

**IN THE MATTER OF**  
**THE REAL ESTATE ACT, C. R-1.3**  
**AND**  
**IN THE MATTER OF RE/MAX CROWN REAL ESTATE LTD.**

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

**Commission File: #2009-40A**

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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  
Rick Miron, Registrant  
Calbert Notschaele, Associate Broker

Hearing Date: January 18, 2010

Written Decision: February 2, 2010

The Mitigation Hearing was held January 18, 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. With the consent of all parties, this Hearing was held jointly with the Mitigation Hearing of Rick Miron, based on the same incident. The Statement of Facts and Admissions sworn by Gary Cossette, as broker/owner of Re/Max Crown Real Estate Ltd. (herein referred to as “the Brokerage”), dated November 24, 2009 provided particulars of Re/Max Crown Real Estate Ltd.’s violation and admissions.

### **CHARGE and ADMISSION OF MISCONDUCT**

The Brokerage was charged with and has admitted, in the Statement of Facts and Admissions, to professional misconduct contrary to Section 39(1)(a) of *The Real Estate Act* as follows:

- The Brokerage and/or its management team, between May 5, 2009 and May 31, 2009 failed to notify the Seller or the listing agent, in writing, of instances where the deposit cheque was not held in trust as stated in the accepted Residential Contract of Purchase and Sale.

### **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 the Brokerage’s Statement of Facts and Admissions, which include the following relevant points:

1. At all times material to this trade in real estate; Re/Max Crown Real Estate Ltd. was a registered brokerage with the Saskatchewan Real Estate Commission. Gary Cossette is the broker/owner of Re/Max Crown Real Estate Ltd. and has been 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 June 10, 1975.
2. Gary Cossette successfully completed the salesperson’s pre-licensing course in May 1975; the broker’s course (Real Estate 300) in June 1978; and all continuing professional development seminars each registration year since 2001-2002.
3. Gary Cossette is presently registered under the provisions of *The Real Estate Act* as a broker with Re/Max Crown Real Estate Ltd.; Kirk Kozan and Rick Miron are registered as salespersons with his brokerage.
4. On or about April 13, 2009, Mr. Kirk Kozan of Re/Max Crown Real Estate Ltd. listed a 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 the brokerage within two business days of acceptance.
6. During the early evening of May 5, 2009, Rick Miron's 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 his 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 every indication of progressing with mortgage financing, ordering of a home inspection and completing the deal 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 conveyance department the \$50,000 deposit cheque on May 12, 2009, the Buyers had never delivered to Rick Miron 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 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 a satisfactory replacement \$50,000 deposit cheque.
12. Gary Cossette first learned of the deposit cheque issue and basic outline of the transaction during a conversation with Rick Miron on June 1, 2009. That same day Gary Cossette spoke with the Buyers' 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. The brokerage processed an initially accepted contract that erroneously stated they possessed a \$10,000 deposit cheque when no deposit was received. When the bank returned the \$50,000 deposit cheque, the brokerage acknowledges that it remained responsible for ensuring that their seller client and listing agent were notified; they were not.

## **REPRESENTATIONS**

The Investigation Committee representative, Ed Miller, felt that the facts are clear that there was a failure to immediately notify the listing agent or the Seller of the situation. He stated that the brokerage was cooperative in the investigation and that this was an isolated incident. Mr. Miller stressed that the Seller had thought there was a 20% deposit which they could rely upon. It is not appropriate that the brokerage did not immediately notify the Seller of the situation, when they determined that the cheques did not clear the bank. There is a significant importance in the securing of deposits and communication of any problems associated with them.

Mr. Miller felt it was important to send a message to all brokerages and registrants generally that deposits are a fundamental part of the trade in real estate and where problems occur; all parties must be made aware of the situation. He said that general deterrence for the industry is the primary thrust of the sanction he seeks in this matter. Re/Max Crown Real Estate Ltd. is an experienced brokerage and there was no malice in their actions, but the sale did not go through and there was no deposit for the Seller to rely upon.

Cal Notschaele spoke on behalf of the brokerage. He said their policy manual is clear on how to proceed in these circumstances, but the action was not taken. He said that they have taken measures to ensure that this will not happen again. They have moved the responsibility from the conveyance department to the management. He is confident that this will not reoccur within this brokerage.

## **DECISION**

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

- a) That the Brokerage receive an order of reprimand for the violation of Section 39(1)(a) of the *Act*;
- b) That the Brokerage, prior to March 31, 2010, pay to the Saskatchewan Real Estate Commission, a \$4,000.00 fine for the said violation of the *Act*; and
- c) Pursuant to the *Act*, that the Brokerage's registration shall be suspended if it fails to pay any portion of the fine and costs within the said period of time.

## **RATIONALE**

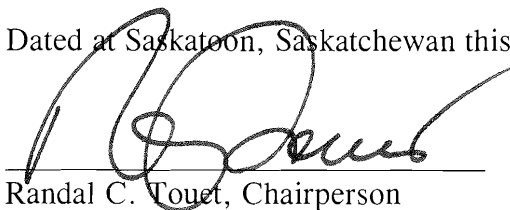
The Committee, in considering the disciplinary action, considered the Brokerage's lack of previous sanction history and the lengthy experience of Gary Cossette in the real estate industry.

The Hearing Committee finds this to be a very serious situation. The deposit is a fundamental part of a contract dealing with real estate. It is essential that all parties know what the deposit is, where it is held and whether it can be relied upon to secure the performance of the buyer in completing the transaction. When problems arise, all parties must be made aware of the situation. It is not fair or reasonable that the Seller is not notified immediately as to the lack of a deposit. The Seller must be able to determine whether any action on their part should be undertaken to reduce their risk of loss. As a brokerage, they are responsible for the actions or inactions of their employees. It is clear that Mr. Cossette acknowledges this responsibility and Mr. Notschaele concurs.

The Committee feels that the importance of the sanction in this matter is to ensure that all brokerages have proper policies in place to see that notification is made in all circumstances where there is an issue with the existence of the deposit. The policy must be enforced and clear to all employees of the brokerage or the consequences will be severe. The fine in this instance is consistent with the Realty Executives Saskatoon decision (2008-56A) where they received a fine of \$4,000.00. In this matter, the management of the brokerage did act appropriately when they became aware of the situation, but their employees did not act soon enough after learning of the cheque being returned. As the Commission has noted in the past, these issues can be dealt with quickly and properly, if there is communication of the problem. It is neither fair nor reasonable that only the buyer's agent knows of the circumstances. The Seller and their agent must be notified immediately.

The Commission is responsible to ensure the protection of all parties to the transaction and to maintain public confidence in the ability of the Commission to properly regulate how the real estate industry performs. This fine will stress that the Commission takes its responsibility seriously and that failure of a registrant to act appropriately in the transaction will be dealt with in a firm and responsible manner. The Committee stresses that communication of problems with deposits must take place immediately.

Dated at Saskatoon, Saskatchewan this 2<sup>nd</sup> day of February, 2010.

A handwritten signature in black ink, appearing to read 'Randal C. Touet', is written over a horizontal line. The signature is fluid and cursive.

Randal C. Touet, Chairperson