



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:

REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

- AND-

DWIGHT STC GRANGE

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:	Dwight Stc Grange
For the Real Estate Council of Ontario:	Robert Maxwell, counsel Dipak Parmar, paralegal
Heard in Toronto:	October 17, 2016

FINDINGS: In violation of Sections 5, 6(1), 38 and 39 of the Code of Ethics.

ORDER: A further date will be scheduled for the Parties to present oral submissions on the issue of penalty and/or costs, as established by the Discipline Panel.

COSTS AND EXPENSES: If appropriate, submissions to be made on costs and expenses with submissions on penalty.

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This hearing was held on October 17, 2016, in the presence of the Respondent, Dwight STC Grange (the “Respondent” and/or “Mr. Grange”); Robert Maxwell, counsel for the Real Estate Council of Ontario (“RECO”); Glen Thomas, Compliance Officer for the Real Estate Council of Ontario; and Maria Bursey, independent legal counsel to the Discipline Panel.

At the commencement of the Hearing, Mr. Maxwell advised that the complainant would not be testifying, as he was out of town. Mr. Grange raised no objection. Mr. Grange advised that he re-arranged his disclosure documents, previously submitted, with numbered tabs for ease of reference. Mr. Maxwell raised no objection.

ALLEGATIONS BY THE REGISTRAR, REBBA 2002

In its allegation statement the Registrar, *REBBA 2002* alleged that Mr. Grange acted unprofessionally when he:

1. listed the Property for sale on behalf of a non-owner, Business B, without permission of the owner Business A; and
2. failed to take steps to verify the legal owner of the Property, or, alternatively, knew who the legal owner was but, notwithstanding that knowledge, went ahead and listed the Property nonetheless.

The Registrar, *REBBA 2002* alleged that Mr. Grange breached the following sections of the Code of Ethics:

3. – Fairness, honesty, etc. – A registrant shall treat every person the registrant deals with in the course of a trade in real estate fairly, honestly and with integrity.
5. – Conscientious and competent service, etc. – 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.
- 6.(1) – Providing opinions – A registrant shall demonstrate reasonable knowledge, skill, judgment and competence in providing opinions, advice or information to any person in respect of a trade in real estate.

38. – Error, misrepresentation, fraud, etc. – 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.

39. – Unprofessional conduct, etc. – 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.

EXHIBITS

1. Allegation Statement, dated May 22, 2015
3. RECO Book of Documents, dated May 22, 2015
2. Amended Notice of Hearing, dated October 7, 2016
4. Grange Book of Documents

BACKGROUND

The complainant at the relevant times was the owner of Business A, which owned 1-A Street, City A.

Business A had entered into a Lease Agreement (“lease”) with Business B in around October 5, 2012. The portion of the lease in question was the following (Note: paragraph eight (8) of the lease was repeated three times, for convenience, the first eight (8) will be noted as “8A”, the second eight (8) as 8B):

- 8A. **Assignment and Subletting.** The Tenant shall have the right to assign its interests under this Lease to a limited company, partnership, or person. The tenant agrees to send written notice to the Landlord of its intention to assign to the Landlord and obtain the Landlord’s written approval prior to any assignment. Such approval shall not be arbitrarily or unreasonable withheld or delayed. Upon receiving necessary approval from the Landlord, the Tenant acknowledges and agrees that he (is) not relieved of any liability under this Agreement.

8B. **Tenant Right to Purchase.** During the first three (3) years of the lease, to September 30, 2015, the Tenant shall have the right to purchase the Premises (referring to the property) or the first right of refusal.

The Right to Purchase. At any time during the first three years of the rental term the Tenant can purchase the premises for the agreed upon price of \$900,000.00, subject to usual adjustments.

First Right of Refusal. Upon receipt of an Offer of Purchase and Sale acceptable to the Landlord, the Landlord shall notify the tenant, who shall, upon receipt of said notice shall have 5 (five) business days to exercise his option to purchase the premises for \$900,000.00 or for the price listed in the Agreement of Purchase and Sale whichever is lower. If the Tenant fails to exercise his option to purchase the Premise under this paragraph 9(II), then the Tenant acknowledges and agrees that he must complete the purchase of the Premises within six months of exercising his first right of refusal, failing which, all rights to purchase the Premises contained in this agreement shall be forfeited. All terms of the lease with the Tenant shall continue with any Third Party purchaser of the premises.

In around October 22, 2013, Brokerage A (“Respondent’s Brokerage”) entered into a listing agreement with Business B for the sale of the subject property for \$1,200,000.00.

In around March 27, 2014, the complainant reported his complaint to RECO against the Respondent’s Brokerage indicating that “They [referring to the Respondent’s Brokerage and/or Business B] put my property for sale + [and] sold [sell] it optional for 1.2 million.” This statement by the complainant has no bearing or weight in the view of the Panel, but this commenced the investigation into this matter by RECO because it commenced the investigation by RECO. Furthermore, the complainant did not testify at the hearing and the statement was not made under oath.

OPENING STATEMENT BY THE REGISTRAR, REBBA 2002

Counsel for RECO explained this matter was a simple factual issue about whether the Respondent had actual authority to list the property at the relevant times it was posted on the Multiple Listing Service (“MLS”). Their position was that the Respondent failed to inquire and/or obtain actual authority to list the property on the MLS and further, procured an offer for the property between Business B and a 3rd party. This conduct by the Respondent substantiates the allegations.

OPENING STATEMENT BY THE RESPONDENT

The Respondent took an opposing view. He denied listing the property without authority and took the position that his client, Business B had the authority to list the property on the MLS. His reasoning was that he received confirmation from Business B that he had exercised his right under paragraph 8B of the lease therefore Business B had the authority to list the property through the Respondent’s Brokerage.

WITNESS FOR THE REGISTRAR, REBBA 2002

1. Compliance Officer A

Examination-in-chief

Compliance Officer A was the investigator of the complaint. He has worked with RECO as a Compliance Officer since June 2012. His evidence confirmed that the property was owned by Business A, which was purchased on February 18, 2011 for \$600,000.00.

During his investigation and disclosure of documents by relevant parties, he obtained a copy of the lease between Business B and Business A. His evidence confirmed that at the time of the posting of the property on the MLS that in fact the property was not owned by Business B, but Business A.

He further provided evidence of an email from the complainant through his solicitor dated March 31, 2014, to Business B demanding that the MLS listing be cancelled

within two (2) business days. This letter is hearsay evidence; however confirmation of the cancellation was confirmed on April 1, 2014 via information records from the MLS. The investigator further confirmed that to his knowledge, there was no information on whether the exercise option in the lease to purchase the property was exercised, except for the statement from the Respondent that it was. There was no confirmation in writing.

Cross-examination

During cross-examination, the Respondent pointed out in the investigation by the investigator that the lease in question had specific omissions. Such omissions were:

1. the fact there was no restrictive covenant preventing the advertising for the sale of the property;
2. there was no right to assign or sublease the lease by Business B; and
3. there was no information on how notice was to be provided, if Business B exercised the lease option.

Furthermore, to the understanding of the investigator, Registrant B, Broker at Brokerage B, Brokerage had provided a copy of the MLS listing to the complainant, who in turn provided it to the investigator.

Re-direct

During re-examination, the investigator advised the only role from his understanding of this matter was that Registrant B provided the MLS Print-off used by the complainant.

WITNESSES FOR THE RESPONDENT

1. Individual B

Examination-in-chief

Individual B is the owner of Business B. He confirmed that he is a friend with the owner of Business A, The complainant or the complainant. His evidence was that he was always in discussions with the complainant to purchase the subject property.

As such, he negotiated a tenancy with Business A, and indicated that he included a purchase option to purchase the property in the future. His evidence was that the option was exercised verbally and that there was nothing in writing. He further advised that the many discussions and terms he discussed were not in writing.

He advised that this property had been previously listed by Registrant B, who he understood to be the realtor and friend of the complainant. His evidence suggested that Registrant B was behind the complaint made by the complainant to RECO.

He indicated further that a listing was entered into with the Respondent for the sale of the property. There was not much activity at the property, until an offer finally came through Brokerage C from Buyer C. This offer was accepted by Business B, but was conditional. Ultimately that offer did not go through and the transaction was terminated and the deposit provided by Buyer C was returned.

He further explained the reason behind the cancellation of the listing by the Respondent. His understanding was that he always had authority by the complainant on behalf of Business A to list the property and then sell it. He believed this was the case because he had indicated that he had exercised the option in his lease. He further indicated that it was his understanding that the complainant's wife saw the listing and got upset and she told the complainant to take down the listing because she was not in agreement with the sale of the property. He indicated that the reasons for this were unclear.

However, he maintained that he and the complainant were always in on-going dialogue and discussions to have the property sold to Business B.

Cross-examination

During cross-examination Individual B maintained his position that he was allowed to exercise his right to purchase the property and list it for sale. Mr. Maxwell cross-examined Individual B at length at the lack of steps that would suggest this property as sold from Business A to Business B, including retaining lawyers, having an agreement in writing, having an exact completion date of the transaction.

However, Individual B maintained that the complainant did not wish to have lawyers involved and that he was always out of the country. In an effort to save on the costs and time, he confirmed everything verbally and relied upon the verbal confirmations when the property was listed. He maintained his position that he was exercising the purchase option but did not have it in writing.

THE RESPONDENT

1. Dwight STC Grange

Examination-in-chief

The Respondent testified and was unrepresented. His evidence indicated that he had the authority to list the property for sale and name Business B as the Seller. He indicated that he had taken steps to determine the legal owner, but the complainant did not have a problem with the sale of the property.

His evidence was that the exercise option in the lease between Business B and Business A would be exercised simultaneously when and the property was sold. In other words, the lease between Business B and Business A was a lease with a

purchase and in that purchase option was the right to list and sell the property. On that basis, the Respondent through his brokerage listed the property for sale.

He further testified that during the listing that an offer was procured from another party, Buyer C. The Respondent indicated that the offer by the Buyer C did not proceed because the City A would not give an exception to a by-law preventing that party from using the premises for their intended use.

Even during these conversations, the Respondent maintained that Individual B's company Business B and the complainant's company Business A were still in on-going conversations to sell the property to Business B. He maintained that the option in the lease was a true option.

Cross Examination

The Respondent was cross-examined at length by Mr. Maxwell. It was confirmed through cross examination that the MLS posted by the Respondent did not list the "true owner." The Respondent re-stated that the true owner because the beneficial owner would be Business B relying upon the option to purchase.

Even further, the Respondent maintained that Individual B ultimately did purchase the property from Business A, but not using the Business B corporation, indicating that the parties had a "gentleman's agreement."

However, when the Respondent was pressed about specific details of the purchase at the time of the MLS being posted, the Respondent did not have details about the completion date, the financing for the buyer to purchase the property and the lack of lawyers being involved in the transaction.

The Respondent did produce an agreement between Individual B and Business A, wherein the property was sold for \$920,000.00, with a completion date of

December 31, 2015, and a number of other standard clauses in the sale of commercial property.

Further evidence was provided by the Respondent that from his experience, that was how purchase options operated, in that, if there is an option to purchase a property, it could be done simultaneously. Throughout the cross examination, this was the position that the Respondent maintained.

He further indicated that on the basis of the manner in which the lease was constructed, Business B could do whatever they wanted to do with the property. However, during cross examination, he admitted he had no specific authorization from Business A to list the property.

Re-Direct

There was no re-direct that added to the evidence or was of significant value.

SUBMISSIONS FOR THE REGISTRAR, REBBA 2002

Mr. Maxwell confirmed their position that this was as simple factual case of the Respondent failing to take the necessary steps to ensure that he had the authority to list the property in question and failed to take necessary steps to confirm this. That on this basis, the Respondent breached the allegations outlined above.

Mr. Maxwell maintained that the evidence that the Respondent had the authority to list because of the purchase option is inconsistent with the actions taken by the complainant. The complainant made the complaint to RECO and he even retained counsel to take necessary steps to remove the MLS listing. One day after the letter from the complainant's solicitor, the MLS was cancelled.

Mr. Maxwell further submitted that the position the Respondent has taken is a breach of the Statute of Frauds, in that, any sale of lands must be made in writing and this option to purchase is not enough.

Finally, they further point out that a third party, the Buyer C, made an offer on this property despite Business B not being of the property. There will be significant confusion in the real estate market if these types of circumstances were to take place.

He submitted that RECO had proven the allegations in these proceedings based on their submissions and evidence presented.

SUBMISSIONS FOR THE RESPONDENT

The Respondent's position was circumstances before the Panel involved an option to purchase, which was a "true-option." Furthermore, because of the existence of this true-option, this would not offend the Statute of Frauds that Mr. Maxwell alluded to in his submissions.

He went on further to submit that the complainant did not testify in these proceedings. This is a significant factor because the actual complainant did not provide evidence and did not provide it under oath.

Also, the Respondent submitted the true-option in this matter, gave an "equitable interest" in the property. Because the true-option bound the Business A to sell to Business B, Business A was bound to sell the property to Business B and no other buyer. If a buyer was to purchase the property, Business B had a right of refusal, which would prevent any other buyer from purchasing the property. Furthermore, the Respondent submitted that the lack of a restrictive covenant, allowed Business B to market the sale of the property. To support this position, he relied on an article by Lawyer A, from Law Firm A titled: Real Estate Options: Is an Option to Purchase Property Marketable on the MLS, published April 21, 2010. Wherein the author indicates that, an option to purchase under specific pre-determined terms represents an equitable interest in the property. The author goes on to distinguish and explain a true-option and right of first refusal and their operation in the sale of real estate. The

Respondent's position was that he was acting on behalf of Business B under his equitable rights.

Based on these submissions, the Respondent submitted that he has not offended any sections of the RECO Code of Ethics (Ontario Regulation 580/05).

CODE OF ETHICS

The Registrant is governed by the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c.30, Schedule C ("*REBBA 2002*").

This Discipline Committee is established to hear and determine these issues, in accordance with the prescribed Regulations. The Discipline Committee must determine if the Registrant has failed to comply with the Code of Ethics established by the Minister in accordance with Section 21 of the *REBBA 2002*.

Section 50 of the *REBBA 2002* provides that the Minister may make Regulations establishing a Code of Ethics for the purposes of subsection 21(1).

Ontario Regulation 580/05 is the Code of Ethics pursuant to the *REBBA 2002* and is the Code of Ethics that governs these proceedings.

FINDINGS BY THE PANEL

Having carefully considered the testimony of the witnesses at the hearing, and the documentary evidence, the Panel has arrived at the RECO has proven s.5, 6(1), 38 and 39 of the RECO Code of Ethics. Each will address in turn.

Section 5. – Conscientious and competent service

The Respondent failed to provide conscientious and competent service when he listed the subject property for sale on the MLS, despite knowing and/or ignoring the existence of the true owner of the property.

The Respondent, from his own evidence, indicated that Business B had exercised the option to purchase the property. This was not confirmed in writing. There was only oral evidence to this degree. However, it should be noted this fact does not have a significant bearing on the Panel's findings. The concern is that the Respondent was aware that the transfer of the property had not occurred between Business A and Business B.

There was no agreement of purchase and sale, there were no solicitors retained by the parties for the sale of the property. There was no information of a specific completion date, deposit or any other particular details required for the sale of a property. These are basic requirements for the sale of land.

Section 6.(1) – Providing opinions

The Respondent failed to demonstrate reasonable knowledge, skill, judgment and competence in advising Business B. In explaining the reasoning behind listing the property for sale, the Respondent indicated that in his view the property could be transferred from Business A to Business B and then to another third party simultaneously, between their respective counsel. In addition to the above circumstances, this demonstrates a lack of knowledge and understanding of the transfer of real property and is significantly short of the reasonable knowledge a Registrant should exercise in the circumstances. For example, the Registrant could have advised Business B to seek legal advice in exercising the option to ensure that Business B's purchase is implemented in accordance of the lease.

Even further, there is confusion over the exercise of the purchase option, which lead to the investigation by RECO and these proceedings. However, the Respondent maintains in his submission he was acting on Business B's behalf pursuant to his equitable interest in the property and relies on an article from Lawyer A. As Lawyer A did not give evidence, the panel was not given the benefit of hearing his opinion as subject to cross examination. Nor did the Respondent take any steps to introduce Lawyer A as an expert or the article as an expert report. The panel was not asked to,

nor did it, qualify Lawyer A as an expert or accept the article as an expert report. Furthermore, the Respondent had an opportunity in advance of the hearing to take such steps and seek legal advice or guidance in regards to this issue, but did not. In light of these issues, Lawyer A's article was given very little to no consideration by the Panel in the decision making process.

However, it is the Panel's view that the Respondent does not understand under exactly what authority (if any) he was acting under when he put the property on the MLS. An analysis of an individual's equitable rights versus legal rights should be conducted by practitioner lawyer, not a Registrant. Taking steps to seek advice from a lawyer was warranted in the circumstances.

It should be noted, there was no evidence of any steps the Respondent took to ensure he was acting under the appropriate authority, except his own understanding and the operation of the purchase option in the lease.

Section 38. – Error, misrepresentation, fraud, etc.

The Respondent further failed to use his best efforts to prevent error, misrepresentation, fraud or any unethical practice with respect to this trade. The listing of Business B as the seller on the MLS is a misrepresentation of the facts; facts that the Respondent knew or wilfully ignored.

This MLS listing, being posted without legal authority from the true owner lead to the procurement of an agreement of purchase and sale to a third party, namely Buyer C. This third party placed an offer on a property that Business B could not legally sell to them at the time.

Reasonable efforts by the Respondent could have been taken to avoid such a circumstances, such as having the purchase option turned into a formal agreement of purchase and sale with an option to assign the agreement to a third party, or obtaining consent from the true owner to list the property. This did not occur in this situation.

Section 39. – Unprofessional conduct, etc.

Lastly, the Respondent acted in an unprofessional or manner unbecoming of a Registrant. In addition to the above noted circumstances, it is inappropriate to list a property for sale where there is no legal authority to do so. From the all the facts and circumstances it is clear Business B and the Registrant were working together to purchase the property at the price agreed upon in the lease and re-sell the property for a higher price. The Registrant assisted Business B to make such a profit was acting in the best interest of his client, however the manner in which it was conducted was inappropriate in all the circumstances as outlined herein.

PENALTY

A further date will be scheduled for the Parties to present oral submissions on the issue of penalty and/or costs, as established by the Discipline Panel.

Any inquiries relating to the delivery of the above-mentioned documents should be directed to the Manager, Discipline and Appeals Hearings.

[Released: May 10, 2017]



Real Estate Council of Ontario

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 -

DWIGHT STC GRANGE

Heard on the 10th day of November, 2017 at Toronto, Ontario in the presence of

Dwight STC Grange, Registrant

Robert Maxwell, Counsel for the Registrar, Real Estate and Business Brokers Act, 2002.

Dipak Parmar, Paralegal for the Registrar, Real Estate and Business Brokers Act, 2002
A. Maria Burse, Legal Counsel to the Discipline Hearing Panel

DATE OF DECISION: November 10, 2017

ORDER: Fine of \$2500.00 payable to RECO within 12 months of sending this decision.

Successful completion of the Real Estate Institute of Canada “REIC 2280: Legal Issues in Real Estate” classroom course and provide RECO with confirmation of successful completion within 12 months of sending this decision.

COSTS AND EXPENSES: If parties wish to make submission on costs, provide to Panel within (30) thirty days of this decision.

WRITTEN REASONS:

REASONS FOR DECISION

PENALTY AND COST

INTRODUCTION

The hearing to determine whether the Respondent, Dwight STC Grange (the “Respondent” and/or “Mr. Grange”) in violation of any rules under the *Real Estate Business Broker’s Act, 2002 (“REBBA”) Ontario Regulation 580/05 Code of Ethics (“Code of Ethics”)* was held on November 10, 2017.

The hearing was held in the presence of the Respondent, Dwight STC Grange (the “Respondent” and/or “Mr. Grange”); counsel for the Real Estate Council of Ontario (“RECO”), Robert Maxwell (“Mr. Maxwell”); Compliance Officer A for the Real Estate Council of Ontario; and Maria Bursey, independent legal counsel to the Discipline Panel.

The Panel has found that the Respondent was in violation of 5, 6(1), 38 and 39 of the *Code of Ethics*.

A hearing to determine the penalty was held on November 10, 2017 for the Respondent in the presence of The Respondent; counsel for the Real Estate Council of Ontario (“RECO”), Robert Maxwell (“Mr. Maxwell”); Compliance Officer A for the Real Estate Council of Ontario; and Maria Bursey, independent legal counsel to the Discipline Panel.

The submissions of RECO and the Respondent are addressed in the reasons for penalty. RECO recommended a fine in the \$5,000.00 range as the appropriate penalty based on the need for specific and general deterrence in these circumstances. The Respondent recommended no penalty maintaining that he did not violate the code of Ethics, notwithstanding the Panel’s finding to the contrary.

PANEL'S DECISION ON PENALTY

RECO submitted a number of decisions in reliance of their penalty in this matter. The Panel relies upon principles in the appeal decision of *RECO & Suzette Thompson #071050 (30074)* heard May 31, 2012. The decision outlines the factors a lower panel shall consider in disciplinary orders regarding penalty, which include:

1. The nature and gravity of the breaches of the Code of Ethics,
2. The role of the offending member in the breaches,
3. Whether the offending member suffered or gained as a result of the breaches,
4. The impact of the breaches on complainant or others,
5. The need for there to be specific deterrence to protect the public,
6. The need for there to be general deterrence to protect the public,
7. The need to maintain the public's confidence in the integrity of the profession
8. The degree to which the breaches are regarded as being outside the range of acceptable conduct, and
9. The range of sanction in similar cases

In deciding the appropriate penalty, the Panel considered each factor.

1. Nature and Gravity

The nature and gravity of the breaches is quite severe and so is an aggravating factor. The Respondent listed a property without getting the authority to do so from the owner. The Respondent failed to determine whether his client had the authority to list the property. Effectively, the Respondent did not take reasonable and diligent steps in determining whether his client actually had the authority to list the property. While these breaches are severe, the Panel did not conclude that they were deliberate, but rather the results of mistaken beliefs of the Respondent regarding his role as a Realtor.

2. Role of Offending Member

The Respondent was the principal offender in this matter. This is an aggravating factor.

3. Financial Gain

The Respondent did not financially gain from his conduct. This is a mitigating factor for the Respondent.

4. Impact on Complainants and Others

There was no severe impact on the complainants or any other party involved. It was noted by the Panel that a third party could have entered into a contract that could have been misleading or invalid, however this did not occur. Overall, this is a mitigating factor for the Respondent as there was no real harm on any complainants or other parties.

5. Specific Deterrence

The Respondent is a Broker of Record at his Brokerage. Specific deterrence in these circumstances is needed to ensure that the Respondent does not misguide or mislead other Registrants operating at the Brokerage, given his role as the Broker of Record. Further, the Respondent fails to accept the facts and finding of the Panel, continues to plead innocence in the circumstances, and did not express any form of remorse. Overall the need for specific deterrence is significant.

Furthermore, the Respondent has demonstrated a complete lack of remorse by his very conduct during the hearing. This was evidenced by the Respondent's failure to understand the proceedings that was brought against him. He failed to comprehend that the proceedings were brought in relation to his conduct and not the legality or right of his client to list a property. This is an aggravating factor.

6. General Deterrence

The Panel finds that there is a need for general deterrence. While transactions involving the sale of commercial property with a lease are not typical or "normal" types of transactions, the conduct of the Respondent creates a concern. Hence there is need for Registrants to be diligent in their practice. In these circumstances, the Respondent could have avoided the complaint by obtaining written consent from the owner or

confirming in writing that the option available to the tenant was exercised. Proper due diligence could have prevented the misconduct by the Respondent. With the foregoing, the Panel maintains that general deterrence is required in the circumstances. This is an aggravating factor.

7. Maintaining Public Confidence and Integrity

Although the conduct is a violation of the Code of Ethics, this type of transaction is not broadly practiced by Registrants, however the Respondent has demonstrated a lack of understanding in terms of “rights in a lease” versus “ownership of a property” and the steps required to ensure compliance with the code of ethics. Maintaining public confidence and integrity would be accomplished by assisting the Respondent in ensuring that this type of circumstance does not arise in the future and that it be prevented. This is an aggravating factor.

8. Degree Outside Range of Acceptable Behaviour

The Respondent’s conduct outside of acceptable behaviour is in the mid-range. This is not an extreme case of fraud, dishonesty or deception, which involves sophisticated planning. The Panel would characterize the conduct gross incompetence or wilful ignorance. This would be a neutral factor for the Respondent.

9. Range of Similar Cases

The Panel received similar decisions to assist in deciding the penalty in this case. The Panel finds that the cases are distinguishable on the facts or far more extreme compared to the Respondent’s conduct.

In RECO v. Finora #200700247, the Registrant in this circumstance conducted herself in a far more severe manner, was unprofessional and provided information that she knew was false. The penalty imposed was \$10,000.00.

In RECO v. Rhys Trenhaile #200900750, the Registrant did not conduct the appropriate due diligence in the circumstance but also committed fraud or misrepresented facts over

an extended period of time and involved multiple transactions. The penalty imposed was \$16,000.00.

The Panel finds that two cases presented had far more aggravating features than the matter before the Panel. As such, the penalty imposed by the Panel is relatively less.

PENALTY

Considering the aggravating and mitigating factors in the circumstances, the overall need to ensure that the Respondent understands the breaches that he has committed, the Panel imposes a fine of \$2,500.00 payable within twelve (12) months of sending this Discipline Decision and the successful completion of Legal Issues in Real Estate (In-Class Course only) through the Real Estate Institute of Canada within twelve (12) months of sending this Discipline Decision.

SANCTION SOUGHT

None.

COSTS

If parties wish to make submissions on costs, provide to Panel within (30) thirty days of sending this Discipline Decision.

[Released: March 22, 2018]