



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 -

MELANIE MARIAN STEWARD

DISCIPLINE DECISION AND REASONS FOR DECISION

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:

FINDINGS: In violation of Sections 2(1), 38 and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$10,000.00 payable to RECO on or before June 30, 2020.

Successful completion of REIC 2280 “Legal Issues in Real Estate” and provide RECO with confirmation of successful completion on or before February 28, 2020.

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. Melanie Steward (“Steward”) is registered as a salesperson under the Act. Steward is, and was at all relevant times employed, as defined by the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c. 30, Sched. C (“Act”), Brokerage A.
2. Brokerage A is registered as a brokerage under the Act.
 - I. 1ST LISTING & ENVIRONMENTAL INSPECTION REPORT
 3. On or about May 20, 2015, Seller A, (“1st Seller”) and Seller B (collectively the “Sellers”) listed for sale the residential property located at 1-A Street, City A (“Property”) for sale with Brokerage A, and through Steward (“1st Listing”). The Property was subsequently listed for sale onto the Multiple Listing Service (“1st MLS”), and described as:
 - i. Having only 3 bedrooms; and
 - ii. “[...] Note: 1950’s bungalow so does have some asbestos present.”
 - a. ENVIRONMENTAL INSPECTION REPORT
 4. On or about June 29, 2015, an Environmental Inspection Report was completed on the Property (“Environmental Inspection”). The Environmental Inspection looked for environmental concerns in the Property, and observations included:
 - i. “The white material on the supply ducting in the basement is an asbestos heat shield insulation”; and
 - ii. “A strong mould odour was noted in the cold room of the basement. Efflorescence on the walls shows moisture movement through foundation. [...] Moulds were located on the wood shelves and on the painted walls”.
 5. A sample of wall materials taken tested positive for asbestos, and the Environmental Inspection went on to provide that if “any walls are removed for renovation they would have to be done by a licensed professional company.”
- II. 2ND LISTING
6. On or about September 23, 2015, the Sellers again listed the Property for sale with Brokerage A, through Steward (“2nd Listing”). The 2nd Listing also described the Property as:
 - i. Having only 3 bedrooms; and
 - ii. “Note: 1950’s bungalow so does have some asbestos present as do all homes built in this era. Report on file.”
- III. 3RD LISTING & 1ST SALE
7. On or about May 1, 2016, the Sellers again listed the Property for sale with Brokerage A, through Steward (“3rd Listing”). Again, the Property was listed for sale onto the Multiple Listing Service (“3rd MLS”). This time, however, the 3rd MLS was silent on the Property having asbestos but did say that it was “a perfect candidate for open concept renovation”.

8. The 3rd Listing was silent on the Environmental Inspection Report being on file.
9. On or about May 11, 2016, Company A agreed to purchase the Property (“1st Agreement”). The 1st Agreement was conditional on the Property being inspected.
10. Company A was represented by Representative B, another registrant employed (as defined by the Act) by Brokerage A. Steward had a duty of full disclosure and was required to disclose everything factual about the property.

a. INSPECTION

11. On or about May 16, 2016, the Property was inspected by Inspector A of Business A (“Business A Inspection”).
12. Business A Inspection did not look at determining the presence of mould, fungi and other indoor air quality contaminants, but did note the following:

Insulation: “Insulation recommended at: Entire Basement” as “[t]here is very little if any insulation throughout the basement.”

Asbestos: “The air ducts appear to have had asbestos fibres on them. Remedial work appears to have been done.” It then went on to suggest inquiries about whether “[i]s there a receipt available? was the air cleaned afterwards?”

How

b. AMENDMENT

13. On or about May 18, 2016, and because of the issues identified in the Business A Inspection, an ‘Amendment’ to the Agreement was executed, deleting the inspection provision and reducing the purchase price of the Property.

SUMMARY OF AGREEMENTS

It is agreed Steward breached the Code as follows:

- A. Failed to take reasonable steps to ensure that the Environmental Inspection Report was properly disclosed, contrary to sections 2(1), 38, and 39 of the Code.

Brokers and salespersons

2. (1) A broker or salesperson shall not do or omit to do anything that causes the brokerage that employs the broker or salesperson to contravene this Regulation.

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.

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

MELANIE MARIAN STEWARD, the Respondent, be ordered to pay a penalty of \$10,000.00 on or before June 30, 2020.

In addition to the above penalty, Respondent must enroll in REIC 2280, Legal Issues in Real Estate, and provide proof of successful completion of the course on or before February 28, 2020.

By initials below, I, MELANIE MARIAN STEWARD, 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, MELANIE MARIAN STEWARD, 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, MELANIE MARIAN STEWARD, 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 2(1), 38 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. MELANIE MARIAN STEWARD is Ordered a Fine of \$10,000.00 payable to RECO on or before June 30, 2020.
2. MELANIE MARIAN STEWARD is Ordered to successfully complete REIC 2280 "Legal Issues in Real Estate" course on or before February 28, 2020.

[Released: March 3, 2020]