



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 -

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:

FINDINGS: In violation of Sections 3, 35 and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$6,000.00 payable to RECO by March 30, 2018.

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. Kolenc is and was at all relevant times registered under the *Real Estate and Business Brokers Act, 2002* ("Act") as a Salesperson.
2. In 2012, the sellers ("Sellers") of a rural property (the "Property") listed it for sale.
3. On or about January 12, 2013, the Sellers made an Agreement of Purchase and Sale (the "APS") with a buyer (the "Buyer"). The Buyer was represented by Ms. Kolenc.

4. The APS was extended due to an appraisal report providing an unexpectedly low estimate of value. It was determined that this was unexpected and a circumstance not within Ms. Kolenc's control.
5. On May 5, 2013, title to the Property transferred further to the APS as extended ("Closing").
6. Before Closing, the Sellers accepted a Promissory Note (the "Promissory Note") made by the Buyer and guaranteed by Ms. Kolenc, dated May 1, 2013, for \$60,000.00, in favour of one of the Sellers payable in full in 30 days from the date the Promissory Note was executed. Ms. Kolenc promised to guarantee repayment under the Promissory Note.
7. A number of payments were made towards the Promissory Note. However, the Buyer did not repay the Payee the full amount owing. Ms. Kolenc did not, at the relevant time, fully honour the guarantee under the Promissory Note, contrary to Sections 3 and 35 of the Code.
8. On March 4, 2015, Ms. Kolenc signed a written agreement with the Sellers whereby Ms. Kolenc promised to pay the amount then the remaining under the Promissory Note (the "2015 Agreement"). Ms. Kolenc made a number of payments, but failed to pay all of the amount owing under the 2015 Agreement, contrary to Sections 35 and 39 of the Code.
9. After proceedings had been commenced, Ms. Kolenc compensated the Sellers to the Sellers satisfaction, which at that point amounted to \$14,000.00.

AGREED PENALTY

Having regard, in part, to the \$14,000.00 compensation payment, VESNA KOLENC be ordered to pay a fine of \$6,000.00 by March 30, 2018.

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 represented by Legal Counsel 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, 35 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. Having regard, in part, to the \$14,000.00 compensation payment, VESNA KOLENC is Ordered a Fine of \$6,000.00 payable to RECO by March 30, 2018.

[Released: November 13, 2017]