



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-

KRYSTAL HILL

DATE OF DECISION: March 15, 2010

FINDINGS: In violation of Sections 2(1), 3, 4, 5 and 38 of the Code of Ethics

ORDER: Fine of \$8,000.00 payable to RECO within 6 months of sending this decision.

Successful completion of the OREA "Land Structures and Real Estate Trading" course and provide RECO with confirmation of successful completion within 6 months of sending this decision.

COSTS AND EXPENSES: N/A

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This hearing was held on March 15, 2010 in the presence of the Respondent, Krystal Hill, and counsel for Krystal Hill; counsel for the Registrar, *Real Estate and Business Brokers Act 2002* ("REBBA 2002"); and independent legal counsel to the Discipline Panel.

The Agreed Statement of Facts and Penalty read:

AGREED STATEMENT OF FACTS AND PENALTY

1. Krystal Hill is and at all relevant times was a salesperson registered under the Act. Prior to on or about May 26, 2009, Ms. Hill was registered with the brokerage Brokerage A. Beginning on May 26, 2009; Ms. Hill transferred her registration to the brokerage Brokerage B.
2. On or about May 2009, Consumer A1 and Consumer A2 were looking for a residential property. They became aware of Ms. Hill through the internet. They became aware of a property for lease located at 1-A Street in City A, Ontario (the "Property"). On behalf of Consumer A1 and Consumer A2, Ms. Hill arranged for them to view the Property.
3. On or about May 19, 2009, Consumer A1 met Ms. Hill at the property and they viewed it together. Access to the property was via a key kept in a lockbox. On behalf of Consumer A1 and Consumer A2, Ms. Hill had been provided the code to the lockbox by the listing agent, Seller Representative, a salesperson with Seller Brokerage (the "Listing Agent").
4. Consumer A1 and Consumer A2 later called Ms. Hill to say they wanted her to prepare an offer on their behalf to lease the Property.
5. On or about May 20, 2009, Consumer A1 and Consumer A2 met Ms. Hill. Ms. Hill prepared an application for a lease and an offer to lease (the "Offer") for them to sign. Also, at Ms. Hill's direction they acknowledged a Confirmation of Cooperation and Representation form. They also acknowledged having received an Ontario Real Estate Association brochure about representation relationships, although on that document two contradictory sections were initialed.
6. The Offer and Confirmation of Cooperation and Representation indicated Brokerage B was the cooperating brokerage representing Consumer A1 and Consumer A2, notwithstanding that Ms. Hill had not at the relevant time transferred her registration to that brokerage. The salesperson on behalf of the cooperating brokerage was represented on those documents to be Registrant B, who was and is a salesperson with Brokerage B. Consumer A1 and Consumer A2 did not have any dealings with Registrant B at the relevant time when they viewed the property and at the time of the Offer.
7. As part of the lease application and for the purpose of making the Offer, Consumer A1 and Consumer A2 provided Ms. Hill with documents and information with respect of their identity and financial situation, including credit history and employment income.
8. On or about May 24, 2009, the Listing Agent advised Ms. Hill that the Offer had not been accepted.
9. Consumer A1 and Consumer A2 did not have any further dealings with Ms. Hill with respect to looking for another property. Ms. Hill never at any time provided Consumer A1 and Consumer A2 with a written representation agreement for their signatures in respect of her services.

10. On or about June 1, 2009, Ms. Hill attended at Company located at 1-C Street, City C, and asked for a loan of \$200.00. To support the loan application, Ms. Hill furnished a statement of employment earnings and deductions purporting to contain information about Ms. Hill. In fact, that statement contained information about Consumer A1. Consumer A1 previously provided that statement to Ms. Hill as part of the lease application and Offer.
11. Ms. Hill falsified Consumer A1's statement of earnings and deductions by inserting Ms. Hill's own name, address and bank account number on that document, prior to furnishing it as her own.
12. Ms. Hill received the \$200.00 loan from Company. Company later contacted Consumer A1 and by that means it was confirmed that the statement furnished by Ms. Hill was false.
13. Ms. Hill acted unprofessionally including as follows:
 - a) Improperly and without authorization used information about a client or customer provided in the course of trading in real estate to obtain a personal loan under false pretences, including by falsifying a document containing the personal financial information of a client or customer.
 - b) Traded in real estate on behalf of a brokerage to which she was not registered at the relevant time and caused or acquiesced in false information being inserted on representation and transaction documents to hide that fact.
 - c) On behalf of the brokerage on whose behalf she was trading, did not make and submit for signature a written buyer agency agreement at the earliest practical opportunity.
14. Ms. Hill later repaid the loan.
15. At the relevant time, Ms. Hill was experiencing financial hardship, as well as difficult personal circumstances including documented health issues and domestic violence issues.
16. Ms. Hill contravened 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.

BEST INTERESTS

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

CONSCIENTIOUS AND COMPETENT SERVICE, ETC.

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.

ERROR, MISREPRESENTATION, 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.

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, i.e.

BUYER REPRESENTATION AGREEMENTS

14. If a brokerage enters into a buyer representation agreement with a buyer and the agreement is not in writing, the brokerage shall, at the earliest practicable opportunity, reduce the agreement to writing, have it signed on behalf of the brokerage and submit it to the customer for signature.

1(1) "buy" means acquire or seek to acquire an interest in real estate, and "buyer" has a corresponding meaning;

"buyer representation agreement" means a representation agreement between a brokerage and a buyer;

Ontario Regulation 567/06 General 1.(1) in the Act, "representation agreement" means a written, oral or implied agreement between a brokerage and a person under which the brokerage will represent the person in respect of a trade in real estate.

AGREED PENALTY:

Krystal Hill be ordered to pay a penalty of \$8,000.00 within 6 months of the date of the decision of the Discipline Committee in this matter.

Krystal Hill successfully complete the Ontario Real Estate Association Land Structures and Real Estate Trading Classroom Course within 6 months of the date of the decision of the Discipline Committee in this matter.

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

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

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.]

EXHIBITS

1. Allegation Statement, dated September 23, 2009
2. Notice of Hearing, dated January 13, 2010
3. Agreed Statement of Facts and Penalty, dated January 27, 2010
4. Letter from Brokerage B, dated January 11, 2010
5. Recognizance of Bail, dated June 15, 2007

FINDINGS BY THE PANEL

Having carefully considered the Agreed Statement of Facts and Penalty, the submissions of the Parties at the hearing, and the documentary evidence, the Panel has arrived at the following conclusions:

The facts outlined therein support the allegations made against the Respondent. The Panel therefore finds the conduct of the Respondent did indeed breach the Code of Ethics – Sections 3, 4, 5 and 38 as well as the Obligation of Registrants Section 2(1) as it applies to Section 14.

The Panel gave careful consideration to the joint submission of the Parties as to penalty, and given the circumstances in the case, it has determined that the proposed penalty is appropriate and warranted in this case.

PENALTY

Accordingly, based on the reasons set forth herein, the following penalty is imposed on the respondent Krystal Hill:

1. Fine of \$8,000.00 payable to RECO within 6 months of sending this decision, and
2. Successful completion of the OREA “Land Structures and Real Estate Trading” course and provide RECO with confirmation of successful completion within 6 months of sending this decision.

As no costs were requested, no costs are ordered.