



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 -

FRANK A. SALVATORE

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 3, 4, 5 and 21(1) of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$7,500.00 payable to RECO not later than 180 days from the date of the Decision of the Discipline Committee.

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

1. Frank Salvatore (“Salvatore”) is registered as a broker under the Real Estate and Business Brokers Act, 2002. Salvatore is employed at the Brokerage A.
2. Buyer A and Buyer B (the “Complainants”) were first time buyers interested in purchasing a home in the City A, Ontario area.
3. Seller A (the “Seller”) owned two adjacent properties at 1-A and 2-A Street in City A.
4. In or around January of 2019, the Seller retained Brokerage A, with Salvatore as the listing representative, to sell both properties separately.
5. At the time of listing, Salvatore and a principal of the Seller discussed a potential issue with separately transferring title of the two properties: because these adjacent properties were owned by the same entity, title in the two properties had merged.
6. The principal of the Seller instructed Salvatore not to raise any “red flags” to potential purchasers, so as not to discourage any offers. Salvatore relied upon the representations of the Seller and the Seller’s lawyer that a mechanism was in place to address the severance.
7. The Complainants became interested in purchasing one of these two properties: 1-A Street (the “Property”).
8. On March 10, 2019, the Complainants entered into a Buyer Representation Agreement with Brokerage A, with Salvatore and his colleague Representative B acting as the buying representatives.
9. As a result, Brokerage A and Salvatore were in a multiple representation situation, owing duties of representation to both sets of clients: the Seller and the Complainants.
10. Salvatore did not raise or discuss with the Complainants the potential obstacle surrounding the transfer of title to the Property.
11. On or about March 12, 2019, an Agreement of Purchase of Sale for the Property was reached between the Seller and the Complainants.
12. Prior to closing, the Complainants’ real estate lawyer discovered the issue with transferring title to the Property.
13. Both the Complainants’ lawyer and the Seller’s lawyer agreed that a consent from the local Committee of Adjustments would be required in order to transfer title to the

Property separately from the adjacent property. The Seller requested an extension of the closing date of at least six weeks to obtain the consent. The Complainants elected not to agree to a six-week extension and requested a return of their deposit.

14. The Seller and the Complainants agreed to a mutual release from the Agreement of Purchase and Sale, and the Complainant's deposit was returned.

SUMMARY OF AGREEMENTS

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

15. Salvatore did not disclose a material fact to his buyer clients, namely, that there may be an issue with the ability of the Seller to transfer title, contrary to sections 3, 4, 5 and 21(1) 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, 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.

Material facts

21. (1) A broker or salesperson who has a client in respect of the acquisition or disposition of a particular interest in real estate shall take reasonable steps to determine the material facts relating to the acquisition or disposition and, at the earliest practicable opportunity, shall disclose the material facts to the client.

AGREED PENALTY

FRANK A. SALVATORE, the Respondent, be ordered to pay a penalty of \$7,500.00 not later than 180 days after the date of the Decision of the Discipline Committee on this matter.

By initials below, I, FRANK A. SALVATORE, 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, FRANK A. SALVATORE, 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, FRANK A. SALVATORE, acknowledge that I exercised 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 21(1) 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. FRANK A. SALVATORE is Ordered a Fine of \$7,500.00 payable to RECO not later than 180 days from the date of the Decision of the Discipline Committee.

[Released: March 5, 2020]