

IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3
AND
IN THE MATTER OF GASTON SIROIS

DECISION OF THE
SASKATCHEWAN REAL ESTATE COMMISSION

Commission File: #2008-68

Before: A Saskatchewan Real Estate Commission Hearing Committee
comprised of the following:
Randal C. Touet - Chairperson
Larry Gingerich
Richard Jeanneau
Terry Powell

Appearances: Ed Miller, on behalf of the Investigation Committee
Gaston Sirois, Registrant-by telephone

Hearing Date: May 21, 2009

Written Decision: June 11, 2009

The Mitigation Hearing was held May 21, 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 March 3, 2009 provided particulars of Gaston Sirois’ violation and admissions.

CHARGE and ADMISSION OF MISCONDUCT

Gaston Sirois pled 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(f) as follows:

On or about June 16, 2008 when acting in a limited dual agency capacity, he failed to provide the Saskatchewan Real Estate Commission’s mandatory Statement of Disclosure form to the Buyers of his ownership interest in #101115270 Saskatchewan Ltd.

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 730 (f) of *The Real Estate Act* states:

“The following approved forms, provided by the Association of Saskatchewan REALTORS, shall be mandatory: (f) Statement of Disclosure.”

FACTS

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

1. Gaston Sirois has been continuously registered under the provisions of *The Real Estate Act* in the Province of Saskatchewan since April 27, 2005.
2. Gaston Sirois has taken the following real estate courses:
 - Real Estate as a Professional Career;
 - Residential Real Estate as a Professional Career;
 - Principles of Real Property Law; and
 - Principles of Real Estate Appraisal.
3. Gaston Sirois completed the continuing professional development seminars each registration year since 2004-2005.
4. Gaston Sirois is presently registered under the provisions of *The Real Estate Act* as a salesperson with Sutton Group – Results Realty.

5. Gaston Sirois and Laurent Sirois (another registrant) each own a 25% share of #101115270 Saskatchewan Ltd.; Laurent Sirois presides as the president; and Gaston Sirois holds an officer position with the corporation. In 2007, #101115270 Saskatchewan Ltd. undertook the new home construction of property in Regina, Saskatchewan (hereinafter called **Fairway**).
6. Laurent Sirois and Gaston Sirois on behalf of #101115270 Saskatchewan Ltd. originally listed Fairway on the MLS in 2007 with an asking price of \$434,900.
7. The Buyers first viewed Fairway with Laurent Sirois on or about June 15, 2008. On June 15, 2008, Laurent Sirois verbally confirmed to the Buyers that Laurent Sirois and Gaston Sirois each owned a material interest in the property by way of their ownership of #101115270 Saskatchewan Ltd.
8. On June 16, 2008, the Buyers wrote and as sellers, Laurent Sirois and Gaston Sirois, signed acceptance of a \$434,000 Residential Contract of Purchase and Sale to buy Fairway from #101115270 Saskatchewan Ltd. Gaston Sirois neglected to ever have the Buyers sign the Commission's Mandatory Disclosure form.
9. On the accepted contract, Laurent Sirois named himself as both the seller's and buyer's representative; wrote out the majority of the document; witnessed the buyers' signatures and witnessed Gaston Sirois' signature. Laurent Sirois and Gaston Sirois signed acceptance of the contract as sellers and completed the Association of Saskatchewan REALTOR® Limited Dual Agency acknowledgement form.
10. When Laurent Sirois and Gaston Sirois accepted the Fairway offer, they did so with a 48-hour option clause and the condition that either a property on Hutchison in Regina, Saskatchewan (hereinafter called **Hutchison**) or on Shumiatcher Drive, in Regina, Saskatchewan (hereinafter called **Shumiatcher**) sell, on or before August 1, 2008.
11. Prior to the Buyers' purchase of Fairway on June 16, 2008, neither Hutchison nor Shumiatcher were listed on the MLS; Hutchison and Shumiatcher appeared on the SaskHomes4Sale.com website. Concurrent with the purchase of Fairway the female Buyer listed Shumiatcher at \$397,900 on the MLS; and the male Buyer listed Hutchison at \$449,900 on the MLS; both through Gaston Sirois and Laurent Sirois as representatives of Sutton Group – Results Realty.
12. On July 7, 2008, the female Buyer accepted a \$385,000 Residential Contract of Purchase and Sale for Shumiatcher as received from another brokerage. The conditionally accepted contract required that the buyer be satisfied with: building, furnace and chimney inspections; a gas line location and certificate; a Property Condition Disclosure Statement; the scope of the remaining seasonal work; and the transfer of the builder's and new home warranties. An included term called for the seller to complete all seasonal work by August 5, 2008.

13. As part of the negotiated sale of Schumiatcher, Laurent Sirois and Gaston Sirois reduced the sale price of Fairway to \$428,000 by way of an Amendment to the Residential Contract of Purchase and Sale form signed on July 7, 2008. Laurent Sirois and Gaston Sirois amended the Exclusive Seller's Brokerage Contract for Shumiatcher to waive the listing brokerage's real estate commission earned for the sale; the sellers remained responsible for applicable buyer's brokerage commission payable.
14. The net effect of the price and commission reductions by Laurent Sirois, Gaston Sirois and their company, bridged the \$12,900 gap between the \$385,000 offered to the female Buyer and her bottom line net sale price demanded on Shumiatcher.
15. On July 15, 2008, Gaston Sirois and Laurent Sirois received notice that the buyers of Shumiatcher removed all buyers' conditions and the sale became firm.
16. On July 15, 2008, Laurent Sirois discussed with the Buyers their intention to sign a Notice to Remove Conditions form for Fairway believing that Schumiatcher was now sold. To further allay concerns of the Buyers, Laurent Sirois prepared a document stating that in the event that Shumiatcher did not close on August 11, 2008, the Buyers did not have to complete the Fairway purchase.
17. On August 5, 2008 the female Buyer told Gaston Sirois that she and the male Buyer were not going to reconcile and were not prepared to proceed with the purchase of Fairway. On August 6, 2008, Gaston Sirois met with the Buyers and thereafter the Buyers signed a Mutual Agreement to Release their \$10,000 deposit to #101115270 Saskatchewan Ltd. thereby collapsing the Fairway transaction.
18. The Schumiatcher transaction collapsed in August 2008. Lawyers for the buyers and seller negotiated the release of the Schumiatcher deposit, such that the female Buyer received \$1,500; and the buyers received \$8,500 of their original \$10,000 deposit.
19. Before Laurent Sirois and Gaston Sirois re-sold Fairway for \$389,000 on behalf of #101115270 Saskatchewan Ltd. in October 2008, the buyers received and signed the Commission's mandatory written disclosure form.

REPRESENTATIONS

The Investigation Committee representative, Ed Miller, confirmed that the sole issue was the failure to use the mandatory disclosure form. He acknowledged that verbal representations of ownership were made, but the mandatory form was not completed. It was also acknowledged that the collapse of the transaction was due to the failure of the reconciliation of the Buyers, not the lack of the form.

Mr. Miller noted that this was the first offence for Gaston Sirois and there was no impropriety concerning the deposit. It is also clear that Gaston Sirois had a material interest in the Fairway property and the use of the disclosure form was mandatory.

The Investigation Committee recommended a letter of reprimand and a fine of \$1,000.00 or more. This is to provide specific deterrence to Mr. Sirois to ensure that he uses all mandatory forms in the future and is expected to provide general deterrence to the other registrants to ensure they know they must use mandatory forms.

Mr. Miller referred the Committee to the Dwayne Kok case where he received a \$1,500.00 fine and hearing costs for failure to use mandatory disclosure forms; to the Marty Leier case where he failed to use the forms on two transactions and received a \$3,550.00 fine; and to the Janice Seale decision where she received a \$1,000.00 fine for each of two mandatory forms she did not use.

Mr. Sirois stated that he knows the forms should have been signed, but asks for leniency. This was a failed sale in a depreciating market and they took a loss on the property. Mr. Sirois stressed there was no intention to deceive or mislead the Buyers and that was not a factor in the collapse of the trade in real estate.

DECISION

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

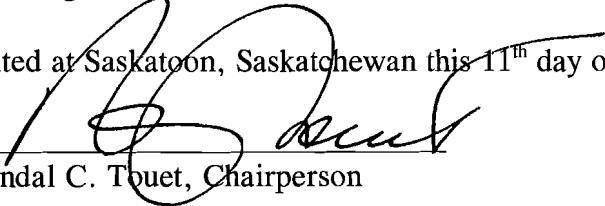
- a) Pursuant to clause 38(1)(f) of the *Act*, that Gaston Sirois receive an order of reprimand for the violation of Bylaw 730 (f);
- b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Gaston Sirois, by August 15, 2009, pay to the Saskatchewan Real Estate Commission, a \$1,000.00 fine for the said violation of the *Act*; and
- c) Pursuant to clause 38(2)(b) of the *Act*, that Gaston Sirois' 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. Sirois' lack of previous sanction history and his short experience in the real estate industry.

The Hearing Committee states that it is extremely important that mandatory forms be used. It is not up to the registrants to determine when and where they should be used. The Bylaws are clear that the forms must be used in each circumstance. This will eliminate confusion and potential deception. All registrants must know this is essential. It is a reducing factor in this matter that there was clearly not a gain or profit by the registrant and that clear verbal communication had taken place. Were it not for these factors, the fine may well have been more significant.

Dated at Saskatoon, Saskatchewan this 11th day of June, 2009.


Randal C. Touet, Chairperson