



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 -

MARTA CASTELHANO

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 2(1), as it pertains to Sections 25(1) and 39, as well as 3, 5, 38 and 39 of the *REBBA 2002* Code of Ethics.

ORDER:

Fine of \$10,000.00 payable to RECO on or before March 2, 2018.

Enrol in “REIC 2600: Ethics and Business Practice” course provided by the Real Estate Institute of Canada and provide RECO proof of successful completion of the course on or before November 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. Castelhana is, and was at all relevant times, registered as a broker under the Act with Brokerage A.

I. LISTING & SALE

2. On or about May 14, 2015, the Sellers entered into a 'Listing Agreement' with Brokerage A, and Castelhana as its representative, to list for sale the residential property located at 1-A Street, City A ("Property").
3. The Listing Agreement provided:
 - i. that the Property was to be listed for sale for \$1,388,000.00 ("List Price");
 - ii. that in consideration of Brokerage A listing the property for sale, that Brokerage A was entitled to a commission of 3.5% of the sale price of the Property; and
 - iii. that Brokerage A was authorized to offer to pay any co-operating brokerage a commission of 2.5% of the sale price of the Property.
4. The Property was subsequently listed onto the 'Multiple Listing Service' ("MLS Listing"). The MLS Listing indicated that a co-operating brokerage involved in facilitating the sale of the Property would receive a commission of 2.5% of the sale price of the Property.
5. On or about June 4, 2015, the List Price was reduced by \$70,000.00 to \$1,318,000.00.

II. OFFERS

6. On or about June 25, 2015, Buyer A, ("First Buyer") who was also being represented by Brokerage A, and Castelhana as its representative, made an offer to purchase the Property for \$1,250,000.00 ("First Offer"). The First Offer proposed a completion date of November 30, 2015, and included conditions

which the First Buyer had to waive no later than 11:59 p.m.; 7 days from acceptance of the First Offer (“Conditions”).

7. On or about June 26, 2015, Buyer B and Buyer C, (“Second Buyers”) who were being represented by Brokerage B, and Representative A as its representative, made an offer to purchase the Property for \$1,270,000.00 (“Second Offer”). The Offer Second Offer included a completion date of August 27, 2015, and unlike the First Offer was unconditional.

III SUBSEQUENT EVENTS

8. In a series of emails, Castelhana emailed Representative A inquiring as to whether the Second Buyers would be amenable to a closing date of October 30, 2015; however due to the Second Buyers’ timeline, they were not. While on the one hand Castelhana confirmed in these emails that she, on behalf of Brokerage A, was representing the First Buyer, on the other hand she failed to inform either Representative A or the Second Buyers of the existence of any agreement with the First Buyer relating to a reduction in the commission Brokerage A was entitled to under the Listing Agreement.
9. On or about June 27, 2015, the Sellers accepted the First Offer from the First Buyer, (“Agreement”) and on or about July 8, 2015, the First Buyer waived the Conditions, making the Agreement firm and binding.
10. An amendment to the Listing Agreement was later executed, formalizing an earlier agreement to reduce the total commission payable by the Sellers, from 3.5% + HST to 3.5% - \$20,000.00 + HST (“Commission Reduction Agreement”).

SUMMARY OF AGREEMENTS

IS ALLEGED THAT CASTELHANO ACTED UNPROFESSIONALLY INCLUDING AS FOLLOWS:

- A. Failing to disclose both the existence and details of the Commission Reduction Agreement to either Representative A or the Second Buyers, contrary to

Sections 2(1), as it pertains to Sections 25(1) and 39, as well as 3, 5, 38 and 39 of the Code of Ethics.

IT IS ALLEGED THAT CASTELHANO BREACHED THE FOLLOWING SECTIONS OF THE CODE OF ETHICS:

Brokers and Salespersons

2.(1) A broker or salesperson shall not do or omit to do anything that causes the brokerage that employs the broker or salesperson to contravene this Regulation.

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.

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. O. Reg. 580/05, s. 5.

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

MARTA CASTELHANO, the Respondent, be ordered to pay a penalty of \$10,000.00 on or before March 2, 2018.

In addition to the above penalty, Respondent must enrol in the Ethics and Business Practice Course provided by the Real Estate Institute of Canada (REIC), and provide proof of successful completion of the course on or before November 30, 2018.

By initials below, I, MARTA CASTELHANO, 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, MARTA CASTELHANO, 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, MARTA CASTELHANO, 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

2(1) as it pertains to Sections 25(1) and 39, 3, 5, 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. MARTA CASTELHANO is Ordered a Fine of \$10,000.00 payable to RECO on or before March 2, 2018.
2. MARTA CASTELHANO is Ordered to enroll in “REIC 2600: Ethics and Business Practice” course provided by the Real Estate Institute of Canada and provide RECO with proof of successful completion of the course on or before November 30, 2018.

[Released: December 1, 2017]