



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 -

DALE GODFREY

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:

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

ORDER: Fine of \$6,000.00 payable to RECO on or before December 5, 2014.

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. Dale Godfrey ("Godfrey") is registered as a broker under the Act. At all relevant times, Godfrey was a broker and broker of record with the Brokerage.

2. The Brokerage, through Godfrey, listed 1-A Street, City A (the "Property") for the Sellers.
3. By agreement of purchase and sale (the "APS") dated April 20, 2010, the Numbered Company agreed to purchase the Property from the Sellers. The APS contained the following provisions:
 - a) a purchase price of \$105,000.00;
 - b) a deposit of \$500.00;
 - c) a date of June 25, 2010;
 - d) the brokerage was the brokerage for both the Sellers and the Numbered Company;
 - e) the completion of the APS was conditional upon the Numbered Company arranging suitable financing;
 - f) the completion of the APS was conditional upon inspection of the property by a third party and the obtaining of a report satisfactory to the Numbered Company at its own expense; and
 - g) the Numbered Company had the rights to inspect the property one additional time prior to closing.
4. In addition to the APS, both the Sellers and the Numbered Company consented to multiple representation (dual agency) by signing a Confirmation of Co-operation and Representation. The document stated, among other things, that the listing brokerage has a duty of full disclosure to both the Numbered Company and the Sellers, including a duty to disclose all factual information regarding the Property. Godfrey, on behalf of the Brokerage, signed the Confirmation of Co-operation and Representation.
5. On or about April 20, 2010, Godfrey provided a Seller Property Information Statement ("SPIS") to the principals of the Numbered Company that indicated there were no known problems with moisture or water infiltration. This SPIS was provided to the Numbered Company before it entered into the APS and was relied upon by the Numbered Company in its decision to enter into the APS.
6. The Numbered Company needed financing to purchase the Property. The Bank contemplated financing the Numbered Company's purchase by providing a first mortgage. However, in order to approve the financing, the Bank wanted a report completed on the condition of the Property. In accordance with finalizing, the Numbered Company retained the Inspection Company prior to closing to meet the Bank's requirement. As a result of the Inspection Company's report, the Bank refused to advance funds for closing and, therefore, the Numbered Company was unable to complete the transaction.
7. The Inspection Company report concluded, among other things, that:
 - a) That the foundation was "very vulnerable" to water leakage into the interior basement;

- b) There were several significant foundation cracks that were visible at the exterior that extended below grade;
 - c) That the Sellers confirmed that there were no footing or weeping tile system around the exterior foundation;
 - d) That a portion of the Property had been actively leaking the previous year;
 - e) That chronic leakage occurring at the foundation cracks;
 - f) Chronic leakage at several areas where the concrete had spalled; and
 - g) That water collects under the basement floor and is forced up under pressure through cracks and joints into the basement, and the water cannot be drained away properly due to either a dysfunctional or non-existent tiling system.
8. The Inspection Company's report estimated the remedial work to cost in excess of \$12,000.00.

SUMMARY OF AGREEMENTS

It is agreed that Godfrey acted unprofessionally when she:

- A. By not ensuring that the version of the SPIS that was provided to the principals of the Numbered Company was accurate, the Brokerage and Godfrey failed to act fairly, honestly and with integrity.
- B. By not ensuring that the version of the SPIS that was provided to the principals of the Numbered Company was accurate, the Brokerage and Godfrey failed to promote and protect the best interests of the Numbered Company.
- C. By not ensuring that the version of the SPIS that was provided to the principals of the Numbered Company was accurate, the Brokerage and Godfrey did not provide conscientious service to its client, the Numbered Company.
- D. By not ensuring that the version of the SPIS that was provided to the principals of the Numbered Company was accurate, the Brokerage and Godfrey, in the course of a trade in real estate, engaged in an act or omission that, having regard to the circumstances that the property was subject to leaking, was unprofessional or dishonourable, or both.

It is agreed that Godfrey breached 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, 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.

AGREED PENALTY

DALE GODFREY, the Respondent, be ordered to pay a penalty of \$6,000.00 on or before December 5, 2014.

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

[Respondent's Initials]

By initials below, I, DALE GODFREY, 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, DALE GODFREY, acknowledge that I exercised my right to be represented by Counsel or agent in this matter.

[Respondent'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

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 and 21(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:

1. Dale Godfrey is Ordered a Fine of \$6,000.00 payable to RECO on or before December 5, 2014.

[Released: June 23, 2014]