



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-

SEAN MARANDI

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: March 15, 2010

FINDINGS: In violation of Sections 3, 4, 5, 6(1), 21(1) and 38 of the *REBBA 2002* Code of Ethics

ORDER: Fine of \$7,500.00 payable to RECO within 90 days of sending this decision.

Successful completion of the "Ethics and Business Practice – REIC" course and provide RECO with confirmation of successful completion within 120 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. Mr. Sean Marandi (“Mr. Marandi”) is a member of RECO and a Registrant under the Real Estate and Business Brokers Act, 2002 (“REBBA 2002”). At all material times Mr. Marandi was registered with Brokerage A.
2. Buyer A (the “Complainant”) is a member of the public.
3. A property with the Municipal address of 1-A Street, in City A, Ontario was listed by Brokerage A with Mr. Marandi as the representative on the City B Real Estate Board Multiple Listing System (the “City B MLS”). The sellers were Seller A1 and Seller A2. 1-A Street was listed on June 7, 2006 at \$555,000.
4. On or about June 9, 2006, Mr. Marandi drafted an Agreement of Purchase & Sale (the “Offer”) on behalf of the Complainant for the purchase of 1-A Street.
5. Included in the documents with the Offer was a Confirmation of Representation form indicating the Complainant had signed a Buyer Representation Agreement and was a client of the Brokerage with Dual Representation of buyer and seller.
6. According to the City B MLS listing information, 1-A Street was described as:

“Magnificent house in Prestigious Court, elegant design with two apartments in the basement (\$1,150.00 income), all window coverings, all existing light fixtures, CAC, CVAC, security systems, garage opener, three fridges, three stoves, a washer and a dryer. Seller and Agent do not warrant retrofit status of basement apartment”.
7. By the Offer drafted by Mr. Marandi on behalf of the Complainant:
 - a. the offered price was \$520,000;
 - b. there was a deposit of \$10,000 to be paid upon acceptance
 - c. the offer was irrevocable by the buyer until 11:59 p.m. on June 9, 2006 and
 - d. the completion date was set for August 15, 2006.
8. The Offer was conditional on the following:
 - a. financing within one business day of acceptance of the Offer; and
 - b. inspection within one business day of the acceptance of the Offer.
9. The Offer also had a clause requiring the seller to provide, on acceptance, an existing survey of 1-A Street showing current structures, buildings, improvements, easements, rights of way, and encroachments affecting the property, along with a declaration confirming that there had been no additions, buildings, improvements of 1-A Street since the date of the survey.
10. In the Offer, Mr. Marandi had the Complainant acknowledge that Brokerage A represented both the buyer and the seller in this transaction.

11. The Offer was signed back at \$542,000 by the sellers. The sign back was accepted by the Complainant on June 9, 2006 at 7:30 p.m.
12. Although Mr. Marandi inserted the survey clause, as stated in paragraph 9 above, there was no indication that Mr. Marandi, who represented both parties followed through on the production of the survey to protect his client the Complainant.
13. Mr. Marandi further advised the Complainant that 1-A Street would be an excellent purchase for investment purposes as the previous owner had built a separate entrance to the basement. According to Mr. Marandi, this created the possibility of 1-A Street being rented by two separate tenants.
14. While Brokerage A, represented both the buyer and the seller with Mr. Marandi as the sales representative for both, and he inserted the clause in the City B MLS listing protecting the brokerage and the seller by stating that the retrofit status of the basement apartment was not warranted by the brokerage and the seller, Mr. Marandi did not take any steps to protect the Complainant by inserting a clause in the Agreement of Purchase and Sale or preparing some other documentation to ensure the Complainant was fully informed of the legality and suitability of the secondary unit for his intended use.
15. Once the transaction concluded, due to the failure of Mr. Marandi, to protect the Complainant by inserting a clause or other documentation as noted above, the Complainant had to undergo a host of legal and financial hardships. These hardships included, among others:
 1. The Town of City A advising the Complainant that the basement entrance was not built in compliance with the *Building Codes Act 1992*;
 2. An order being issued by the Town of City A for the violation of the *Building Code Act 1992* because the basement apartment was not in compliance of the *Building Code Act*;
 3. Water damage to 1-A Street of about \$50,000.00 due to the improper building of the basement door
 4. Being taken to the Ontario Rental Housing Tribunal due to the problems the tenants had with the door
 5. Having to file for bankruptcy as he could not carry the mortgage of 1-A Street, when the tenants stopped providing rent due to the damage to their living space.

Accordingly Mr. Marandi acted unprofessionally when he;

1. Failed to verify the retrofit status and/or intended use of the basement apartment on behalf of his client, the Complainant.
2. Failed to follow through with a clause in the offer regarding a survey and improvements and structural changes to 1-A Street.
3. Failed to insert a clause in the offer to ensure that the Complainant received assurances and/or information from the Town of City A regarding the legality of the retrofit of the basement apartment before the offer became binding.

It is thereby alleged that Mr. Marandi has breached the following sections of the Code of Ethics:

Section 3 – Fairness and honesty

A registrant shall treat every person the registrant deals with in the course of a trade in real estate fairly, honestly and with integrity.

Section 4 – Best interests

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

Section 5 – Conscientious and competent service, etc.

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.

Section 6(1) – Providing opinions, etc.

A registrant shall demonstrate reasonable knowledge, skill, judgment and competence in providing opinions, advice or information to any person in respect of a trade in real estate.

Section 21(1) – Material facts

A broker or salesperson who has a client in respect of the acquisition or disposition of a particular interest in real estate shall take reasonable steps to determine the material facts relating to the acquisition or disposition and, at the earliest practicable opportunity, shall disclose the material facts to the client.

Section 38 – Error, misrepresentation, fraud

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

AGREED PENALTY:

- 1) Mr. Marandi be ordered to pay a penalty of \$7,500 within 90 days of the date of the decision of the Discipline Committee in this matter.
- 2) Mr. Marandi takes and successfully completes the following course and provide RECO with the confirmation of successful completion within 120 days of the decision of the Discipline Committee
 - i) Ethics and Business Practice – REIC

By initials below, I Sean Marandi, 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.

By initials below, I Sean Marandi, 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 Penalty as a final settlement of this matter.

[Respondent's Initials]

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

[Respondent's Initials]

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

DECISION OF THE CHAIR

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 3, 4, 5, 6(1), 21(1) and 38 of the *REBBA 2002* Code of Ethics. The Chair of the Discipline Committee (*REBBA 2002*) is also in agreement with the joint submission of the Parties as to penalty and accordingly makes the following order:

- 1) Mr. Marandi be ordered to pay a penalty of \$7,500 within 90 days of the date of the decision of the Discipline Committee in this matter.
- 2) Mr. Marandi takes and successfully completes the following course and provide RECO with the confirmation of successful completion within 120 days of the decision of the Discipline Committee
 - i) Ethics and Business Practice – REIC