



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-

MAUREEN O'HALLORAN

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant: Maureen O'Halloran

For the Real Estate Council of Ontario: Maya Sabharwal

Heard in Toronto: December 2, 2019

FINDINGS: In violation of Section 38 of the Code of Ethics

ORDER: Fine in the amount of \$6500.00 payable to REGO within 90 days of sending this decision.

COSTS AND EXPENSES: N/A

WRITTEN REASONS:

REASONS FOR DECISION **PENALTY & COSTS**

INTRODUCTION

This hearing with respect to penalty and costs was held on December 2, 2019 in the presence of Prosecutor, Maya Sabharwal, legal counsel for the Registrar, *Real Estate and Business Brokers Act, 2002* (“**REBBA 2002**”) and the Registrant, Maureen O'Halloran, representing herself, and proceeded on the basis of an Agreed Statement of Facts Only executed by Ms. O'Halloran on November 1, 2019 (the “**Agreed Statement of Facts**”).

SUBMISSIONS FOR THE REGISTRAR, REBBA 2002

The Prosecutor referred the Panel to the nine (9) factors outlined in the appeals decision of the Registrar, REBBA 2002 v. Suzette Thompson:

1. The nature and gravity of the breach of the Code of Ethics: The Prosecutor submitted that in failing to independently verify the lot dimensions of the subject property provided to her by her seller clients, Ms. O'Halloran's conduct was serious and fell below that expected of registrants.
2. The role of the offending member in the breach: The Prosecutor submitted that Ms. O'Halloran's role was central to the breach of the Code of Ethics. The breach of the Code of Ethics would not have occurred but for the conduct of Ms. O'Halloran.
3. Whether the offending member suffered or gained as a result of the breach: It was submitted by the Prosecutor that Ms. O'Halloran neither gained nor suffered as a result of the breach of the Code of Ethics. It was acknowledged that Ms. O'Halloran did not represent the interests of the purchaser of the subject property.
4. The impact of the breach on the complainant or others: The failure of Ms. O'Halloran to independently verify the lot dimensions of the subject property resulted in the purchaser obtaining a property that had a frontage of 62.61 feet as opposed to what the purchaser expected and to what was indicated in the MLS listing, being a frontage of 70 feet. It was submitted by the Prosecutor that the purchaser of the subject property received a property that was worth far less than anticipated as a direct result of the actions of Ms. O'Halloran.
5. The need for there to be specific deterrence to protect the public: The Prosecutor argued that any penalty imposed against Ms. O'Halloran by the Panel should be meaningful. The Prosecutor acknowledged that although Ms. O'Halloran admitted as per the Agreed Statement of Facts that she failed to comply with the Code of Ethics in not independently verifying the lot dimensions of the subject property provided by her clients, Ms. O'Halloran's actions fell below the acceptable standards expected from that of a registrant.
6. The need for there to be general deterrence to protect the public: The Prosecutor submitted that sanctions imposed by the Discipline and Appeals Committee of RECO act as guidelines to registrants in terms of what constitutes misconduct under the Code of

Ethics, and that diligence, competence, and professionalism are required by all registrants.

7. The need to maintain the public's confidence in the integrity of the profession: The Prosecutor argued that RECO's role is to protect the interest of the public.
8. The degree to which the breach is regarded as being outside the range of acceptable conduct: In failing to independently verify the lot dimensions of the subject property provided to her by her clients, the Prosecutor submitted that Ms. O'Halloran's breach of the Code of Ethics should be considered serious.
9. The range of sanction in similar cases: After briefly summarizing the case of the Real Estate Council of Ontario v. Michael Bolger, the Prosecutor urged the Panel to levy a monetary penalty against Ms. O'Halloran in the sum of \$8,000.00. The Prosecutor did not seek costs against Ms. O'Halloran.

SUBMISSIONS REGARDING PENALTY – RESPONDENT

Ms. O'Halloran submitted that she is an experienced real estate representative with thirty (30) years of service, is detailed oriented, maintains accurate record keeping, and used her best efforts in order to prevent an error in representing the dimensions of the subject property to prospective purchasers.

Ms. O'Halloran stated that she noticed a discrepancy with respect to the lot dimensions of the subject property after searching the records of "GeoWarehouse". Although her seller clients informed her that the frontage of the subject property was 70 feet, GeoWarehouse indicated the frontage as 62.61 feet. Ms. O'Halloran then conducted additional due diligence in order to attempt to ascertain the correct lot dimensions of the subject property, including, but not limited to, contacting her clients to further discuss the issue, obtaining and reviewing the feature sheet that her clients obtained when they purchased the subject property, and contacting a real estate representative who had previously listed the subject property for sale to discuss the matter in greater detail. Ms. O'Halloran did ask her clients for a copy of an existing survey of the subject property; however, Ms. O'Halloran was told by her clients that they were uncertain as to whether they had an existing survey in their possession. Ultimately, Ms. O'Halloran's clients were unable to locate an existing survey in their personal records prior to the listing of the subject property for sale by Ms. O'Halloran. After conducting her additional investigations, Ms. O'Halloran submitted that it was agreed to with her clients that the frontage of the subject property was in fact 70 feet and that it would be represented as such on the MLS listing.

Ms. O'Halloran stated that the purchaser of the subject property did not suffer any damage or loss as

a result of the error in describing the frontage of the subject property and that she did not agree with the penalty recommendation of the Prosecutor. Ms. O'Halloran urged the Panel not to levy any monetary penalty against her. No submissions on costs were made by Ms. O'Halloran.

CODE OF ETHICS

The Registrant is governed by the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c.30, Schedule C.

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

The Panel has carefully considered the facts contained within the Agreed Statement of Facts as well as the submissions of both the Prosecutor and Ms. O'Halloran. In doing so, the Panel has arrived at the following conclusions and determinations:

The Panel is in agreement with the Prosecutor's submissions as to the seriousness of the conduct of Ms. O'Halloran and the recommendation that a significant monetary penalty be appropriate in the circumstances of this case. Although Ms. O'Halloran conducted some due diligence when she became aware of the discrepancy of the lot dimensions of the subject property, it is the view of the Panel that Ms. O'Halloran could have conducted additional due diligence in order to ascertain the true dimensions of the subject lands prior to listing the subject property for sale, including, but not limited to, reviewing any existing records available at the City of A, insisting that her clients provide her with a copy of a survey of the subject property (which her clients ultimately found in their personal records after the completion of the subject transaction), and asking her clients to provide her with the most recent MPAC Property Assessment Notice which would have included the lot dimensions of the subject property. In failing to do so, and as stated in the Agreed Statement of Facts, Ms. O'Halloran breached the Code of Ethics. The due diligence conducted by Ms. O'Halloran was inconclusive and was not based on fact, but was rather based, in large part, on discussions she had with her clients

and a real estate representative that had previously listed the subject property for sale. It was not appropriate in the circumstances for Ms. O'Halloran to indicate the frontage of the subject property on the MLS listing as 70 feet.

While a hearing was avoided by RECO and Ms. O'Halloran agreeing on an Agreed Statement of Facts, Ms. O'Halloran did not seem to appreciate that additional due diligence was required of her and that if conducted, could have prevented this issue from arising altogether. The Panel notes that although Ms. O'Halloran admitted to breaching the Code of Ethics and agreed with the Agreed Statement of Facts, she did not believe that a penalty, monetary or otherwise, should be imposed against her. In the Panel's view, a clear message to Ms. O'Halloran is warranted in order to prevent her from repeating such conduct and to act as a deterrent to other registrants from conducting themselves in such a manner. A significant monetary penalty is, therefore, appropriate in this case.

In making its determination on the issue of penalty, the Panel reviewed and took into account the non-exhaustive factors as enunciated by Justice Green in Jaswal v. Newfoundland Medical Board in Proceeding 1993 St. J. No. 225 of the Supreme Court of Newfoundland, Trial Division.

These factors are as follows:

1. The nature and gravity of the breach of the Code of Ethics.
2. The role of the offending member in the breach.
3. Whether the offending member suffered or gain as a result of the breach.
4. The impact of the breach on complainants or others.
5. The need for there to be specific deterrence to protect the public.
6. The need for there to be general deterrence to protect the public.
7. The need to maintain the public's confidence in the integrity of the profession.
8. The degree to which the breach is regarded as being outside the range of acceptable conduct.
9. The range of sanction in similar cases.

Having reviewed and considered the Agreed Statement of Facts and after hearing the submissions of the parties, the Panel has concluded that as a result of the Registrant's breach of Section 38 of the Code of Ethics, the following penalty is appropriate in the circumstances:

PENALTY

1. Maureen O'Halloran is ordered to pay a fine in the amount of \$6,500.00 to RECO within ninety (90) days of RECO sending this decision to her.

[Released: March 4, 2020]