



DISCIPLINE DECISION

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO
BY-LAW NO. 10 OF THE REAL ESTATE COUNCIL OF ONTARIO

BETWEEN:

**MANAGER OF COMPLAINTS, COMPLIANCE AND DISCIPLINE
REAL ESTATE COUNCIL OF ONTARIO**

- AND -

MORRISSA AMSEL, BROKER A AND LAUREN FREED

DATE OF DECISION: February 20, 2007

COMPLAINT #1

FINDINGS:

Morrissa Amsel

In violation of Rules 1(1), 1(2), 1(5), 2, 3, 5, 9, 11, 41, 46 and 47 of the RECO Code of Ethics

Lauren Freed

In violation of Rule 23 of the RECO Code of Ethics

Broker A

In violation of Rules 23 and 43 of the RECO Code of Ethics

COMPLAINT #2

FINDINGS:

Morrissa Amsel

In violation of Rules 1(1), 1(2), 1(5), 2, 3, 5, 9, 41, 46 and 47 of the RECO Code of Ethics

Broker A

In violation of Rules 23 and 43 of the RECO Code of Ethics

PENALTY:

RECO to deliver written submissions to the Panel and to the Respondents on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.

The Respondents shall deliver to the Panel and to RECO its written submissions on penalty and costs in response to RECO's submissions within 15 days of the date on which RECO's submissions on penalty and costs are delivered to the Respondents.

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

The panel shall deliver its decision on penalty and costs after considering the written submissions of the parties.

COSTS AND EXPENSES: N/A

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This hearing was held on October 5, 6 and 16, 2006, November 14, 2006, and February 20, 2007 in the presence of the Respondents Morrissa Amsel, Broker A, and Lauren Freed. Lawyer A, counsel for Ms. Amsel, Lawyer B, counsel for the Real Estate Council of Ontario ("RECO") and Lawyer C, counsel for the Discipline panel, were also present.

ALLEGATIONS BY RECO

In its Allegation Statement RECO made numerous allegations regarding the conduct of the Respondents in relation to two complaints.

Complaint # 1

The first complaint related to the purchase by Lauren Freed of a home owned by Seller A and Seller B, municipally known as 1-AB Street, City AB (the "Property"). Morrissa Amsel acted as the selling agent for this home. RECO alleged that she had an interest in the home as she was the life partner of Lauren Freed at the time.

The Sellers AB advised Ms. Amsel that they would be willing to sell their home for \$519,000.00. Ms. Freed put an offer on the Property in the amount of \$518,000.00, with a deposit of \$5,000.00, and a further \$5,000.00 to follow.

The Sellers AB entered into a Listing Agreement and a Buyer Agency Agreement with Ms. Amsel. In addition, the Registrant's Statement as Buyer (which was unsigned by Ms. Amsel in respect to her leasehold interest in the Property) was acknowledged by the Sellers AB, and the Dual Agency Consent was signed by the parties.

That same day, the Sellers AB signed the paperwork and the parties had a binding Agreement of Purchase and Sale on the Property for \$518,000.00, with a scheduled closing of June 29, 2004.

Ms. Amsel represented the Sellers AB and Ms. Freed on the transaction. RECO alleged that she did not explain dual agency to the Sellers AB nor did she obtain an acknowledgement of Agency Relationships Explained.

RECO alleged that Ms. Amsel promised to pay the Sellers AB's legal fees if they agreed to use her to find a new home. The Sellers AB agreed and they signed a purchase commitment in respect thereto. At Seller A's request, Ms. Amsel signed a note to reimburse legal fees. However, Ms. Amsel has refused to return the original or a reproduced version of the note to Seller A.

On or about March 12, 2004, the Sellers AB entered into an Agreement of Purchase and Sale in respect of a new home.

The closing for the new home was May 28, 2004 and, thereby, the Sellers AB were compelled to obtain bridge financing for one month because the Property was not scheduled to close until June 29, 2004.

On or about June 25, 2004, Ms. Amsel and Ms. Freed attended at the Property for their third visit. At the time, Ms. Amsel requested an extension to the closing.

On or about July 7, 2004, the transaction on the Property finally closed.

On or about July 12, 2004 and in accordance with their agreement, Seller A gave Ms. Amsel an invoice in respect to reimbursing their legal fees.

On or about July 18, 2004, Ms. Amsel left the Sellers AB two angry voicemail messages. The first message referred to them leaving garbage in the garage at the Property and the Property not being in a broom swept condition. The second message left by Ms. Amsel was a personal attack on Seller A.

On or about July 14, 2004, the Property was listed by Ms. Amsel, on behalf of Ms. Freed, for \$598,000.00, which was eighty thousand dollars more than the purchase price for the Property.

On or about July 21, 2004, Ms. Freed cancelled the listing. That same day, the Property was re-listed for \$548,888.00.

On or about July 26, 2004, Ms. Freed entered into an Agreement of Purchase and Sale for the Property with a purchaser in the amount of \$520,000.00, with a deposit of \$10,000.00.

RECO alleges that Broker A and Ms. Freed did not make themselves available to be interviewed regarding this complaint and that Broker A did not provide various documents as requested by the RECO researcher.

Complaint #1 Allegations

Ms. Amsel

In relation to Ms. Amsel, RECO alleges that:

- i) She acted in an unprofessional manner, including in particular:
 - (a) Failing to act in the best interests of the Sellers AB;
 - (b) Preferring her own interests over those of the Sellers AB;
 - (c) Failing to explain agency relationships and to obtain an acknowledgement in respect thereto;
 - (d) Failing to provide a proper valuation of the Property;
 - (e) Failing to disclose her financial interest in the purchase of the Property;
 - (f) Verbally abusing the Sellers AB;
 - (g) Failing to fulfil her promises to the Sellers AB in respect to reimbursing their legal costs in respect to the transaction.

Ms. Amsel is alleged to have breached the following rules of the RECO Code of Ethics (the "Code"):

Rule 1 – Ethical Behaviour – A Member shall:

- (1) endeavour to protect and promote the best interests of the Member's Client;

- (2) endeavour to protect the public from fraud, misrepresentation or unethical practice in connection with real estate Transactions,
- (5) deal fairly, honestly and with integrity with the public, other Members and third parties,

Rule 2 – Primary Duty to Client – A Member shall endeavour to protect and promote the best interests of the Member’s Client. This primary obligation does not relieve the Member of the responsibility of dealing fairly, honestly and with integrity with others involved in each transaction;

Rule 3 – Disclosure of Role - At the earliest practical opportunity, but no later than when the Member Accepts an Agency, a Member shall fully disclose in writing the role and nature of the service that the Member shall be providing to the Person. The Member shall also disclose the Member’s role to others involved in the Transaction when appropriate.

Rule 5 – Financial Disclosure - A Member shall disclose the financial aspects of a Transaction and any personal interest of the Member in a matter to the Parties sufficient to enable them to make an informed decision.

Rule 9 – Abuse of a Client or Customer - A Member, when acting in a professional capacity, shall not physically, sexually, emotionally or verbally abuse a Client, a Customer, a member of the public, another Member, or any other third party.

Rule 11 – Discovery of Facts - A Member shall discover and verify the pertinent facts relating to the Property and the Transaction relevant to the Member’s Client that a reasonably prudent Member would discover in order to fulfill the obligation to avoid error, misrepresentation or concealment of pertinent facts.

Rule 41 – Evaluations and Comparative Market Analysis - A Member shall not give an opinion or advice about the value of Property unless the Member has the knowledge, skill and training to do so for that type of opinion or advice and for that type of Property and the Member has done the necessary research.

Rule 46 – Unprofessional Conduct – A Member shall not engage in an act or omission relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by Members or the public as disgraceful, dishonourable or unprofessional.

Rule 47 – Conduct Unbecoming a Member - A Member shall not engage in conduct unbecoming a Member.

Ms. Freed

In relation to Ms. Freed, RECO alleges that:

- ii) She acted in an unprofessional manner, including in particular:
 - a) Failing to cooperate with the RECO researcher's repeated requests to conduct an interview;
 - b) Failing to fulfill RECO's requests for documentation

Ms. Freed is alleged to have breached the following Rules of the Code:

Rule 23 - Obedience to Law - A Member shall practice in accordance with all federal, territorial or provincial law or municipal by-law relevant to the Member's fitness to practise.

With respect to Rule 23 of the Code (Guiding Principle 23.2), Freed is alleged to have breached the following sections of By-Law #10:

- 19. Breaches of the following terms of membership in the Council may lead to discipline under this by-law:
 - (a) breaching a by-law made by the Council or the Code of Ethics;
 - (b) failing to cooperate with and participate in the complaints, compliance and discipline procedures, including ADR, set out in this by-law;
 - (c) failing to comply with a requirement made by the Manager of CCD under this by-law;
 - (d) failing to cooperate with and provide full assistance to a representative of the Council conducting an inspection program.
- 22. A former Member continues to be subject to the disciplinary jurisdiction of the Council and to any outstanding financial obligations, including fees, dues or other amounts attributable to their being Members of the Corporation as required under the by-laws owing, to the Council.

25. A Member shall assist a Researcher appointed under this by-law, whether or not the Member is the subject of the inquiry. The assistance shall include:

- (b) obtaining and providing the original or, if requested, copies of all documents that may touch upon the matter under inquiry;
- (d) answering questions asked by the Researcher that may touch upon the matter under inquiry;

Rule 30 – Cooperation with the Council - A Member shall cooperate fully with any representative of the Council carrying on the Council's regulatory functions and duties including investigations and discipline. A Member shall give due consideration to the Member's duty of confidentiality in a Member's responses to any such representative of the Council.

Broker A

In relation to Broker A, RECO alleges that:

- iii) He acted in an unprofessional manner, including in particular:
 - a) Failing to adhere to RECO's requests for documentation;
 - b) Failing to properly supervise Ms. Amsel's conduct

Broker A is alleged to have breached the following Rules of the Code:

Rule 23 - Obedience to Law - A Member shall practice in accordance with all federal, territorial or provincial law or municipal by-law relevant to the Member's fitness to practise.

With respect to Rule 23 of the Code (Guiding Principle 23.2), Broker A is alleged to have breached the following sections of By-Law #10:

- 19. Breaches of the following terms of membership in the Council may lead to discipline under this by-law:
 - (a) breaching a by-law made by the Council or the Code of Ethics;
 - (b) failing to cooperate with and participate in the complaints, compliance and discipline procedures, including ADR, set out in this by-law;
 - (c) failing to comply with a requirement made by the Manager of CCD under this by-law;
 - (d) failing to cooperate with and provide full assistance to a representative of the Council conducting an inspection program.

25. A Member shall assist a Researcher appointed under this by-law, whether or not the Member is the subject of the inquiry. The assistance shall include:

(b) obtaining and providing the original or, if requested, copies of all documents that may touch upon the matter under inquiry;

(d) answering questions asked by the Researcher that may touch upon the matter under inquiry;

(e) directing all employees and persons acting under the direction of the Member to cooperate with the Researcher.

Rule 30 – Cooperation with the Council - A Member shall cooperate fully with any representative of the Council carrying on the Council's regulatory functions and duties including investigations and discipline. A Member shall give due consideration to the Member's duty of confidentiality in a Member's responses to any such representative of the Council.

Rule 43 – Broker Responsibility – A Broker shall be responsible for the professional conduct and professional actions of those Members registered with that broker.

Rule 46- Unprofessional Conduct – A Member shall not engage in an act or omission relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by Members or the public as disgraceful, dishonourable or unprofessional.

Complaint # 2

Seller C and Seller D (the "Sellers CD") owned a home, municipally known as 1-CD Street, City CD (the "Property").

In or about December of 2003, the Sellers CD were encountering financial difficulties and elected to list the Property for sale in favour of renting an apartment. On or about December 16, 2003, the Sellers CD entered into a listing agreement with Ms. Amsel, who was known to the Sellers CD's daughter in-law Individual E through Ms. Freed.

The MPAC Assessment for the Property for 2003 was \$329,000.00. Despite the Sellers CD's suggestion otherwise, Ms. Amsel recommended that the Sellers CD list the Property for \$269,000.00. Even though the Sellers CD believed that Ms. Amsel's suggested list price was

too low, the Sellers CD felt pressured by Ms. Amsel to heed her advice. They relied wholly upon Ms. Amsel given their lack of knowledge of real estate.

The Sellers CD told Ms. Amsel not to show the Property unless they were present. Notwithstanding the Seller CD's clear instructions, Ms. Amsel showed the Property on two occasions in their absence.

RECO alleged that Ms. Amsel promised the Sellers CD a 2% rebate on her commission, vis-à-vis a cash rebate provided that the Property was sold for Ms. Amsel's suggested list price. The Sellers CD requested a written agreement in respect to the rebate but Morrissa indicated that it was unnecessary. The Sellers CD and Ms. Amsel also agreed that the rebate would be applied directly to the first and last's month rent for the Sellers CD's new apartment.

Throughout the transaction, Ms. Amsel was rude, verbally abusive and failed to return the Seller CD's telephone calls.

On or about December 22, 2003, the Sellers CD entered into an Agreement of Purchase and Sale for the Property with Buyer C, in the amount of \$289,000.00. At the same time, the Sellers CD executed a Dual Agency Consent. On or about January 7, 2004, Buyer C signed a Waiver in respect to financing.

Two weeks later, Individual F discovered that a home in the neighborhood was listed for \$90,000.00 more than the list price for the Property.

Ms. Amsel did not disclose to the Seller CD that Buyer C's interest in the Property was to make renovations and flip the Property for a profit.

A few months later Brokerage A issued a rebate cheque in the amount of \$2,550.00 to the Sellers CD because Ms. Amsel supposedly did not have the funds. The parties executed a document in respect to the rebate, which characterized the rebate as 'a gift'.

A few weeks later the Sellers CD decided not to rent the apartment and they returned the cheque to Brokerage A. The parties signed a document to acknowledge that all of the funds were returned to Brokerage A. The parties agreed that a replacement cheque would be issued

once the Sellers CD found a suitable apartment. However, the cheque for \$2,550.00 was never re-issued to the Sellers CD.

The Sellers CD, Individual F and Individual E all attempted to contact Ms. Amsel without success.

Eventually, Ms. Amsel answered Individual F's telephone call and advised that she could not afford to pay the full amount owing to the Sellers CD. Ms. Amsel issued a cheque to the Sellers CD in the amount of \$1500.00, which was \$1050.00 less than the original cheque. Ms. Amsel promised to pay the balance within two weeks.

The Sellers CD, Individual F and Individual E followed up with Ms. Amsel after she failed to pay the balance as promised. On or about April 18, 2004, Ms. Amsel finally responded to the many calls made by the Sellers CD, Individual F and Individual E. RECO alleged that Ms. Amsel made death threats against the Sellers CD, Individual F and his children.

On or about April 19, 2004, the Sellers CD contacted Broker A to inform him of their interactions with Ms. Amsel and, further, that they would be calling the Police to advise of Ms. Amsel's conduct.

Broker A agreed to speak with Ms. Amsel and to follow-up with the Sellers CD. To date, Broker A has not contacted the Sellers CD.

On or about July 19, 2004, Individual F sent a letter to RECO advising that the Property was resold by Ms. Amsel for \$389,000.00, which amounted to a \$100,000.00 increase in price in only four months.

RECO alleged that Ms. Amsel continued to harass and threaten the Sellers CD including leaving a voicemail message for Individual F which said: "yeah, Granny Freed's free daycare you big fat f---ing loser".

RECO alleged that the Police instructed Ms. Amsel to refrain from contact with the Sellers CD, Individual F and Individual E. Despite the direction made by the Police, Ms. Amsel continued to contact the Sellers CD.

On or about April 25, 2005, the researcher interviewed Broker A and requested various documents which Broker A has not provided to date.

RECO further alleged that Ms. Amsel assaulted Registrant G, salesperson, at the offices of Brokerage H, for the purpose of obtaining \$300.00 owed to her and that Ms. Amsel threatened Registrant I, who witnessed this assault.

RECO also alleged that Ms. Amsel has had various similar negative interactions with other registrants in the past.

Complaints #2 Allegations

Ms. Amsel

In relation to Ms. Amsel, RECO alleges that:

- i) She acted in an unprofessional manner, including in particular:
 - a) Failing to act in the best interests of her seller clients;
 - b) Misleading her seller clients about the appropriate valuation of the Property;
 - c) Scheming with the buyer in relation to the selling price of the Property;
 - d) Flipping the Property for financial gain without furnishing the seller with the requisite disclosure;
 - e) Failing to explain agency to her seller clients and to obtain an acknowledgement in respect thereto;
 - f) Physically and verbally abusing her seller clients, other members and employees;
 - g) Failing to fulfil her promises to her seller clients in respect to providing a rebate from her commission.

Ms. Amsel is alleged to have breached the following Rules of the Code:

Rule 1 – Ethical Behaviour – A Member shall:

- (1) endeavour to protect and promote the best interests of the Member's Client;
- (2) endeavour to protect the public from fraud, misrepresentation or unethical practice in connection with real estate Transactions,
- (5) deal fairly, honestly and with integrity with the public, other Members and third parties,

Rule 2 – Primary Duty to Client – A Member shall endeavour to protect and promote the best interests of the Member's Client. This primary obligation does not relieve the Member of the responsibility of dealing fairly, honestly and with integrity with others involved in each transaction;

Rule 3 – Disclosure of Role - At the earliest practical opportunity, but no later than when the Member Accepts an Agency, a Member shall fully disclose in writing the role and nature of the service that the Member shall be providing to the Person. The Member shall also disclose the Member's role to others involved in the Transaction when appropriate.

Rule 5 – Financial Disclosure - A Member shall disclose the financial aspects of a Transaction and any personal interest of the Member in a matter to the Parties sufficient to enable them to make an informed decision.

Rule 9 – Abuse of a Client or Customer - A Member, when acting in a professional capacity, shall not physically, sexually, emotionally or verbally abuse a Client, a Customer, a member of the public, another Member, or any other third party.

Rule 41 – Evaluations and Comparative Market Analysis - A Member shall not give an opinion or advice about the value of Property unless the Member has the knowledge, skill and training to do so for that type of opinion or advice and for that type of Property and the Member has done the necessary research.

Rule 46 – Unprofessional Conduct – A Member shall not engage in an act or omission relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by Members or the public as disgraceful, dishonourable or unprofessional.

Rule 47 – Conduct Unbecoming a Member - A Member shall not engage in conduct unbecoming a Member.

Broker A

In relation to Broker A, RECO alleges that:

ii) He acted in an unprofessional manner, including in particular:

- a) Failing to adhere to RECO's requests for documentation;
- b) Failing to properly supervise Ms. Amsel's conduct

Broker A is alleged to have breached the following Rules of the Code:

Rule 23 - Obedience to Law - A Member shall practice in accordance with all federal, territorial or provincial law or municipal by-law relevant to the Member's fitness to practise.

With respect to Rule 23 of the Code (Guiding Principle 23.2), Broker A is alleged to have breached the following sections of By-Law #10:

19. Breaches of the following terms of membership in the Council may lead to discipline under this by-law:

- (a) breaching a by-law made by the Council or the Code of Ethics;
- (b) failing to cooperate with and participate in the complaints, compliance and discipline procedures, including ADR, set out in this by-law;
- (c) failing to comply with a requirement made by the Manager of CCD under this by-law;
- (d) failing to cooperate with and provide full assistance to a representative of the Council conducting an inspection program.

25. A Member shall assist a Researcher appointed under this by-law, whether or not the Member is the subject of the inquiry. The assistance shall include:

- (b) obtaining and providing the original or, if requested, copies of all documents that may touch upon the matter under inquiry;
- (d) answering questions asked by the Researcher that may touch upon the matter under inquiry.
- (e) directing all employees and persons acting under the direction of the Member to cooperate with the Researcher.

Rule 30 – Cooperation with the Council - A Member shall cooperate fully with any representative of the Council carrying on the Council's regulatory functions and duties including investigations and discipline. A Member shall give due consideration to the Member's duty of confidentiality in a Member's responses to any such representative of the Council.

Rule 43 – Broker Responsibility – A Broker shall be responsible for the professional conduct and professional actions of those Members registered with that broker.

Rule 46 – Unprofessional Conduct – A Member shall not engage in an act or omission relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by Members or the public as disgraceful, dishonourable or unprofessional.

EVIDENCE CALLED BY RECO

WITNESSES:

1. Seller A

The Panel found Seller A to be believable and consistent in her testimony and demeanor through some aggressive questioning by defence counsel. Clearly the couple put their transaction and real estate future in the hands of Ms. Amsel and clearly there were gaps in the services provided, all of which caused concern for the Panel. The lack of a Comparative Market Analysis (“CMA”), incomplete and inaccurate disclosures of the role of the Registrant and the Registrants Statement as Purchaser could not be overlooked by the Panel.

2. Individual F

Individual F provided clear and consistent testimony before the Panel of the climate under which the transaction took place, but was not an actual witness to the negotiations in the transaction. However, he did have first hand knowledge of Ms. Amsel’s conduct after the transaction closed and the Panel preferred his testimony over Ms. Amsel’s where the evidence of the two conflicted.

3. Individual E (was called but did not testify because no witness statement had been provided by RECO).

4. Buyer C

In an emotional appearance before the Panel, Buyer C recalled her dealings with Ms. Amsel, and specifically the promise of 2% rebate to cover first and last months’ rent, since it was a financially difficult time for the family. Buyer C testified to the threatening atmosphere that existed once the monies were not forthcoming. Under cross-examination Buyer C did confirm the condition of the property was “rough”. The Panel accepted her testimony and preferred her testimony over Ms. Amsel’s where they conflicted. The Panel found Buyer C to have been a somewhat sensitive witness but it did find her testimony to be credible.

5. Buyer D

Buyer D attended the hearing and recounted to the Panel the circumstances and climate of the transaction. He was clear and concise in his recall of the confrontations by Ms. Amsel and in attempts to get the outstanding monies from her and the Panel accepted his testimony.

6. Registrant I

Registrant I described his role as “gopher” for Ms. Amsel and provided the Panel with first hand account of a physical confrontation by Ms. Amsel on Registrant G, Ms. Amsel’s theft of \$5 for an outstanding debt and Ms. Amsel’s threats to Registrant I. The Panel felt that Registrant I had nothing to gain by testifying at the discipline hearing and it accepted his evidence.

7. Registrant G

Registrant G demonstrated to the Panel the fear that many people seemed to have when dealing with Ms. Amsel. The Panel believed this witness and found that physical violence and bullying were among the techniques used by Ms. Amsel to achieve her goals. The Panel believed Registrant G’s account of the assault on her by Ms. Amsel.

8. Registrant H

A previous broker employer, Registrant H, testified to the aftermath of the “serious” confrontation between Ms. Amsel and Registrant G. While the Panel also heard that commission reduction promises were made and not honoured while Ms. Amsel was employed with the former brokerage, there was no evidence provided to clarify that to the Panel. However the panel feels that in the area of credibility, Registrant H’s testimony was convincing and supported the version of events alleged by RECO.

9. RECO Researcher

As researcher, RECO Researcher reported to the Panel the many attempts by RECO to obtain the required documents and interview the parties in this complaint.

EVIDENCE CALLED BY BROKER A

WITNESSES:

1. Witness A

Testified that as administrator she did send to RECO many of the files requested and confirmed to the Panel that the deal files were incomplete in this matter.

2. Broker A

Testified that he declined to be interviewed and co-operate with RECO in its investigation, that he provided RECO with what documents he did have, but offered no proof of what was reportedly faxed, compared to what RECO received.

EVIDENCE CALLED BY MS. AMSEL

WITNESSES:

1. Morrissa Amsel

Ms. Amsel testified before the Panel. The Panel found her testimony to be contrived and evasive, as well as confrontational under cross-examination. Ms. Amsel's answers seemed to be "spun" rather than clarified and the Panel felt that she did not tell the whole story on the issues of rebates and gifts to the complainants. Repeatedly the Panel heard from Ms. Amsel phrases like "as a professional – a good agent would" in matters relating to both deals, but the lack of documentation outweighed those claims. The Panel received a transcript of an obscene voicemail message left by Ms. Amsel, who clearly admitted leaving that message when the requests for the rebate monies were made by the Sellers CD. Even while sitting at the defence table, Ms. Amsel engaged in confrontations with RECO counsel, her own legal counsel, and sniped at the Panel about the hearing process. During the course of the hearing, there were several breaks so that Ms. Amsel could be spoken to by her counsel. Her demeanour during the hearing provided support for the Panel's view that she was not a credible witness.

2. Registrant J

Registrant J testified before the Panel as to the property conditions in her role as listing agent prior to the expiry of 1-AB Street on MLS and subsequent contact by Ms. Amsel and Ms. Freed. Factors like decorating, housekeeping and the corner lot were all issues affecting the market price of the property, which did not sell previously at the price offered and agreed to by the Respondents. She characterized the property as in "rough shape".

3. Expert A

As an appraiser and expert witness, he provided historical CMAs and appraisals on both properties in the two complaints before RECO and testified to the “reasonableness” of the transaction prices. In the Seller CD matter, he testified that lack of MLS could affect the price and that prudent sellers would always choose that method of marketing.

4. Buyer D

As buyer for the 1-CD Street property he testified that it was in extremely poor condition, which was ideal for what he wanted to do. Appliances were not in working order as agreed to in the offer, and cleanliness was absent, at the time of closing. As clients of Ms. Amsel, he and his wife were looking for a fixer-up. Based on size and condition, it seemed to be a good deal, which resulted in the purchase. Over the next few months, more than \$60,000 of materials went into the property to achieve the \$389,000 selling price when it was sold.

5. Lauren Freed

In her appearance before the Panel, Ms. Freed was calm and consistent with her testimony that as assistant to Ms. Amsel and business and personal partner, they sought out and renovated properties as a business. She rarely listed properties, never took offers but offered a support role to the day-to-day business of Ms. Amsel. At the time of her testimony, she was not licensed. She was not a witness to the behaviour surrounding the 1-CD Street complaint, and her role was merely delivering documents.

EVIDENCE CALLED BY MS. FREED

None

FINDINGS BY THE PANEL

We the Panel in the case of RECO vs. Morrissa Amsel, Broker A and Lauren Freed find as follows:

Complaint #1

Morrissa Amsel

The Panel finds that Ms. Amsel is in violation of Rules 1(1), 1(2), 1(5), 2, 3, 5, 9, 11, 41, 46 and 47 of the RECO Code of Ethics.

Rule 1, Ethical Behaviour

Ms. Amsel breached Rule 1(1), 1(2) and 1(5) as she and Ms. Freed were in the business of finding properties that they could clean up, renovate and resell and Ms. Amsel was clearly representing her and Ms. Freed's own interests and those goals in this particular transaction. The lack of price discussion and CMA left the sellers to rely on their own knowledge of real estate values from their previous unsuccessful listing. Ms. Amsel's dealings with the client were argumentative and confrontational and with the broken promise to pay their legal fees, neither fair nor honest.

Rule 2, Primary Duty to Client

Ms. Amsel breached Rule 2 by not clearly protecting the interest of her clients. It was impossible to know by the member's actions who she was representing in this transaction and it appears that her own interests overrode the interests of the client.

Rule 3, Disclosure of Role

Ms. Amsel breached Rule 3 by not explaining and confirming to the sellers the agent's role in writing as required by RECO rules.

Rule 5, Financial Disclosure

Ms. Amsel breached Rule 5 by making financial promises to the sellers to pay their legal fees on their subsequent property purchase. Ms. Amsel's failure to pay these fees resulted in added costs to the sellers. Ms. Amsel also failed to fully disclose to the sellers her own interest in the property as Ms. Freed's partner.

Rule 9, Abuse of a Client or Customer

Ms. Amsel breached Rule 9 by leaving an abusive and threatening voicemail message to Seller A regarding the garbage that had been left in the home.

Rule 11, Discovery of Facts

Ms. Amsel breached Rule 11 by not verifying comparable MLS sales data, by not verifying with the sellers her role as agent, by not paying the legal fees of the sellers as promised and by failing to document many of the steps in this transaction.

Rule 41, Evaluations and Comparative Market Analysis

Ms. Amsel breached Rule 41 because there is no evidence that she provided any guidance or direction on pricing for either the buyer or seller in this transaction. Both buyer and seller were left to decide on their own what was a fair and reasonable price for the property.

Rule 46, Unprofessional Conduct

Ms. Amsel breached Rule 46 by not being open with the sellers about her and Ms. Freed's intentions in purchasing the house and by treating Seller A in an unprofessional manner during her discussions and telephone conversations with her. Ms. Amsel's conduct can reasonably be described as disgraceful, dishonourable and unprofessional in her dealings with the Sellers AB.

Rule 47, Conduct Unbecoming a Member

Ms. Amsel breached Rule 47 when she left the second voicemail message for Seller A which was a personal attack on Seller A. Ms. Amsel's conduct reflects on her integrity to the point that public protection is warranted through the discipline process. The conduct in which Ms. Amsel engaged undermines her personal and professional integrity and reflects unfavourably upon the real estate profession as a whole.

Lauren Freed

The Panel finds Ms. Freed to be in violation of Rule 23 of the RECO Code of Ethics.

Rule 23, Obedience to Law

Ms. Freed breached Rule 23, By-Law #10, sections #19, #22 & #25 as follows:

The researcher, RECO Researcher testified that she made three attempts to set-up an interview with Ms. Freed, with no success. Subsequently, the Manager of Complaints, Compliance and Discipline sent a letter dated June 23, 2005 asking Ms. Freed to co-operate and attend an interview with RECO Researcher at the RECO office on June 30, 2005. RECO Researcher later paged Ms. Freed, through her Brokerage A office to confirm her attendance at this meeting but no response was received.

Rule 30, Co-operation with the Council

The Panel finds that the facts underlying this allegation essentially duplicate the allegation regarding Rule 23 and so makes no finding in this regard. If for some reason the Panel had not

made a finding under Rule 23, it would have found that Ms. Freed breached Rule 30 for the reasons set out above.

Broker A

The Panel finds Broker A to be in violation of Rules 23 and 43 of the RECO Code of Ethics

Rule 23, Obedience to Law

Broker A breached By-Law #10 and the Code of Ethics as follows:

Broker A failed to submit documentation requested by the Compliance Officer on September 23, 2004 and the Researcher on May 5, 2005.

Broker A failed to submit documents requested by the Manager of CCD on June 23, 2005.

Broker A failed to co-operate with the Researcher by declining to be interviewed. He did sit in on an interview of Ms Amsel on April 25th but did not offer any comments or information in connection with Complaint #2. He testified to the panel his office policy is not to be interviewed or co-operate.

Broker A failed to submit originals or copies of Acknowledgement of Agency Relationship Explained and signed by the Seller and Trade Record Sheet concerning Complaint #1.

Broker A did not instruct Ms. Freed to co-operate with the Researcher.

Rule 30, Cooperation with the Council

The Panel makes no finding under Rule 30 as it finds that the facts underlying this allegation essentially duplicate the allegation regarding Rule 23. If for some reason the Panel had not made a finding under Rule 23, it would have found that Broker A violated Rule 30 for the reasons set out above.

Rule 43, Broker Responsibility

Broker A breached Rule 43 as he neglected to control the professional conduct and actions of Ms Amsel when advised of her conduct and actions in connection with Complaint #1. He has since changed company policy in that Agents will not receive commission unless all documents are in the office and all promises must be in writing.

Rule 46, Unprofessional Conduct

The Panel made no finding under Rule 46 as it finds the facts underlying this allegation essentially duplicate the allegation regarding Rule 43. If for some reason the Panel had not

made a finding under Rule 43, it would have made a finding under Rule 46 for the reasons set out above regarding Rule 43.

Complaint #2

Morrissa Amsel

The Panel finds Ms. Amsel to be in violation of Rules 1(1), 1(2), 1(5), 2, 3, 5, 9, 41, 46 and 47 of the RECO Code of Ethics.

The Panel finds that they were dealing with two issues in connection with Complaint #2 concerning Ms. Amsel. The first is a domestic situation and the second is her actions pertaining to the rules and regulations as administered by RECO. The domestic situation was disregarded by the Panel and attention directed solely to the rules and regulations of RECO.

During the hearing of witnesses, Ms. Amsel would tend to stare down the witnesses and interrupt them. It appeared to the Panel that she was trying to intimidate the witnesses.

Ms. Amsel did not work in the best interest of the Vendors in establishing the list price of the property nor in marketing the property as she did not follow the instruction of the Vendors. Also, the Panel accepts the evidence given by Seller C and Seller DI that a promise was made to the Vendors concerning a rebate but this promise was never in writing.

It seems to the Panel that Ms. Amsel was working in the interest of the Purchaser by insisting on a list price that was lower than the assessed value and less than what other properties sold for in the area.

The Panel finds that Ms. Amsel is in violation of the Rules of the RECO Code of Ethics as charged including:

Rule 1(1), 1(2) and 1(5), Ethical Behaviour

Ms. Amsel breached Rule 1(1), 1(2) and 1(5) by not protecting and promoting the best interests of the Client and not protecting the public from misrepresentation and unethical practice in connection with this real estate transaction and did not deal fairly, honestly and with integrity in connection with this transaction.

Rule 2, Primary Duty to Client

Ms. Amsel breached Rule 2 by not protecting and promoting the best interest of her Client.

Rule 3, Disclosure of Role

Ms. Amsel breached Rule 3 when upon accepting her role as Agent she did not fully disclose in writing her role and the nature of the service she would provide to the Client nor did she disclose her role with the Purchaser.

Rule 5, Financial Disclosure

Ms. Amsel breached Rule 5 by not disclosing to the Vendors that she knew of the Purchaser's intention to renovate the property and resell it at a profit.

Rule 9, Abuse of a Client or Customer

Ms. Amsel breached Rule 9 by emotionally and verbally abusing the Sellers CD through her telephone contact with them and her voicemail message to Individual F. Ms. Amsel engaged in this conduct in the course of her professional capacity as Agent for the Sellers CD.

Rule 41, Evaluations and Comparative Market Analysis

Ms. Amsel breached Rule 41 by not providing a proper CMA based on research, her knowledge, skill and training and the use of other information available to her to properly advise her Client as to the value of their home.

Rule 46, Unprofessional Conduct

Ms. Amsel breached Rule 46 and engaged in disgraceful, dishonourable and unprofessional conduct by not following the Sellers CD's instructions regarding the showing of the property, by not returning the Sellers CD's phone calls and by the manner in which she treated the Sellers CD generally throughout the transaction and afterwards when they tried to contact her regarding the rent cheque.

Rule 47, Conduct Unbecoming a Member

Ms. Amsel breached Rule 47 and engaged in conduct unbecoming a member of the real estate profession in her assault on Registrant G and her threats to Registrant I. Her conduct reflects on her integrity to the point that public protection is warranted through the discipline process. The conduct in which Ms. Amsel engaged undermines her personal and professional integrity and reflects unfavourably upon the real estate profession as a whole.

Broker A

The Panel finds Broker A to be in violation of Rules 23 and 43 of the RECO Code of Ethics.

Rule 23, Obedience to Law

Broker A breached By-Law #10 and the Code of Ethics as follows:

Broker A failed to submit documentation requested by the Compliance Officer on September 23, 2004 and the Researcher on May 5, 2005.

Broker A failed to submit documents requested by the Manager of CCD on June 23, 2005.

Broker A refused to co-operate with the Researcher by declining to be interviewed. He did sit in on an interview of Ms Amsel on April 25th but did not offer any comments or information in connection with Complaint #2.

Broker A failed to submit originals or copies of Acknowledgement of Agency Relationship signed by the Seller and Buyer of Complaint #2

Broker A neglected to instruct Ms. Freed to co-operate with the Researcher.

Rule 30, Cooperation with the Council

The Panel makes no finding under Rule 30 as it finds that the facts underlying this allegation essentially duplicate the allegation regarding Rule 23. If for some reason the Panel had not made a finding under Rule 23, it would have found that Broker A violated Rule 30 for the reasons set out above.

Rule 43, Broker Responsibility

Broker A breached Rule 43 as he neglected to control the professional conduct and actions of Ms Amsel when advised of her conduct and actions in connection with Complaint #2. He has since changed company policy in that Agents will not receive commission unless all documents are in the office and all promises must be in writing.

Rule 46, Unprofessional Conduct

The Panel made no finding under Rule 46 because it found that the facts underlying this allegation essentially duplicate the allegation regarding Rule 43. If for some reason the Panel had not made a finding under Rule 43, it would have made a finding against Broker A under Rule 46 for the reasons set out above.

PENALTY

RECO is to deliver written submissions to the Panel and to the Respondents on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.

The Respondents shall deliver to the Panel and to RECO its written submissions on penalty and costs in response to RECO's submissions within 15 days of the date on which RECO's submissions on penalty and costs are delivered to the Respondents.

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

The panel shall deliver its decision on penalty and costs after considering the written submissions of the parties.



DISCIPLINE DECISION

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO
BY-LAW NO. 10 OF THE REAL ESTATE COUNCIL OF ONTARIO

BETWEEN:

**MANAGER OF COMPLAINTS, COMPLIANCE AND DISCIPLINE
REAL ESTATE COUNCIL OF ONTARIO**

- AND -

MORRISSA AMSEL, BROKER A AND LAUREN FREED

The Panel met on June 14, 2007 to discuss the written submissions by all parties with respect to penalty and costs. The Panel decided as follows:

COMPLAINT #1

PENALTY:

Morrissa Amsel

Administrative Penalty of \$25,000.00 payable to RECO within 30 days of sending this decision.

Lauren Freed

Administrative Penalty of \$5,000.00 payable to RECO within 60 days of sending this decision.

Broker A

Administrative Penalty of \$10,000.00 payable to RECO within 30 days of sending this decision.

COMPLAINT #2

PENALTY:

Morrissa Amsel

Administrative Penalty of \$20,000.00 payable to RECO within 30 days of sending this decision.

Broker A

Administrative Penalty of \$10,000.00 payable to RECO within 30 days of sending this decision.

COSTS AND EXPENSES: N/A

WRITTEN REASONS:

REASONS FOR DECISION

COMPLAINT #1 – #0424938

Morrissa Amsel

The Panel finds Ms. Amsel's conduct in this matter unacceptable. She put her own goals ahead of the clients with threatening behaviour and violence to accomplish her ends. Such contempt for the client and the profession will not be tolerated and as such the Panel agreed with RECO's submissions that an administrative penalty of \$25,000.00 is appropriate.

Lauren Freed

The Panel was moved by the written submission by Ms. Freed in this matter, "No behaviour exists without context" she said in her submission and the Panel found the context to be believable and persuasive, and as such the panel rejected RECO's submission in favour of a \$5,000.00 administrative penalty. The Panel felt Ms. Freed's actions, on the issue of co-operation were influenced by Ms. Amsel, in their personal relationship.

Broker A

The Panel felt Broker A chose to ignore what RECO described in its submission as "Storm Clouds", which were created by Ms. Amsel, and the penalty should be an example to other Brokers of Records regarding oversight and co-operation. There were obvious indications to Broker A that there were problems with Ms. Amsel's behaviour and as Broker of Record he should have applied internal controls much earlier. The termination in the matter was too late. The panel finds that an administrative penalty of \$10,000.00 is appropriate in this matter.

COMPLAINT #2 – #048687

Morrissa Amsel

The Panel views specific and general deterrence as overriding principles in this case in light of the unacceptable behaviour before them. A message must be sent to stop such behaviour from occurring again.

The Registrant needs to understand dishonesty and deviousness is not acceptable – promises were made by her and not honoured. The use of physical and verbal threats to clients, and other professionals, must be punished, and the order in this case must be sufficient to deter such behaviour, whether by this Registrant or by any other member of the profession. The panel finds that an administrative penalty of \$20,000.00 is appropriate in this matter.

Broker A

Compliance with RECO as the Regulator is fundamental, and a minimum standard for the Broker of Record, ignored by Broker A. He further demonstrated no action was taken to ensure the transaction files were complete to RECO standards. As Broker of Record – record keeping is a duty. Documents were missing – files were incomplete. The panel finds that an administrative penalty of \$10,000.00 is appropriate in this matter.

ADDENDUM

Broker A has appealed the Discipline Decision.