



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-

**SHERI SUTHERLAND, YVONNE DRIELSMA and ROYAL LEPAGE BURLOAK REAL
ESTATE SERVICES**

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: May 25, 2010

Sheri Sutherland

FINDINGS: In violation of Sections 2(1) and 17 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$5,000.00 payable to RECO within 90 days of sending this decision.

Yvonne Drielsma

FINDINGS: In violation of Sections 4 and 5 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$7,000.00 payable to RECO within 90 days of sending this decision.

Royal LePage Burloak Real Estate Services

FINDINGS: In violation of Sections 17, 26(1) and 41(1) of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$2,000.00 payable to RECO within 30 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. Royal LePage Burloak Real Estate Services Ltd. (hereinafter "Burloak") is a member of the Real Estate Council of Ontario (hereinafter "RECO"), and a brokerage registered under the Act.
2. Yvonne Drielsma (hereinafter "Ms. Drielsma") is also a member of RECO, and a Broker registered under the Act. At all material times Ms. Drielsma was an employee of Burloak.
3. Sheri Sutherland (hereinafter "Ms. Sutherland") is also a member of RECO, and a Salesperson registered under the Act. At all material times Ms. Sutherland was an employee of Burloak.
4. On or about May 24th, 2006 the Financial Institution (hereinafter "Bank") entered into a 'Listing Agreement' with Burloak, and Ms. Sutherland as its representative, to list the residential property located at the municipal address of 1-A Street, City A, Ontario for \$345,000.00.
5. At the instruction of the Bank, Ms. Sutherland was to hold all the offers until May 31st, 2006, when they would all be presented simultaneously.
6. On or about May 25th, 2006 Consumer A (hereinafter "Complainant") entered into a 'Buyer Representation Agreement' (hereinafter "BRA") with Burloak, and Ms. Drielsma as its representative. The Complainant was being treated as a client. According to the BRA, Burloak was to assist the Complainant locate a single family residence in City A.
7. On or about this same day, Ms. Drielsma submitted to Ms. Sutherland, on behalf of the Complainant, an offer to purchase 1-A Street for \$356,000.00 (hereinafter "First Offer"). The First Offer, which was irrevocable until May 31st, 2006, proposed for a completion date of June 9th, 2006.
8. On or about May 30th, 2006, and after having learned that a total of eight offers had been received for 1-A Street, the Complainant contacted Ms. Drielsma for the purpose of improving her offer to \$360,600.00 (hereinafter "Second Offer"). Ms. Drielsma proceeded to submit the Complainant's Second Offer, which was also irrevocable until May 31st, 2006, to Ms. Sutherland.

9. On or about the morning of May 31st, 2006 Individual A, assistant to Lawyer A, the lawyer acting on behalf of the Bank, faxed Ms. Sutherland an authorization to *“disclose the contents of the highest offer to all of the persons making an offer”* for 1-A Street. Individual A also asked that *“any resubmissions [be] made to [Ms. Sutherland] by 3:30”* of that same day.
10. At approximately noon of that same day, Ms. Sutherland contacted Ms. Drielsma to tell her that while the Complainant’s offer had been the highest one made, she had been authorized to disclose the contents of the Second Offer to all those who had made competing offers. Ms. Sutherland also informed Ms. Drielsma that any improved offers were to be submitted by no later than 3:30pm that same day.
11. Shortly after 3:00pm of that same day, Ms. Drielsma contacted the Complainant to inform her of the situation. Ms. Drielsma failed, however, to advise the Complainant that she was capable of improving her offer a second time at this time.
12. As a result of the Complainant’s Second Offer having been disclosed, 1-A Street was subsequently sold to another buyer for \$361,500.00, \$900.00 more than the Complainant’s Second Offer. The accepted offer also had a completion date of June 7th, 2006, two days sooner than the Complainant’s Second Offer.

Burloak acted unprofessionally when:

- i) in providing services to more than one party in respect of the same trade in real estate, Burloak failed to inform, in writing, at the earliest practicable opportunity, and before either the First Offer or Second Offer had been made, that it had informed all parties involved in that trade the nature of its relationship to each;
- ii) it disclosed the substance of a competing offer, specifically the Complainant’s Second Offer, to other potential buyers; and when
- iii) it failed to ensure that every salesperson and broker the brokerage employed was carrying out their duties in compliance with the Code of Ethics.

Burloak thereby breached the following sections of the Code of Ethics:

Nature of Relationship

17. If a registrant represents or provides services to more than one buyer or seller in respect of the same trade in real estate, the registrant shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all buyers and sellers involved in that trade of the nature of the registrant’s relationship to each buyer and seller.

Competing Offers

26. (1) If a brokerage that has a seller as a client receives a competing written offer, the brokerage shall disclose the number of competing offers to every person who is making one of the competing offers, but shall not disclose the substance of the competing offers.

Duty to Ensure Compliance

41. (1) A brokerage shall ensure that every salesperson and broker that the brokerage employs is carrying out their duties in compliance with this Regulation.

Ms. Sutherland acted unprofessionally when:

- i) after she disclosed the substance of a competing offer, specifically the Complainant's Second Offer, causing the brokerage that employed her to contravene the Code of Ethics; and
- ii) in providing services to more than one party in respect of the same trade in real estate, she failed to confirm, in writing, at the earliest practicable opportunity, and before either the First Offer or Second Offer had been made, that she had informed all parties involved the nature of her relationship to each.

Ms. Sutherland thereby 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.

Nature of Relationships

17. If a registrant represents or provides services to more than one buyer or seller in respect of the same trade in real estate, the registrant shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all buyers and sellers involved in that trade of the nature of the registrant's relationship to each buyer and seller.

Ms. Drielsma acted unprofessionally when:

- i) after learning that the Complainant's Second Offer was being disclosed, and that her client could improve upon her offer even more, she failed to protect her client's best interests by not telling the Complainant as such within a reasonable amount of time; and when
- ii) after learning that the Complainant's Second Offer was being disclosed, and that her client could improve upon her offer even more, she failed to provide conscientious service to her client, or in the alternative failed to demonstrate reasonable knowledge, skill, judgment and competence in providing those services, by not telling her the Complainant as such within a reasonable amount of time.

Ms. Drielsma thereby breached the following sections of the Code of Ethics:

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.

JOINT RECOMMENDATION AS TO PENALTY:

- A) Burloak Real Estate be ordered to pay a penalty of \$2,000.00 within 30 days of the date of the decision of the Discipline Committee in this matter being sent to it.

By initials below, I, Broker of Record for Burloak Real Estate, acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions.

[Broker of Record's Initials]

By initials below, I, Broker of Record for Burloak Real Estate, 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.

[Broker of Record's Initials]

By initials below, I, Broker of Record for Burloak Real Estate, acknowledge that I was aware of my right to be represented by Counsel or agent in this matter.

[Broker of Record's Initials]

- B) Sheri Sutherland 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 being sent to her.

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

[Sheri Sutherland's Initials]

By initials below, I, Sheri Sutherland, 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.

[Sheri Sutherland's Initials]

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

[Sheri Sutherland's Initials]

- C) Yvonne Drielsma be ordered to pay a penalty of \$7,000.00 within 90 days of the date of the decision of the Discipline Committee in this matter being sent to her.

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

[Yvonne Drielsma's Initials]

By initials below, I, Yvonne Drielsma, 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.

[Yvonne Drielsma's Initials]

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

[Yvonne Drielsma'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

Sheri Sutherland

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) and 17 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:

Sheri Sutherland is ordered to pay a fine of \$5,000.00 within 90 days of the date of the decision of the Discipline Committee in this matter being sent to her.

Yvonne Drielsma

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 4 and 5 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:

Yvonne Drielsma is ordered to pay a fine of \$7,000.00 within 90 days of the date of the decision of the Discipline Committee in this matter being sent to her.

Royal LePage Burlaok Real Estate Services

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 17, 26(1) and 41(1) 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:

Royal LePage Burloak Real Estate Services is ordered to pay a fine of \$2,000.00 within 90 days of the date of the decision of the Discipline Committee in this matter being sent to it.