

IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3
AND
IN THE MATTER OF LEONARD REMPEL

DECISION OF THE
SASKATCHEWAN REAL ESTATE COMMISSION

Commission File: #2009-57

Before: A Saskatchewan Real Estate Commission Hearing Committee
comprised of the following:
Randal C. Touet - Chairperson
Larry Gingerich
Phillip Mack

Appearances: Ed Miller, on behalf of the Investigation Committee
Leonard Rempel, registrant

Hearing Date: April 12, 2010

Written Decision: May 11, 2010

The Mitigation Hearing was held April 12, 2010 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 February 25, 2010 provided particulars of Leonard Rempel’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:

Mr. Rempel plead guilty to professional misconduct contrary to Section 39(1)(c) of *The Real Estate Act* by breaching Commission Bylaw 709 when on or about September 28, 2009, he made a telephone call to a buyer represented by a buyer’s representative at another brokerage and asked negotiation questions of the buyer rather than contacting the buyer’s brokerage agent.

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*, the regulations or the bylaws or any terms or restrictions to which the registration is subject.”

Commission Bylaw 709 states:

“Negotiations concerning exclusively listed Property or negotiations with any party who is exclusively represented shall be carried on with the client's agent and not with the client directly, except with the consent of the client's agent.”

FACTS

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

1. Mr. Rempel has been continuously registered under *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since July 6, 1995.
2. He has taken the following real estate courses:
 - Real Estate 150;
 - Principles of Real Property Law;

- Principles of Real Estate Appraisal;
 - Principles of Mortgage Financing;
 - Working Within *The Real Estate Act*; and
 - Real Estate Office Management.
3. Mr. Rempel completed the continuing professional development seminars each registration year since 2001-2002.
 4. He is presently registered under the provisions of *The Real Estate Act* as a broker with Royal LePage Southland.
 5. January 29, 2009: Mr. Rempel signed an MLS® Seller's Brokerage contract with the Sellers for property in the Hazenmore district of Saskatchewan (hereinafter called "the Property"). The Sellers asked for a \$997,000 purchase price for the 1,880 acre mixed farm operation and ranch style bungalow. Mr. Rempel marketed the Property on the MLS® and his brokerage's website.
 6. September 17 2009: Mr. Rempel answered voice mail messages and first spoke to the Prospective Buyer's wife and thereafter spoke to the Prospective Buyer on his cell phone. Mr. Rempel understood that the Prospective Buyer, from British Columbia, would be travelling to Saskatchewan to look at a couple of farms for sale in Saskatchewan including, the Property. Mr. Rempel told the Prospective Buyer that when he arrived in Swift Current he could attend the brokerage and obtain information about the Property and the brokerage would have someone available to help him.
 7. Mr. Rempel understood that the Prospective Buyer would arrive in Swift Current later in the day on September 21, 2009 and wished to view the Property on September 22, 2009. Not physically in Swift Current or even Saskatchewan the day of the initial telephone call, Mr. Rempel had his brokerage's administration team create an information package for the Property and map of the area for The Prospective Buyer when he came to Swift Current.
 8. September 21, 2009: After supper Mr. Rempel telephoned the Sellers to schedule the showing for September 22, 2009. At that time he learned that the Prospective Buyer had shown up unannounced and un-represented at the Property that afternoon with his brokerage's information package in hand. The Sellers showed the Property to the Prospective Buyer using as reference the detailed information package the Prospective Buyer had retrieved from Mr. Rempel's brokerage office.
 9. September 25, 2009: Mr. Rempel's brokerage received via another registrant from a separate brokerage and her client, the Prospective Buyer, an \$800,000 Offer of Contract of Purchase and Sale form and attached schedules for the Property that listed many chattels connected to the Property. The offer was open for acceptance until 11:00 a.m. on September 28, 2009. To Mr. Rempel's knowledge and during the term

of the Seller's Brokerage contract, the other registrant never physically attended the Property.

10. Mr. Rempel learned of the offer for the Property while in Fairmont, British Columbia on September 25, 2009 and returned to Swift Current Saskatchewan on or about 1:00 a.m. September 26, 2009.
11. September 26, 2009: Mr. Rempel arrived at the brokerage office about mid-morning, telephoned one of the Sellers and verbally gave her the details of the offer. His intention was to set up a time that day to go over the details of the offer with the Sellers. Before Mr. Rempel had an opportunity to drive out to the farm, the Seller telephoned him. They discussed the offer and the Seller emphatically told Mr. Rempel there was no point doing anything with the offer as the Prospective Buyer was offering less than half of what the Sellers wanted for all the Property and included chattels.
12. During his September 26, 2009 telephone conversation with the Seller, Mr. Rempel learned that the Prospective Buyer and his father had again visited the farm between September 22 and 24, 2009, unannounced and un-represented, to go over everything again. The Seller told Mr. Rempel that on their telephone display earlier that week, they saw two calls from the other registrant's brokerage; no messages were left.
13. September 27 or 28, 2009: Mr. Rempel telephoned the Prospective Buyer as Mr. Rempel felt he owed him an answer as to what took place from the time he initially contacted Mr. Rempel; picked up the information package at his brokerage; attended unannounced at the Property; again attended unannounced at the Property; and asked for unadvertised items in the contract that in the Sellers' opinion were equal to the value of the advertised land. Mr. Rempel's recollection of the brief telephone call was that the Prospective Buyer cited Farm Credit Corporation information and only offered what he felt he could. Mr. Rempel told the Prospective Buyer that his offered price was "just not likely to happen."
14. September 28, 2009: Mr. Rempel telephoned the Seller and discussed the Farm Credit Information given him by the Prospective Buyer. The Seller dismissed the Farm Credit Corporation information as irrelevant in that he had not had any recent dealings with Farm Credit Corporation. The other registrant telephoned Mr. Rempel on September 28, 2009 wondering why he had contacted her client; Mr. Rempel's response was that she had attempted to contact his clients.
15. Mr. Rempel acknowledged that he should not have telephoned the Prospective Buyer after receiving his contract of purchase and sale from the other registrant. He stated his intention was not to negotiate with the Prospective Buyer but to get an understanding of the circumstances that led to an offer that in his and his Sellers' opinion was 50% of the value of the proposed contract.

REPRESENTATIONS

The Investigation Committee representative, Ed Miller, stated that Mr. Rempel clearly breached the section of *The Act*. Mr. Rempel is broker/owner of a Royal LePage franchise. He has been a registrant since 1995. He suggested this was an isolated incident for Mr. Rempel and acknowledged that the conversation was very short. He confirmed that Mr. Rempel acknowledged that he should not have contacted the Prospective Buyer in these circumstances. Mr. Rempel was fully cooperative in the investigation, attended at the Hearing and this was his first offence.

Mr. Miller noted that Mr. Rempel was a senior registrant and broker and should have realized he could not call the Prospective Buyer who was represented by another registrant.

Mr. Miller, on behalf of the Investigation Committee, recommended a letter of reprimand and a fine of \$500.00 for the breach of Bylaw 709.

Mr. Rempel confirmed he had been on holidays when first contacted by the Prospective Buyer. He felt the calls made from the other registrant's office to the Seller should have been made to his office. Mr. Rempel felt there were reasons for rejecting the offer. He acknowledged that there was nothing gained by his contact with the Prospective Buyer and he quickly realized the conversation was going nowhere. He felt that if the other registrant was talking to "my Seller", he would give the Prospective Buyer a call.

DECISION

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

- a) That Leonard Rempel receive an order of reprimand for the violation of Bylaw 709;
- b) That Leonard Rempel, prior to July 15, 2010, pay to the Saskatchewan Real Estate Commission, a \$1,000.00 fine for the said violation of the bylaw; and
- c) That Leonard Rempel'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 Leonard Rempel's lack of sanction history and the long length of time he has been in the real estate industry.

The Hearing Committee did not feel Mr. Rempel had much remorse for his actions. He was angry that the Prospective Buyer had him do the leg work and then contact another registrant to make an offer. Mr. Rempel clearly felt the offer was an affront to the Seller. His rationale for making the call seemed clear. He felt that if the other agent had tried to call his client, he would call her client directly. This is clearly both inappropriate and contrary to *The Act*. Although the conversation was brief, it was made and that is wrong.

This case is distinguishable from the Al Fuchs case (2008-72) where he sent material to the lawyer. In this matter, Mr. Rempel contacted the Prospective Buyer directly, when the Prospective Buyer was represented by another registrant.

Mr. Rempel knew his actions were wrong before he made the call. This is blatant disregard for the provisions of *The Act* and cannot be condoned by the Commission. Registrants must have respect for other registrants and their clients. Clearly, when someone is represented by another registrant, you must communicate through the other registrant. If you feel the other registrant is acting improperly, your remedy is not to act improperly yourself.

The Hearing Committee feels it is important for Mr. Rempel to understand that this is not a small matter. The proper protocol must be followed by him in the future and all registrants must be reminded not to contact the clients of their fellow registrants.

Mr. Rempel is a senior registrant and a broker. He must show leadership in this area.

Dated at Saskatoon, Saskatchewan this 11 day of May, 2010.



Randal C. Touet, Chairperson