

IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3
AND
IN THE MATTER OF ANNETTE SINCLAIR

DECISION OF THE
SASKATCHEWAN REAL ESTATE COMMISSION

Commission File: #2010-02

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

Appearances: Ed Miller, on behalf of the Investigation Committee
Annette Sinclair, Registrant, by telephone

Hearing Date: July 22, 2010

Written Decision: August 22, 2010

The Mitigation Hearing was held July 22, 2010 at the offices of the Saskatchewan Real Estate Commission, Saskatoon, Saskatchewan before a Hearing Committee ("the Committee") of the Commission. The Statement of Facts and Admissions dated June 18, 2010 provided particulars of Annette Sinclair'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. Sinclair breached Commission Bylaw 726(b) 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 inaccurate."

- Ms. Annette Sinclair breached this section between March 26 and May 18, 2008 (both dates inclusive) by representing to the public the square footage of the Property as 894 square feet when such was not the case.

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(b) 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 inaccurate."

FACTS

In accordance with subsection 9(4) of *The Real Estate Regulations* ("the Regulations"), the Committee accepted Annette Sinclair's Statement of Facts and Admissions, which included the following relevant points:

1. Ms. Sinclair has been continuously registered under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since September 5, 1986.
2. She completed the *Real Estate 150* course in August 1986 and completed the continuing professional development seminars each registration year since 2001-2002.
3. Ms. Sinclair was registered under the provisions of *The Real Estate Act* as a salesperson with Info Market Group - GMAC Real Estate at the time of the events herein.

4. On or about March 26, 2008, Ms. Sinclair signed the Sellers to a Seller's Brokerage contract with Info Market Group - GMAC Real Estate. The sellers asked for a \$72,900 sale price and directed that 6% seller's brokerage commission be equally split between the successful listing and buying brokerages. The sellers and Ms. Sinclair described the property as a 1957 house with above grade square footage at 894 square feet. If asked by a buying client, Ms. Sinclair says she would have verbally described the property as a "fixer-upper".
5. In March 2008, the real estate market in Moose Jaw was "hot" with many buyers competing for the same properties. Another agent with Ms. Sinclair's brokerage represented the successful Buyer of the property. The successful Buyer and the Sellers agreed to an unconditional \$85,000 Residential Contract of Purchase and Sale between 3:30 and 7:30 p.m. on March 28, 2008.
6. Ms. Sinclair understood that the Buyer undertook extensive remodelling at the property up until August 2008 at which time the Buyer engaged an agent to list the property for sale. Ms. Sinclair is advised that the said agent inquired with persons at Moose Jaw City Hall via Saskatchewan Assessment Management Agency (SAMA) records that stated the property was a 926 square feet bungalow.
7. Ms. Sinclair states that the property is not a 926 foot bungalow although she did not have her 2008 on-site measurements due to her computer hard drive crashing. Her search of the MLS® confirmed that the said agent first advertised the property as a 764 square foot bungalow effective August 28, 2008 with a \$234,900 asking price. Thereafter, the seller (the former Buyer) reduced the asking price to \$209,000 on September 8, 2008; and to \$199,000 on September 30, 2008 and remained the owner of the property in May 2010.
8. The Buyer's complaint to the Saskatchewan Real Estate Commission was the first indication to Ms. Sinclair that a discrepancy in square footage existed at the property (764 actual as opposed to her advertised 894).
9. Ms. Sinclair indicates her real estate practice with listings is to record measurements and advertise what she measured. With the benefit of hindsight, she speculates that she may have added in the dimensions of the porch, twice, to come up with an advertised square footage 130 square feet greater than actual. This investigation caused Ms. Sinclair to solicit the help of co-workers to assist with measuring of properties.

REPRESENTATIONS

The Investigation Committee representative, Ed Miller, confirmed that Ms. Sinclair is a first time offender under the *Act*. He indicates that she was cooperative and admitted the violation.

The Investigation Committee recommended a letter of reprimand and a fine of at least \$1,000.00 for breach of Bylaw 726(b).

Mr. Miller suggested that this sanction is 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. Sinclair and she would understand the consequences of her actions.

He stressed that this was a 17% error in the square footage on the house, by an inaccurate measurement. Mr. Miller acknowledged that the Buyer had the opportunity to view the Property and there was no intention to deceive the parties by Ms. Sinclair. However, he pointed out that she has 23 years experience as a registrant and should have been more careful.

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 Reg Kotlar case (2006-52) where he received a fine of \$500.00 for advertising violations; and the Martin Blonski case (2008-75) for accepting the seller's representations about a new boiler (a fine of \$2,000.00).

Ms. Sinclair told the Committee that this was an unfortunate and unintentional mistake. She said she would be careful in the future. In questioning, Ms. Sinclair was unable to explain clearly how the mistake was made, suggesting all her data was missing from her computer. She will accept the sanction determined by the Hearing Committee.

DECISION

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

- a) Annette Sinclair receive an order of reprimand for the violation of Bylaw 726(b);
- b) Annette Sinclair, prior to October 30, 2010, pay to the Saskatchewan Real Estate Commission, a \$2,000.00 fine for the said violation of the *Act*; and
- c) Annette Sinclair's registration shall be suspended if she fails to pay any portion of the fine within the said period of time.

RATIONALE

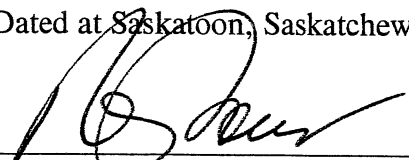
The Committee, in considering the disciplinary action, considered Annette Sinclair's lack of ~~previous sanction history and the twenty-three years she has been in the real estate industry.~~

The Committee stressed that it was the responsibility of each registrant to verify all of the facts related to the property with which they are dealing. There was a significant error in the square footage reported in this matter. A difference of 130 square feet (894 to 764 square feet) is a major difference in a property of this size. This was a situation which was easy to remedy. The Committee felt this required a serious sanction.

On the MLS Data Input Form there were three different square footages written down. Two of these numbers were scratched out, leaving 894 as the figure she used. This should have given Ms. Sinclair more notice that she must double check to ensure that the number she used

is correct. As an experienced registrant, she should have realized her error and corrected it before submitting the document to MLS. The "hot market" is not an excuse to fail your clients and the public. They are expecting professionals to act responsibly to look after their best interests. The entire transaction was done in a manner which did not display the trained professional manner expected by the public. The Hearing Committee wants to stress to Ms. Sinclair and all registrants that failure to act in accordance with your duty and obligations as registrants will lead to significant sanctions.

Dated at Saskatoon, Saskatchewan this 22nd day of August, 2010.



Randal C. Touet, Chairperson

