

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

AND

IN THE MATTER OF GLENN ROTH

**DECISION OF THE
SASKATCHEWAN REAL ESTATE COMMISSION**

Commission File: #2008-86

Before: A Saskatchewan Real Estate Commission Hearing Committee
comprised of the following:
Randal C. Touet - Chairperson
Cheryl Elliott
Rich Jeanneau
Terry Powell

Appearances: Christopher Mason, on behalf of the Investigation Committee
Glenn Roth, Registrant

Hearing Date: June 18, 2009

Written Decision: July 17, 2009

The Mitigation Hearing was held June 18, 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 May 4, 2009 provided particulars of Glenn Roth’s violation and admissions.

CHARGE and ADMISSION OF MISCONDUCT

Charge #1

Glenn Roth plead guilty to a charge of professional misconduct contrary to Section 39(1)(a) of *The Real Estate Act* as follows:

Between September 10 and 13, 2008, he failed to properly assist the Buyers in determining the location of the property line on the Property.

Charge #2

Glenn Roth plead guilty to a charge of professional misconduct contrary to Section 39(1)(c) of *The Real Estate Act* in that he breached Commission Bylaw 730(g) as follows:

Between September 10 and 13, 2008, he failed to ensure that the Buyers completed and retained, on file, the mandatory Ancillary Services form.

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.”

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.”

Commission Bylaw 730(g) of states:

“The following approved forms, provided by the Association of Saskatchewan REALTORS®, shall be mandatory: (g) Ancillary Services in the Purchase of Residential Real Estate (applies only to re-sale residential real estate.)”

FACTS

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

1. Glenn Roth 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 for less than 2 years since May 22, 2007.
2. Glenn Roth completed the following real estate courses:
 - Real Estate as a Professional Career
 - Residential Real Estate as a Professional Career
 - Principles of Real Estate Appraisal
 - Principles of Real Property Law
 - Farm Real Estate as a Professional Career
 - Real Estate Update 2006-2008
 - Real Estate Update 2008-2009
3. Glenn Roth is presently registered under the provisions of *The Real Estate Act* as a salesperson with Sutton Group – Norland Realty.
4. On or about September 10, 2008 Glenn Roth met with the complainants, the Buyers (emigrating from Ontario) and showed them a number of acreages in the Saskatoon area.
5. On September 13 and 14, 2008 the Buyers, at Glenn Roth’s direction and assistance, completed a Residential Contract of Purchase and Sale and a subsequent Counter Offer.
6. On or about September 14, 2008 Glenn Roth presented both the Buyers with various documents to sign in this transaction; he failed to ensure they signed an Ancillary Services in the Purchase of Residential Real Estate form as required by the Commission Bylaws. At one point during the transaction, the male Buyer did comment during the viewing of the property that he was satisfied with his own visual inspection; however, ultimately Glenn Roth did not obtain from either of the Buyers an endorsement of their reviewing the Ancillary Services form.
7. On December 5, 2008 the Saskatchewan Real Estate Commission received a complaint in which the Buyers raise the issue of “finding out exactly where the property line was.” However, the Residential Contract of Purchase and Sale only asked for a “surveyor’s certificate if available,” as paying for one was not something the Buyers had wanted to do.
8. The Property as represented by Glenn Roth and purchased by the Buyers did not go all the way to the fence between them and their neighbours, which fence was approximately in line with the side of the neighbours’ house.

REPRESENTATIONS

The Investigation Committee representative, Christopher Mason, confirmed that Mr. Roth has been a registrant since 2007 and this was his first time before the Commission. Mr. Mason indicated that Mr. Roth had only been a registrant for sixteen months at the time of this offence. He stated that the offence was done out of ignorance and not of malice. However, Mr. Mason felt that there was a lack of comprehension on the part of Mr. Roth of the impact of his not providing the mandatory form.

Mr. Mason felt that the sanction must ensure public protection and provide specific deterrence to Mr. Roth and general deterrence to all registrants. The registrants must know that mandatory forms are legislated as a necessary protection for the public and for registrants. Mr. Mason stated that while this was an isolated incident, it placed all parties to the transaction at risk.

Mr. Mason acknowledged that Mr. Roth accepted responsibility for the incident and told Mr. Mason that it would not happen again.

The Investigation Committee recommended a letter of reprimand and a fine of \$1,000.00 for both offences. Mr. Mason said that Mr. Roth was co-operative, honest and forthcoming during the investigation. However, he failed to give his clients the opportunity to do further investigation of the property before the sale closed and the Buyers suffered harm.

Mr. Mason referred the Committee to cases involving failure to use mandatory forms being Swehla (2007-27), Leskewich (2007-74), Ratcliffe (2007-92) and Elder (2007-93). All of these cases had a fine of \$1,000.00 for breach of Bylaw 730(g). Mr. Mason noted that since these cases, the value of homes in Saskatchewan has increased dramatically and there has been a number of investigations involving failure to provide this mandatory form.

Mr. Roth spoke to the Hearing Committee and acknowledged his responsibility for the breach of the *Act* and Bylaw. He said he did not recommend that a survey take place. This was the first transaction he had been involved in that had a problem with the size of the lot. Mr. Roth said that he misunderstood the information from the Sellers' registrant and he thought the fence was on the property line. He was not conscious of the eaves of the adjacent house encroaching on the sale Property. Even with the issues presented to him, Mr. Roth did not think a Surveyor's Certificate was necessary.

DECISION

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

Count #1.

- a) That Glenn Roth receive an order of reprimand for the violation of Section 39(1)(a) of the *Act*;

- b) That Glenn Roth, by September 30, 2009, pay to the Saskatchewan Real Estate Commission, a \$2,000.00 fine for the said violation of the *Act*; and
- c) Pursuant to clause 38(2)(b) of the *Act*, that Glenn Roth's registration shall be suspended if he fails to pay any portion of the fine within the said period of time.

Count #2.

- a) That Glenn Roth receive an order of reprimand for the violation of Commission Bylaw 730(g);
- b) That Glenn Roth, by September 30, 2009, pay to the Saskatchewan Real Estate Commission, a \$1,500.00 fine for the said violation; and
- c) Pursuant to clause 38(2)(b) of the *Act*, that Glenn Roth'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 Mr. Roth's lack of previous sanction history and his short experience in the real estate industry.

The Hearing Committee was concerned that none of the issues presented to Mr. Roth seemed to get his attention sufficiently for him to ensure steps were taken to try to protect his clients' interests. His lack of insight into the issues such as the encroaching eaves and fence in line with the neighbours' house are not matters which can be excused by his lack of experience in the industry. Mr. Roth should have realized that further steps could have been taken immediately to ensure the lot size was that which he and his clients believed it to be. If he was not sure what to do, Mr. Roth should have checked with his broker as to what action he should have taken. Mr. Roth had the problem with the lot identified, but he took no steps to deal with the issues.

These concerns were raised by the Buyers and were relatively easy to check. A simple measurement by tape would have shown that the distance to the fence was further than the understood lot size. The size of the lot in a residential sale transaction is one of the fundamental elements to the contract. The public is depending on the registrant to ensure that they receive what they think they are purchasing. In this case, Mr. Roth did nothing to help his Buyers.

The cases referred to are relevant to show that the prior fines for breach of Bylaw 730(g) have not been sufficient to show registrants that mandatory forms are indeed mandatory, not discretionary. The failure to review and have the form signed leads to significant problems. The decision not to review matters should be the choice of the client, after the registrant has pointed out the options to them. This is a clear case to illustrate the need for mandatory forms.

The facts in this case were of a concern to the Hearing Committee. It appeared that Mr. Roth was oblivious to the issues raised by his Buyers and by the Property itself. Mr. Roth indicated to the Committee that he took no steps because he thought "it will work out." This is not an adequate response. Registrants must take steps to help their clients.

The Committee felt it was important to impose separate fines for both infractions. The fine for the breach of 39(1)(a) was less than it would have been otherwise, because of the lack of experience of Mr. Roth in the real estate industry and because there was another fine imposed for the breach of the Bylaw. His actions or lack thereof were not malicious, but it was more than a simple oversight. Mr. Roth was extremely careless, to the detriment of his clients and to the real estate industry. The Committee is hopeful that Mr. Roth will learn from this decision and his continued practice will reflect those lessons. We also hope that the industry in Saskatchewan will take further note that mandatory forms must be used, or the consequences will be significant. The Hearing Committee suggests that brokers should create a checklist to ensure that mandatory forms are completed in every trade in real estate.

Dated at Saskatoon, Saskatchewan this 17th day of July, 2009.



Randal C. Touet, Chairperson