



Real Estate Council of Ontario

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**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 -**

**WAI KWAN  
(ALSO KNOWN AS DAVID WAI YIN KWAN)**

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**DISCIPLINE DECISION AND REASONS FOR DECISION**

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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:

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**FINDINGS:** In violation of Sections 3 and 4 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$5,000.00 payable to RECO on or before January 9, 2019.

Enrol in “REIC 2600: Ethics and Business Practice” course provide by the Real Estate Institute of Canada and provide RECO with proof of successful completion of the course on or before January 9, 2019.

**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. Kwan is a registered Broker under the Act, currently employed with Brokerage B. During the period in question, Kwan was registered as a salesperson with Brokerage A.
2. On or about February 23, 2011 Buyer A (the "Complainant") purchased a pre-construction condominium unit, using the services of Kwan as his (then) salesperson. The Complainant took possession on or about September 3, 2013.
3. Sometime before closing, the Complainant and Kwan entered into an agreement (the "Rebate Agreement") which stated as follows:

*"My client, Buyer A should have the option to choose either (1) or (2), from below, to excersies [SIC] anytime.*

- 1) *I, David Kwan, agent, will return one percent of the purchase price before final closing.*
- 2) *I, David Kwan, agent, will reduce one and half percent 1.5% on my commission for the re-sale of the property after final closing."*

4. In the above Rebate Agreement, "reduce one and half percent 1.5% on my commission" was crossed out by hand and replaced with the following handwritten text: "not charge commission" so that point 2 reads:

*"I, David Kwan, agent, will not charge commission for the re-sale of the property after final closing."*

The majority of the Rebate Agreement is typewritten, however, the above noted amendments are handwritten. The amendments have two sets of handwritten initials beside them.

5. The Rebate Agreement is undated, but does indicate the property to be "City A" with the name of Kwan's then employing Brokerage, Brokerage A at the top of the document. The Rebate Agreement is signed with two different signatures, one with the handwritten notation "David Kwan" below the signature line.
6. At no point after the transaction occurred, nor at any point after the Complainant re-sold the condominium unit, did Kwan fulfil his obligations under the Rebate Agreement.
7. Kwan's conduct in this matter is in violation of Sections 3 and 4 of the Code of Ethics, such that he did not treat his client fairly, or with integrity when he failed to live up to his obligations under the Rebate Agreement. Further, Kwan failed to protect the best interests of his client when he entered into a Rebate Agreement which was undated.

## AGREED PENALTY

WAI KWAN (ALSO KNOWN AS DAVID WAI YIN KWAN), the Respondent, be ordered to pay a penalty of \$5,000.00 on or before January 9, 2019.

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 January 9, 2019.

By initials below, I, WAI KWAN (ALSO KNOWN AS DAVID WAI YIN KWAN), 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, WAI KWAN (ALSO KNOWN AS DAVID WAI YIN KWAN), 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, WAI KWAN (ALSO KNOWN AS DAVID WAI YIN KWAN), acknowledge that I was 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**

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 3 and 4 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. WAI KWAN (ALSO KNOWN AS DAVID WAI YIN KWAN) is Ordered a Fine of \$5,000.00 payable to RECO on or before January 9, 2019.
2. WAI KWAN (ALSO KNOWN AS DAVID WAI YIN KWAN) 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 January 9, 2019.

*[Released: January 15, 2018]*