits are one of the most basic parts of the trade in real estate and every registrant, new or old, must ensure that they are handled in the appropriate manner and that all parties to the transaction know what is happening with them. As we stated in the Christian Didur decision, "If the deposit is non-existent, it is essential and fundamental that the seller knows of this immediately. It is not up to the buyer's agent to decide when and how to let the seller know whether the deposit is there. They have already told the seller the deposit has been received.

When this ceases to be true, the seller must be notified immediately. They may want to cancel the transaction, for breach of contract. They may want to continue and give the buyer time to bring in the money. Whatever is decided, it is for the seller to decide at that moment, not the buyer or their agent.”

The Hearing Committee wants to stress to all registrants that the deposit must be treated properly. The Commission is obligated to ensure that they do so and the consequences for failing to act appropriately will be treated with a serious sanction.

Dated at Saskatoon, Saskatchewan this 2nd day of February, 2010.



Randal C. Touet, Chairperson