



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-

ANNEMARIE MILLS

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: July 26, 2010

FINDINGS: In violation of Sections 3, 4, 5, 21(1), 38 and 39 of the *REBBA 2002* Code of Ethics

ORDER: Fine of \$9,000.00 payable to RECO within 180 days of sending this decision.

Successful completion of the Real Estate Institute of Canada (REIC) "Ethics and Business Practice" classroom course and provide RECO with confirmation of successful completion within 240 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) Ms. Mills is a member of the Real Estate Council of Ontario (hereinafter the "RECO"), and is registered as a salesperson under the Act. At all material times Ms. Mills was an employee of Seller Brokerage (hereinafter "Seller Brokerage"), a brokerage also registered under the Act.
- 2) On or about August 12, 2008 Seller A1 and Seller A2 (collectively hereinafter the "Sellers") listed for sale the residential property located at the municipal address of 1-A Street, City A (hereinafter the "Property") with Seller Brokerage, and Ms. Mills as its representative.
- 3) The Property listed onto the 'Multiple Listing Service', and included the following description of it: "*Apx Sqft: 1500-2000*" (hereinafter "MLS Listing").
- 4) On or about August 20, 2008 Buyer A (hereinafter the "Complainant") made an offer to purchase the Property for \$310,000.00 (hereinafter "Offer") through Buyer Brokerage, and Buyer Representative as its representative (hereinafter "Buyer Representative").
- 5) On or about August 20, 2008, and after several negotiations, the Sellers entered into an 'Agreement of Purchase and Sale' with the Complainant, wherein they agree to sell the Property to the Complainant for \$315,000.00 (hereinafter "APS"). 'Schedule A' to the APS made the agreement "*conditional upon the inspection of the subject property by a certified home inspector*" (hereinafter "Inspection Condition").
- 6) On or about August 24, 2008 the Complainant signed a 'Waiver' waiving the Inspection Condition, thereby making the APS a firm and binding agreement.
- 7) On or about October 31, 2008 the Buyer Representative sent Ms. Mills an email asking her to fax or e-mail her the details with respect to the Property's 'liveable area', as the Complainant needed to provide the information "*for insurance purpose and [because the] Lawyer need[ed] it too*".
- 8) On or about November 2, 2008 Ms. Mills sent an email to the Buyer Representative, in which she asked that the Buyer Representative provide her with the fax and phone numbers of both the Complainant's insurance company and lawyer.
- 9) On or about November 4, 2008 the Buyer Representative sent Ms. Mills another email:
 - 1) outlining how Ms. Mills had confirmed with her on October 20, 2008 that the Property was approximately 1800 square feet;
 - 2) providing Ms. Mills, once again, with the Complainant's lawyer's fax number; and
 - 3) requesting that Ms. Mills forward a copy of the information to both the Complainant's lawyer and the Complainant, so that she could submit it to her insurance company, "ASAP".
- 10) On or about November 5, 2008 Ms. Mills sent an email to the Buyer Representative, in which she indicated that if that the Complainant was "*not planning on closing this transaction*", that the Complainant was then to "*deal with the lawyers*".

- 11) On or about November 6, 2008 the Buyer Representative sent an email to Ms. Mills, in which she informed her that:
 - 1) the Complainant needed the exact square footage of Property as it was the last day the Complainant was going to receive a special offer from her insurance company; and
 - 2) this would be the "*last request [she] is sending [her]*" for this information.
- 12) On or about November 10, 2008 Ms. Mills sent the Buyer Representative an email, in which Ms. Mills told the Buyer Representative that "*Lawyer don't need it insurance can use approximate*".
- 13) On or about November 10, 2008 Ms. Mill sent the Buyer Representative an email informing the Buyer Representative that she was able to get the information from MPAC using their "*real estate system*", and that it would cost the Buyer Representative "*about \$6,00 dollars*".
- 14) On or about January 5, 2009 the RECO received a complaint letter from the Complainant in which she stated that the MLS Listing had indicated that the Property's square footage was between 1500-2000, and that she felt as though she had been "*mislead and cheated by wrongful disclosure*".
- 15) On or about February 13, 2009 the Office of the Registrar received a letter from the Buyer Representative, in which she outlined how:
 - 1) the Complainant "*was interested to buy a detached house almost 1800sf or more in GTA*";
 - 2) she had shown the Complainant a number of properties ranging "*1500-2000sf*", the Property being one of them;
 - 3) the Complainant "*demanded exact square footage ... for the purpose of insurance because ... the range presented on MLS was big to give a good quote*";
 - 4) she had called Ms. Mills to provide this information, but after number of attempts Ms. Mills told the Buyer Representative "*square-footage should be approx 1800*"; and
 - 5) she then provided the Complainant with an MPAC assessment which listed the Property's liveable area as only being 1360sf.
- 16) Included with the Buyer Representative's letter were a number of documents, including:
 - 1) a copy of the MLS Listing indicating that the Property was 'For Sale', and that the Property had "*Apx Sqft: 1500-2000*";
 - 2) an MLS history printout which indicates that on October 22, 2008 the approximate square footage to the Property had been removed from the MLS Listing; and
 - 3) a second copy of the MLS Listing indicating that the Property was 'Sold', this time however with no information on the approximate square footage of the Property.
- 17) On or about April 13, 2009 the Office of the Registrar received a response from Ms. Mills (hereinafter "Response Letter"), in which Ms. Mills outlined how:

- 1) on October 20, 2008 the Buyer Representative called her “request[ing] that [she] confirm the exact square footage of the Property”, contending that “if the [Complainant] purchased a property that was less than 1800 sq ft, then the [Complainant] felt as though she overpaid for the property”. It was at this time that Ms. Mills contends she advised the Buyer Representative “to obtain the requested information from... [MPAC] directly”;
- 2) on October 22, 2008 she:
 - i) checked MPAC, and discovered that “the square footage [of the Property] was 1380 and not 1500-2000”;
 - ii) removed “The square footage reference... from the MLS listing... in the event that the [Complainant] did not close the transaction and the Property had to be relisted for sale”;
 - iii) “inform[ed] [Buyer Representative] about the change to the listing”;
- 3) on November 10, 2008 she told the Buyer Representative “to go on MPAC and get the information she wanted” herself.

Ms. Mills acted unprofessionally including as follows:

- 1) Failing to take reasonable steps to determine the square footage of the Property.
- 2) Creating, or allowing for the creation of, the MLS Listing which contained false and/or misleading information.
- 3) Causing the Property to be represented with a larger square footage than it possessed.
- 4) Causing her seller clients to enter into the APS while the Property was under the representation that it had a larger square footage than it actually possessed.
- 5) Failing to treat the Buyer Representative fairly, and acted unprofessionally, by:
 - a) failing to provide the Buyer Representative with the information she had repeatedly requested from her within a reasonable amount of time if at all; and/or
- 6) Failing to treat the Complainant fairly after she had been told by the Buyer Representative that the Complainant needed the information, and especially after she had been told by the Buyer Representative of the circumstances in which the Complainant needed it.

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

Fairness, honestly, 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.

Material facts

21. (1) 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.

Error, misrepresentation, fraud, etc.

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, etc.

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. Mills be ordered to pay a penalty of \$9,000.00 within 180 days of the date of the decision of the Discipline Committee in this matter.

Ms. Mills be ordered to register for and successfully complete the Real Estate Institute of Canada's (REIC) 'Ethics and Business Practice' course by attending the classroom seminars. Ms. Mills must also provide RECO with proof of her successful completion of REIC's Ethics and Business Practice course within 240 days of the date of the decision of the Discipline Committee in this matter being sent to her.

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

[Annemarie Mills' initials]

By initials below, I Annemarie Mills, 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.

[Annemarie Mills' initials]

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

[Annemarie Mills' 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 3, 4, 5, 21(1), 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:

1. Fine of \$9,000.00 payable to RECO within 180 days of sending this decision.
2. Successful completion of the Real Estate Institute of Canada (REIC) "Ethics and Business Practice" classroom course and provide RECO with confirmation of successful completion within 240 days of sending this decision.