



Real Estate Council of Ontario

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 -

ANITA STERN

DATE OF DECISION: January 14, 2010

FINDINGS: In violation of Rules 1(1), 1(5), 42 and 46 of the RECO Code of Ethics

PENALTY: Administrative Penalty of \$5,000.00 payable to RECO within 90 days of sending this decision.

COSTS AND EXPENSES: N/A

WRITTEN REASONS:

REASONS FOR DECISION

The hearing was held on January 14th, 2010 and proceeded as an Agreed Statement of Facts and Joint Submission as to Penalty. The Agreed Statement and Joint Submission was submitted to the Panel by RECO's Counsel. The Respondent did not attend. The Agreed Statement and Joint Submission read:

AGREED STATEMENT OF FACTS AND PENALTY

1. Ms. Anita Stern ("Stern") is a Member of the Real Estate Council of Ontario ("RECO") and registered as a salesperson pursuant to the Real Estate and Business Brokers Act (the "Act"). At all material times, Stern was registered as an employee of Seller Brokerage.

2. Buyer Representative is also a Member of RECO and is registered as a salesperson pursuant to the Act. At all material times, Buyer Representative was registered as an employee of Buyer Brokerage.
3. Seller was the seller of a property described as 1-A Street in City A, Ontario (the "Property").

Summary of Allegations:

1. Stern was the salesperson for the Seller on the transaction. On or about November 6, 2005, the Seller and the Buyers entered into an Agreement of Purchase and Sale ("APS"). The APS contained a provision that the deposit amount of \$1,000 was to be delivered "upon acceptance". The APS stipulated that the completion date would be November 30, 2005.
2. On December 15, 2005, Seller filed a written complaint to RECO regarding this transaction. He stated that the deposit cheque provided by Buyer was returned "NSF" on or about November 16 and he, Seller, was not notified of this fact until 2 days before the completion date.
3. On January 25, 2006, Stern provided a written reply to the allegations to RECO. In her statement she advised that the deposit cheque was received by her on November 9th.
4. On or about November 16th, Stern states that she received a call from the Administration Department at Seller Brokerage that the deposit cheque had been returned "NSF".
5. Stern admitted in her submissions that it took her approximately 10 days to advise Seller of the deposit cheque being NSF.
6. The completion date was extended until December 2nd; however the transaction did not close. Seller states he was told this would now occur on the following Monday (December 5th), however on December 6th, 2005 he was notified the

transaction had still not completed and that neither Stern nor Buyer Representative had heard from the Buyers.

7. Such other facts as may arise prior to the hearing and the Manager of Complaints, Compliance and Discipline may advise thereof.

Accordingly, Anita Stern acted in an unprofessional manner by:

- (a) failing to protect the best interests of her client by withholding information regarding the status of the deposit cheque from him;
- (b) failing to deal fairly, and with integrity with the public, other members and third parties;
- (c) failing to conduct herself in a professional manner by not advising the seller immediately after being made aware that the deposit cheque was returned as “NSF”;
- (d) failing to provide real estate services in a knowledgeable, competent, and skilled manner.

Thereby breaching the following Rules of the RECO Code of Ethics: 1(1), 1(5), 42 and 46.

Rules 1 – Ethical Behaviour:

A Member shall:

- (1) endeavour to protect and promote the best interests of the Member’s Client,*
- (5) deal fairly, honestly and with integrity with the public, other Members and third parties,*

Rule 42 – Competence:

A Member shall render conscientious service with the knowledge, skill, judgement and competence, in conformity with this Code of Ethics and the standards which are reasonably expected of Members. When the Member is unable to render such

a service, either alone or with the aid of another Member, the Member shall decline to act.

Rule 46 – Unprofessional Conduct:

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

AGREED PENALTY:

Ms. Stern be ordered to pay a penalty of \$5,000.00 within 90 days of the date of the decision of the Discipline Committee in this matter.

By initials below, I Anita Stern, acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions.

[Respondent's Initials]

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

[Respondent's Initials]

By initials below, I Anita Stern, agree, acknowledge, understand and consent to the submission of this Agreed Statement of Facts and Joint Submission as to Penalty, before the RECO Chambers on a date to be chosen by the Discipline Committee.

[Respondent's Initials]

By initials below, I Anita Stern, acknowledge that, should I wish to attend on the date this Agreed Statement of Facts and Penalty is heard by the Discipline Committee, I will advise the Hearings Coordinator forthwith in order that I may be informed of the date.

[Respondent's Initials]

By initials below, I Anita Stern, acknowledge that I was aware of my rights to be represented by Counsel or agent in this matter.

[Respondent's Initials]

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

Exhibits

1. Notice of Hearing, dated December 9, 2009
2. Agreed Statement of Facts and Penalty

Decision of the Panel

Having reviewed and considered the Agreed Statement of Facts, the Panel concluded that the Respondent breached Rules 1(1), 1(5), 42 and 46 of RECO's Code of Ethics. The Panel is also in agreement with the Joint Submission of the parties as to penalty and accordingly makes the following order:

Administrative Penalty of \$5,000.00 payable to RECO within 90 days of sending this decision.

No other Costs and or Expenses.