



Real Estate Council of Ontario

**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:

REAL ESTATE COUNCIL OF ONTARIO

- AND -

MICHAEL KOLENC and VESNA KOLENC

DISCIPLINE DECISION AND REASONS FOR DECISION

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 Penalty together with the Waiver of Hearing submitted by the Parties to this proceeding and provide the following Order:

MICHAEL KOLENC:

FINDINGS: In violation of Section 5 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$2,000.00 payable to RECO by December 1, 2017.

VESNA KOLENC:

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

ORDER: Fine of \$4,000.00 payable to RECO by December 1, 2017.

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. Vesna Kolenc is and was, at all relevant times, registered under the Act as a Salesperson, employed within the meaning of the Act by Brokerage A (the "Brokerage"). Michael Kolenc is and was, at all relevant times, registered under the Act as a Broker employed by the Brokerage. Michael Kolenc is Vesna Kolenc's son.
2. On or about July 10, 2015, Vesna Kolenc, on behalf of the Brokerage, entered into a written seller representation agreement (the "Listing Agreement") with Seller A and Seller B, represented under Power of Attorney by Individual A, B and C, for a residential property at 1 - A Street, City A (the "Property"). Individual A, B and C are hereafter collectively referred to as the "Sellers".
3. The Listing Agreement provided for a total commission of 4.5% of the sale price of the Property, plus applicable taxes or *"if sold by [Vesna] Kolenc, 3.5% + HST"* (italics indicates handwriting initialled by Vesna Kolenc on behalf of the Brokerage and hereafter referred to as the "handwritten portion of the Commission Agreement").
4. Vesna Kolenc, on behalf of the Brokerage, caused the Property to be listed on the Multiple Listing Service (the "MLS"). Some of the information about the Property disclosed on the MLS, including interior measurements, was obtained by Michael Kolenc, working with Vesna.
5. On or about July 22, 2015, Vesna Kolenc, on behalf of the Brokerage, entered into a written buyer representation agreement specifically naming the Property (the "Buyer Representation Agreement") with Buyer A and Buyer B (hereafter, collectively the "Buyers"). The Buyer Representation Agreement was made on a pre-printed form which named Vesna Kolenc as the Salesperson authorized to bind the Brokerage and declaring that she was insured as required by the Act. Vesna Kolenc signed the Buyer Representation Agreement on behalf of the Brokerage.
6. On or about July 22, 2015, the Buyers made an Offer for the Property for \$660,000.00 (the "Offer"). The Sellers Counter-Offered for \$679,000.00 (the "Sellers Counter-Offer") which in turn led to a further Counter-Offer by the Buyers (the "Buyers Counter-Offer"), accepted by the Sellers on July 22, 2015, and became an Agreement of Purchase and Sale for \$675,000.00, with a Completion Date of September 25, 2015

(the "APS").

7. A "Confirmation of Cooperation and Representation Form" prepared in respect of the APS disclosed that the Brokerage represented both the Sellers and the Buyers in respect of the APS in multiple representation (the "written Multiple Representation disclosure"). The written Multiple Representation disclosure was made on a form that, as printed, named Vesna Kolenc as sole representative of the Brokerage. Vesna Kolenc signed that form over her printed name in one of the two signature lines for the representative of the Brokerage, dated July 22, 2015. Michael Kolenc signed that form over Vesna Kolenc's printed name in the other signature line of the representative of the Brokerage, dated July 22, 2015.
8. During the negotiation of the APS, Ms. Kolenc agreed with the Sellers to reduce the total commission payable to the Brokerage under the Listing Agreement by \$2,000.00. This agreement was reduced to writing by inserting the handwritten notation "*Commission Less \$2000.00*" on the form containing the written Multiple Representation disclosure, which notation was initialed by the Sellers, and Vesna Kolenc and Michael Kolenc for the Brokerage. Ms. Kolenc disclosed this agreement to reduce commission to the Brokerage.
9. The Brokerage charged Commission in respect of the transaction represented by the APS on the basis of the rate of 4.5% of the purchase price of the Property, less \$2,000.00 and not on the basis of the rate of 3.5% agreed to by Vesna Kolenc if she, on behalf of the Brokerage, represented both the Sellers and the Buyers in respect of the sale of the Property.
10. During these negotiations, Vesna Kolenc represented to the Sellers that Michel Kolenc, and not she, was representing the Buyers and that the Buyers were his clients. Applying the applicable definition of "client" under the Act, Vesna Kolenc was, on behalf of the Brokerage, representing both the Buyers and Sellers with respect to the transaction represented by the APS under the Listing and Buyer Representation Agreements. She failed to disclose this to the Sellers and obtain written consent to the same, contrary to Sections 4 and 5 of the Code of Ethics. For further clarity please have regard to General Regulation 567/OS under the Act, Section 1, definition of "client" and Section 22.

11. Applying the applicable definition of "client" under the Act, Michael Kolenc was, on behalf of the Brokerage, working with Vesna Kolenc in representing both the Buyers and Sellers with respect to the transaction represented by the APS. He failed to disclose this to the Sellers and obtain written consent to the same, contrary to Section 5 of the Code of Ethics. For further clarity please have regard to General Regulation 567/05 under the Act, Section 1, definition of "client" and Section 22.

AGREED PENALTY

VESNA KOLENC:

VESNA KOLENC, the Respondent, be ordered to pay a penalty of \$4,000.00 by December 1, 2017.

By initials below, I, VESNA KOLENC, 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, VESNA KOLENC, 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, VESNA KOLENC, acknowledge that I was made aware of 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.]

MICHAEL KOLENC:

MICHAEL KOLENC, the Respondent, be ordered to pay a penalty of \$2,000.00 by December 1, 2017.

By initials below, I, MICHAEL KOLENC, 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, MICHAEL KOLENC, 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, MICHAEL KOLENC, acknowledge that I was made aware of 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

VESNA KOLENC:

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:

1. VESNA KOLENC is Ordered a Fine of \$4,000.00 payable to RECO by December 1, 2017.

DECISION OF THE CHAIR

MICHAEL KOLENC:

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

1. MICHAEL KOLENC is Ordered a Fine of \$2,000.00 payable to RECO by December 1, 2017.

[Released: September 15, 2017]