



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 -**

**STEVEN BAILEY**

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**DISCIPLINE DECISION AND REASONS FOR DECISION**

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The parties have submitted an Agreed Statement of Facts and Penalty and Waiver of Hearing. This Panel accepts the Agreed Statement of Facts and therefore orders as follows:

**DATE OF DECISION:** July 2, 2019

**FINDINGS:** In violation of Sections 3, 4, 5, 6(1), and 38 of the *REBBA 2002 Code of Ethics*

**ORDER:** Fine of \$30,000.00 payable to RECO on or before November 30, 2020.

There shall be no costs awarded to any party in this proceeding.

**WRITTEN REASONS:** attached

**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. Steven Bailey is registered as a broker under the *Real Estate and Business Brokers Act, 2002*. Steven Bailey is employed at Brokerage A.

### ***The 1-A Street Transaction***

2. Buyer A was an unsuccessful buyer for a property located at 1-A Street, City A (the "1-A Street Property"). Buyer A was represented by Representative B of Brokerage B. The seller of the 1-A Street Property was Seller A ("Seller A" or "Seller #1").
3. Steven Bailey and Representative C, on behalf of Brokerage A, were listed as the co-listing representatives for the 1-A Street Property.
4. On March 16, 2017 an initial offer was submitted for the 1-A Street Property with a purchase price of \$675,000.00 ("Offer A"). The registrants representing the buyer on Offer A (the "Buyer") were Representative D, and Steven Bailey.
5. Offer A was sent to Seller #1 on March 16, 2017 at 1:23 p.m. Seller #1 made a counter-offer for \$690,000.00, irrevocable by Seller #1 until March 19, 2017 at 5:00 p.m. This offer expired without being accepted.
6. On March 24, 2017 at 3:26 p.m., Representative B reached out to Steven Bailey about the 1-A Street Property. Steven Bailey instructed him to contact Representative C, as Representative C was primarily responsible for the listing.
7. Representative B confirmed with Representative C that there had been a previous offer, but that Seller #1 had not accepted the offer, nor had the offer been signed back at a higher price and sent to the Buyer. On the same day, Representative B showed the 1-A Street Property to Buyer A.
8. Also on March 24, 2017, Representative C spoke to Seller #1 and agreed that if Representative B's client did not have an offer they would sign back Offer A to the Buyer at \$680,000.00.
9. At 2:44 p.m. on March 24, 2017 Offer A with a reduced price of \$680,000.00 was sent to Seller #1. Seller #1 executed the revised Offer A at 9:28 p.m. the same day but instructed Representative C not to deliver Offer A to the Buyer until they received feedback from Representative B. Offer A was open until March 25, 2017 at 5:00 p.m. Representative C did not communicate this direction to Steven Bailey.

10. On March 25, 2017 at 11:55 a.m., Representative B submitted Buyer A's offer on the 1-A Street Property at a purchase price of \$695,000.00 ("Offer B"). Offer B was conditional on financing for five (5) days. Representative C agreed to review it by 5:00 p.m. that day. Representative C sent Offer B to Seller #1 shortly thereafter.
11. At the time that Offer B was received and sent to Seller #1, Representative C was not aware that the signed back Offer A had already been delivered to the Buyer. In actual fact, contrary to the Seller's instructions to Representative C, the signed-back Offer A was sent to the Buyer, Steven Bailey and Representative D's client, by Steven Bailey via email at 10:46 a.m. on March 25, 2017, and *via DocuSign* at 4:20 p.m.
12. Prior to sending the offer, Steven Bailey did not make any inquiries about whether an offer had been received from Representative B's client or whether he was authorized to forward the signed-back Offer A to the Buyer.
13. The Buyer accepted the signed-back Offer A of \$680,000.00 at 4:27 p.m. on March 25, 2017.
14. Seller #1, represented by Steven Bailey and Representative C, was unable to accept the higher Offer B with a purchase price of \$695,000.00, as Offer A was delivered and remained open for the Buyer at the time Offer B was received.
15. Seller #1 was compensated for the difference in purchase price by a \$15,000.00 reduction in Representative C and Steven Bailey's listing representative commission, and a reduced commission in Steven Bailey and Representative D's buyer representative commission.

### ***The 2-B Street Transaction***

16. Steven Bailey responded to a request from the owner of a house located at 2-B Street, Seller B ("Seller B" or "Seller #2"), to sell her house in the summer of 2016.
17. Steven Bailey did not list the 2-B Street Property and did not enter into any agreement with Seller #2, but rather arranged for a private sale from the Seller to Steven Bailey's parents for \$330,000.00.
18. MPAC assessments showed the 2-B Street Property as having a value of \$511,000.00 in 2015 and \$528,000.00 in 2016.

19. The offer by Steven Bailey's parents was made on September 23, 2016 with a closing date of December 15, 2016. The offer from Steven Bailey's parents was made on the standard OREA Agreement of Purchase and Sale form, which was provided to Seller #2 by Steven Bailey.
20. Prior to closing, Seller #2's counsel advised Seller #2 that she was concerned with the low sale price on the 2-B Street Property.
21. Following negotiations, Steven Bailey's parents agreed to a cancellation of the agreement and signed a full and final mutual release (the "Mutual Release") with Seller #2.
22. During the negotiations, Steven Bailey's parents were represented by counsel with whom Steven Bailey had a long standing relationship.
23. The Mutual Release contained a clause which advised that "the vendor also agrees not to make any complaints to any real estate regulatory body regarding Steven Bailey".
24. The 2-B Street Property was ultimately listed and sold on December 21, 2016 for \$635,000.00.

## **SUMMARY OF AGREEMENTS**

### ***The 1-A Street Transaction***

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

25. Steven Bailey failed to coordinate with Representative C and to remain informed in his capacity as the selling representative for the 1-A Street Property, including with respect to the offers and with respect to Representative B's client's interest in the 1-A Street Property, contrary to sections 4 and 5 of the Code of Ethics, which resulted in:
  - a. Offer B being made at a time when Offer A had been signed back and delivered to the buyer, without Buyer A and Representative B being aware that the signed-back Offer A had been delivered; and
  - b. Seller #1 being required to accept a lower offer (Offer A) over the subsequent Offer B; and
  - c. Buyer A being precluded from having Offer B considered and Seller #1 not having the opportunity to consider it.

**It is agreed that Steven Bailey failed to comply with the following sections of the Code of Ethics:**

**Best interests**

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

**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.

***The 2-B Street Transaction***

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

26. Steven Bailey arranged for the private sale of the 2-B Street Property to his parents for a price that was significantly below market value at the time, contrary to sections 3, 6, and 38 of the Code of Ethics.

27. Steven Bailey was aware of the fact that his parents had required that the Mutual Release include a clause preventing Seller #2 from complaining to RECO, contrary to sections 3 and 38 of the Code of Ethics.

**It is agreed that Steven Bailey 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.

**Providing opinions, etc.**

6. (1) 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.

**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

### ***The 1-A Street Transaction***

STEVEN BAILEY, the Respondent, be ordered to pay a penalty of \$5,000.00 on or before November 30, 2020.

### ***The 2-B Street Transaction***

STEVEN BAILEY, the Respondent, be ordered to pay a penalty of \$25,000.00 on or before November 30, 2020.

By initials below, I, STEVEN BAILEY, 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, STEVEN BAILEY, 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, STEVEN BAILEY, acknowledge that I exercised my right to be represented by Counsel 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 PANEL**

The Panel acknowledges receipt of two documents executed by the Registrar of RECO and Steven Bailey, dated June 28, 2019. The first document is an Agreed Statement of Facts and Penalty and the second is a Waiver of Hearing. The Panel has convened today (July 2, 2019) by way of a conference call and has considered both documents.

The parties are aware that a hearing from July 2 to 12, 2019 inclusive was previously scheduled to deal with the Allegation Statement which has resulted in the execution of the two documents. The Panel issued a direction on June 28, 2019 to adjourn the hearing until July 3, 2019 pending receipt and review of the two documents it has now received and reviewed.

Having considered the Agreed Statement of Facts and the joint submission of the parties on penalty, the Panel believes that it represents a reasonable and just resolution of the allegations in the Allegation Statement and, as such, the Panel accepts and approves same. The Panel wishes to thank the parties for working on a without prejudice basis prior to the commencement of the hearing to resolve all outstanding issues between them and avoid the need for a lengthy hearing.

As for the Waiver of Hearing, and in light of the Agreed Statement of Facts and Penalty, the Panel accepts the Waiver and, accordingly, the hearing originally scheduled for the period July 2, 2019 to July 12, 2019 inclusive is hereby cancelled.

Given the Agreed Statement of Facts and Penalty, which the Panel has accepted and approved, the Panel makes the following order:

- 1) In respect of the 1-A Street Transaction, as identified in the Agreed Statement of Facts and Penalty, the Panel finds that the Respondent, Steven Bailey contravened Sections 4 and 5 in the Code of Ethics and that the Respondent shall pay an administrative penalty of \$5,000.00 to RECO on or before November 30, 2020;
- 2) In respect of the 2-B Street Transaction, as identified in the Agreed Statement of Facts and Penalty, the Panel finds that the Respondent, Steven Bailey contravened Sections 3, 6(1), and 38 of the Code of Ethics and that the Respondent shall pay an administrative penalty of \$25,000.00 to RECO on or before November 30, 2020;
- 3) There shall be no costs awarded to any party in this proceeding; and
- 4) If necessary, any further inquiries by the parties to the Panel should be directed to the Manager, Discipline and Appeals Hearings.

*[Released: July 5, 2019]*