Real Estate Council of Ontario

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*, S.O. 2002, c. 30, Sch. C

BETWEEN:

REAL ESTATE COUNCIL OF ONTARIO

- AND-

MONA MOHSENI-KHALESI

DISCIPLINE DECISION AND REASONS FOR DECISION

The Panel met by videoconference on October 18, 2023, to discuss the written submissions with respect to Penalty and Costs. The Panel decided as follows:

ORDER:	Fine of $50,000.00 payable to RECO within ninety days of sending this decision. Successful completion of the course "REIC 2600: Ethics and Business Practice", within 180 days of this decision being released and provide RECO with confirmation of successful completion of this course.
COSTS AND EXPENSES:	No cost award

WRITTEN REASONS:

REASONS FOR DECISION

The Panel met by way of a video conference on October 18, 2023, to review written Submissions on Penalty, following the Discipline Decision, rendered on June 19, 2023. The Panel has noted that no written Submissions on Penalty were received from the Respondent.

In the Panel's Discipline Decision, the Panel found that Mona Mohseni-Khalesi ("Mohseni-Khalesi" or "the Registrant") had contravened sections 3,4,5,24(1),37,38 and 39 of the Code of Ethics.

In its Penalty Deliberations, the Panel took into consideration:

1. The Discipline Decision.
2. RECO's Submissions to the Panel, Regarding Penalty and Costs.
3. RECO's Book of Authorities RE: Penalty and Costs Submissions.

RECO SUBMISSIONS ON PENALTY

1. In RECO's Submissions on Penalty and Costs RECO sought the following penalty:

    a) An Order that Mohseni-Khalesi pay a fine of $50,000.00, payable within 90 days of the Penalty Decision of the Panel; and

    b) An Order that Mohseni-Khalesi successfully complete the Real Estate Institute of Canada ("REIC") course number 2600: "Ethics and Business Practice" within 180 days of the Penalty Decision.

2. RECO did not seek an order for Costs.

3. RECO pointed the Panel to the following factors ("the Factors"), as established in the case Registrar v. Suzette Thompson, May 31, 2012 (the "Thompson case"), as being relevant for guidance in determining an appropriate penalty for breaches of the Code of Ethics:

    1) The nature and gravity of the breaches of the Code of Ethics;
    2) The role of the offending member in the breaches;
    3) Whether the offending member suffered or gained because of the breaches;
    4) The impact of the breaches on the complainant or others;
    5) The need for there to be specific deterrence to protect the public;
    6) The need for there to be general deterrence to protect the public;
    7) The need to maintain the public's confidence in the integrity of the profession;
    8) The degree to which the breaches are regarded as being outside the range of acceptable conduct; and
    9) The range of sanctions in similar cases.

RECO further put forward the following specific arguments addressing the Factors, to support its Submissions on Penalty:

i) The Nature and Gravity of the Breaches

1. The nature and gravity of the breaches of the Code of Ethics are at the most serious end of the spectrum.
2. Mohseni-Khalesi disregarded her obligations as a registrant to act honestly and with integrity and to promote the best interests of her client, the complainant, Complainant A ("the Client" or "Her Client")
3. To the contrary, Mohseni-Khalesi was an active participant along with her spouse, in a scheme to misappropriate approximately $100,000.00 that was owed to her Client and then engaged in dishonest behavior to try and cover up her conduct, including falsely claiming the Property at issue ("the Property") had not been sold and then not making herself and the proceeds of sale available to her Client.

ii) The Role of the Registrant in the Breaches

4. RECO directed the Panel to the Registrant's role in relation to the breaches (i.e., central vs peripheral) and also requested that the Panel consider whether the Registrant's conduct was active and deliberate versus more negligent in nature.
5. It was submitted that Mohseni-Khalesi's conduct was deliberate and the sole cause of the breaches.
6. Mohseni-Khalesi purposefully and knowingly participated in the scheme to sell the Property and misappropriate the proceeds of sale from her Client and then misled her Client (and RECO), in an attempt to cover up her wrongdoing.

iii) Whether the Registrant Suffered or Gained, as a Result of the Breaches

7. Mohseni-Khalesi gained financially from her unprofessional conduct. Therefore, this factor weighs heavily against her.
8. In particular, Mohseni-Khalesi (with her spouse) misappropriated approximately $100,000.00 of her client's money.

iv) The Impact of the Breaches on the Complainant/Seller

9. Due to Mohseni-Khalesi's conduct, her client suffered significant financial harm.
10. The Client did not receive the monies (approximately $100,000.00) that were owed to him. Further, the client had to incur the time and expense to pursue legal action to attempt to recover funds that Mohseni-Khalesi and her spouse misappropriated.

v) The Need for Specific Deterrence

11. Specific deterrence requires the Panel to ensure that the penalty is sufficiently meaningful to try and inhibit/stop a respondent from recommitting the offence(s) in the future. This Submission is supported by the findings in *R. v. McGill*, [2016] O.J. No. 138 (Ont. Ct Jus.) at para 97.
12. To that end, the penalty imposed by the Panel must be more than merely "the cost of doing business".
13. It must be made clear to Mohseni-Khalesi, through a significant penalty, that consumers and other registrants rely upon her to conduct herself ethically, honestly, and competently.
14. This is particularly important in this case given that Mohseni-Khalesi has taken no responsibility or accountability for her actions and, in fact, provided false information to try and avoid such accountability.

vi) The Need for General Deterrence

15. The principle of general deterrence requires that the penalty imposed not only

deter Mohseni-Khalesi from reoffending; but also, it should deter other registrants from engaging in similar misconduct. *R. v. Thies*, 2014 CM 3007 at para 11 and *Re Cartaway Resources Corp.* [2004] 1 S.C.R. 672, at para 4, supports this submission.

16. General deterrence is a particularly relevant consideration in cases of professional discipline.
17. This is because the sanctions imposed by a Discipline Committee are published and monitored by the profession.
18. The penalty imposed by a Discipline Committee is a communication to the profession about a) what conduct is inappropriate, and b) the severity of the breaches of the Code of Ethics.
19. The breach of agreements with clients and the misappropriation of client monies are amongst the most serious, if not the most serious, misconduct registered registrants can engage in.
20. The penalty for such activities must be significant in order to demonstrate the very serious nature of Mohseni-Khalesi's actions and deter other registrants from engaging in similar acts.

vii) The Need to Maintain the Public's Confidence

21. A primary consideration in imposing a penalty for unprofessional conduct is the collective reputation of the profession. That includes the legitimacy/reputation of the profession's ability to self-regulate its members. This consideration is highlighted in the findings in *Merchant v. Law Society of Saskatchewan*, [2014] S.J. No. 245, (Sask. C.A.) at para 119.
22. The public should be confident that when they retain and engage with real estate professionals, they will be treated fairly, conscientiously and in accordance with the applicable rules that govern registrants. The public should also have confidence that when a registrant breaches the ethical standards, the self-disciplinary system will appropriately address such breaches.

23. Mohseni-Khalesi's breaches involved fundamental matters of importance to maintaining the confidence of the public – namely, the basic and important obligation of a registrant not to prey upon, nor take advantage of a client.

viii) The Degree to Which the Breaches are Outside the Range of Acceptable Conduct

24. This factor requires the Panel to assess where Mohseni-Khalesi's actions fall on a sliding scale of misconduct from least serious to most serious.

25. As noted earlier, it is RECO's position that Mohseni-Khalesi's actions fall right at the most serious end of the spectrum, given they involve misappropriating funds from a client and then trying to cover-up that conduct.

ix) The Range of Sanction in Similar Cases

26. Previous cases can be helpful as a guide to help the Panel determine the appropriate penalty. A comparison of similar cases is an important factor when considering the appropriateness of a disciplinary penalty. The case of *Duval v. College of Nurses of Ontario,* [2007] O.J. No. 3992, (Ont. Div. Ct.) is a helpful guide in this regard.

27. In this case, the conduct of Mohseni-Khalesi is exceptional. RECO submitted that it is unaware of any other cases in which a registrant has engaged in such pre-meditated and dishonest behaviour to deceive and harm their own client.

The Panel agrees with and adopts all the Submissions from Counsel for the Registrar and in particular the Submissions regarding the seriousness of the action and inaction of Mohseni-Khalesi and the Panel agrees that the Penalty in this case must be appropriate to the facts and must serve as a deterrence.

With the foregoing, the Panel, in an effort to determine the Penalty, paid attention to and specifically considered the Factors as follows:

i) The Nature and Gravity of the Breaches

The Panel agrees that the nature and gravity of the breaches of the Code of Ethics are at the most serious end of the spectrum.

Mohseni-Khalesi and her spouse actively participated in a scheme to mislead her client into believing that the Property transaction was not completed, intending not to make the approximately $100,000.00 sale proceeds available to her client. Mohseni-Khalesi continued her dishonest behavior to cover up her conduct by deliberately not contacting her client.

ii) The Role of the Registrant in the Breaches

The Panel has determined that Mohseni-Khalesi's role in relation to the breaches was direct and central. Further, Mohseni-Khalesi's conduct was active and deliberate because she purposefully and knowingly participated in the scheme to sell the Property, misappropriated the proceeds of the sale from her client and then misled her client (and RECO) in an attempt to cover up her wrongdoing.

iii) Whether the Registrant Suffered or Gained, as a Result of the Breaches

This factor weighs heavily against Mohseni-Khalesi. She failed to provide her client with the proceeds of the Property transaction. As a result, she gained financially from her unprofessional conduct because she personally maintained possession of approximately $100,000.00 of her client’s money.

iv) The Impact of the Breaches on the Complainant/Seller

The Panel agrees that due to Mohseni-Khalesi's conduct, her client suffered significant financial harm because her client did not receive the monies that were owed to him.

v) The Need for Specific Deterrence

As a result of the egregious nature of Mohseni-Khalesi's conduct, the Panel will ensure that the penalty is significant and sufficiently meaningful to inhibit/stop Mohseni-Khalesi from recommitting the offence(s) in the future.

Mohseni-Khalesi has taken no responsibility or accountability for her actions and even provided false information to try and avoid such accountability.

The Panel will ensure that the penalty imposed will be more than merely "the cost of doing business."

vi) The Need for General Deterrence

The Panel agrees that the Penalty for such activities must be significant in order to demonstrate the very serious nature of Mohseni-Khalesi's actions and the penalty should also be such that it deters other registrants from engaging in similar acts, because the breach of agreements with clients, and the misappropriation of client money are amongst the most serious, if not the most serious misconduct that can be engaged in by registrants.

vii) The Need to Maintain the Public's Confidence

The Panel agrees that Mohseni-Khalesi's breaches involve fundamental matters of importance that clearly impact the need to maintain the confidence of the public. She failed in the most basic, obvious, and important duties - a registrant must not prey upon, take advantage of, or misappropriate money from their own client.

The penalty ordered here will promote public confidence that when they retain and engage with real estate professionals, they will be treated fairly, conscientiously and in accordance with the rules; and the penalty will illustrate that when a registrant breaches the ethical standards, the self-disciplinary system will appropriately address the breaches.

viii) *The Degree to Which the Breaches are Outside the Range of Acceptable Conduct*

The Panel has assessed that Mohseni-Khalesi's actions falls towards the most serious end of the spectrum of misconduct.

ix) *The Range of Sanction in Similar Cases*

The Panel agrees that Mohseni-Khalesi's conduct is exceptional. The Panel is unaware of any other cases in which a registrant has engaged in such pre-meditated and dishonest behaviour to deceive and harm their client.

The Panel considers that because of the very exceptional and egregious nature of the breaches by Mohseni-Khalesi, the sanction must match the misconduct and the seriousness of the breaches of the Code of Ethics.

The Panel finds that the systematic plan by Mohseni-Khalesi involving misappropriating funds from her client is at the most serious end of the spectrum.

In coming to its conclusions, this Panel considered that beyond the profession, the imposition of the penalty must also maintain the public's confidence in the real estate profession. Integrity is crucial. This Panel wishes to send a strong message to the public that the conduct displayed here fell far below the acceptable standard and will not be tolerated.

The Panel has reached this decision unanimously and has concluded that the penalty imposed is appropriate given the evidence presented at the Hearing and the Panel's findings. The Panel also specifically considered the cases submitted by the Registrar, in particular the Thompson case which weighed heavily in determining the appropriate penalty.

The Panel, therefore, makes the following Order:

The Panel has decided that Mona Mohseni-Khalesi shall pay a fine in the amount of $50,000.00 to RECO, payable within 90 days of this decision being released to the parties.

In addition to the above, Mona Mohseni-Khalesi is ordered to successfully complete, at her own expense, the course "REIC 2600: Ethics and Business Practice", within 180 days of this decision being released to the parties and provide RECO with confirmation of successful completion of this course.

[Released: December 15, 2023]

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*, S.O. 2002, c. 30, Sch. C

BETWEEN:

REAL ESTATE COUNCIL OF ONTARIO

- AND-

MONA MOHSENI-KHALESI

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:	No one
For the Real Estate Council of Ontario:	Shane Smith, counsel
Heard in Toronto on:	May 1, 2023

FINDINGS:	In violation of Sections 3, 4, 5, 24(1), 37, and 38 of the Code of Ethics.
ORDER:	Counsel for the Registrar, *REBBA 2002* to deliver written submissions to the Panel and to the Respondent on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.

The Respondent shall deliver to the Panel and to Counsel for the Registrar, *REBBA 2002* its written submissions on penalty and costs in response to Counsel for the Registrar, *REBBA 2002*'s submissions within 15 days of the date on which Counsel for the Registrar, *REBBA 2002's* submissions on penalty and costs are delivered to the Respondent.

Counsel for the Registrar, *REBBA 2002* shall deliver to the Panel and to the Respondent its reply to the written submission on penalty and costs of the Respondent within 5 days of the date on which the Respondent's submissions on penalty and costs are delivered to Counsel for the Registrar, *REBBA 2002*.

Any inquiries relating to the delivery of the above-mentioned documents should be directed to the Hearings Coordinator.

COSTS AND EXPENSES: If appropriate, submissions to be made on costs and expenses with submissions on penalty.

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This Hearing took place on May 1, 2023, by video conference. Mona Mohseni-Khalesi (the "Respondent" and/or "Mohseni-Khalesi") was not present, hence it was a Hearing in Absentia. Shane Smith, counsel for the Real Estate Council of Ontario was present. The Panel was comprised of Mary Popat, Silvio Azzinnari and Devon Saunders. Nicolette Holovaci was present as Independent Legal Counsel to the Discipline Panel.

ALLEGATIONS BY THE REGISTRAR, REBBA 2002

In its Allegation Statement, the Registrar, *REBBA 2002* alleged that Mona Mohseni-Khalesi acted unprofessionally when:

A. In the sale of 1-A Street, City A ("the Property"), Mohseni-Khalesi did not communicate or consult with Individual A ("Complainant A"), a person whom she knew to be an owner of the Property, and/or otherwise take steps to ensure his knowledge and agreement to the sale of the Property contrary to sections 3, 4, 5, 24(1), 37, and 38 of the Code of Ethics.

B. Mohseni-Khalesi participated in a scheme to sell the Property without the knowledge and/or consent of a person known to be an owner of the Property, contrary to sections 3, 4, 5, 37, and 38 of the Code of Ethics.

C. Mohseni-Khalesi misled and made false statements to a person who was an owner of the Property, contrary to sections 3, 4, 5, 37, and 38 of the Code of Ethics.

D. Mohseni-Khalesi made false and misleading statements to RECO about the sale of the Property, contrary to sections 37 and 38 of the Code of Ethics.

E. As a result of the actions set out in paragraphs A to D, Mohseni-Khalesi engaged in disgraceful, dishonourable, unprofessional and/or unbecoming conduct, contrary to section 39 of the Code of Ethics.

It is alleged that Mohseni-Khalesi failed to comply with the following sections of the Code of Ethics:

Fairness, honesty, etc.

3. A registrant shall treat every person the registrant deals with in the course of a trade in real estate fairly, honestly and with integrity.

Best interests

4. A registrant shall promote and protect the best interests of the registrant's client.

Conscientious and competent service, etc.

5. A registrant shall provide conscientious service to the registrant's clients and customers and shall demonstrate reasonable knowledge, skill, judgment and competence in providing those services.

Conveying offers

24. (1) A registrant shall convey any written offer received by the registrant to the registrant's client at the earliest practicable opportunity.

Inaccurate representations

37. (1) A registrant shall not knowingly make an inaccurate representation in respect of a trade in real estate.

(2) A registrant shall not knowingly make an inaccurate representation about services provided by the registrant.

Error, misrepresentation, fraud, etc.

38. A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in real estate.

EVIDENCE OF THE PARTIES - EXHIBITS

1. Notice of Hearing
2. Allegation Statement
3. Scheduling and Notice Communication
4. RECO Book of Documents

The Discipline Hearing scheduled to start at 10:00 a.m. was delayed because the Respondent was not present.

A 15-minute grace period was given by the Discipline Panel to give the Respondent the benefit of the doubt of a late arrival.

With no contact made by the Respondent at 10:15 a.m., the Discipline Panel noted that there was a Direction made on December 13, 2022, which directed that the

Discipline Hearing was to proceed on May 1, 2023, on a peremptory basis.

The Discipline Panel received confirmation that the Respondent was in receipt of the Notice of Hearing and had communicated that she may not be in attendance. (Exhibit 3, page 9).
With the foregoing, no motion for an adjournment was made.

The Prosecution advised the Discipline Panel that it was ready to proceed and as a result, the Hearing in Absentia commenced, pursuant to S. 7 of the *Statutory Powers Procedure Act,* R.S.O. 1990, CHAPTER S.22

OPENING STATEMENT – REGISTRAR

The Prosecution submitted that the Respondent acted for her husband and for the Complainant in the purchase of the Property; she was aware that Complainant A was a 50% owner of the Property; she facilitated and was aware of the Trust Agreement that confirmed Complainant A's 50% ownership and provided that no sale of the Property could be done without the written consent of the Complainant A; she facilitated the sale of the Property without advising or obtaining the consent of Complainant A; she misled Complainant A as to the status of the listing of the Property and failed to communicate and consult with him about the listing; and she misled RECO in her response to the Complaint. The Prosecution submitted that the Respondent thus violated sections 3, 4, 5, 24(1), 37, 38, and 39 of the Code of Ethics.

WITNESSES FOR THE REGISTRAR, REBBA 2002

Witness Number 1 – Complainant A

Complainant A is a 12-year vehicle sales professional at Company A.

Complainant A filed a Complaint with RECO as he was unable to get any response from Mohseni-Khalesi after discovering that the Property, which he had 50% interest in, had in fact been sold.

Mohseni-Khalesi and her spouse had approached Complainant A regarding an investment property at 1-A Street, City A - the Property. An Agreement of Purchase and Sale ("APS") with Complainant A and the spouse of Mohseni-Khalesi (Individual A), as purchasers, was entered into on October 18, 2018 (Exhibit 4, page 38). Mohseni-Khalesi represented Complainant A and her spouse in the transaction. The understanding was that this purchase was to be an investment property, with both purchasers having a 50% interest in the Property.

At a later date, Complainant A was told by Mohseni-Khalesi and her spouse that Complainant A's name had to be removed as purchaser, in order to secure mortgage financing. An Amendment to the APS was done (Exhibit 4, page 310), to which Complainant A agreed, based on the fact that Mohseni-Khalesi and her spouse told him that a Trust Agreement and Power of Attorney would be put in place to protect Complainant A's 50% ownership in the Property.

Complainant A stated he agreed to the Amendment without knowing the full repercussions of it. He said that the scope and circumstances were not fully explained to him.

The mortgage was secured, and the transaction closed with Complainant A and the spouse of Mohseni-Khalesi contributing equally to the closing costs. A Trust Agreement and Power of Attorney (Exhibit 4, pages 256-258) were prepared by a lawyer recommended by Mohseni-Khalesi and her spouse. The terms of the documents included that both Complainant A and the spouse of Mohseni-Khalesi each had a 50% beneficial interest in the Property with equal responsibilities, and any sale/disposal of the Property would require written permission from Complainant A.

The Property was advertised for lease by Complainant A and he found tenants, but Mohseni-Khalesi gave him excuses why not to rent to the prospective tenant(s).

Mohseni-Khalesi and her spouse then proposed that they would move into the Property, during the renovations. Rental terms were agreed upon and Mohseni-Khalesi moved

into the Property. When Complainant A suggested that there be a written lease agreement Mohseni-Khalesi declined to provide one.

Complainant A and the spouse of Mohseni-Khalesi contributed equally to the cost of the renovation as well as to the mortgage, property tax and other property costs. In his testimony, Complainant A pointed to various receipts and photographs relating to the renovations to the Property and his payment of expenses. (Exhibit 4)
In November 2017, the Property was listed for sale by Mohseni-Khalesi, after discussions regarding the listing had taken place with Mohseni-Khalesi, Complainant A, and her spouse. The Property was listed multiple times, with no offers. Complainant A enquired multiple times for updates on the Property regarding any interested buyer(s), and Mohseni-Khalesi stated there was no interest. Complainant A testified that his enquiries were met with negative responses, Mohseni-Khalesi failed to provide any information and he was led to believe that no one was interested in the property.

After Complainant A tried to contact Mohseni-Khalesi on several occasions via phone, text and through her Brokerage office with no response and also failing to make contact with his business partner, the spouse of Mohseni-Khalesi without success, Complainant A took it upon himself to go to the Land Registry office to look up the status of the Property.

Based on his enquiries, Complainant A found that the Property had in fact, already sold. He identified the Agreement of Purchase and Sale pursuant to which the Property was sold. (Exhibit 4, page 166). Complainant A did not give signed consent for the Property to be sold and neither Mohseni-Khalesi nor her spouse told Complainant A that the Property was sold.

Complainant A testified that he believes he is owed more than $100,000.00 regarding the Property and he stated that litigation was ongoing.

<u>Witness Number 2 – Investigator A</u>

Investigator A was the Manager of Investigations at the Real Estate Council of Ontario

(RECO) where he has been employed for 6 years. At the material time, Investigator A was an Investigator at RECO and had carriage of this Complaint file. Prior to being employed by RECO, Investigator A worked for 5 years at the Ministry of the Attorney General and with City A – Police Services for 28 years.

Investigator A's role was to obtain all available information pertaining to the Complaint. He spoke with the Complainant.

Investigator A stated it was difficult to schedule a time to meet with Mohseni-Khalesi. Ultimately, due to that difficulty he requested that Mohseni-Khalesi provide a written response to the Complaint.

Her written response was sent to him via email in May 2021 and he identified that document. (Exhibit 4, page 356).

Investigator A prepared a detailed synopsis of the facts he uncovered which he submitted to his Manager.

Investigator A said that all the documentary evidence which he obtained is included in Exhibit 4 and was submitted with his case synopsis.

WITNESSES FOR THE RESPONDENT

No witness appeared for the Respondent and the Respondent was also not present.

SUBMISSIONS FOR THE REGISTRAR, REBBA 2002

The Registrar submitted that the evidence was very clear. Mohseni-Khalesi represented both Complainant A (Complainant) and Mohseni-Khalesi's spouse in the purchase of the Property.

Mohseni-Khalesi's involvement continued when she made an Amendment to the Agreement of Purchase and Sale removing Complainant A as purchaser due to apparent mortgage approval issues.

The Respondent advised Complainant A that he would be protected by a Trust Agreement that would be in place stating that Mohensi-Khalesi's spouse and Complainant A would each own 50% of the property. A Lawyer was recommended by the Respondent and her spouse, and that lawyer prepared a Trust Agreement and Power of Attorney which were signed by both Complainant A and Mohseni-Khalesi's husband. It confirmed that Complainant A had a 50% beneficial interest in the Property and further that the Property could not be sold without Complainant A's written consent. Mohensi-Khalesi was aware of the Trust Agreement.

It later came about that Mohensi-Khalesi and her spouse would become tenants of the property while renovations were being completed. An agreed amount of monthly rent plus utilities was established though Mohseni-Khalesi refused to sign a lease.

The Prosecution submitted pictures of the Respondent being present at the Property while renovations were being done (Exhibit 4), which established that she knew what renovations were being done. Complainant A contributed to the Property expenses including the mortgage as well as the renovation expenses (Exhibit 4).

During May 2018, the Property was listed and sold by Mohensi-Khalesi. She continued to falsely state to Complainant A that she was unaware of any interest in the Property, and she did not advise him of the sale of the Property.

Complainant A did his own due diligence by going to the Land Registry Office and found out that the Property had been sold.

Complainant A tries to locate Mohensi-Khalesi and was unsuccessful.

The Prosecution stated that Mohensi-Khalesi's written response to RECO included many false statements. Contrary to what she told RECO, she was fully aware of the renovations that were completed at the Property (as per pictures provided). Her written response also stated she kept Complainant A in the loop during the process of the sale of the Property and gave him a copy of the Agreement of Purchase and Sale but this

was proven false and no paperwork was given to Complainant A regarding the sale of the Property.

The Prosecution submitted that the evidence presented proved the allegations set out in the Allegation Statement on a balance of probabilities and that Mohseni-Khalesi violated sections 3, 4, 5, 24(1), 37, 38, and 39 of the Code of Ethics.

SUBMISSIONS FOR THE RESPONDENT

No submissions from Respondent.

CODE OF ETHICS

The Registrant is governed by the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c.30, Schedule C ("*REBBA 2002*").

This Discipline Committee is established to hear and determine these issues, in accordance with the prescribed Regulations. The Discipline Committee must determine if the Registrant has failed to comply with the Code of Ethics established by the Minister in accordance with Section 21 of the *REBBA 2002*.

Section 50 of the *REBBA 2002* provides that the Minister may make Regulations establishing a Code of Ethics for the purposes of subsection 21(1).

Ontario Regulation 580/05 is the Code of Ethics pursuant to the *REBBA 2002* and is the Code of Ethics that governs these proceedings.

FINDINGS BY THE PANEL

Having carefully considered the testimony of the witnesses at the Hearing, and the documentary evidence, the Panel has arrived at the following conclusions:

The Panel finds that the 50% ownership by Complainant A in the Property is not in dispute. While Complainant A's name is not on title because of the systematic plan by Mohseni-Khalesi, Complainant A's personal interest and financial contribution towards the acquisition and renovation of the Property, backed by the Trust Agreement and Power of Attorney supports this conclusion.

1. Mohseni-Khalesi represented both Complainant A and her spouse in the purchase of the Property. As the Buyers' representative, she was aware of all the amendments

to the Agreement of Purchase and Sale (APS), including removing Complainant A as a buyer and leaving only her spouse. Further, Mohseni-Khalesi was instrumental in the creation of the Trust Agreement which should have protected Complainant A's 50% interest in the Property, to the extent that no legitimate transaction regarding the Property should have occurred without the consent and/or involvement of Complainant A.

Mohseni-Khalesi represented her spouse and Complainant A in the sale of the Property and it is abundantly clear from the evidence that neither Mohseni-Khalesi nor her spouse either communicated or consulted with Complainant A, knowing of Complainant A's 50% interest in the Property. Mohseni-Khalesi failed to inform Complainant A regarding the status of the Listing and Offers to purchase the Property. She misled Complainant A to believe that there was no interest in the Property and no offer was received. Furthermore, she did not obtain written consent from Complainant A, to sell the Property.

In respect of Allegation (A), the Panel has finds that:

i. Mohseni-Khalesi did not treat Complainant A fairly, honestly and with integrity.
ii. On the basis of Complainant A's 50% interest in the Property, Complainant A was Mohseni-Khalesi's client and by virtue of her action, she did not promote and protect the best interest of Complainant A.
iii. The services Mohseni-Khalesi provided to Complainant A were less than conscientious and she did not demonstrate reasonable knowledge, skill, judgment and competence in providing those services.
iv. Mohseni-Khalesi did not convey any written offer that she received to Complainant A. She should have done so, at the earliest practicable opportunity.
v. Mohseni-Khalesi knowingly made inaccurate representations to Complainant A regarding the Listing and the Offers.
vi. Mohseni-Khalesi did not make any effort to prevent error, misrepresentation, fraud or any unethical practice in respect of Complainant A and the sale of the Property.

While Mohseni-Khalesi was not present to give evidence, on the basis of the evidence presented, the Panel finds on a balance of probabilities, that Mohseni-Khalesi has contravened Sections 3, 4, 5, 24(1), 37, and 38 of the Code of Ethics.

2. Mohseni-Khalesi, along with her spouse introduced the idea of a partnership with Complainant A to acquire real estate investment properties and in turn, introduced the Property to Complainant A.

After enticing Complainant A and assuming the responsibility of representing Complainant A and her spouse in the transaction, Mohseni-Khalesi prepared the Offer / APS inclusive of Complainant A and her spouse as the Buyers.

After the acceptance of the Offer, Mohseni-Khalesi and her spouse informed Complainant A that Complainant A's name had to be removed from the transaction for the mortgage financing application to be successful.

Mohseni-Khalesi orchestrated the Amendment to the APS to which Complainant A agreed, without knowing the full repercussions of it. Mohseni-Khalesi did not fully explain the scope and circumstances of the Amendment but Complainant A based his agreement on the assurance from Mohseni-Khalesi and her spouse that the Trust Agreement and Power of Attorney would be put in place to protect his 50% ownership in the Property.
Complainant A contributed 50% towards the purchase of the Property.

After the close of the purchase, the Property was advertised for lease and Complainant A found tenants, but Mohseni-Khalesi gave Complainant A excuses why the Property should not be rented to the prospective tenant(s).

Complainant A and the spouse of Mohseni-Khalesi then agreed to renovate the Property with each contributing 50% to the renovation cost.

Mohseni-Khalesi and her spouse convinced Complainant A that they would move

into the Property while it was being renovated and they moved in.

After the renovation was completed, the Property was advertised for sale. When Complainant A enquired about the status of the sale of the Property, Mohseni-Khalesi misled Complainant A to believe that no one was interested in the Property.

Eventually, Mohseni-Khalesi and her spouse cut off all communication with Complainant A.

Complainant A made independent enquiries and found out that the Property was sold without his written consent.

In respect of Allegation (B), the Panel has finds that:

i. Mohseni-Khalesi did not treat Complainant A fairly, honestly and with integrity.
ii. On the basis of Complainant A's 50% interest in the property, Complainant A was Mohseni-Khalesi's client and by virtue of her action, she did not promote and protect the best interest of Complainant A.
iii. The services Mohseni-Khalesi provided to Complainant A was less than conscientious and she did not demonstrate reasonable knowledge, skill, judgment and competence in providing those services.
iv. Mohseni-Khalesi knowingly made inaccurate representations to Complainant A regarding the Listing and the Offers.
v. Mohseni-Khalesi did not make any effort to prevent error, misrepresentation, fraud or any unethical practice in respect of Complainant A and the sale of the Property.

With the foregoing, the Panel finds that Mohseni-Khalesi participated in a systematic plan to sell the Property without the knowledge and/or consent of Complainant A, with full knowledge of Complainant A's 50% ownership of the Property. The Panel has concluded that, on a balance of probabilities, Mohseni-Khalesi contravened Sections 3, 4, 5, 37, and 38 of the Code of Ethics.

3. The evidence before the Panel clearly demonstrates that Mohseni-Khalesi hid the true status of the interest of prospective buyers and any and all offers to purchase the Property. Mohseni-Khalesi was not forthcoming when Complainant A requested status updates regarding the sale of the Property. His enquiries were met with negative responses.

While the Panel did not hear any evidence from Mohseni-Khalesi, on the basis of the evidence that was presented at the Hearing, the Panel finds that the Property was sold without Complainant A's knowledge and written consent, and Mohseni-Khalesi misled and made false statements to Complainant A, who was an owner of the Property.

In respect of Allegation (C), the Panel has finds that:

i. Mohseni-Khalesi did not treat Complainant A fairly, honestly and with integrity.
ii. On the basis of Complainant A's 50% interest in the property, Complainant A was Mohseni-Khalesi's client and by virtue of her action, she did not promote and protect the best interest of Complainant A.
iii. The services Mohseni-Khalesi provided to Complainant A was less than conscientious and she did not demonstrate reasonable knowledge, skill, judgment and competence in providing those services.
iv. Mohseni-Khalesi knowingly made inaccurate representations to Complainant A regarding the Listing and the Offers.
v. Mohseni-Khalesi did not make any effort to prevent error, misrepresentation, fraud or any unethical practice in respect of Complainant A and the sale of the Property.

The Panel has concluded that, on a balance of probabilities, Mohseni-Khalesi contravened Sections 3, 4, 5, 37, and 38 of the Code of Ethics.

4. Mohseni-Khalesi was not forthcoming, in her written response to RECO, regarding the Complaint. She falsified her response regarding the following:

i. Her knowledge of the renovations that were completed at the Property. The evidence shows that Mohseni-Khalesi had full knowledge of the renovations.
ii. Providing Complainant A with correct information during the process of the sale of the Property. It was proven that Mohseni-Khalesi did not provide Complainant A with correct information.
iii. Providing paperwork to Complainant A regarding the sale of the Property. The evidence established that Mohseni-Khalesi not give Complainant A a copy of the Agreement of Purchase and Sale.

In respect of Allegation (D), the Panel has finds that:

i. Mohseni-Khalesi knowingly made inaccurate representations to RECO.
ii. Mohseni-Khalesi did not make any effort to prevent error, misrepresentation, fraud or any unethical practice in respect of Complainant A and the sale of the Property.

The evidence is clear that Mohseni-Khalesi made false and misleading statements to RECO about the sale of the Property, in her response to the Complaint.

The Panel finds that on a balance of probabilities, Mohseni-Khalesi acted contrary to sections 37 and 38 of the Code of Ethics.

As a result of the above actions and the resultant findings by the Panel that Mohseni-Khalesi has contravened Sections 3, 4, 5, 24(1), 37, and 38 of the Code of Ethics, the Panel ultimately concludes that cumulatively, on a balance of probabilities, Mohseni-Khalesi engaged in disgraceful, dishonorable, unprofessional and unbecoming conduct in her role regarding the Property, contrary to section 39 of the Code of Ethics.

SUBMISSIONS REGARDING PENALTY

Counsel for the Registrar, REBBA 2002 shall deliver written Submissions to the Panel and to the Respondent on the issue of penalty and costs within fifteen (15) days of the date on which the Panel's Decision and Reasons are delivered.

The Respondent shall then deliver to the Panel and to Counsel for the Registrar, REBBA 2002 her written Submissions on penalty and costs in response to Counsel for the Registrar, REBBA 2002's Submissions within fifteen (15) days of the date on which Counsel for the Registrar, REBBA 2002's Submissions on penalty and costs are delivered to the Respondent.

Counsel for the Registrar, REBBA 2002 shall deliver to the Panel and to the Respondent its reply to the written Submission on penalty and costs of the Respondent with five (5) days of the date on which the Respondent's Submissions on penalty and costs are deliver to Counsel for the Registrar REBBA 2002.

Any inquiries relating to the delivery of the above-mentioned documents should be directed to the Manager, Discipline and Appeals Hearings.

[Released: June 19, 2023]