

IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3
AND
IN THE MATTER OF DAN TORWALT

DECISION OF THE
SASKATCHEWAN REAL ESTATE COMMISSION

Commission File: #2009-51

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

Appearances: Ed Miller, on behalf of the Investigation Committee
Dan Torwalt, 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 May 7, 2010 provided particulars of Dan Torwalt’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:

Count 1:

That contrary to Section 39(1)(c) of *The Real Estate Act* Mr. Torwalt breached Commission Bylaw 714 which states: “A registrant shall take reasonable steps to discover facts pertaining to every property for which the registrant accepts an agency agreement that a prudent registrant would take in order to fulfil the obligation to avoid error, misrepresentation or concealment of pertinent facts.”

- Dan Torwalt breached this section between August 21, 2007 and September 30, 2007 (both dates inclusive) when he obtained a seller’s brokerage contract for a represented ten acre parcel of land without conducting inquiries to verify the actual size of the property, which was 4.03 acres.

Count 2:

That contrary to Section 39(1)(c) of *The Real Estate Act* Mr. Torwalt breached Commission Bylaw 726(b) and (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: (b) inaccurate; or (c) reasonably capable of misleading the recipient or intended recipient.”

- Mr. Torwalt breached this bylaw between August 21, 2007 and September 30, 2007 (both dates inclusive) by representing to registrants and the public the Property as ten acres when the actual size was 4.03 acres.

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 714 which states: “A registrant shall take reasonable steps to discover facts pertaining to every property for which the registrant accepts an agency agreement that a prudent registrant would take in order to fulfil the obligation to avoid error, misrepresentation or concealment of pertinent facts.”

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FACTS

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

1. Dan Torwalt has been continuously registered as a salesperson 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 April 27, 2004.
2. He has completed the following real estate courses:
 - Fundamentals of Real Estate;
 - Principles of Mortgage Financing;
 - Principles of Real Property Law; and
 - Principles of Real Estate Appraisal.
3. Mr. Torwalt has completed the continuing professional development seminars each registration year since 2003-2004.
4. Mr. Torwalt is presently registered under the provisions of *The Real Estate Act* as a salesperson with Century 21 Diamond Realty; at the time relevant to this transaction he was registered as a salesperson with Re/Max Saskatoon.
5. On or about August 21, 2007 Mr. Torwalt listed a parcel of land for the Seller containing a farm site and residence. The Seller owned the entire quarter section of land and it was his intention to sell off the farm site which the Seller believed to be about 10 acres. The seller's brokerage contract identified a \$279,000 purchase price and directed that the 5% seller's brokerage commission be equally split between the successful listing and buying brokerages.
6. Mr. Torwalt verbally obtained, from the R.M. of Humboldt office, tax information regarding the acreage parcel. He did not obtain from the R.M. of Humboldt their tax roll information regarding their information about the size of the acreage nor did he obtain a copy of the Certificate of Title from Information Services Corporation which is his usual practice.
7. Mr. Torwalt advertised the Property on the MLS® under authority from the Seller.
8. In September 2007, the Buyers attended the Property, unrepresented by a registrant and without Mr. Torwalt's knowledge. The Seller showed the Property to the Buyers. The

Seller later related to Mr. Torwalt that the Buyers told him they did not want to see the Property through the services of a registrant and wanted to talk directly with the Seller.

9. Mr. Torwalt was told that the Seller's recollection of his showing of the Property was that the Buyers were happy with the Property and that the Seller had told the Buyers that he did not know the exact number of acres for the acreage and that a search at Land Titles would confirm the number of acres as would a check at the R.M. office which would also confirm the exact amount of taxes on the property.
10. On September 8, 2007 another registrant from a different Saskatoon brokerage assisted the Buyers to write a Residential Contract of Purchase and Sale offering to purchase the Property at a \$260,000 offer price with a November 1, 2007 completion date.
11. Mr. Torwalt assisted the Seller to write a Counter Offer to a Residential Contract of Purchase and Sale form which the Buyers accepted on September 9, 2007. The accepted counter offer dealt with access to the yard and removal of chattels with no change in the purchase price. The transaction completed and title transferred as contracted.
12. In May 2009, the Buyer contacted Mr. Torwalt at his new brokerage to say that the 2007 transaction netted him title to only 4 acres as opposed to the advertised 10 acres. The Seller agreed to provide land to make up any shortfall.

REPRESENTATIONS

The Investigation Committee representative, Ed Miller, confirmed that Mr. Torwalt is a first time offender under the Act. He confirmed that Mr. Torwalt had three years experience as a registrant at the time of the offence. Mr. Miller said that Mr. Torwalt was cooperative and tried to work out a solution for the clients.

Mr. Miller noted that Mr. Torwalt had no intention to deceive the parties or the public. This was a mistake and the Buyers took no steps to check out the information themselves. He indicated there was no quantifiable loss in the circumstances. Mr. Miller stressed that there was the opportunity to independently verify the size of the acreage, but Mr. Torwalt simply relied on the representations of the Seller. He said this simply constituted a lack of due diligence on the part of registrant.

The Investigation Committee recommended a letter of reprimand and a fine of at least \$1,000.00 for breach of Bylaw 714 and a fine of at least \$1,000.00 for the breach of Bylaw 726. He suggested this would provide a specific deterrence for Mr. Torwalt, so that he shall obtain independent verification of information in the future.

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

case(2009-17) where a fine of \$2,000.00 was imposed for relying on another registrant's information regarding square footage with no independent verification.

Mr. Torwalt told the Committee that this was his mistake, for which he is sorry. He said it was a busy time, but acknowledged that this was not an excuse for not upholding his obligations as a registrant. He accepted the comments of Mr. Miller and respects the real estate industry and the need to promote consumer confidence. Mr. Torwalt stated that with the trees around the site, it looked like 10 acres (from his farm experience). He said it was always his client's intention to sell 10 acres, but the title documentation was smaller. The challenge was the resurveying of the Property.

DECISION

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

Count 1

- a) Dan Torwalt receive an order of reprimand for the violation of Bylaw 714;
- b) Dan Torwalt, prior to October 30, 2010, pay to the Saskatchewan Real Estate Commission, a \$1,000.00 fine for the said violation of the *Act*; and
- c) Dan Torwalt's registration shall be suspended if he fails to pay any portion of the fine within the said period of time.

Count 2

- d) Dan Torwalt receive an order of reprimand for the violation of Bylaw 726(b) and (c);
- e) Dan Torwalt, prior to October 30, 2010, pay to the Saskatchewan Real Estate Commission, a \$1,000.00 fine for the said violation of the *Act*; and
- f) Dan Torwalt's registration shall be suspended if he fails to pay any portion of the fine within the said period of time.

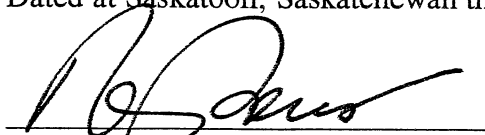
RATIONALE

The Committee, in considering the disciplinary action, considered Dan Torwalt's lack of previous sanction history and the short length of time he had been in the real estate industry.

The Committee confirmed that it was the responsibility of registrants 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. This was a situation which was easy to remedy. The correct information was available and easily obtained. It is not acceptable to simply rely on the assertions of the client, which may be incorrect due to misinformation, error, failed memory or wishful thinking. The public relies on the registrant to be professional and to seek proper confirmation of the information related to the property being sold. It is important that all registrants understand their responsibility to know the property they are dealing with. If they make no inquiries, there is always the possibility of error, for which the registrant may become responsible. The registrants must do their due diligence. Failure to do such due diligence will lead to sanctions at this level, which is necessary both to ensure the registrants correct their behaviour and to ensure the public remains confident in the ability of the Commission to

monitor the actions of the registrants in Saskatchewan. Knowing your property is a fundamental part of the transaction. The clients expect registrants to know their obligations and the Commission will ensure they act accordingly.

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



Randal C. Touet, Chairperson