



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 -

FRANK LORUSSO & OLGA JIRASKOVA

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

Frank Lorusso

FINDINGS:

In violation of Sections 4, 21(1), 38 and 39 of the *REBBA 2002* Code of Ethics.

ORDER:

Fine of \$6,000.00 payable to RECO within 12 months of sending this decision.

Successful completion of the Ontario Real Estate Association (OREA) "Real Property Law" course and/or provide RECO with confirmation of successful completion within 2010.

Olga Jiraskova

FINDINGS:

In violation of Sections 4, 21(1) and 38 of the *REBBA 2002* Code of Ethics.

ORDER:

Fine of \$4,000.00 payable to RECO within 12 months 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) Frank Lorusso (hereinafter "Mr. Lorusso") is a member of the Real Estate Council of Ontario (hereinafter "RECO") and at all material times was registered under the Real Estate and Business Brokers Act (hereinafter "Act").
- 2) Mr. Lorusso is an employee of Seller Brokerage (hereinafter "Seller Brokerage").
- 3) Ms. Olga Jiraskova (hereinafter "Ms. Jiraskova") is a member of RECO and at all material times was registered under the Act.
- 4) Ms. Jiraskova is an employee of Buyer Brokerage (hereinafter "Buyer Brokerage").
- 5) Seller Representative A is a member of RECO and at all material times was registered under the Act.
- 6) Seller Representative A is an employee of Real Estate Services.
- 7) Buyer A was a buyer, and at all material times was represented by Buyer Brokerage with Ms. Jiraskova as the representative, in a trade involving a condominium property municipally known as 1-A Street, City A (hereinafter "the Property").
- 8) Seller A was the seller of the Property and was represented by Seller Brokerage with Mr. Lorusso as its representative.
- 9) The Property was listed on the Multiple Listing Services (hereinafter "MLS") by Real Estate Services, with Mr. Lorusso as listing sales representative and Seller Representative A listed as broker.
- 10) Seller Representative A referred this listing to Mr. Lorusso, and had limited involvement with this trade.
- 11) The MLS listing indicated that the Property included one underground parking spot.
- 12) Buyer A was introduced to the Property by Ms. Jiraskova, as his representative. Buyer A hired Buyer Brokerage with Ms. Jiraskova as its representative to represent him in the purchase of a property, as he had no knowledge of real estate transactions and was seeking professional guidance and expertise for his purchase.

- 13) Buyer A informed Ms. Jiraskova that he wanted to purchase a condominium unit that had underground parking and Ms. Jiraskova assured him that the Property would have underground parking.
- 14) When Buyer A first viewed the Property, with Ms. Jiraskova, he requested that he be permitted to view the underground parking spot. Ms. Jiraskova responded by informing that she did not have the keys for the underground parking garage at the time, however assured Buyer A that the Property had an underground parking spot.
- 15) Buyer A relied upon Ms. Jiraskova's assurance and proceeded to eventually make an offer to purchase the Property.
- 16) On or about October 18, 2008, Buyer A, with Ms. Jiraskova as his representative, entered into an Agreement of Purchase and Sale (hereinafter "APS") for the purchase of the Property at \$163,000.
- 17) The APS clearly indicated "*together with ownership or exclusive use of Parking Space #127*".
- 18) The APS became firm and completed on December 29, 2008, as scheduled.
- 19) On December 29, 2008, Buyer A moved into the Property and learned to his surprise, that parking spot 127 is not an underground parking spot, but an above ground parking spot.
- 20) Buyer A proceeded to contact Ms. Jiraskova and informed her of this error. Ms. Jiraskova's response was that she did not know that parking spot #127 was not an underground spot, and that Mr. Lorusso, the seller's representative, was responsible for the misrepresentation.
- 21) Buyer A also contacted the solicitor that represented him in this real estate transaction, and was informed that the situation had resulted for a seller's misrepresentation; accordingly they would have to communicate with the seller's solicitor.
- 22) Buyer A's solicitor later informs him about a resolution offer of \$3,000.00 dollars to be paid as a settlement payment to him for the error.
- 23) Buyer A was not interested in the settlement offer and continued making efforts to obtain an underground parking spot through notices posted in the common areas of the building, seeking to purchase an underground parking spot.
- 24) Buyer A located an individual willing to sell his underground parking spot, being Consumer A. Buyer A provided Consumer A's contact information to Ms. Jiraskova, and spoke directly to Seller Representative B, Broker Manager of Seller Brokerage, however no purchase of this parking spot occurred.

A. SUMMARY OF ALLEGATIONS

AGAINST FRANK LORUSSO

It is alleged that Mr. Lorusso acted unprofessionally as follows:

- 25) By relying on his client's representations regarding an underground parking spot and by failing to verify that the condominium unit included an underground parking spot before listing the Property.
- a) In doing so, Mr. Lorusso failed to use his best efforts to prevent error, misrepresentation, or any unethical practice in respect of a trade in real estate.
 - b) In doing so, Mr. Lorusso failed to provide conscientious and competent service and failed to discover material facts with respect to a listing.
 - c) In doing so, Mr. Lorusso engaged in an act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

It is thereby alleged that Mr. Lorusso 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.

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

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 the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a registrant.

AGAINST OLGA JIRASKOVA

It is alleged that Ms. Jiraskova acted unprofessionally as follows:

- 26) By failing to verify material facts with respect to the inclusion of an underground parking spot, before her client entered into an APS for the purchase of the Property.
- a) In doing so, Ms. Jiraskova failed to use her best efforts to prevent error, or any unethical practice in respect of a trade in real estate.
 - b) In doing so, Ms. Jiraskova failed to discover material facts with respect to her client's purchase of the Property.

It is thereby alleged that Ms. Jiraskova 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.

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

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.

AGREED PENALTY:

Mr. Lorusso be ordered to pay a penalty of \$6,000.00 within 12 months of the date of the decision of the Discipline Committee in this matter.

Mr. Lorusso be ordered to register for and successfully complete the Ontario Real Estate Association's (OREA) 'Real Property Law' course and/or provide RECO with proof of his successful completion of OREA's Real Property Law course within 2010.

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

[Frank Lorusso's Initials]

By initials below, I Frank Lorusso, 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.

[Frank Lorusso's Initials]

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

[Frank Lorusso's Initials]

AGREED PENALTY:

Ms. Jiraskova be ordered to penalty a penalty of \$4,000.00 within 12 months of the date of the decision of the Discipline Committee in this matter.

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

[Olga Jiraskova's Initials]

By initials below, I Olga Jiraskova, 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.

[Olga Jiraskova's Initials]

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

[Olga Jiraskova'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

Frank Lorusso

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 4, 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 \$6,000.00 payable to RECO within 12 months of sending this decision.
2. Successful completion of the Ontario Real Estate Association (OREA) "Real Property Law" course and/or provide RECO with confirmation of successful completion within 2010.

Olga Jiraskova

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 4, 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. Fine of \$4,000.00 payable to RECO within 12 months of sending this decision.