

IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3
AND
IN THE MATTER OF DORIS SHANK

DECISION OF THE
SASKATCHEWAN REAL ESTATE COMMISSION

Commission File: #2010-45

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

Appearances: Ed Miller, on behalf of the Investigation Committee
Doris Shank, Registrant, by telephone

Hearing Date: December 14, 2010

Written Decision: January 14, 2011

The Mitigation Hearing was held December 14, 2010 at the Saskatoon Club, Saskatoon, Saskatchewan before a Hearing Committee (“the Committee”) of the Commission. The Statement of Facts and Admissions dated November 12, 2010 provided particulars of Doris Shank’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:

That contrary to Section 39(1)(c) of *The Real Estate Act* Ms. Shank breached Commission Bylaw 726(c) as follows:

- Ms. Doris Shank breached this section on or about July 21, 2010 when she authorized advertising in the Yorkton Kaleidoscope that represented sixteen “new listings” when the sixteen listings were not “new”.

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 a breach of this *Act*, the regulations or the bylaws or any terms or restrictions to which the registration is subject.”

Bylaw 726(c) which states: “Any advertisement or incentive or the offering of any incentive or the participation in an incentive program to the public as an inducement to trade in real estate undertaken or authorized by a registrant shall not be reasonably capable of misleading the recipient or intended recipient.”

FACTS

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

1. Ms. Shank has been continuously 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 December 11, 1996 as a salesperson and February 1, 2005 as a broker.
2. She has taken the following real estate courses:
 - Fundamentals of Real Estate;
 - Principles of Mortgage Financing;

- Principles of Real Property Law;
 - Principles of Real Estate Appraisal;
 - Working Within the Real Estate Act; and
 - Real Estate Office Management.
3. Ms. Shank completed the continuing professional development seminars each registration year since 2001 - 2002.
 4. She is presently registered under the provisions of *The Real Estate Act* as a broker with Re/Max Blue Chip Realty.
 5. Ms. Shank supervises an administrative team within the brokerage and maintains responsibility for all advertising. Her practice is that for a listing to be classified as “new” it shall be something that was listed in the last two weeks prior to the most current advertising.
 6. Ms. Shank has an administrative assistant to assist her to deal with the local newspaper regarding proofs of ads and verifications of accuracy. In this particular situation, Ms. Shank did not have a proof of the ad where they could have confirmed its accuracy prior to the ad going to print.
 7. Ms. Shank authorized the ad representing sixteen new listings that appeared in the Wednesday July 21, 2010 issue of the Yorkton Kaleidoscope. In August 2010 she received an enquiry from Ed Miller of the Saskatchewan Real Estate Commission regarding their July 21, 2010 advertising.
 8. She researched her brokerage’s agency contracts and reported to the Saskatchewan Real Estate Commission there were sixteen advertisements indicating “new” listings, which did not match her “new listing” policy.
 9. Ms. Shank confirms that her brokerage does its best to maintain accuracy in advertising and to not make mistakes. The ad in question contained sixteen instances where they represented a new listing that in fact was not new.

REPRESENTATIONS

The Investigation Committee representative, Ed Miller, confirmed that Ms. Shank is a first time offender under the *Act*. He indicated that she was cooperative and had taken responsibility for the violation. Mr. Miller stated that he believed this to be an isolated incident and noted the letter from the newspaper which acknowledged that they failed to make the changes suggested by the brokerage after the first proof was viewed.

The Investigation Committee recommended a letter of reprimand and a fine of at least \$500.00 for a breach of Bylaw 726(c).

Mr. Miller suggested this sanction was required to provide confidence for the public in the enforcement of discipline where there has been a lack of proper behaviour of registrants in the performance of their obligations as registrants. He also felt it would provide specific deterrence for Ms. Shank that she would understand the consequences of her actions.

Mr. Miller noted that Ms. Shank did not specifically review these ads, which led to them being printed without the error being noted. He wanted to ensure that all registrants and brokers realize the importance of broker supervision in the matter of proper advertising.

Mr. Miller referred the Committee to the Lou Doderai case (2009-17) where he received a fine of \$2,000.00 for providing wrong measurements because he relied on measurements done by others; the Martin Blonski case (2008-75) for accepting the seller's representations about a new boiler (a fine of \$500.00); and the Dan Torwalt decision (2009-51) where he relied on the sellers representations and received a fine of \$1,000.00.

Ms. Shank told the Committee that she acknowledged her error and said there was no malice or intent in the situation. This was at the time of major flooding in Yorkton and it affected everyone. She said it was unfortunate that her team did not wait for the second proof from the newspaper before allowing the ad to go to print. They had been advised of the error, but did not ensure that the changes had been made. Ms. Shank indicated that they have changed their policy to make sure that the final proof has been viewed, after they have suggested the corrections, before the advertising can go to print.

DECISION

In accordance with *The Real Estate Act*, Bylaws and Regulations, the Committee made the following orders:

- a) Doris Shank receive an order of reprimand for the violation of Bylaw 726(c);
- b) Doris Shank, prior to March 28, 2011, pay to the Saskatchewan Real Estate Commission, a \$500.00 fine for the said violation of the *Act*; and
- c) Doris Shank's registration shall be suspended if she fails to pay any portion of the fine within the said period of time.

RATIONALE

The Committee, in considering the disciplinary action, considered Doris Shank's lack of previous sanction history and the fourteen years she has been in the real estate industry.

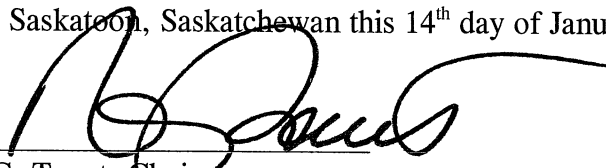
The Committee stresses that it is the responsibility of each registrant to verify all of the facts related to the property with which they are dealing. The brokerage must ensure that misleading or incorrect advertising is not placed before the public, leading to a lack of respect for the real estate industry.

The Committee also noted that the cases put forward were not helpful as they were circumstances of reliance on information from others, while this case was solely the error in verifying the advertising.

In this case, it is apparent that Ms. Shank's office had noticed the error, advised the newspaper of the corrections, but did not see the final proof before allowing the advertising to go to print. They are changing their policy to make sure that the final, correct proof is viewed before they sign off on the advertising. This error should not occur again.

The Hearing Committee accepts Ms. Shank's statements that they had not intended for the misleading advertising to proceed. However, the Committee wants registrants and brokers to realize that they must supervise the advertising process and this includes setting up a proper and effective system for the review of the advertising that goes out from their brokerage. It is only the specific circumstances of this case, including the acknowledged error from the newspaper, that kept the fine from being significantly higher. The Committee is concerned that the public must have confidence in proper, accurate advertising from registrants and that the Commission will monitor and discipline registrants who allow improper advertising to proceed.

Dated at Saskatoon, Saskatchewan this 14th day of January, 2011.



Randal C. Touet, Chairperson