



Real Estate
Council of Ontario

**IN THE MATTER OF AN APPEALS HEARING HELD PURSUANT TO THE
*REAL ESTATE AND BUSINESS BROKERS ACT, 2002***

BETWEEN:

REAL ESTATE COUNCIL OF ONTARIO

- and -

SHUXIN LIU (Registered as ANTONE LIU)

APPEALS DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant: Self-represented

For the Real Estate Council of Ontario: Chantel Marler, paralegal

Heard in Toronto: March 7, 2025

FINDINGS: The Appeal is dismissed

ORDER: The Discipline Committee decision, dated June 16, 2023, is upheld. Further, the Discipline Committee decision on penalty, dated October 19, 2023, is upheld but amended concerning the payment date of the monetary penalty and the date by which the Appellant must successfully complete educational courses.

An Order shall be issued affirming the Order of the Discipline Committee with respect to its monetary penalty, dated October 19, 2023, that is, imposing a fine of \$20,000.00 payable to RECO within 180 days of RECO sending him this decision.

An Order shall be issued affirming the Order of the Discipline Committee, dated October 19, 2023, with respect to the requirement that the Registrant must successfully complete the RECO continuing education course - Compliance and Ethics in Real Estate, parts one and two, within 180 days of RECO sending him this decision.

However, if, owing to the unavailability or limited availability of the above-mentioned courses, the Appellant is prevented from complying with the Appeal Panel's Order, the Appellant may apply to the Panel in a timely manner, while providing an

explanation of the circumstances, to request an extension of time to successfully complete the courses.

COSTS AND EXPENSES: The Registrar shall have seven (7) days from the date of the release of this decision to advise the Manager, Discipline & Appeals Hearings at RECO (the “**Manager**”) and the Registrant, whether the Registrar is seeking costs as a result of this proceeding.

If costs are being sought, the parties shall have fourteen (14) days from the release of this decision to attempt to reach agreement on the issue of costs and, if so, the Registrar shall advise the Manager of any agreement on costs.

If the parties are unable to agree on costs, the Registrar shall, within twenty-eight (28) days from the date of the release of this decision, serve on the Appellant and file with the Manager, written submissions relating to its purported entitlement to costs for the appeal as well as the quantum of requested costs. Such submissions shall not be greater than three pages in length, and shall include, on one additional page, the quantum of costs sought and the breakdown of the work comprising the quantum so sought.

The Appellant shall, in turn, have twenty-one (21) days from the date of service on the Appellant of the Registrar’s submissions on costs to serve responding submissions on the Registrar and to file such submissions with the Manager. The Appellant’s submissions shall not be greater than three pages in length but may include, if the Appellant so wishes, one additional page setting out the different (i.e. reduced) quantum, if any, that the Appellant submits should be awarded to the Registrar for the costs of this appeal.

WRITTEN REASONS:

Reasons for Decision

Background

1. This is an appeal to a Panel of the Appeals Committee (the “**Appeal Panel**” or this/the “**Panel**”) from two decisions of the Discipline Committee (the “**Discipline Panel**”) pursuant to the *Real Estate and Business Brokers Act, 2002* (“**REBBA**”).
2. The first decision of the Discipline Panel was released on June 16, 2023 (the “**Merits Decision**”). The Discipline Panel found that the Appellant, Shuxin Liu (registered as

Antone Liu) (the “**Appellant**” or “**Liu**”), had breached Sections 3, 35, and 39 of the Code of Ethics under *REBBA* (the “**Code**”).

3. The second decision of the Discipline Panel was released on October 19, 2023, and related to the penalty and costs (the “**Penalty Decision**”) to be imposed against the Appellant following the finding of breaches of the Code as aforementioned. The Discipline Panel ordered the Appellant to pay a fine of \$20,000 and to complete the RECO mandatory continuing education course - Compliance and Ethics in Real Estate, Parts One and Two.
4. The original hearings were held before the Discipline Panel on March 20 and 21, 2023 (merits) and August 28, 2023 (penalty) (together, the “**Discipline Hearing**”).
5. The Discipline Hearing was initiated by an Allegation Statement, dated June 16, 2022, issued to the Appellant by the Registrar pursuant to *REBBA* (the “**Registrar**”), which Statement was marked as an Exhibit at the Discipline Hearing. The Allegation Statement was amended on December 20, 2022, but owing to an objection from the Appellant at the merits hearing, the Discipline Panel proceeded using the original June 16, 2022 Allegation Statement (which the Discipline Panel permitted to be amended simply to correct a clerical error in the spelling of the Appellant’s name). The Registrar filed a book of documents at the Discipline Hearing, and the self-represented Appellant filed a “list of evidence” document which consisted of six emails.
6. The particulars in the Allegation Statement can be summarized as follows:
 - a. the Appellant is a member of the Real Estate Counsel of Ontario (“**RECO**”) and was a registered salesperson under *REBBA* at all material times;
 - b. in May 2014, Buyer A (the “**Client**”) retained the services of Liu in order to purchase a residential condo unit in a building located at 1-A Street, City A, Ontario (the “**Property**”);
 - c. as part of the transaction to purchase the Property, Liu promised to give the Client 50% of the commission to be received by Liu from the vendor of the Property and

Liu issued the Client a promissory note and/or commission rebate agreement (the “**Commission Agreement**”) memorializing same; and

- d. once the Property closed, Liu failed to pay the Client any of the commission that he received from the sale of the Property. Liu claimed that the Client was to have signed a buyer representation agreement (which the Client did not do) in order to obtain the commission rebate, but the Client disagreed that this had been a requirement.
7. The Discipline Hearing proceeded with the Client and Liu testifying.
 8. Following submissions by both parties, the Discipline Panel issued the Merits Decision. After a further hearing, the Discipline Panel issued the Penalty Decision.
 9. In short, the Discipline Panel found that Liu had breached the Commission Agreement, which had resulted in Liu dealing unfairly with the Client. Further, Liu had not been financially responsible in conducting business with the Client, such that, on the whole, his conduct had been unprofessional and unbecoming of a registrant. The Discipline Panel declined to find that Liu had attempted to mislead RECO or the Client as to the status of the commissions that were payable or that Liu had initially induced the Client into making an offer for the Property in exchange for a rebate of 50% of the commission.
 10. Liu filed a Notice of Appeal on November 12, 2023 and, after the Appeal Panel granted him an extension to perfect his Appeal, a Factum in support of his Appeal was delivered on November 24, 2024. Mr. Liu remained self-represented in these proceedings for the Appeal proceedings.

Preliminary Matters

11. The Panel had to address two preliminary matters before considering and determining the merits of the Appeal. The first issue related to the Notice of Appeal and the issues to be determined on the Appeal. The second issue related to the standard of review to be applied by this Panel in reviewing the decisions of the Discipline Panel.

A. Issues on the Appeal

12. The Notice of Appeal set out three broad grounds of appeal from the Merits Decision, followed by seven sub-issues articulated under those grounds.
13. In his Factum, the Appellant altered his submissions for the appeal (by abandoning some of the issues in the Notice of Appeal, amending some, and adding new ones), stating as follows:¹
 - a. [the Discipline Panel] erred in ignoring [the Client's] inconsistencies and conflicts and lack of credibility in the hearing testimony and ignoring [the Client's] bad faith and malicious and blackmailing intention;
 - b. [the Discipline Panel erred in the Discipline Hearing] – treating the Appellant unequally, with bias, [and] double standards, [in order] to favour [the Registrar];
 - c. [the Discipline Panel] failed to consider that the matter [before it was] a contract dispute [and] not a matter of professional ethics; and
 - d. [the Discipline Panel improperly failed to find that the Commission Agreement was] invalid/unenforceable.
14. The Registrar, in turn, responded to these issues in its factum and in oral submissions during the Appeal Hearing.
15. Accordingly, this Panel has proceeded on the basis that any other issues raised in the Notice of Appeal that were not addressed in subsequent written or oral submissions have been abandoned by the Appellant and, as such, they need not be considered by this Panel for the purposes of its decision. Thus, nothing further will be said concerning the appeal grounds apart from the grounds that were the focus of the Appeal Hearing.

B. Standard of Review on this Appeal

16. As the Registrar correctly pointed out in its factum, the standard of review on an appeal to the Appeal Panel is that of reasonableness. This standard has long been applied by the

¹ Factum of the Appellant at paragraph 1.

Appeals Committee² and it was not materially altered by the Supreme Court of Canada decision in *Minister of Citizenship and Immigration v. Vavilov*, 2019 SCC 65.³ However, Mr. Liu believed that a higher standard should apply and he cited *Starson v. Swayze*, a 1999 decision about mental health incapacity decisions.⁴ The cited portions of that opinion dealt with a higher standard of proof in that particular case, not a higher standard of review on appeal (in fact, the case itself discussed what standard of review was applicable, and it was noted to be reasonableness⁵).

17. Concerning the standard of reasonableness, the Supreme Court of Canada has stated:

“A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable, and a reviewing court must not interfere. This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling. This does not mean that every element of the reasoning given must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, are tenable as support for the decision. At all times, a court applying a standard of reasonableness must assess the basic adequacy of a reasoned decision remembering that the issue under review does not compel one specific result. Moreover, a reviewing court should not seize on one or more mistakes or elements of the decision which do not affect the decision as a whole.”⁶

18. The Appeal Panel, therefore, has considered the issues on this appeal by applying the review standard of reasonableness. That standard, by its very nature, affords the decision of the Discipline Panel considerable deference.

Submissions made at the Appeal Hearing

19. As noted above, the Appellant advanced several arguments as to why the Discipline Panel’s findings of fact and legal determinations about breaches of the Code were

² See *Van Dyk v. RECO*, March 26, 2014 at pages 18-19.

³ See *Gogek v. RECO*, July 28, 2021 at pages 8-13.

⁴ 1999 CanLII 15052 (ON SC) at paragraph 17 as cited in the Factum of the Appellant at page 14.

⁵ *Ibid* at paragraph 10.

⁶ See *Law Society (New Brunswick) v. Ryan*, [2003] S.C.J. No. 17, at paras 55-56.

unreasonable. However, Liu's arguments were often general in nature, with little focus on the specific breaches of the Code determined by the Discipline Panel.

20. For instance, Liu did not demonstrate how or why any findings of fact made by the Discipline Panel did not support the breaches of the Code determined by the Panel. Nor were there any cogent submissions-- with specific references to the factual findings of the Discipline Panel --that the Discipline Panel had made palpable and overriding errors of fact such that conclusions about breaches of the Code had no evidentiary foundation.
21. As far as the Discipline Panel's reasoning was concerned, no specific arguments were made to demonstrate to the satisfaction of this Panel that the Discipline Panel's reasoning lacked reasonableness as that concept has been defined by the Supreme Court of Canada.
22. Indeed, for the most part, the submissions of the Appellant were either (a) complaints about alleged procedural unfairness (based mostly on the Appellant's personal opinion rather than evidence in the record from the Disciplinary Hearing) or (b) that the Discipline Panel had weighed the evidence improperly. The Appellant's factum provided quotes from numerous cases (of questionable relevance to the issues on appeal) and no attempt was made-- despite the Panel's prompting --to tie these cases to the grounds of appeal. The result was that the Appellant's submissions frequently became an attempt to relitigate the merits of the hearings before the Discipline Panel by requesting that the Appeal Panel substitute a decision more favourable to him.
23. The Appellant also submitted that the Discipline Panel had erred in ignoring witness inconsistencies, potential motives of the Client, and in making credibility determinations.
24. However, based on the record below, and the reasons in the Discipline Panel's decision on the merits, this Panel does not agree. The record does not indicate that the Discipline Panel failed to consider the full testimony of the witnesses, nor did the Discipline Panel fail to give sufficient weight to conflicting evidence in making its determinations.

25. The Discipline Panel clearly understood the evidence of the Appellant⁷; it simply did not accept most of that evidence as believable, especially in the face of the oral testimony of the Client and the existing documentary evidence. Reviewing the reasons of the Discipline Panel, one finds a logical and convincing narrative supporting the breaches of the Code that were found, as well as the Panel's rejection of certain allegations made by the Registrar. Indeed, the Discipline Panel not only understood, but it also accepted the evidence of the Appellant on certain issues⁸. In short, the Discipline Panel arrived at its conclusions in a reasonable manner.
26. The task of the Discipline Panel was to hear the evidence of the parties and decide which, in its reasoned opinion, was the most credible. With respect to the concept of credibility, a useful explanation can be found in *Peterson v. Wahl*:⁹

Credibility refers to what I believe or do not believe of the testimony that I have heard. I am entitled to believe the whole or a part, or to disbelieve the whole or a part, of the testimony of any witness, and to weigh the evidential value of the evidence that I have found to be acceptable, and therefore, believable. I must decide what evidence is believable and acceptable and what evidence is not, how much weight or importance I will give to it, and what facts have been established on that evidence. Testimony that is not plausible or reasonable in itself may be rejected on that basis alone, that is, that it is unreasonable and unworthy of belief even if the testimony is otherwise uncontradicted. I am entitled to consider whether a witness was consistent in his testimony, and where there were inconsistencies, prior inconsistent statements or in [their] testimony at trial, whether the inconsistencies were of a minor nature or were serious enough to affect [their] credibility on the matter. It is simply common sense that I am not bound to accept and believe every word that every witness has said in the witness stand, or to reject everything that was said because of inconsistent statements made by the witness. In considering the testimony of a witness, regard must be had to the integrity of the witness, to the witness's appearance of sincerity and truthfulness in the witness stand, to the witness's demeanor, to the witness's candor and fairness, and to the witness's personal interest or lack of personal interest in the outcome of the trial.

⁷ See the Merits Decision at page 9.

⁸ Ibid at pages 11-12.

⁹ [1994] A.J. No. 282 (Q.B.) at paragraphs 9 and 10.

Conflicting testimony requires an assessment of the credibility of the witnesses in the light of those principles applicable to the assessment of credibility generally, and in the light of the burden of proof in adducing evidence. There is no single rule or test which a judge can apply to tell [them] when a witness is speaking the truth or an untruth. The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his or her story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. The judge should consider what facts are beyond dispute and examine which of the conflicting accounts best accords with those facts according to the ordinary course of human affairs and the usual habits of life or business; the consistency with the testimony; the way the testimony dovetailed in with the admitted or proven facts. [emphasis added]

27. The reasons of the Discipline Panel indicate that it embraced the above-mentioned approach to credibility issues.
28. Equally important, the fact is that much of this case did not involve the Discipline Panel having to make credibility determinations to reach its legal conclusions. There was documentation before the Discipline Panel confirming a commission reduction arrangement between the parties. One issue that the Discipline Panel had to consider was whether the Commission Agreement was ambiguous and, if so, whether that Agreement had nevertheless been breached by Liu.
29. The Discipline Panel used the Registrant's version of the Commission Agreement.¹⁰ Furthermore, the Registrant conceded at the merits hearing that he did not pay to the Client any portion of the commission he had received from the sale of the Property.¹¹ No credibility assessment between the parties needed to be performed by the Discipline Panel to make such findings.

¹⁰ See the Transcript of the Discipline Hearing at page 77-78, paragraph 88.

¹¹ Ibid at page 116, lines 24-25 and page 117, lines 1-3.

30. Once the Discipline Panel had determined the correct verbiage of the Commission Agreement based on the evidence before it, any suggested ambiguity was displayed for the panel to determine. Further, given the Appellant's own admission that he had not paid any commission rebate to the Client, the Discipline Panel was within its rights to determine that the Commission Agreement had been breached. Based on the factual finding of that contractual breach, the Discipline Panel proceeded to apply the requirements of the Code of Ethics and decide whether one or more sections of the Code had also been breached.
31. The Appeal Panel wishes to make clear that a proceeding before a Discipline Panel is not conducted by a complainant, nor does it proceed at the behest of the complainant. Once a complaint has been made to RECO, the Registrar conducts an independent and professional investigation into the circumstances surrounding the complaint. In conducting its investigation, the Registrar may uncover facts that were not included in the initial complaint and make preliminary determinations that one or more breaches of the Code had likely taken place (or not). Such determinations, however, are not binding on any registrant.
32. Only after the Registrar has conducted its own investigation and concluded that there are reasonable grounds to believe that one or more breaches of the Code have occurred, does the Registrar make a decision whether to refer the matter to a disciplinary hearing. The vast majority of complaints to RECO concerning the conduct of registrants are *not* referred to disciplinary hearings. They are resolved before the spectre of any hearing presents itself.
33. Once a matter has been referred to a disciplinary hearing, a discipline panel is charged with conducting an impartial hearing with a view to eliciting the truth on a balance of probabilities¹². A discipline panel is not the agent of the Registrar or the registrant. It is an independent decision-making body with its own legal counsel, and the hearing must reflect the principles of natural justice and carefully consider the oral and documentary evidence. A discipline panel must necessarily make factual findings and, after doing so, determine whether any acts or omissions by the registrant identified in the Allegation Statement have been proven by those findings and, moreover, whether those acts or omissions also constitute a breach of the Code.

¹² See the RECO Discipline and Appeals Process Procedural Guidelines at page 32.

34. In making its factual findings, a discipline panel, like any trier of fact, must scrutinize the documents before it, and often assess the credibility of witnesses. In this case, the Discipline Panel did precisely that and its reasons reflect that exercise having been completed in a fair and impartial manner.
35. Given the analysis above, this Panel does not find that the hearings before the Discipline Panel were marked by procedural unfairness or that that the Discipline Panel improperly weighed the evidence before it.
36. The Appeal Panel's findings extend to the Appellant's assertions that he was subject to double standards and bias at the hearings before the Discipline Panel.
37. The Appellant submitted that the Allegation Statement identified allegations that he believes, in his own opinion, were not proven at the merits hearing, such that it reflected bias on the part of the Discipline Panel. Further, given that the Discipline Panel expressly rejected one of the allegations in the Appellant's favour, Liu suggested that the Allegation Statement in its entirety should have been struck out as not having been fully proven.¹³
38. Liu also claimed that bias was reflected in the fact that the Registrar did not use all the documents it had produced or, alternatively, that it had otherwise "filtered" the evidence to support its own narrative in the Allegation Statement. In addition, the Appellant reiterated that the Discipline Panel had compounded bias by giving improper weight to certain evidence.
39. Further, Liu claimed that because the original Allegation Statement was *almost* replaced at the outset of the Discipline Hearing by a proposed amended Allegation Statement containing certain revised allegations, it demonstrated that the proceeding had been biased.
40. During the appeal hearing, the Appellant added that he had been interrupted too often at the Discipline Hearing, which also reflected bias on the part of the Discipline Panel.

¹³ See the Factum of the Appellant at page 6, first paragraph following the chart.

41. This Panel rejects the Appellant's submissions on the bias issue. Allegation statements often contain facts and allegations that are not proven at a hearing – indeed, that is the very point of the hearing. The hearing serves to flush out the truth as best and as reasonably as possible. But the fact that not all allegations in an Allegation Statement are proven in a disciplinary proceeding does not mean that the Discipline Panel should strike out the Allegation Statement or dismiss the proceeding in its entirety.
42. That the Registrar attempted to amend the Allegation Statement is neither here nor there. The Discipline Panel refused to permit the proposed Amended Allegation Statement to be used at the merits hearing. Instead, the original Allegation Statement was used after it had been slightly amended to correct the spelling of the Appellant's name. Thus, far from being biased in favour of the Registrar, the Discipline Panel made a determination in Liu's favour.
43. Contrary to the submissions of the Registrar at the Appeal Hearing, the Registrar had attempted at the merits hearing to amend the Allegation Statement by introducing more changes than it had initially suggested to the Discipline Panel. Whether that had been a genuine mistake¹⁴ by the Registrar or otherwise, it was ably caught and disallowed by the Discipline Panel; in short, the system worked as intended.
44. During the Appeal Hearing, Liu appeared fixated on the idea that since the Discipline Panel had acquitted him of one of the allegations, the rest of the allegations should have simply fallen away¹⁵. However, as noted above, that is not how a disciplinary proceeding works; the remaining allegations in the Allegation Statement were not dependent on one another. As such, this line of appeal is dismissed.
45. With respect to the issue of documentation, the Registrar was under no obligation to use every document it had produced at the merits hearing.¹⁶ Perhaps more importantly, many of the documents in question were emails to and from the Appellant himself¹⁷ – as such, Liu would have had his own copies of them and, if he so desired, he was fully capable of producing and relying on those documents at the Discipline Hearing.

¹⁴ Transcript of the Discipline Hearing, page 16, line 9.

¹⁵ See the Factum of the Appellant, page 6, Ground 3 and 4 and following, and Transcript of the Penalty Hearing at page 30, line 10-13.

¹⁶ See section 46 of the Code, only those documents that the Registrar intends to rely on at the hearing need to be produced.

¹⁷ Factum of the Appellant at paragraph 2.3.3

46. It is not the Registrar's role to mount the defense for a registrant, to use every document it had produced in its Book of Documents, or ensure that the registrant was provided with documents that he already had. Also, this issue was raised at the Discipline Hearing, and it was correctly disposed of by the Discipline Panel.¹⁸
47. The Appellant took issue that he had been occasionally interrupted at the Discipline Hearing during his evidence and submissions. However, a review of the entire transcript from the Discipline Hearing reveals a very patient Chair attempting to guide, if not assist, a very wilful self-represented registrant into following basic procedural rules and respecting the decorum required in disciplinary proceedings.¹⁹ In that respect, the Appeal Panel finds that the Appellant got a very fair hearing and he was given considerable leeway by the Discipline Panel.
48. There was one very curious argument made by the Appellant relating to alleged unfair treatment by the Discipline Panel. Liu believes that, despite its finding of liability against him, the Discipline Panel should have withheld his name from being published in its decisions. He asserted that publishing his name in panel decisions was unfair because it would harm his reputation, both before and after his retirement from the real estate industry.²⁰
49. The Discipline Panel did not obviously rule on this issue, and the Appellant was unable to provide any authority justifying the Discipline Panel withholding his name. At the Appeal Hearing, Liu could not show instances where the name of a registrant had been protected from publication by a discipline panel even though the registrant had been found in breach of Code provisions.
50. However, at the Appeal Hearing, Liu repeatedly asserted-- without any supporting case law or statutory authority -- that administrative tribunals routinely protected the names of respondents from public disclosure.

¹⁸ See the Merits Decision at pages 10 and 13.

¹⁹ See, for instance, the Transcript of the Discipline Hearing at pages 102-104 and the Transcript of the Penalty Hearing at pages 35-39.

²⁰ Factum of the Appellant at paragraph 2.6.

51. In contrast to the submissions of the Appellant, the regulations made pursuant to *REBBA* appear to require that a registrant's name be published in cases where there has been a violation of the Code.²¹ Indeed, it would defy logic to have a registrant found liable for breaching the Code protected from publication. The public has a right to know the full details of the outcome of a disciplinary proceeding where liability has been established. Discipline hearings themselves are open to the public. Members of the public are entitled to make informed decisions about the realtors they choose to work with, and the publication of the name of an offending registrant after a disciplinary (and appeal) process has been completed serves the purposes of specific and general deterrence.
52. The Appellant's submissions on the issue of the post-hearing publication of his name are dismissed by this Panel and it expressly confirms that the Appellant's name should be included in the publication of all decisions in this matter.
53. In summary, the bias, double-standard, and unfair treatment submissions of the Appellant have been rejected, and the more broadly stated grounds of appeal relating to those issues are hereby dismissed.
54. The third substantive submission by the Appellant was that the controversy with his Client had been a contractual dispute, that is, a purely commercial matter that did not raise ethical issues under the Code. Further, it did not justify intervention by the Discipline Panel.
55. In the Appeal Panel's view, the novelty of this submission is far greater than its substance.
56. It is certainly within a Discipline Panel's jurisdiction to review and make determinations on contractual arrangements that are relevant to allegations in an Allegation Statement and purported Code violations.
57. Each and every day realtors deal with clients with whom they enter into a myriad of contracts directly, and their clients often enter into contracts with third parties. Each representation agreement, purchase/sale agreement, lease, listing agreement, commission agreement, and so on, is a contract.

²¹ See O.Reg 567/05 s.11(1)11 – see also s.11(4) for where names need to be excluded.

58. If a realtor's acts or omissions with a client involving a contract appear to have been inappropriate, and allegations are made that the acts or omissions constituted a breach of the Code, a discipline panel is well within its jurisdiction to scrutinize and make contractually-related findings at a disciplinary hearing. Even though allegations relating to a contract may raise questions of contract law and serve as the basis for (independent) civil claims, the jurisdiction of a discipline panel is neither ousted nor foreclosed. The conduct of a realtor in respect of a contract can easily be a matter of professional ethics requiring review and determination by a discipline panel.²²
59. In this case, as well as in many other disciplinary proceedings, the distinction between a "purely contractual matter" on the one hand, and ethical requirements on the other, will usually be a false one. From the outset, this case was about a realtor and client who had allegedly entered into a commission reduction agreement. In order to deal with the allegations before it, the Discipline Panel rightly determined on the evidence that there was such a contract between them²³ and, further, that the Appellant had breached the contract.²⁴ In addition to any civil claim that the Client might have against the Appellant (which a court would have jurisdiction to determine), the Discipline Panel justifiably and reasonably concluded that the Appellant's breach of contract was also a breach of the Code.²⁵
60. The Appellant's distinction between purely contractual issues on the one hand, and ethical considerations on the other-- in order to challenge the decision-making jurisdiction of the Discipline Panel -- is rejected by this Panel as being without legal foundation and practical application.
61. In his final ground of appeal, the Appellant claimed that the Discipline Panel erred in failing to find that the Commission Agreement was, as Liu had argued, invalid or unenforceable.
62. The Appellant claimed at the Discipline Hearing that the Commission Agreement clearly required the Client to enter a buyer representation agreement in order for the commission

²² See *REBBA* at section 21(1).

²³ See the Merits Decision at page 12.

²⁴ *Ibid* at page 13.

²⁵ *Ibid*.

rebate to be payable to the Client.²⁶ The Discipline Panel found otherwise, concluding that the Commission Agreement was clear that the Appellant would simply pay part of his commission to the Client, and that the Agreement did not in any way require as a term or condition that the Client had to first enter into a buyer representation agreement with Liu.²⁷ In short, Liu had attempted to read into the Commission Agreement a requirement that simply was not there.

63. An appeal hearing is not an opportunity for an appellant – whether it be a registrant or the Registrar -- to relitigate a disciplinary hearing on its merits or request the Appeal Panel to take a fresh look at the merits and substitute different conclusions for those of the Discipline Panel.²⁸ That admonition was given to the Appellant several times during the Appeal Hearing.
64. RECO appeal hearings deal with alleged legal errors made by a discipline panel. An appeal is not a hearing *de novo* involving a complete re-hearing of the case, as if it were being heard for the first time, permitting the introduction of new evidence and arguments. RECO appeal hearings will scrutinize whether a discipline panel misinterpreted or misapplied the law, or whether it made palpable and overriding errors of fact such that its legal conclusions were not based on supporting evidence. As such, new evidence is not ordinarily admitted in an appeal unless there is very good reason to do so, and the appeal panel decides to permit it.
65. It was up to the Appellant to argue how and why the findings, and supporting reasoning, of the Discipline Panel were unreasonable; that is a fairly high bar to overcome. The Appellant did not make significant or convincing submissions to deal with that requirement.
66. Having reviewed the record of the proceeding below, and the written reasons of the Discipline Panel, the Appeal Panel finds that the Discipline Panel acted reasonably in its factual and legal findings, and it presented a reasonable and convincing analysis to justify those findings.

²⁶ See, for instance, the Transcript of the Discipline Hearing at pages 128-129, paragraphs 121-122.

²⁷ See the Merits Decision at page 12.

²⁸ The Appellant spent an inordinate time attempting to do just that in his Appeal, just like he attempted to do so in his Penalty Hearing (see the Transcript of the Penalty Hearing starting on page 30 and continuing through page 43).

67. In addition, the Appellant acknowledged that the relevant part of the Commission Agreement read as follows:²⁹

...the purchase agreement is firmed. First, thank you...very much for your trust and authorization, because of your trust and authorization, I agree that when the unit you purchased is finally closed...I will share with you 50 per cent of the commission I received for the Builder” (sic)

68. Despite that reality, the Appellant claimed at the Discipline Hearing that reference to “authorization” (twice) in this paragraph meant that a buyer representation agreement was required from the Client in order for a portion of the commission to be payable by him.³⁰ The Discipline Panel determined otherwise and the Appeal Panel finds that that conclusion was eminently reasonable in the circumstances. In fact, there was no convincing evidence at the Discipline Hearing to support Liu’s assertion that the two references to “authorization” meant that the Client was obliged to enter into a buyer representation agreement with the Appellant before any commission rebate would be payable by him. There was no mention whatsoever of a buyer representation agreement in the Commission Agreement, let alone any requirement for the Client to execute one.

69. The Appellant argued many times that it was not his intention to deceive anyone.³¹ In fact, the Discipline Panel agreed with the Appellant in one major instance that he did not intend to deceive anyone in relation to the physical payment of the commission.³² But what the Appellant did not appreciate was that the issue of an intention to deceive his Client from the outset was not relevant to the finding of liability relating to the Commission Agreement. The Commission Agreement did not clearly state what Liu wanted it to say, or what he intended it to say, and it did not contain conditions that had to be satisfied by the Client for the Agreement to be binding on Liu. The Discipline Panel was reasonable in making that finding, and the Discipline Panel was reasonable in concluding that deficiencies or ambiguities in the drafting of the Commission Agreement were to be construed in favour of the Client rather than Liu.

²⁹ See the Transcript of the Discipline Hearing at pages 77-78, paragraph 88.

³⁰ Ibid at page 101, lines 1-13.

³¹ For instance, see the Transcript of the Discipline Hearing at page 205, lines 24-25 and page 206, lines 1-2.

³² See Merits Decision at pages 11-12.

70. To avoid any confusion or misunderstanding on the part of the Client, and to make it clear that the payment of any commission rebate was *conditional* on the Client entering into a buyer representation agreement, the Appellant could have taken more care to draft a better Commission Agreement. But he simply failed to do so.
71. The result of any confusion or disagreement between Liu and the Client was (provisionally) resolved by Liu himself in his own favour – by refusing to pay a rebate to his Client. But the subsequent complaint to RECO by the Client and the hearing held by the Discipline Panel resulted in sanctions against Liu for his self-serving conduct. Briefly stated, Liu was made to account for his mistakes, his inappropriate conduct, and his breaches of the Code.
72. Unfortunately, even at the Appeal Hearing, it was clear that the Appellant refused to accept the findings of the Discipline Panel, that he was not prepared to accept the consequences of the clear wording of the Commission Agreement, and his decision not to honour that Agreement. On several occasions during the Appeal Hearing, the Appellant claimed that “his opinion” on the meaning of the law (without providing supporting statutory authority or case law), and his alternative narrative about the legal impact of his dealings with the Client, should be persuasive on their own. Extending that point, the Appellant appeared to believe that the principal point of his appeal was simply to convince the Appeal Panel that his view of the case should be adopted in place of the findings of the Discipline Panel, such that its decision, in its entirety, should be set aside.
73. In light of the foregoing, the Appeal Panel hereby dismisses all grounds of appeal presented by the Appellant, including his ancillary arguments, in respect of the Merits Decision.

Penalty

74. Having dismissed all grounds of appeal relating to the Merits Decision of the Discipline Panel, the Appeal Panel will now deal with the Appellant’s submissions relating to the Penalty Decision.
75. The Appellant submitted that, if he were successful on any of the grounds in his appeal, both the Merits and the Penalty Decisions should be set aside. Beyond this, and on his passing reference that the Discipline Panel’s findings culminated in a “heavy penalty”, the

Appellant did not make any specific submissions, either in his factum or in oral argument, with respect to the Penalty Decision.

76. Indeed, no submissions were made that the penalty imposed by the Discipline Panel was excessive or otherwise improper, such that it should be set aside or varied.
77. By contrast, the Registrar made submissions in its factum³³ that the Penalty Decision was fair and reasonable based on an analysis of each of the factors in RECO's leading case relating to the determination and imposition of penalties, that is, *RECO v. Suzette Thompson*.³⁴
78. Having considered the matter, the Appeal Panel agrees that the Discipline Panel acted reasonably and provided substantial narrative support for its decision on the appropriate penalty in this case. As such, that decision should not be disturbed.
79. It is clear from the Penalty Decision that the Discipline Panel engaged in an analysis of whether a monetary penalty should be imposed on Liu, and if so, the appropriate quantum.
80. As the Appeal Panel has noted herein, the Discipline Panel acted reasonably in making its various findings at the merits hearing, and in justifying its conclusions in detailed written reasons.
81. The Appeal Panel finds that the same observations apply to the Discipline Panel's findings relating to penalty, the proper test to be applied, and the Panel's justification for the \$20,000 fine and educational requirements. It is clear that the Discipline Panel took into account the circumstances of this case in a fair-minded and reasonable manner and, after doing so, assessed a penalty which the Appeal Panel finds no grounds to set aside or vary. Therefore, the Appellant's appeal as it relates to the Penalty Decision is also dismissed.

Disposition

³³ At paragraphs 42-49.

³⁴ *RECO v. Suzette Thompson*, Decision of the Appeals Committee, May 31, 2012.

82. Given that the Appeal Panel has determined that the appeal in its entirety should be dismissed, this leaves the issue of the costs of the appeal.
83. Accordingly, the Registrar shall have seven (7) days from the date of the release of this decision to advise the Manager, Discipline & Appeals Hearings at RECO ("**Manager**"), whether the Registrar is seeking costs for this proceeding.
84. If costs are being sought, the parties shall have fourteen (14) days from the date of the release of this decision to try to reach an agreement on the issue of costs and, if so, the Registrar shall advise the Manager as to their agreement.
85. If the parties are unable to agree on costs, the Registrar shall, within twenty-eight (28) days from the date of the release of the Appeal Panel's decision, serve on the Appellant and file with the Manager written submissions on its purported entitlement to costs for the appeal, including the quantum of requested costs. Such submissions shall not be greater than three pages in length, and shall include, on one additional page, the quantum of costs sought and the breakdown of the work comprising the quantum so sought.
86. The Appellant shall, in turn, have twenty-one (21) days from the date of service on the Appellant of the Registrar's submissions on costs to serve responding submissions on the Registrar and to file a copy of the submissions with the Manager. The Appellant's submissions shall not be greater than three pages in length but may include, if the Appellant so wishes, one additional page setting out the different (i.e. reduced) quantum, if any, that the Appellant submits should be awarded for the Registrar's costs of this appeal.

Decision Released: March 17, 2025

**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 -

SHUXIN LIU registered as ANTONE LIU

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:	Unrepresented
For the Real Estate Council of Ontario:	Chantel Marler, Paralegal
Heard in Toronto:	August 28, 2023

ORDER: Fine of \$20,000.00 payable to RECO within 180 days of sending this decision.

Successful completion of the RECO Mandatory Continuing Education Compliance and Ethics in Real Estate, Part 1 and Part 2 and provide proof of completion of this course within 180 days of sending this decision.

WRITTEN REASONS:

REASONS FOR DECISION ON PENALTY & COST

INTRODUCTION

In furtherance of the Discipline Decision in this matter released on June 16, 2023, which found violations of Sections 3, 35 and 39 of the Code of Ethics, the Discipline Panel

convened, on August 28, 2023, to hear the oral Submissions from the Prosecution and the Respondent (SHUXIN LIU registered as ANTONE LIU, hereinafter “Liu” or “the Respondent”) on the issue of penalty and costs. Chantel Marler attended for the Prosecution and the Respondent, acknowledged his right to legal representation but chose to represent himself at the Penalty Hearing.

PRELIMINARY ISSUE

The Respondent requested an adjournment of the Penalty Hearing, and the request was opposed. The Respondent submitted that he needed more time to read the caselaw submitted by the Prosecution. Counsel for the Registrar argued that there is no provision in the Rules of Practice or elsewhere that requires delivery of caselaw within any specific timeframe. Counsel for the Registrar also submitted that the caselaw was originally provided to the Respondent via email on August 24, 2023, at 2:13 p.m. and further, on August 25, 2023, at 10:24 a.m., Counsel for the Registrar sent another email to the Respondent specifically identifying the cases and the sections of the cases that she would be relying upon at the Penalty Hearing.

The Panel considered the Submissions of both Parties and determined that there was no requirement to deliver caselaw at any particular time and, in any event, the Respondent was provided with the relevant caselaw as well as further particulars of the anticipated argument of Counsel for the Registrar well in advance of the Penalty Hearing. As such, the Panel denied the motion to adjourn.

SUBMISSION ON PENALTY BY THE PROSECUTION:

Counsel for the Registrar submitted various cases in support of her request for penalty and she particularly referred to *Registrar v. Suzette Thompson, Appeals Committee of RECO, May 31, 2012, as providing guidance in determining penalty. She referred to the factors that case established for consideration on penalty.*

Counsel for the Registrar asserted that:

The Respondent made a personal and deliberate choice not to honour the commission rebate agreement.

The Respondent played the sole central role in the breach of the Code of Ethics.

Further, as a result of the Respondent's breach of the Code of Ethics, the Respondent gained a financial benefit, and the Complainant suffered a financial loss.

Specific and General Deterrence is necessary as the Respondent acted below the standard expected of Registrants.

The penalty the Registrar is seeking is intended to prevent a repeat occurrence from the Respondent, and, to provide a message for fellow Registrants to view the penalty as more than a cost of doing business.

The penalty must also serve to maintain consumer confidence in the real estate profession and demonstrate to the consumer that the profession has the ability to self-regulate and adequately address breaches of the Code of Ethics.

In terms of similar cases, the Registrar's Counsel relied upon the following RECO Decisions to support the penalty the Registrar is seeking:

- *Sharon Male*, Release Date: January 24, 2023
- *Daxin Zhan*, Release Date: June 27, 2023
- *Eric Wong*, Release Date: September 12, 2017

Counsel for the Registrar clearly expressed that in determining an appropriate penalty, reliance was placed upon the factors established in *Registrar v. Suzette Thompson*.

The Registrar sought an order that the Respondent pay a fine of \$20,000.00 and complete the RECO Mandatory Continuing Education courses: Ethics in Real Estate Parts 1 & 2. There was no request for costs related to the Hearing.

SUBMISSION ON PENALTY BY THE RESPONDENT:

The Respondent in his Submissions stated that he cannot accept the Panel's Discipline Decision and Reasons for Decision that were issued. The Respondent stated that he believes that his case is different, and that professional ethics should not be used to deal with this matter.

The Respondent asserted his belief that it was the Complainant who breached the commission rebate agreement and not the Respondent. He suggested that the Prosecution lied at the Hearing. The Respondent stated further that it was unfair for the Complainant to submit a complaint to RECO and the actions the Respondent took were to protect his name and reputation.

Though the Respondent originally submitted in support of his request for an adjournment that he did not have time to read the cases submitted by Counsel for the Registrar, he did refer to them and make Submissions about them and he suggested that they did not apply to his case. The Respondent argued that if the Hearing was a fair and just process, he should not be charged with an ethics violation and he submitted that no penalty should be imposed.

REPLY SUBMISSIONS

Counsel for the Registrar suggested to the Panel that the Respondent's Submissions underscore the fact that he still does not see the gravity of his actions or accept responsibility for his conduct.

PANEL'S DECISION ON PENALTY:

After carefully considering the Submissions of both parties, the Panel came to the following conclusions.

The Panel reviewed the factors established in *Registrar v. Suzette Thomspou* case:

- a) The nature and gravity of the breaches of the Code of Ethics;

- b) The role of the offending member in the breaches;
- c) Whether the offending member suffered or gained because of the breaches;
- d) The impact of the breaches on the complainant or others;
- e) The need for there to be specific deterrence to protect the public;
- f) The need for there to be general deterrence to protect the public;
- g) The need to maintain the public's confidence in the integrity of the profession;
- h) The degree to which the breaches are regarded as being outside the range of acceptable conduct; and
- i) The range of sanctions in similar cases.

Nature and gravity of the breaches of the Code of Ethics:

The failure to fulfil a written promise made by a Registrant to a Consumer, specifically a commission rebate, as occurred in this case, is viewed by the Panel as falling into the middle range of severity as it was the Respondent's deliberate choice not to honour the commission rebate agreement.

Role of the offending member in the breaches:

The Respondent acted deliberately and was solely responsible for breaching the Code of Ethics by failing to pay the promised commission rebate to the Complainant.

Whether the offending member suffered or gained because of the breaches:

The Respondent clearly gained financially as a result of the Respondent's deliberate decision to not pay the commission rebate to the Complainant.

Impact of the breach on the Complainant and others:

The Complainant suffered financial harm as the Complainant expected to receive the commission rebate but did not. There is also an impact on others as the Respondent's breach of the Code of Ethics negatively impacts the general public by undermining the general public's view of real estate professionals.

Need for there to be specific deterrence to protect the public:

The actions of the Respondent that led to the breach of the Code of Ethics and the Respondent's subsequent failure to accept responsibility for his actions undermines the public's confidence in the real estate profession. The penalty should serve as a specific deterrent to the Registrant to deter him from repeating a similar breach of the Code of Ethics.

Need for a general deterrence to protect the public:

The penalty imposed upon the Respondent for this breach of the Code of Ethics must serve as general deterrence, by sending a message to fellow Registrants, that such conduct is unacceptable, and the penalty must be sufficient to deter other Registrants from engaging in the same conduct.

Need to maintain the public's confidence in the integrity of the profession:

It is of the utmost importance that breaches of the Code of Ethics be dealt with seriously, and, of equal importance is the penalty imposed in order to restore the public's confidence in the integrity of the real estate profession. The penalty must send a clear signal to fellow Registrants that a violation of the Code of Ethics is not a cost of doing business and violators will incur serious financial consequences. It should also encourage Registrants to be mindful of the requirement to invest time to improve their standards through further education.

Furthermore, Decisions finding violations of the Code of Ethics will be published and open to scrutiny by the general public thereby assuring the public that offending conduct is dealt with seriously and appropriately. The effectiveness of the real estate industry's system of self-discipline is critical in order to maintain the general public's confidence in the integrity of the profession.

Degree to which the breaches are regarded as being outside the range of acceptable conduct:

As indicated above, the Respondent's breach of the Code of Ethics is unacceptable conduct and falls within the middle range of seriousness.

Range of sanctions in similar cases:

Counsel for the Registrar submitted three cases for consideration by the Panel which she submitted were similar to this case and could provide the Panel some guidance on appropriate penalty. The penalties in those cases ranged from \$12,000.00 to \$40,000.00. The cases in the lower range of penalty were settled by Agreed Statement of Facts and Penalty and the Respondents took responsibility for their actions in those cases.

The higher range case (Wong) proceeded to a Hearing and also dealt with other issues in addition to failure of a Registrant to pay a commission rebate promised to a consumer. The Panel reviewed each of these Decisions and found them helpful. Having reviewed all of the circumstances and in particular the factors set out in Registrar v. Suzette Thompson; the Panel finds that the sanction proposed by Counsel for the Registrar is appropriate.

PENALTY:

The Panel hereby orders the Respondent to:

- a) Pay a fine of \$20,000.00 to RECO within 180 days of the release of this decision.
- b) Successfully complete the RECO Mandatory Continuing Education: Compliance and Ethics in Real Estate, Parts 1 and 2 within 180 days of the release of this decision.

[Released: October 19, 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 -

SHUXIN LIU registered as ANTONE LIU

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant: No one

For the Real Estate Council of Ontario: Chantel Marler, paralegal

Heard in Toronto on: March 20 and 21, 2023

FINDINGS: In violation of Sections 3, 35 and 39 of the Code of Ethics.

ORDER: A further date will be scheduled for the Parties to present oral submissions on the issue of penalty and/or costs, as established by the Discipline Panel.

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This Hearing took place on March 20 and 21, 2023, in the presence of the Respondent Shuxin Liu registered as Antone Liu (the “Respondent” and/or “Liu”). Chantel Marler, Paralegal for the Real Estate Council of Ontario. The Panel was comprised of Filippo

Sbrocchi, Myra Bongard and Devon Saunders. Viktoria Anteby was present as Independent Legal Counsel to the Discipline Panel.

ORIGIN OF THE CASE

In May 2014, Buyer A (the “Buyer” and/or “Buyer A”) used the services of Antone Liu, real estate agent, employed with Brokerage A (the Respondent), to purchase a new condominium. Liu provided the Buyer with a promissory note and/or commission rebate agreement wherein, Liu agreed to provide a commission rebate to the Buyer once the transaction closed.

Liu failed to honor the promissory note and/or commission rebate agreement, even after several requests from the Buyer. The Buyer in turn filed a complaint with RECO.

ALLEGATIONS BY THE REGISTRAR, REBBA 2002

In its Allegation Statement the Registrar, *REBBA 2002* alleged that Antone Liu acted unprofessionally when:

Liu failed and/or neglected to honour the promissory note and/or commission rebate agreement after the closing of the Property, and further misled RECO and Buyer A (the buyer and complainant) about the status of the commissions, contrary to sections 3, 35 and 39 of the Code of Ethics.

The Registrar, *REBBA 2002* alleged that Antone Liu breached 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.

Financial responsibility

35. A registrant shall be financially responsible in the conduct of business

Unprofessional conduct, etc.

39. A registrant shall not, in the course of trading in real estate, engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a registrant.

EVIDENCE OF THE PARTIES

1. Allegation Statement dated June 16, 2022
2. Notice of Hearing dated February 17, 2023
3. RECO Book of Documents dated October 12, 2022
4. Antone Liu's List of Evidence Documents (6 emails)

PRELIMINARY ISSUES:

Liu bought a motion before the Panel on the basis of bias, claiming that RECO amended the Allegation Statement which he felt was unfair and that he needed additional time to prepare to respond.

Counsel for RECO responded by indicating that there were no substantive changes made, and that the only change was correction to Liu's surname. In any event, RECO was prepared to proceed with the original Allegation Statement.

Liu responded by claiming that the change was not only his surname but there were other changes as well.

The Panel denied the motion as the hearing was proceeding on the original Allegation Statement of which Liu had ample notice and the amended Allegation Statement was disregarded.

WITNESSES FOR THE REGISTRAR, REBBA 2002

The only witness for the Registrar was Buyer A, who was the Buyer, and is also the Complainant in the matter. At the Hearing Buyer A testified with the assistance of an interpreter, Individual A. Buyer A testified that:

In May 2017, Buyer A wanted to purchase a new condominium unit at 1-A Street, City A and was introduced to Liu by a friend. Buyer A explained that the friend was also a former client of Liu.

Buyer A was purchasing the condominium for her personal use, and she decided to use Liu's services. Her decision to use Liu's services was dependent upon Liu agreeing to pay Buyer A a commission rebate of 50% of the commission received from the Builder upon the closing of the transaction with the Builder.

Buyer A succeeded in purchasing the unit from the Builder. Following the purchase, Buyer A received a promissory note and/or commission rebate agreement from Liu which was dated May 30, 2014. The promissory note and/or commission rebate agreement promised to give Buyer A 50% of the commission received from the builder on the final closing of the purchase. The promissory note and/or commission agreement did not outline any conditions.

In July of 2014, Liu asked Buyer A to sign a Buyer Representation Agreement. Buyer A refused to sign the Buyer Representation Agreement for several reasons which she outlined, including:

- due to her limited knowledge of English,
- her understanding of Buyer Representation Agreement is that it should be signed before the deal was made, not after,
- it would have restricted her ability to work with another real estate agent,
- she would be responsible to pay commission if the Builder did not,
- she had already purchased the unit and did not need to sign it,
- she was presented with the Buyer Representation Agreement in July, although it was signed by Liu in May

There was no further communication from Liu.

The property closed with the Builder on May 19, 2021, following which the Buyer made numerous telephone calls and sent emails to Liu, asking for the commission rebate. Liu did not respond until September 29, 2021.

In an email Buyer A received from Liu on September 21, 2021, Liu indicated that since Buyer A refused to sign a Buyer Representation Agreement, the rebate agreement was terminated.

There were no terms on the promissory note and/or commission rebate agreement that required a signed Buyer Representation Agreement in order to receive the rebate.

CROSS EXAMINATION OF WITNESS BY RESPONDENT

During Liu's cross examination of Buyer A, he asked Buyer A questions regarding the Buyer Representation Agreement, and, when Buyer A was asked to sign the Buyer Representation Agreement. Buyer A's testimony was that Liu did not ask Buyer A to sign the Buyer Representation Agreement during the period of purchase but after the purchase was completed and that Buyer A did not receive the Buyer Representation Agreement until July 2014. Buyer A testified that she was relying on her memory and the email she received from Liu on July 7, 2014 (which was not part of RECO's documents). Buyer A admitted that she has no evidence that Liu failed to ask her to sign a Buyer Representation Agreement prior to July 2014.

Liu questioned Buyer A on her understanding of the Commission Memorandum to which Buyer A responded that the Commission Memorandum did not make any reference to a Buyer Representation Agreement.

REDRESS OF WITNESS BY REGISTRAR

Within the Prosecutions redirect examination of Buyer A, Buyer A was asked as to whether Buyer A saw any terms in the Commission Memorandum that would require Buyer A to sign a Buyer Representation Agreement to which Buyer A responded that she did not. Buyer A was further asked if Buyer A was provided with a Buyer Representation Agreement by Liu prior to July 2014 to which Buyer A responded that she was not. Buyer A was additionally asked by the Prosecution as to whether Buyer A has received the commission rebate to which Buyer A responded that she has not.

WITNESSES FOR THE RESPONDENT

Shuxin Liu registered as Antone Liu gave evidence on his own behalf.

Liu testified that:

He has been in the real estate business for 11 years. He is not an active agent. He only has his license for investment. He does not look for clients and only serves himself and his close clients.

In May 2014, Company A's new condominium development at 1-A Street, City A was 'very hot' and in demand. The builder allocated units to VIP agents. Regular agents could only get access to units through/from the VIP agents.

In May of 2014, he was approached by Buyer A who was very specific about the unit she wanted to purchase. The unit she wanted to purchase was the Unit A which was the most popular unit. He introduced Buyer A to Registrant A another sales representative from his office who was a VIP agent and who had access to the block of units Buyer A was interested in.

On May 17, 2014, he presented Buyer A with the Buyer Representation Agreement. On May 24, 2014, he succeeded in getting Buyer A the unit she wanted. Since Buyer A refused to sign the Buyer Representation Agreement, the sold unit was registered with

the VIP agent and not with him. If the sale was under Liu's name, it would help him get VIP status with the Builder and it would also help him to get more units allocated to him in future releases of the Builder.

A Buyer Representation Agreement was needed to become a VIP agent and Liu's Brokerage required Buyer Representation Agreements in order to pay commission.

Buyer A asked for a commission rebate and on May 30, 2014, he presented her with the promissory note and/or commission rebate agreement as the promissory note and/or commission rebate agreement would help him become a VIP agent.

The deal closed in May 2021 and in September 2021, Buyer A asked for the commission rebate and threatened to complain to RECO and to speak poorly of him in Community A in an effort to damage his business reputation if he did not pay the rebate.

When he responded to Buyer A in September 2021, he had not yet received any commission payment.

His Brokerage did not take action to pay him until after the RECO complaint. The Trade Record Sheets were issued to him, and 'commission' paid to him by his Brokerage only after the complaint was received by the Brokerage. He insisted that he was paid a referral fee and not commission.

He has not paid the commission rebate to Buyer A as he has no reason to pay it because the promissory note and/or commission rebate agreement is invalid and because she threatened him.

SUBMISSIONS FOR THE REGISTRAR, REBBA 2002

The Prosecution submitted the matter is a single allegation of Liu's failure to honour the promissory note and or commission rebate agreement, after the closing of the transaction and that Liu misled both RECO and the Complainant about the status of the commission.

In May of 2014, the purchase transaction with the Builder firmed up. Subsequently, on May 30, 2014, the promissory note and/or commission rebate agreement was signed. There were no conditions in the promissory note and/or commission rebate agreement. On July 7, 2014, Buyer A, via email from Liu received the Buyer Representation Agreement which she refused to sign. The deal closed on May 19, 2021, following which Buyer A reached out to Liu via email and telephone, with no response.

The Prosecution submitted with respect to Section 3 of the RECO Code of Ethics that Liu did not treat Buyer A fairly, honestly and with integrity when he failed to honour the promissory note and/or commission rebate agreement.

Additionally, the Prosecution submitted with respect to Section 35 of the RECO Code of Ethics that Liu failed to fulfil the promissory note and/or commission rebate agreement and his failure to provide the rebate caused him to breach this section.

The Prosecution further submitted with respect to Section 39 of the RECO Code of Ethics that Liu violated this section by not including clear terms in the promissory note and/or commission rebate agreement and that his claim that the promissory note and/or commission rebate agreement was not enforceable and that he was paid a referral, and not a commission, was misleading.

SUBMISSIONS FOR THE RESPONDENT

The Respondent articulately submitted the following:

Liu reiterated the condo project was a very 'hot property'. Buyer A approached him and was specific about wanting to purchase a specific unit (Unit A). He followed her instructions and explained to her the buying process and asked her to sign a Buyer Representation Agreement. He succeeded in getting her the unit she wanted but because she did not sign a Buyer Representation Agreement, he was unable to get VIP status with the Builder. At Buyer A's request he provided her with the promissory note and/or

commission rebate agreement. Following the closing, Buyer A blackmailed him by threatening to issue a complaint to RECO and to damage his reputation within his community if he did not pay the rebate. He felt he had no reason to reply to threats. Buyer A's complaint is an act of revenge. He expressed the promissory note and/or commission rebate agreement is unenforceable because the Buyer Representation Agreement was not signed.

Liu further submitted that Buyer A provided conflicting evidence and lacks credibility, and the complaint is malicious based on revenge for failure of her blackmail efforts. Examples of Buyer A's conflicting evidence and lack of credibility include her false allegation about the term of the Buyer Representation Agreement; the conflicting statement that he did not respond to her calls and emails when he did so 10 days after receiving her email of September 19, 2021; her reasons for not signing the Buyer Representation lacks credibility, and, the translation of the promissory note and/or commission rebate agreement she provided to RECO left out critical terms and was intended to mislead RECO.

Liu submitted on the issue of the true status of the commission received that he provided RECO the truth and that he informed RECO the promissory note and/or commission rebate agreement was unenforceable. Liu submitted as well that the Allegation Statement was misleading when it referred to inducement as Buyer A admitted she asked him for the rebate, and it was not him offering it to her. As well, the promissory note and/or commission rebate agreement was provided on May 30, 2014, was after he succeeded in getting the special unit Buyer A wanted to purchase. When RECO inquired about the status of the commission, he responded to RECO that he had not received commission and he did not mislead RECO. He was unaware that his Brokerage had received the commission and his Brokerage did not inform him until after the Brokerage received the complaint from RECO. Any money he received from his Brokerage for this transaction was a "referral fee" and not a "commission".

In Liu's submission, he expressed that RECO selectively excluded evidence and only included evidence that was favourable to Buyer A (he argued that RECO did not include his email response and other emails he sent to Buyer A in 2014 in its Book of Documents) RECO has failed to prove the allegations.

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:

In considering whether Liu had misled RECO and Buyer A about the status of the commissions the Panel relied upon the following sequence of emails:

On August 15, 2021, Liu received a Condo Commission Update from Individual B, the New Condo Administrative Assistant for Brokerage A. The email indicates that no commission was received for the subject unit.

On September 19, 2021, Buyer A emailed Liu asking about the commission rebate to which he replied to her by email on September 29, 2021, indicating that the Buyer Representation Agreement ended which also terminated the promissory note and/or commission rebate agreement.

On October 27, 2021, RECO emailed Liu notifying him of the Complaint and he was asked to provide a response to which he replied by email to RECO on November 8, 2021, and indicated in his response that there would be no commission rebate.

On January 18, 2022, Liu received an email from Individual B, the New Condo Administrative Assistant for Brokerage A wherein she informs Liu that the commission cheque for several units, including the subject unit was now ready for him to pick up. On January 24, 2022, Liu receives a second reminder email from Individual B to pick up the commission cheque.

On February 4, 2022, Liu received an email from RECO requesting an update on the commission received, to which Liu replied on February 6, 2022, that the cheque was received on January 24, 2022.

The Panel finds having regard to the circumstances and on the balance of probabilities, there is no evidence that Liu misled RECO and Buyer A about the status of the commissions. Therefore, the Panel is unable to find Liu in contravention of the above noted sections of RECO's Code of Ethics pertaining to this particular allegation.

With respect to whether Mr. Liu failed, and or neglected, to honor the promissory note and/or commission rebate agreement after the closing of the property, there is no question that Liu promised to give Buyer A a commission rebate.

The promissory note and/or commission rebate agreement clearly spells out that Liu will share 50% of the commission received from the Builder. The promissory note and/or commission rebate agreement does not contain any conditions, or any clear and concise

provisions that would indicate any possibility of invalidating the promissory note and/or commission rebate agreement. The promissory note and/or commission rebate agreement does not include a requirement that a Buyer Representation Agreement must be signed to receive the promised commission rebate.

The “commission” was paid by the Builder to Brokerage A. Brokerage A produced a Trade Record Sheet for the transaction, clearly spelling out “Commission” and how the commission was to be paid. On the Trade Record Sheet, Liu received the majority of the commission that was received from the Builder. Liu signed and accepted the Trade Record Sheet as issued by the Brokerage, without any revisions to it. There is no reference to a “referral fee” on the Trade Record Sheet.

On the issue of the Buyer Representation Agreement, as a consumer, it was Buyer A’s choice, at her sole and absolute discretion, whether to sign the Buyer Representation Agreement, or not. Additionally, the Builder’s Agreement to Co-Operate does not make any reference to a Buyer Representation Agreement and it is not a term of the Builder’s Agreement to Co-Operate in order for the Co-Operating Brokerage to be paid their commission.

At this point in time, Buyer A has not received the commission rebate from Liu.

The Panel concludes that, having regard to the circumstances and on the balance of probabilities, the evidence supports the finding that Liu failed and/or neglected to honor the promissory note and/or commission rebate agreement after the closing of the subject Property.

In doing so, Liu breached Section 3 of the Code of Ethics as he failed to deal fairly with Buyer A in the course of this trade. Also, the Panel finds that Liu breached section 35 of the Code of Ethics and was not financially responsible in the conduct of his business in respect of this transaction, by not paying the promised compensation to Buyer A. Further, the Panel finds Liu in breach of section 39 of the Code of Ethics by acting unprofessionally

and unbecoming of a registrant, in failing to honor the promissory note and/or commission rebate agreement.

With respect to Liu's allegation that RECO failed to include certain emails in its Book of Documents, the emails in question were within Liu's possession and he had every opportunity to include them in his book of documents (the same way he knew to include the other 6 emails that were before this Panel) if he intended to rely on them at the Hearing.

PENALTY

A further date will be scheduled for the Parties to present oral submissions on the issue of penalty and/or costs, as established by the Discipline Panel.

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

[Released: June 16, 2023]