



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 -**

**DONNA JAMIESON**

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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, 17, 25(1) and 39 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$7,500.00 payable to RECO on or before September 7, 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. Jamieson is, and was at all relevant times, registered as a salesperson under the Act, and was employed by Brokerage A (the "Listing Brokerage").
2. On December 13, 2015, on behalf of the Listing Brokerage, Jamieson executed a listing agreement with the executor of the estate for the property at 1-A Street, City A ("the

Property”). The listing agreement provided for total commission of 5%, with 2.5% payable to a cooperating brokerage.

3. On December 15, 2015, the Property was listed for sale on the Multiple Listing Service (“the MLS Listing”). The Property was listed for \$599,000.00. The MLS Listing outlined that any cooperating brokerage would be paid a commission of 2.5%. The MLS Listing also indicated that offers were to be reviewed by the seller at 2:00 p.m. on December 20, 2015.
4. Two days prior to the offer presentation date, on December 18, 2015, Jamieson entered into a buyer customer service agreement on behalf of her brokerage with an interested buyer, Buyer A.
5. On the presentation date, eight offers were received. Jamieson never advised the other offerors’ representatives that she was also providing services to an offeror, Buyer A, despite the obligation to do so in writing at the earliest practicable opportunity, and before any offer is made.
6. One of the offers was submitted by salesperson Registrant C on behalf of his client, Buyer C, for \$648,000.00, with a \$15,000.00 deposit. A confirmation of cooperation and representation was signed by both Buyer C and Registrant C on December 20, 2015, noting that a commission of only 1.5% (as opposed to the offered 2.5%) would be payable from the Listing Brokerage to the cooperating brokerage. Registrant C made it clear to Jamieson by email and text message that her seller client would only need to pay a cooperating commission of 1.5%, rather than 2.5%, if his client’s offer was accepted.
7. With this knowledge, Jamieson also reduced her brokerage’s cooperating commission on the Buyer C offer to 1.5% to match the cooperating commission of the Registrant C offer. Jamieson did not advise Registrant C that she was doing so.
8. Registrant D submitted one of the offers on the Property on behalf of his client Buyer D. The offer was in the amount of \$655,100.00 with a \$20,000.00 deposit.
9. Jamieson informed Registrant D that his client’s offer was among the top three offers. She informed Registrant D that another offeror’s representative had reduced his commission from 2.5% to 1% (this being the Registrant C offer). This was incorrect: Registrant C’ cooperating commission had been reduced to 1.5%, not 1%. Jamieson asked if Registrant D was willing to reduce his brokerage’s cooperating commission. However, Jamieson did not advise Registrant D that she was also cutting her own

cooperating commission on the offer from her customer Buyer B to 1.5%. Registrant D did not reduce his brokerage's cooperating commission.

10. The seller accepted the Buyer B offer of \$650,000.00, as it netted the seller the most money after Jamieson reduced her brokerage's cooperating commission. It was \$2,000.00 more than the Registrant C offer with the same 1.5% cooperating commission. Jamieson was entitled to receive \$27,889.69 in commission for double-ending this transaction.

11. Buyer B was not able to close on the transaction. The Property was ultimately re-listed and re-sold.

### **SUMMARY OF AGREEMENTS**

12. In violation of sections 3, 17, and 39 of the Code, Jamieson provided services to the buyer and the seller in respect of the same trade in real estate yet failed to inform all other offerors in writing at the earliest practicable opportunity of her and her brokerage's relationship with the buyer.

13. In violation of sections 3, 25(1) and 39, Jamieson did not disclose to the representatives of all other offerors that the stated cooperating commission of 2.5% would be reduced to 1.5% if her brokerage's customer and/or if Registrant C' client were the successful buyers.

**It is agreed that Jamieson breached the following sections of the Code of Ethics:**

**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.

**Nature of relationship**

17. If a registrant represents or provides services to more than one buyer or seller in respect of the same trade in real estate, the registrant shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all buyers and sellers involved in that trade of the nature of the registrant's relationship to each buyer and seller. O. Reg. 580/05, s. 17.

### **Agreements relating to commission**

25. (1) If a brokerage has a seller as a client and an agreement between the brokerage and the seller contains terms that relate to a commission or other remuneration and that may affect whether an offer to buy is accepted, the brokerage shall disclose the existence of and the details of those terms to any person who makes a written offer to buy, at the earliest practicable opportunity and before any offer is accepted. O. Reg. 580/05, s. 25 (1).

### **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. O. Reg. 580/05, s. 39.

### **AGREED PENALTY**

DONNA JAMIESON, the Respondent, be ordered to pay a penalty of \$7,500.00 on or before September 7, 2018.

By initials below, I, DONNA JAMIESON, 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, DONNA JAMIESON, 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, DONNA JAMIESON, 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, 17, 25(1) 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. DONNA JAMIESON is Ordered a Fine of \$7,500.00 payable to RECO on or before September 7, 2018.

*[Released: May 11, 2018]*