



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 -**

**ALLISTER J. SINCLAIR, registered as AL SINCLAIR**

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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, 4, 5, 17, 25, 26 and 39 and of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$15,000.00 payable to RECO on or before July 15, 2021.

Successful completion of REIC's "The Complaint Trade (Residential) Course" and provide RECO with confirmation of successful completion on or before July 15, 2021.

**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

It is agreed as follows:

1. Allister J. Sinclair, registered as Al Sinclair ("Sinclair"), is registered as a salesperson under the *Real Estate and Business Brokers Act, 2002* ("Act"). Sinclair is employed as a salesperson by Brokerage A.
2. Seller A and Seller B (the "Sellers") were the owners of the condominium property known municipally as 1-A Street, City A (the "Property").
3. At all relevant times Individual A and Individual B (the "Tenants") were the tenants living at the Property.
4. Buyer A and Buyer B ("Buyers A") engaged Representative A ("Representative A&B") and Representative B, are salespersons at the brokerage of Brokerage B, with respect to making an offer for the purchase of the Property.
5. Buyer B ("Buyer B") engaged Representative C, a salesperson at Brokerage C, with respect to the purchase of the Property.
6. On April 23, 2017, the Sellers signed a Listing Agreement with Brokerage A to list the Property for sale at a list price of \$1,299,000.00, using Sinclair as their salesperson.
7. The Listing Agreement stated the commission was 4.5% of the sales price "or 4% if double ended".
8. Sinclair set May 17, 2017 as the date which the Sellers would review offers for the purchase of the Property.
9. On or about 2:54 p.m. on May 17, 2017, Representative A&B submitted, on behalf of Buyers A, an offer to purchase the Property for \$1,480,000.00.
10. On or about 4:30 p.m. Representative A&B called Sinclair's office and was told that three offers had been submitted that were under consideration. At approximately 5:00 p.m., Sinclair called Representative A&B and indicated that the offer from Buyers A was close, but not the highest offer. Ultimately the offer from Buyers A increased to \$1,550,000.00. They removed the financing condition and amended the status certificate condition to a two-day period.
11. On May 17, 2017, Representative C also submitted an offer on behalf of Buyer B for the purchase of the Property for \$1,400,000.00.
12. On May 17, 2017, the Sellers accepted an offer from the Tenants to purchase the Property for \$1,525,000.00.
13. The Tenants were represented by Sinclair and had signed a Buyers Representation Agreement with him on May 13, 2017, for the purpose of purchasing the Property.

14. On May 18, 2017, the Tenants and the Sellers signed a Confirmation of Co-operation and Representation whereby they agreed that the total commission payable would be 4% minus \$25,000.00 plus HST.
15. Sinclair failed to inform Buyer A and Buyer B:
  - a) that he was representing a prospective buyer, the Tenants;
  - b) that he agreed in the Listing Agreement to reduce his commission from 4.5% to 4.0% if he represented the purchaser and the Sellers;
  - c) that he entered into another agreement to reduce his commission further in order to complete the sale to the Tenants; and
  - d) the number of offers submitted to the Sellers.

#### SUMMARY OF AGREEMENTS

**It is agreed that Sinclair failed to comply with the Code of Ethics as follows:**

16. Sinclair failed to inform all the competing buyers that he represented the Sellers and the Tenants contrary to sections 3, 4, 5, 17 and 39 of the Code of Ethics.
17. Sinclair failed to inform all the competing buyers that he entered into an agreement with the Sellers on April 23, 2017, to reduce his commission from 4.5% to 4.0% if the transaction was double ended, contrary to sections 3, 4, 5, and 25 of the Code of Ethics.
18. Sinclair failed to inform all the competing buyers that he agreed to further reduce his commission from 4.0% to 4% minus \$25,000.00 plus HST so that the Sellers would accept the offer he presented on behalf of the Tenants, contrary to sections 3, 4, 5, and 25 of the Code of Ethics.
19. Sinclair failed to inform all the buyers of the number of competing offers made toward the purchase of the Property contrary to section 3, 4, 5, 26 and 39 of the Code of Ethics

**It is agreed that Sinclair failed to comply with 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.

**Best interests**

4. A registrant shall promote and protect the best interests of the registrant's client.

### **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.

### **Nature of relationships**

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.

### **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.

(2) Subsection (1) applies, with necessary modifications, to a brokerage that has a seller as a customer, if the brokerage and the seller have an agreement that provides for the brokerage to receive written offers to buy.

### **Competing offers**

26. (1) If a brokerage that has a seller as a client receives a competing written offer, the brokerage shall disclose the number of competing written offers to every person who is making one of the competing offers, but shall not disclose the substance of the competing offers.

(2) Subsection (1) applies, with necessary modifications, to a brokerage that has a seller as a customer, if the brokerage and the seller have an agreement that provides for the brokerage to receive written offers to buy.

### **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

ALLISTER J. SINCLAIR, registered as AL SINCLAIR, the Respondent, be ordered to pay a penalty of \$15,000.00 on or before July 15, 2021.

In addition to the above fine, ALLISTER J. SINCLAIR, registered as AL SINCLAIR, must enrol in The Compliant Trade (Residential) Course provided by the Real Estate Institute of Canada (REIC), and provide proof of successful completion of the course on or before July 15, 2021.

By initials below, I, ALLISTER J. SINCLAIR, registered as AL SINCLAIR, 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, ALLISTER J. SINCLAIR, registered as AL SINCLAIR, 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, ALLISTER J. SINCLAIR, registered as AL SINCLAIR, 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, 4, 5, 17, 25, 26, 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. ALLISTER J. SINCLAIR, registered as AL SINCLAIR, is Ordered a Fine of \$15,000.00 payable to RECO on or before July 15, 2021.
2. ALLISTER J. SINCLAIR, registered as AL SINCLAIR, is Ordered to successfully complete The Complaint Trade (Residential) Course, provided by RECI, on or before July 15, 2021.

*[Released: October 8, 2020]*