



Real Estate Council of Ontario

DISCIPLINE DECISION

**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:

REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

- AND-

ALISON CARTER

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

DATE OF DECISION: January 25, 2010

FINDINGS: In violation of Sections 2(1), 4, 5, 7(1), 10(1), 10(2), 11(1), 28(1), 37(1), 37(2), 38, 39 of the *REBBA 2002* Code of Ethics

ORDER: Fine of \$18,000.00 payable to RECO within 180 days of sending this decision.

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

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

The Agreed Statement of Facts and Penalty read:

AGREED STATEMENT OF FACTS AND PENALTY

1. Alison Carter (“Carter”) is a member of the Real Estate Council of Ontario (“RECO”) and is registered as a salesperson under the Act. At all material times Carter was employed by Brokerage A based in City A, Ontario.
2. Company B is an Ontario corporation that, among other things, operates Company B1. Company B1 is a residential developer, registered with Tarion Warranty Company as a new homes builder, operating in Ontario. At all material times Company B1 was the developer of a subdivision named Company B2 located in the City B, Ontario. Individual B is the president of Company B and, amongst other things, oversees the daily operations of Company B1.
3. Employee B is neither a member of RECO nor is he a registrant under the Act. At all material times Employee B was employed by Company B1 as a sales representative at the Company B2 site until his discharge on or about April 7, 2009.
4. On or about September 13, 2008 Individual B hired Employee B as a sales representative at the Company B2 building site. Employee B’s duties focused on the sale of Company B2’s homes and processing of offers from potential purchasers.
5. On October 24, 2008 Registrant C, a registered salesperson under the Act employed with Brokerage C located in City C executed a Buyer’s Representation Agreement with Buyer C1 and Buyer C2 (the “Buyers”). The agreement was valid until October 24, 2009 and applied to properties within the Region. The object of the agreement was to find the Buyers a resale home. After a series of resale property viewings Registrant C recommended that the Buyers attend at the Company B2 site to view new homes. Registrant C advised the Buyers to attend the site without him as, in his experience, new home developers typically do not deal with real estate salespersons but rather choose to deal with purchasers directly.

6. During the months of November and December 2008 due to a slump in new home sales at Company B2, Individual B contracted with Registrant D, a registered real estate broker, at Brokerage D located in City D, Ontario to provide Multiple Listing Service ("MLS") marketing, document preparation and handling for select inventory at Company B2. In consideration for the MLS listing and related services Registrant D was to be paid a one percent (1%) listing agent commission for all MLS based sales at Company B2 by other registered salespersons.
7. As part of the Company B2's marketing campaign, Individual B agreed to pay a four percent (4%) selling agent commission to any registered real estate salesperson who sold a Company B2 home, to drop the price of the homes by \$50,000.00 and to continue to advertise the subdivision to the public with the hope of attracting individual buyers to the site to deal with Employee B.
8. In or about January, 2009 during the course of their routine business dealings Employee B advised Individual B of Carter, asserting that he anticipated her bringing in buyers for Company B2.
9. In or about early January, 2009 Consumers E visited the Company B2 site and viewed a number of properties with Employee B. Over a period of several weeks Consumers E narrowed their search to a single home they wished to buy, a property described as 1-E Street, City B, Ontario; this property had been MLS listed by Registrant D, under MLS No. #####. Initially Consumers E directly dealt with Employee B who assisted them in filing a list of additions they wished to have in the home. Although Company B1 rejected their additions request, the Consumers E advised Employee B that they wished to submit an offer on 1-E Street. Employee B advised them that because 1-E Street was an MLS property they required the services of a registered real estate salesperson he directed them to contact Carter and provided them with one of her business cards. Carter and Employee B excluded Registrant D, the listing agent, from this transaction.
10. After satisfying themselves that they required Carter's services to make an offer on 1-E Street, on or about January 17, 2009 Consumers E met with Carter while viewing 1-E Street. Carter had Consumers E execute a Buyer Representation

Agreement on behalf of Brokerage A with a duration period of three (3) months and a commission rate of four percent (4%) of the sale price of the property: "net of GST". Carter also caused Consumers E to execute a Confirmation of Cooperation and Representation form on behalf of Brokerage A as the brokerage and herself as salesperson, this document was never signed by a representative of the listing brokerage.

11. On or about January 20, 2009 Consumers E attended the Company B2 site with Carter and Employee B to place an offer to purchase 1-E Street. Although Carter was purportedly acting on Consumers E's behalf she deferred to Employee B who processed Consumers E's offer, which was for the full MLS list price of \$269,920.00. Employee B also explained all the related transaction documentation to Consumers E while Carter busied herself elsewhere.
12. Shortly after Consumers E's execution of the 1-E Street offer documents Individual B was presented with those same documents purportedly submitted by Carter to Employee B on behalf of Brokerage A and Consumers E. Company B accepted the 1-E Street offer on January 21, 2009.
13. During the month of March 2009 the Buyers attended the Company B2 site and, after having their respective families view the property, decided to make an offer on a property described as 1-C Street, City B, Ontario. This property was not MLS listed by Registrant D and Brokerage D.
14. On or about March 24, 2009 the Buyers attended the Company B2 site and spoke with Employee B. They advised Employee B that they wished to submit an offer on 1-C Street. Employee B advised the Buyers that they were required to return the following day to submit the necessary documentation.
15. On or about March 25, 2009 at approximately 6:00 p.m. the Buyers returned to the Company B2 site in order to submit an offer on 1-C Street. Upon their arrival the Buyers were met by Employee B and Carter. Employee B introduced Carter as his partner and directed that before they could process the offer documentation they needed to sign a few documents with Carter. After this direction Carter, without

explanation, placed a Buyer Representation Agreement in favour of Brokerage A and herself, effective from March 25, 2009 to August 28, 2009 (“BRA”) and a Confirmation of Co-operation and Representation form (“CCR”) in favour of Brokerage A and Carter, before the Buyers. At no time did Carter explain to the Buyers the purpose or effect of the documentation, inquire as to whether the Buyers had been working with another salesperson or ask whether they had signed any similar documentation with another real estate salesperson. After the Buyers executed the forms in favour of Brokerage A and Carter, Carter advised them to submit their offer on 1-C Street through Employee B. Although Registrant D asserts that 1-C Street was not MLS listed his signature, dated March 31, 2009, appears on the CCR form prepared by Carter and executed by the Buyers.

16. The Buyers followed Carter’s direction to work on their offer with Employee B. They offered \$235,490.00 for 1-C Street. Although Carter remained on the scene she made no effort to assist the Buyers in the completion of the Agreement of Purchase and Sale documentation (“APS”). After completing the forms the Buyers were dismissed by Employee B and Carter without being provided a copy of the APS. Employee B advised them that they would be mailed a copy of the APS after Company B1 signed the agreement.
17. On or about March 26, 2009 Registrant D became aware of the 1-E Street transaction when Brokerage A issued correspondence to Brokerage D requesting the commission of \$10,959.48 to be paid out to Brokerage A in accordance with the documents accompanying the 1-E Street sale.
18. Eventually Company B paid out a five (5%) percent commission totaling \$13,699.35 to Brokerage D and Brokerage A.
19. Company B accepted the Buyers’ offer on March 30, 2009. On or about April 2, 2009 the Buyers received a copy of the executed APS in the mail.
20. On or about April 6, 2009 the Buyers met with Registrant C to review the sale documentation they received from Company B and Carter. During this meeting

Registrant C discovered and advised the Buyers that they had signed another BRA even though the agreement they had with him was still in effect.

21. On or about May 14, 2009 Brokerage A issued a request to Brokerage D for payment of commission for the 1-C Street sale in the amount of \$9,583.90.
22. Company B has refused to payout the commission request for the 1-C Street sale.
23. On or about August 31, 2009 the foregoing events were reported to RECO by the York Regional Police based on a criminal complaint filed by Individual B.

It is alleged that Carter acted unprofessionally by:

1. Failing to promote and protect the best interests of her Clients.
2. Failing to provide conscientious service to her Clients and customers and in so doing failed to demonstrate reasonable knowledge, skill, judgement and completion in providing those services.
3. Failing to properly deal with other registrant under the Act.
4. Failing to inform her Clients of the services that she was providing to them on behalf of Brokerage A.
5. Failing to provide her Clients copies of Agreements of Purchase and Sale in a timely and effective manner.
6. Knowingly making inaccurate representations about services provided by her to her Clients.
7. Failing to act in a manner that reflects best efforts to prevent error, misrepresentation or fraud or any other unethical practice in respect of a trade in real estate.
8. Knowingly engaging in an act or omission that, in having regard to the circumstances, is reasonably regarded as disgraceful, dishonourable, unprofessional or unbecoming a registrant.

It is alleged that Carter has breached the following sections of the Code of Ethics:

Brokers and salespersons

2. (1) A broker or salesperson shall not do or omit to do anything that causes the brokerage that employs the broker or salesperson to contravene this Regulation.

Best interests

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

Conscientious and competent service

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

Dealings with other registrants

7. (1) A registrant who knows or ought to know that a person is a client of another registrant shall communicate information to the person for the purpose of a trade in real estate only through the other registrant, unless the other registrant has consented in writing.

Information before agreements

10. (1) Before entering into an agreement with a buyer or seller in respect of trading in real estate, a brokerage shall, at the earliest practicable opportunity, inform the buyer or seller of the following:

1. The types of service alternatives that are available in the circumstances, including a representation agreement or another type of agreement.
2. The services that the brokerage would provide under the agreement.
3. The fact that circumstances could arise in which the brokerage could represent more than one client in respect of the same trade in real estate, but that the brokerage could not do this unless all of the clients represented by the brokerage in respect of that trade consented in writing.
4. The nature of the services that the brokerage would provide to each client if the brokerage represents more than one client in respect of the same trade in real estate.
5. The fact that circumstances could arise in which the brokerage could provide services to more than one customer in respect of the same trade in real estate.

6. The fact that circumstances could arise in which the brokerage could, in respect of the same trade in real estate, both represent clients and provide services to customers.
 7. The restricted nature of the services that the brokerage would provide to a customer in respect of a trade in real estate if the brokerage also represents a client in respect of that trade.
10. (2) The brokerage shall, at the earliest practicable opportunity and before an offer is made, use the brokerage's best efforts to obtain from the buyer or seller a written acknowledgement that the buyer or seller received all the information referred to in Subsection (1).

Contents of written agreements

11. (1) A brokerage shall not enter into a written agreement with a buyer or seller for the purpose of trading in real estate unless the agreement clearly, comprehensibly and prominently,
- a) specifies the date on which the agreement takes effect and the date on which it expires
 - b) specifies or describes the method for determining,
 - i. the amount of any commission or other remuneration payable to the brokerage, and
 - ii. in the case of an agreement with a seller, the amount of any commission or other remuneration payable to any other brokerage;
 - c) describes how any commission or other remuneration payable to the brokerage will be paid, and
 - d) sets out the services that the brokerage will provide under the agreement.

Copies of agreements

28. (1) If a registrant represents a client who enters into a written agreement that deals with the conveyance of an interest in real estate, the registrant shall use the registrant's best efforts to ensure that all parties to the agreement receive a copy of the agreement at the earliest practicable opportunity.

Inaccurate representations

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

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

Error, misrepresentation and fraud

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

Unprofessional conduct

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.

AGREED PENALTY:

Ms. Carter be ordered to pay a penalty of \$18,000.00 within 180 days of the date of the decision of the Discipline Committee in this matter.

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

[Respondent's Initials]

By initials below, I Alison Carter, agree, understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penaltly as a final settlement of this matter.

[Respondent's Initials]

By initials below, I Alison Carter, acknowledge that I was aware of my right to be represented by Counsel or agent in this matter.

[Respondent's Initials]

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

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

DECISION OF THE CHAIR

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 2(1), 4, 5, 7(1), 10(1), 10(2), 11(1), 28(1), 37(1), 37(2), 38 and 39 of the *REBBA 2002* Code of Ethics. The Chair of the Discipline Committee (*REBBA 2002*) is also in agreement with the joint submission of the Parties as to penalty and accordingly makes the following order:

That Alison Carter pay a Fine of \$18,000.00 payable to RECO within 180 days of sending this decision.