
**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 -

NASMA ALI

DISCIPLINE DECISION AND REASONS FOR DECISION

Subject to Rule 4.02 of the Discipline and Appeals Committee Rules of Practice (*REBBA 2002*), I, the Chair of the Discipline Committee (*REBBA 2002*) have reviewed and considered the Agreed Statement of Facts and Penalty together with the Waiver of Hearing submitted by the Parties to this proceeding and provide the following Order:

FINDINGS: In violation of Sections 3, 4, 5, 37(1) and 38 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$ 24,000.00 payable to RECO not later than 250 days after the Decision of the Discipline Committee on this matter.

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This matter proceeded on the basis of an Agreed Statement of Facts and Penalty and Waiver of Hearing, pursuant to Rule 4.02 of the Rules of Practice (*REBBA 2002*).

The Agreed Statement of Facts and Penalty read:

AGREED STATEMENT OF FACTS AND PENALTY

It is agreed as follows:

1. Nasma Ali ("**Ali**"), who is registered as a salesperson under the *Real Estate and Business Brokers Act, 2002* ("**Act**").

2. At all relevant times, Ali was employed at Brokerage A as a salesperson.
3. Complainant A ("**Complainant**") is Ali's brother and was, at all relevant times, represented by Ali for the purchase of a new construction condominium unit.
4. On or about September 13, 2019, Ali submitted numerous worksheets to Business A, operating as Builder A (the "**Builder**").
5. On or about September 14, 2019, the Builder offered Ali two of the eventual three allocations of units of a pre-construction condominium complex located at 1-A Street, City A. The unit relevant to this matter is #1111 (the "**Property**").
6. In or around September 2019, Ali approached the Complainant regarding purchasing the Property. Ali advised the Complainant that purchasing the Property would be an investment opportunity and that they would be able to assign the Property to another buyer before the completion of the sale.
7. The Complainant and his wife had recently moved to Ontario from Country A and had not had stable income for approximately one year at the time they were discussing the Property with Ali. Ali told the Complainant that she would be able to assist in acquiring all mortgage documentation required by the Builder.
8. On or about September 14, 2019, the Complainant and his wife attended the Builder's sales office for the Property and executed an Agreement of Purchase and Sale (the "**APS**") for the Property with a purchase price of \$701,400.00. The Complainant provided the Builder with a \$5,000.00 deposit with the offer, as well as a cheque for \$30,070.00 payable in 30 days. The Complainant also advanced 3 post-dated cheques for \$35,070.00 each, for the remaining of the total 20% deposit required.
9. On or about September 14, 2019, Ali's administrative assistant submitted the OREA Individual Information Record (the "**OREA Identification Record**") on behalf of the Complainant and his wife. Ali is listed as their realtor for the Property.
10. The OREA Identification Record represented that the Complainant was employed as a mortgage agent and that his wife was a fashion designer.

11. A second set of OREA Identification Records was also completed for the Complainant and his wife that listed the Complainant as a mortgage agent at a company called Mortgage A and that his wife was the owner of a company called Business B. The second set of OREA Identification Records was submitted to Brokerage A for their internal record keeping.
12. The Builder required a mortgage pre-approval letter.
13. On or about September 16, 2019, Ali arranged contact between the Complainant and Mortgage Agent A ("**Agent A**") for a mortgage pre-approval letter. Agent A advised Ali that as the Builder of the Property would only accept bank pre-approvals, a letter from him would not be sufficient and suggested the Complainant contact a particular employee at Bank A to request a pre-approval letter for the Complainant.
14. On or about September 18, 2019, Agent A advised the Complainant how to request a pre-approval letter from Bank A employee and stressed to the Complainant not to mention Agent A. Agent A provided the contact information for Mortgage Advisor A ("Mortgage Advisor A"), a Mobile Mortgage Advisor from Bank A to the Complainant. Ali was copied on all correspondence between Agent A and the Complainant.
15. On or about September 23, 2019, the Complainant sent copies of the APS, the purchase price, and deposit for the Property to Mortgage Advisor A. The Complainant also advised Mortgage Advisor A that their family income was \$218,395.00. No supporting documents for the family income were sent by the Complainant to Mortgage Advisor A.
16. On or about September 24, 2019, Mortgage Advisor A sent the Complainant a Bank A Mortgage Affordability Estimate (the "**Estimate Letter**"). The Estimate Letter stated that with their \$140,280.00 deposit and a price range of \$701,400.00, the Complainant could be eligible for a mortgage of \$561,120.00, with a term of 5 years fixed closed at 5.19% interest and a 30-year amortization. The Estimate Letter stated that it "is not a mortgage approval, rate hold or interest rate guarantee".

17. On or about October 9, 2019, after the “cooling off period” had passed, the Builder notified the Complainant that they had rejected the Estimate Letter and required a Pre-Qualification Certificate. The Complainant advised Ali that they didn’t think things were going to work out and asked if one of Ali’s clients or Ali herself could take the Property. Ali told the Complainant that they would try again with a different lender.
18. Ali subsequently reached out to Lawyer A, a real estate lawyer that she knew, to ask for a referral to a mortgage agent. Lawyer A recommended Individual A, a mortgage agent and chartered accountant.
19. On or about October 10, 2019, Ali’s administrative assistant, at Ali’s direction, sent an email to Individual A and Individual A’s assistant Individual B. Ali’s assistant copied Ali on this email. Attached to this email was the Complainant’s APS for the Property and a blank Bank B Mortgage Pre-Qualification Certificate, which the Complainant had received from the Builder.
20. At all relevant times, both Individual A and Individual B were employed at Business C.
21. On or about October 11, 2019, at 12:54 p.m., Ali emailed Individual A and Individual B, requesting for either of them to call her. Shortly thereafter Ali and Individual A spoke on the phone.
22. On or about October 11, 2019, at 1:44 p.m., Individual B sent a Bank B Pre-Qualification Certificate (“**Bank B Pre-Qualification**”) to Ali. The Bank B Pre-Qualification stated that it approved a mortgage for the Complainant in the amount \$561,120.00, at the interest rate of 5.19 percent, interest rate expiry of October 10, 2022, term of five years, and a 30-year amortization.
23. On or about October 11, 2019, Ali, instructed Ali’s administrative assistant to send the Bank B Pre-Qualification to the Builder, without consulting or involving the Complainant.

24. On or about October 13, 2019, the \$30,070.00 down payment cheque was deposited by the Builder, the amount being withdrawn from the Complainant's account.
25. On or around November 20, 2019, the Complainant advised Ali that they could not afford the next portion of the down payment and wanted to back out of the purchase of the Property.
26. On or about November 21, 2019, Ali suggested the Complainant contact the Builder directly and advised that the Complainants may have to agree to a penalty fee to get the Builder to agree to terminate the APS.
27. On or about December 16, 2019, the Complainant executed a Termination Agreement with the Builder which included an agreement for the Complainant to pay a \$1,500.00 penalty for terminating the APS.
28. In or around January 2020, the Complainant received the down payment back with \$1,500.00 deducted as penalty for terminating the APS as per the terms of the Termination Agreement.
29. The Bank B Pre-Qualification indicates it was created by Individual D ("**Individual D**"), a Manager of Mobile Mortgage Services at Bank B. It was subsequently determined that Individual D neither created the Bank B Pre-Qualification, nor did he have any knowledge or contact with the Complainant or Ali.

SUMMARY OF AGREEMENTS

It is agreed that Ali failed to comply with the Code of Ethics as follows:

- A. As a buyer representative, by advising their buyer client to purchase a property beyond what they could afford, and misrepresenting to their buyer client that they would be able to assign it prior to closing, contrary to section 4, 5, and 37(1) of the Code of Ethics.

B. As a buyer representative, by not performing adequate due diligence to ensure that incorrect and/or erroneous information was not provided to the Builder, the brokerage, mortgage agents, and bank representatives, contrary to sections 3, 5, 37(1), and 38(with respect to error and misrepresentation only) of the Code of Ethics.

It is agreed that Ali 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.

Inaccurate representations

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

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.

AGREED PENALTY

The Respondent understands and agrees to the following penalty:

To pay a fine of **\$24,000.00 not later than 250 days after the Decision of the Discipline Committee on this matter.**

Respondent acknowledgements:

1. I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions.
2. I acknowledge my right to seek legal counsel in this matter before signing this agreement.
3. I agree, understand, acknowledge and consent to waiving my right to a hearing before the Discipline Committee.

Waiver of hearing before the Discipline Committee:

4. The parties consent to disposing of the matter without a hearing before the Discipline Committee and agree to the terms set out herein.
5. The parties request an Order from the Chair of the Discipline Committee that includes this Agreement of Facts and Penalty as a final settlement of this matter.

By signature below the Parties agree, acknowledge, understand and consent to the final settlement of this matter by way of this Agreed Statement of Facts and Penalty.

[The Agreed Statement was duly signed by the Parties.]

DECISION OF THE CHAIR

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 3, 4, 5, 37(1) and 38 of the *REBBA 2002* Code of Ethics. The Chair of the Discipline Committee (*REBBA 2002*) is also in agreement with the joint submission of the Parties as to penalty and accordingly makes the following order:

1. NASMA ALI is Ordered a Fine of \$24,000.00 payable to RECO, not later than 250 days after the Decision of the Discipline Committee on this matter.

[Released: June 5, 2024]