



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 -

TAMMY VAILLANCOURT

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant: Tammy Vaillancourt, Registrant

For the Real Estate Council of Ontario: George Drametu, Counsel

Heard in Toronto: August 23, 2017

FINDINGS: The Respondent is in violation of Sections 3, 4, 5, 38 and 39 of the Code of Ethics

ORDER: Counsel for the Registrar, *REBBA 2002* to deliver written submissions to the Panel and to the Respondent on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.

The Respondent shall deliver to the Panel and to Counsel for the Registrar, *REBBA 2002* its written submissions on penalty and costs in response to Counsel for the Registrar, *REBBA 2002's* submissions within 15 days of the date on which Counsel for the Registrar, *REBBA 2002's* submissions on penalty and costs are delivered to the Respondent.

Counsel for the Registrar, *REBBA 2002* shall deliver to the Panel and to the Respondent its reply to the written submission on penalty and costs of the Respondent within 5 days of the date on which the Respondent's submissions on penalty and costs are delivered to Counsel for the Registrar, *REBBA 2002*.

Any inquiries relating to the delivery of the above-mentioned documents should be directed to the Hearings Coordinator.

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This Hearing was held on August 23, 2017, in the presence of the Respondent Tammy Vaillancourt (the “Respondent” and/or “Ms. Vaillancourt”), George Drametu, counsel for the Real Estate Council of Ontario (“RECO”); Chantel Marler, paralegal for the Real Estate Council of Ontario; and Allan Powell, independent legal counsel to the Discipline Panel.

ALLEGATIONS BY THE REGISTRAR, REBBA 2002

In its Allegation Statement the Registrar, REBBA 2002 alleged that Tammy Vaillancourt acted unprofessionally when she:

Signed and/or appended a signature purporting to be the signature of Seller A on the January 5, 2015, Listing Agreement without the knowledge, consent or authority of Seller A, thereby breaching sections 3, 4, 5, 38 and 39 of the Code of Ethics.

The Registrar, REBBA 2002 alleged that Ms. Vaillancourt 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.

4. - Best interests - A registrant shall promote and protect the best interests of the registrant’s clients.

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.

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

At the outset of the hearing Counsel for RECO entered three exhibits into evidence:

- Exhibit 1: Revised Notice of Hearing, dated July 7, 2017
- Exhibit 2: Allegation Statement, dated January 5, 2016
- Exhibit 3: RECO Book of Documents, dated March 17, 2016

The Prosecution in its opening remarks referred the panel to Exhibit 3 Tab 1. This allegation statement outlined the particulars of the case against Ms. Vaillancourt. He stated that those particulars would show that Ms. Vaillancourt breached sections 3, 4, 5, 38 and 39 of the Code of Ethics.

On conclusion of the Prosecution's opening remarks, Ms. Vaillancourt was given the opportunity to either present her opening remarks then or wait until the Prosecution rested its case, and do her opening remarks at that time. Ms. Vaillancourt chose to wait until the prosecution rested.

WITNESSES FOR THE REGISTRAR, REBBA 2002

1. Broker of Record A

As its first witness, the Prosecution called Broker of Record A. Broker of Record A stated that he was the Broker Owner of Brokerage A in City A. He explained that he joined the Brokerage in May 2008 when he registered as a realtor. He became the Broker of Record in September 2010. When asked to explain the functions of a Broker of Record, his reply included: "...management of the company; help agents be successful; run the office; administer staff and make sure agents respect REBBA 2002." He was then asked if he had worked with Ms. Vaillancourt and he explained that she was already at the Brokerage when he got there but they didn't work together. He was asked to explain Ms. Vaillancourt's relationship in the Brokerage and he stated that she had a "tumultuous" time with clients reaching her. That there had

previously been no evidence of tampering with legal documents and that he had worked a lot to assist her.

He was then asked to open Exhibit #3 on the witness stand and turn specifically to Tab 2 and to identify the document, which was the complaint form stamped Received by RECO on January 15, 2015, which he had filled out in relation to this matter.

Broker of Record A was asked to explain to the Panel the reason for his complaint. He stated that his office had received a call from a Seller A stating that she was unhappy with her agent and had not been able to reach her agent for several days. The complaint was referred to him as Broker of Record, and he returned Seller A's call. She agreed to attend the office on January 6, 2015. Prosecution referred him to Tab 4 sub tab "A" and asked to identify the document which he explained was the listing between Seller A and his Brokerage, for \$199,900.00 for the commission of 5% plus HST commencing on the August 22, 2014 and terminating on November 22, 2014. He was then referred to Tab 4 "B" and asked to identify that document, which was a listing between Seller B and his brokerage for \$189,500.00 commencing on the January 5, 2015 until the June 1, 2015.

He explained that when Seller A came into his office she was relatively upset. She explained that Ms. Vaillancourt (or as she called her "Tammy") had called her and told her that she was going to "freshen" the listing and asked if Seller A could send her some new pictures. The Seller had been under the impression that she had signed a six-month Listing Agreement and that was the reason for the so-called freshening. When Broker of Record A showed her the new listing priced at \$189,500.00 she stated that she had never signed that and had never seen it.

He was then asked by Prosecution to explain page 1 of Tab 4 "D" which was a letter e-mailed from him as Broker of Record to Ms. Vaillancourt explaining his meeting with Seller A and the irregularities which he stated he had been trying to discuss with Ms. Vaillancourt to no avail. This e-mail was dated January 7, 2015 at 11:50 a.m. at the end of which he stated he would like to meet with Ms. Vaillancourt today to discuss the serious matters ending with "contact me as soon as possible". He was then asked to turn to Tab 4 "E" which was an e-mail again from him to Ms. Vaillancourt dated January 7, 2015 at 3:15 p.m., Subject: 1-A Street, stating he had removed the listing from the system pending her answer to his last e-mail and had advised Seller A of this development. He stated he was still waiting for Ms. Vaillancourt's official written

version of the event and that he would keep the matter open until 10:00 a.m. tomorrow January 8, 2015 at which time he would take appropriate action.

Prosecution then asked him to move to Tab 4 "F" which was Ms. Vaillancourt's reply e-mail to Broker of Record A, dated January 7, 2015 at 11:01 p.m., and the Subject was 305 Pine. She stated that since the e-mail she had spoken to the Seller and both had agreed to go back to the original January 9, 2015 expiry date. Broker of Record A said Ms. Vaillancourt's email referenced her eagerness to get a new 2015 listing that succeeded in getting 40 views in the past three days. ("My bad I went about it the wrong way having only texted with Seller B my intentions about the freshening the listing (sic) I've attached the short texting conversations"). She stated that she had learned her lesson and that she will slow down with paperwork till they can meet in person.

He stated that on January 8, 2015 he made a phone call to inform Ms. Vaillancourt that she was terminated from employment in the Brokerage, that he was filing a complaint with RECO and that she owed money to the Brokerage.

Cross-Examination of Broker of Record A

Ms. Vaillancourt asked Broker of Record A why he had said she was not employed at the brokerage when he got there? It was explained to her that that was not what he had said; she had just misunderstood. She also asked him if he had a copy of the amended listing agreement. He said he did not.

The Witness was excused with thanks.

The Prosecution stated that they had intended to call the Compliance Officer from RECO, but his only function would have been to state his participation in this matter was as per Exhibit #3 of the Book of Documents. He stated that if Ms. Vaillancourt was willing to stipulate agreement with the Book of Documents, it would be unnecessary to call him as a witness. This was explained to Ms. Vaillancourt and she so stipulated.

WITNESSES FOR THE RESPONDENT

1. Tammy Vaillancourt

Ms. Vaillancourt's opening statement began by stating that the Seller was happy with her and that her understanding was that her Client thought refreshed or freshening of the listing meant signing a new one on her behalf. At that point Ms. Vaillancourt was advised that what she was doing sounded more like testimony and was asked by the Chair if she wished to give testimony. The Chair reminded her that if she was sworn in and gave testimony she would be subject to cross-examination from the Prosecutor.

After being sworn in Ms. Vaillancourt's testimony included: She said that Seller B went to the brokerage to find out the expiry date of the listing agreement. She told Ms. Vaillancourt that she was intimidated by Broker of Record A. Ms. Vaillancourt said that she had been in daily communication with the Seller. Ms. Vaillancourt then said "I made a mistake putting her signature there. She was fine with me being her agent and was still going to use me." Regarding the texts back and forth with the Seller, Ms. Vaillancourt allowed "...I know now it's wrong...it's illegal..." When Bruno tried to reach me, I responded by 11:00 p.m. since I was with another client. And I had to talk to Seller B first to "find out what was going on."

Cross Examination of Tammy Vaillancourt

Under cross-examination Ms. Vaillancourt stated that she had been registered 21 years; that she didn't know she could not sign something on the Sellers behalf; that she thought it was okay. She was directed to open Exhibit #3 to Tab 4 "B" and she admitted that she, using the Sellers names and initials (not the Sellers) had signed and initialled the document in the appropriate places. She was then directed back to 4 "A" and asked why there were no documents for extending that listing if it was just going to be freshened or refreshed. She attempted to find the amendment in her files but could not. The Chair confirmed with the Prosecutor that RECO had not asked Brokerage A to submit the entire file.

When asked to open Tab 6 and identify that document Ms. Vaillancourt recognized it as her reply to Compliance Officer A (RECO) in reply to the complaint letter dated January 16, 2016,

wherein she advised that having spoken to her current Broker of Record she was told that she shouldn't have signed her client's name.

Ms. Vaillancourt was then asked specifically about paragraph 2 in which she states she was in communication with the Seller of 1-A Street. The discussion was about early in the new year cancelling the existing listing and recirculating the refreshed listing in the MLS system. The question arose of why there was discussion in early December of canceling and refreshing a listing which had actually expired on 22 November.

Ms. Vaillancourt was then directed to the three pages of text messages attached to the Compliance Officer A letter in which she continues to refer to the listing as being refreshed and not relisted, in which she asked the Seller to reduce the price to \$189,500.00 and this was refused. She was also asked why in the new listing there were initials for a longer than six month listing, and she was asked if this was discussed with the Seller and it wasn't.

Under Tab 5, page 2, is a letter from the Seller indicating that she had thought the original listing was six months, and it was confusing to her because the Buyer Agency (Buyer Representation Agreement) she had signed with the same Brokerage was for six months. She also indicated in the same letter that she gave no authorization for Ms. Vaillancourt to sign a listing on her behalf.

The Prosecution specifically asked: "You forged her signature?" Ms. Vaillancourt replied: "I guess I actually did...I should not have done that."

The Panel questioned why the first listing was in both spouses' names and the second listing was only in one name? Ms. Vaillancourt replied the property was only in the name of Seller A. Follow-up question asked why then Seller's A's spouse's name was not inserted in the spousal consent section of the new listing, this section was blank. She admitted that she "missed it."

When questioned about the signing without permission in writing, Ms. Vaillancourt stated she didn't think she was doing anything wrong. "I didn't do it before. I thought texting made it all right."

SUBMISSIONS FOR THE REGISTRAR, REBBA 2002

In submissions from RECO, the Prosecution stated that Broker of Record A had been a credible witness, and that he contacted Ms. Vaillancourt to clarify the situation with the January 5, 2015 listing that the Seller did not know about. The Prosecution said that in the Respondent's reply letter to the complaint there was no mention in the text exchange with the Seller of having had permission to sign the listing, that she knew she was wrong and admitted a forgery, which he found "shocking". He concluded that in his view, sections 3, 4, 5, 38 and 39 were breached.

SUBMISSIONS FOR THE RESPONDENT

In submissions from the respondent Ms. Vaillancourt stated that she takes pride in her professionalism, has learned from her mistakes and will not rely on texting in the future.

SUBMISSIONS REGARDING PENALTY

In regards to Submissions regarding penalty: should there be a finding of breach, the Parties elected to receive as per the bylaws the decision of the Panel by e-mail. RECO and the Respondent shall then have the appropriate time in which to make submissions on penalty after which the panel will convene by conference call and make a decision regarding Sanctions.

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 following findings and conclusions:

Ms. Vaillancourt, to her credit, admitted in her testimony that signed and initialled documents in the Seller's name. The Panel accepts this admission and finds this to be a fact.

Based on the evidence adduced at the hearing the Panel finds as a fact that Ms. Vaillancourt did not have the Seller's permission to sign the documents which were signed by Ms. Vaillancourt in the Sellers name.

Based on these findings it is the conclusion of the Panel that:

- Ms. Vaillancourt breached Section 3 of the Code of Ethics. Her actions as a registrant in the course of a trade in real estate were not fair, honest or conducted with integrity.
- Ms. Vaillancourt breached Section 4 of the Code of Ethics. Her actions as a registrant did not promote and protect the best interests of her client.
- Ms. Vaillancourt breached Section 5 of the Code of Ethics. Her actions as a registrant did not demonstrate reasonable knowledge, skill, judgment and competence in providing services to her client.
- Ms. Vaillancourt breached Section 38 of the Code of Ethics. As a registrant her actions failed to demonstrate best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in real estate.
- Ms. Vaillancourt breached Section 39 of the Code of Ethics. Her activities in the course of trading in real estate can reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a registrant.

PENALTY

Counsel for the Registrar, REBBA 2002 to deliver written submissions to the Panel and to the Respondent on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.

The Respondent shall deliver to the Panel and to Counsel for the Registrar, REBBA 2002 its written submissions on penalty and costs in response to Counsel for the Registrar, REBBA 2002's submissions within 15 days of the date on which Counsel for the Registrar, REBBA 2002's submissions on penalty and costs are delivered to the Respondent.

Counsel for the Registrar, REBBA 2002 shall deliver to the Panel and to the Respondent its reply to the written submission on penalty and costs of the Respondent within 5 days of the date on which the Respondent's submissions on penalty and costs are delivered to Counsel for the Registrar, REBBA 2002.

If appropriate, submissions to be made on costs and expenses with submissions on penalty.

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

The Panel shall deliver its decision on penalty and costs after considering the written submissions of the parties.

[Released: December 21, 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 -

TAMMY VAILLANCOURT

The Panel held a teleconference on March 12, 2018 to discuss the written submissions with respect to Penalty and Costs. The Panel decided as follows:

ORDER:

Fine of \$15,000.00 payable to RECO within 90 days of sending this decision.

Successful completion of the “REIC 2600: Ethics and Business Practice” course provided by the Real Estate Institute of Canada.

Provide RECO with confirmation of the successful completion of the course within 6 months of sending this decision.

**COSTS AND EXPENSES:
WRITTEN REASONS:**

REASONS FOR DECISION **PENALTY & COSTS**

INTRODUCTION

The Panel met by teleconference on March 12, 2018 at 2:00 p.m. to review the written submissions of the parties on the issue of penalty and costs. Submissions were received only from the counsel for RECO. The Respondent opted not to participate and failed to respond to multiple requests for comments.

The Panel's Decision on Penalty

In making a determination on the issue of penalty, the Panel took into account the 10 cases submitted by RECO's counsel as precedents. In the Registrar's submissions, the facts are summarized as follows:

Tammy Vaillancourt ("Ms. Vaillancourt") had listed the property of one Seller A; the agreement was valid from August 22, 2014 to November 22, 2014. The property was listed at \$199,900.00 and that listing had expired, although Seller A believed it was still active due to Ms. Vaillancourt's request via text messages (December 27, 2014 to January 4, 2015) for photos to "refresh" the listing. Ms. Vaillancourt prepared a new listing and signed the seller's name on the new listing agreement without the seller's knowledge or consent on January 5, 2015.

Seller A complained to Ms. Vaillancourt's employer, Brokerage A, and subsequently met with the Broker of Record, Broker of Record A. Broker of Record A cancelled the January 5, 2015 listing agreement and attempted to make contact with Ms. Vaillancourt.

In an e-mail to Broker of Record A on January 7, 2015, Ms. Vaillancourt admitted to signing the January 5, 2015 listing without the knowledge and consent of Seller A. Ms. Vaillancourt was terminated by the Brokerage on January 8, 2015 for signing a client's name on a legal document without the client's knowledge and consent.

The foregoing facts accord with the evidence adduced at the hearing and the findings of fact made by the Panel in their Reasons for Decision.

The Role of the Offending Member in the Breaches

The Panel concluded that the breaches were solely the result of Ms. Vaillancourt's actions, and she was solely responsible for the identified breaches including placing her brokerage in the position of potential ethical violation of the Code of Ethics.

Deterrence

The panel agreed that in imposing a penalty, there is a need for both Specific and General deterrence.

The Specific deterrence is intended to be a meaningful deterrent to the individual and not be considered the “cost of doing business” by the respondent.

The General deterrence is the importance of imposing a penalty that will show the member’s peer group that this conduct will never be taken lightly. The penalty is intended to reinforce the need to help maintain the public's confidence in the integrity of the profession.

Penalty Options Available to the Panel

Where the Panel makes a determination that a respondent has failed to comply with the Code of Ethics, it may order any of the options enumerated at subsection 21(4) of the *Real Estate and Business Brokers Act 2002 S0 2002*, Chapter 30, Schedule C.

Remedy Sought

The registrar sought a penalty of \$15,000.00 payable within 90 days of Ms. Vaillancourt’s receipt of the Panel’s decision.

The Panel, after considerable discussion, agreed that the monetary penalty as such was not sufficient. Ms. Vaillancourt, at the time of the infraction, had been a registrant for 20 years. During the hearing, she acknowledged that she had violated the Code of Ethics in multiple ways, and accepted the Registrar’s assertion that she had committed “fraud”. Vaillancourt, despite repeated requests to do so, did not respond to the opportunity to submit or respond to penalty submissions. The Panel chose to include that Ms. Vaillancourt pay the penalty of \$15,000.00 within 90 days of receipt, and that she should successfully complete the REIC course entitled, “*Ethics and Business Practice*” within six months from the date that this decision is sent to her.

As no costs were requested, none were awarded.

[Released: June 20, 2018]