



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 -**

**SHERRI LORENE MARCOGLIESE**

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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 and 38 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$6,000.00 payable to RECO on or before March 26, 2021.

Successful completion of the RECO “Compliance and Ethics in Real Estate, Part 1” course and provide RECO with confirmation of successful completion on or before March 26, 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. Marcogliese was at the relevant times registered under the Act as a salesperson employed by Brokerage A.
2. Seller A and Seller B (“Sellers”) were the owners of the property located at 1-A Street, City A (“Property”).
3. Representative A is a registered salesperson and Broker A is a registered broker. At all material times Representative A and Broker A were employed by Brokerage B.
4. Individual A was a client represented by Representative A.
5. At all material times, Representative B was employed as a salesperson by Brokerage C. Representative B represented the buyers, Buyer A and Buyer B.
6. Representative A, Broker A and Individual A, for reasons set out below, are complainants in this matter.
7. On or about May 16, 2017, the Sellers entered into a Listing Agreement with Brokerage A. Marcogliese was their sales representative.
8. The Listing Agreement was in effect from May 16, 2017 until August 16, 2017 and specified an asking price of \$609,900.00. Commission owing to Brokerage A was 1% plus \$900.00; the amount payable to a cooperating brokerage was 0.5% of the sale price.
9. On May 16, 2017, Marcogliese posted the Property for sale on the Multiple Listing Service® (“MLS® Listing”). She included the following statement under Realtor remarks: “... offers to be reviewed May 24 at 8 p.m. Please register offers by 6 pm, May 24 by email to listing agent. Seller to be notified of written pre-emptive offers.”
10. On or about May 18, 2017, Representative A showed the Property to Individual A. The following day Representative A informed Marcogliese that his client would be submitting an offer. Representative A also informed Marcogliese that he would like to be advised of any pre-emptive offers.
11. On or about May 19, 2017, Broker A viewed the property with her client, who also expressed interest in the property but was under the impression that there were at least a few days left until the offer presentation date.

12. On or about May 21, 2017, Representative B submitted a pre-emptive offer (“Pre-emptive Offer”) on behalf of his clients, Buyer A and Buyer B. The offer price was \$675,000.00 and irrevocable until 9:00 a.m. on May 22, 2017.
13. On or about May 22, 2017 at 8:00 a.m., the Sellers accepted the Pre-emptive Offer.
14. At about 9:00 a.m. on May 22, 2017, Marcogliese altered the offer review date instructions on the MLS® Listing from May 24, 2017 8.00 p.m. to May 22, 2017 at 8:00 a.m.
15. At no time did Marcogliese advise Representative A and Broker A of the Pre-emptive Offer when she had been expressly asked to inform them, and was aware that their respective clients were potentially interested parties. She informed the Complainants of the pre-emptive offer only after it had been accepted.

### **SUMMARY OF AGREEMENTS**

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

- A. She failed to inform Representative A and Broker A of the Pre-emptive Offers, contrary to section 3 of the Code of Ethics.
- B. She failed to promote and protect the best interest of her seller clients by failing to allow opportunities for the other interested buyers to present their offers, contrary to sections 4, 5, and 38 of the Code.

**It is agreed that Marcogliese 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 clients.

Conscientious and competent service

5. A registrant shall provide conscientious service to the registrant’s clients and customers and shall demonstrate reasonable knowledge, skill, judgement and competence in providing those services.

Error, misrepresentation, fraud, etc.

38. 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.

### **AGREED PENALTY**

SHERRI LORENE MARCOGLIESE, the Respondent, be ordered to pay a penalty of \$6,000.00 on or before March 26, 2021.

In addition to the above penalty, the Respondent must enrol in the RECO "Compliance and Ethics in Real Estate, Part 1" course, and provide proof of successful completion of the course on or before March 26, 2021.

By initials below, I, SHERRI LORENE MARCOGLIESE, 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, SHERRI LORENE MARCOGLIESE, 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, SHERRI LORENE MARCOGLIESE, 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 and 38 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. SHERRI LORENE MARCOGLIESE is Ordered a Fine of \$6,000.00 payable to RECO on or before March 26, 2021.

2. SHERRI LORENE MARCOGLIESE is Ordered to successfully complete the RECO “Compliance and Ethics in Real Estate, Part 1” course and provide RECO with confirmation of successful completion on or before March 26, 2021.

*[Released: October 23, 2020]*