



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 -

JOHNNY CHENG

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, 37 (1), 38, and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$18,000.00 payable to RECO no later than one (1) year from sending this decision.

Successful completion of the Real Estate Institute of Canada “REIC 2600: Ethics and Business Practice” course and provide RECO with confirmation of successful completion no later than one (1) year from sending this decision.

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. Johnny Cheng (“Mr. Cheng”) is registered as a salesperson under the Act.
2. From about February 23, 2006, to about October 3, 2014, Mr. Cheng was more or less continuously registered with Brokerage A.
3. From October 3, 2014, to present, Mr. Cheng has been registered with and has been carrying on business on behalf of Brokerage B.
4. On or about July 16, 2001, Consumer 1 purchased the residential property municipality known as 1-A Street (the “Property”). Mr. Cheng represented Consumer 1 in this purchase.
5. Title to the Property was registered in Consumer 1’s name only.
6. On or about November 17, 2009, title to the Property was transferred to Consumer 1 and Consumer 2 as tenants in common with Consumer 1 holding a 99% undivided interest in the Property.
7. On or about March 12, 2010, Mr. Cheng listed the Property for sale on the Multiple Listing Service® (the “March 12, 2010 Listing”) on behalf of Brokerage A. In the March 12, 2010 Listing, only Consumer 1 is named as the seller.
8. All of the following documents related to the March 12, 2010 Listing also only named Consumer 1 as the seller:
 - a) Listing Agreement, dated March 12, 2010; and
 - b) Freehold – Sale MLS Data Information Form, dated March 12, 2010.
9. On March 17, 2010, an Agreement of Purchase and Sale was entered into between Consumer 1 and the Buyer (the “March 17, 2010 APS”). The salient terms of the March 17, 2010 APS were as follows:
 - a) Consumer 1 was named as the seller;
 - b) The purchase price was \$550,000.00;
 - c) The deposit payable was 12,000.00; and
 - d) The completion date was June 14, 2010.
10. Although the Property was jointly owned by Consumer 1 and Consumer 2, only Consumer 1 was named and signed as the seller on the following transaction documents:
 - a) The March 17, 2010 APS;
 - b) The Confirmation of Co-operation and Representation agreement, dated March 14, 2010;

- c) The Amendment to Agreement of Purchase and Sale, dated March 24, 2010; and
 - d) The Amendment to the Agreement of Purchase and Sale, dated April 7, 2010.
11. The March 17, 2010 APS was not completed because the Buyer was unable to secure financing. On June 18, 2010, a mutual release was executed by Consumer 1 and the Buyer. The March 12, 2010 Listing expired without the Property being sold.
 12. In December 2014, while Consumer 1 was in another country, Consumer 3, the relative of Consumer 2, contacted Mr. Cheng with respect to listing the Property for sale. Consumer 3 contacted Mr. Cheng without the knowledge or consent of Consumer 1 or Consumer 2.
 13. Mr. Cheng had previously dealt with Consumer 3 as Consumer 3 was living at the Property when he listed it for sale in 2010.
 14. In December 2014, Mr. Cheng proceeded to market the Property for sale without first seeking the authorization of Consumer 1 and/or Consumer 2.
 15. In January 2015, Mr. Cheng informed Consumer 3 that he had clients who were interested in the Property. At this time, Consumer 1 was still in another country.
 16. Although Consumer 3 had no valid Power of Attorney to deal with the Property, Mr. Cheng advised Consumer 3 to sign the relevant listing/sales documents on Consumer 1's behalf to secure the sale. Mr. Cheng advised that when Consumer 1 returned to Canada, she would be able to legitimately sign the documents.
 17. On or about January 17, 2015, Mr. Cheng prepared a "Freehold – Sale MLS® Data Information Form" for the Property where he names Consumer 1 as the sole seller. Mr. Cheng therefore submitted this document to Brokerage B.
 18. On or about January 17, 2015, Mr. Cheng prepared a "Listing Agreement" for the property where he named Consumer 1 as the sole seller. Mr. Cheng directed Consumer 3 to sign the document on behalf of Consumer 1 without her knowledge or consent. Mr. Cheng thereafter submitted this document to Brokerage B.
 19. On or about January 17, 2015, Mr. Cheng prepared an Agreement of Purchase and Sale (the "January 17, 2015 APS"). The salient terms of the January 17, 2015 APS were as follows:
 - a) Consumer 1 was named as the sole seller;
 - b) The Buyers were the Buyers;
 - c) Mr. Cheng, on behalf of Brokerage B, represented both Consumer 1 and the Buyers;
 - d) The Purchase price was \$720,000.00;

- e) The deposit payable was \$20,000.00; and
 - f) The completion date was April 16, 2015.
20. Mr. Cheng signed as witness for the parties in the January 17, 2015 APS. Mr. Cheng directed Consumer 3 to sign the January 17, 2015 APS on behalf of Consumer 1 without her knowledge or consent. Mr. Cheng thereafter submitted the January 17, 2015 APS to Brokerage B.
21. On or about January 17, 2015, Mr. Cheng prepared a "Confirmation of Co-operation and Representation" agreement that stated that Brokerage B represented both Consumer 1 and the Buyers (the "January 17, 2015 CCR"). In the January 17, 2015 CCR, Mr. Cheng named Consumer 1 as the seller and directed Consumer 3 to sign on behalf of Consumer 1 without her knowledge or consent. Mr. Cheng thereafter submitted this document to Brokerage B.
22. On or about January 17, 2015, Mr. Cheng prepared an "Individual Identification Information Record" form (the "January 17, 2015 ID form") for Consumer 1. Mr. Cheng used the driver's licence information of Consumer 3 as identification for Consumer 1. Mr. Cheng thereafter submitted this document to Brokerage B.
23. On the basis of the January 17, 2015 APS, Mr. Cheng obtained the following commission advances from the Company:
- a) On or about January 26, 2015, Mr. Cheng entered into a commission advance agreement with the Company for \$15,000.00 of the commission he would have been entitled to under the trade and received \$13,074.51; and
 - b) On or about February 9, 2015, Mr. Cheng entered into another commission advance agreement with the Company for \$3,500.00 of the commission he would have been entitled to under the trade and received a \$3,200.75.
24. On or about February 17, 2015, Consumer 1 returned to Canada.
25. On or about February 26, 2015, Mr. Cheng met Consumer 1 and requested her to sign the January 17, 2015 APS. Mr. Cheng explained to her that the purchase price of the Property was actually \$680,000.00 and not \$720,000.00 as stated on the January 17, 2015 APS. He informed Consumer 1 that the \$40,000.00 difference in price was done to enable the Buyers to obtain a higher mortgage for renovations to the Property.
26. On or about February 26, 2015, Consumer 1 communicated to Mr. Cheng that she will be returning to another country on March 24, 2015 and would prefer an earlier completion date. Mr. Cheng advised Consumer 1 that he could move the date of completion to March 23, 2015.
27. Consumer 1 was concerned that Mr. Cheng was able to act without first consulting the Buyers and she refused to sign the January 17, 2015 APS.

28. For two weeks following February 26, 2015, Mr. Cheng called Consumer 1 every day and visited Consumer 1 several times in order to persuade her to sign the January 17, 2014 APS.
29. Frustrated by Mr. Cheng's actions, Consumer 1 sought the assistance of the Individual, her relative and the complainant, who requested that Consumer 1 provide her with Mr. Cheng's business card and a copy of the January 17, 2015 APS.
30. Based on the information on the business card that Mr. Cheng had provided to Consumer 1, the Individual contacted BOR A, broker of record for Brokerage A. BOR A informed the Individual that Mr. Cheng was no longer employed at Brokerage A as he had fired Mr. Cheng on October 7, 2014 for falsifying a client's signature.
31. On or about March 24, 2015, Consumer A returned to another country without signing the January 17, 2015 APS.
32. Following the departure of Consumer 1, Mr. Cheng telephoned Consumer 3 on numerous occasions to convince him to persuade Consumer 1 to sign the January 17, 2015 APS. On one occasion, Mr. Cheng threatened to report Consumer 1 to Immigration Canada regarding her trips to another country for extended periods of time and her residency claims.
33. Mr. Cheng also called the Individual on numerous occasions to convince her to persuade Consumer 1 to sign the January 17, 2015 APS. In particular, on or about April 6, 2015, Mr. Cheng left a voice message on the Individual's business phone line stating that he would give her a "red pocket" if she could persuade Consumer 1 to sign the January 17, 2015 APS.

SUMMARY OF AGREEMENTS

It is agreed that Mr. Cheng acted unprofessionally, including as follows:

- a) When he listed the Property for sale in 2010 without the authorization of Consumer 2, thereby breaching sections 5 and 38 of the Code of Ethics under the Act (the "Code of Ethics").
- b) When he marketed the Property for sale in 2014 based on the authorization of Consumer 3 who had not title interest or a power of attorney to deal in the Property, thereby breaching sections 3, 4, 5, 37 (1), 38 and 39 of the Code of Ethics.
- c) When he marketed the Property for sale in 2014 without the authorization of Consumer 1 and/or Consumer 2, thereby breaching sections 3, 4, 5, 37 (1), 38 and 39 of the Code of Ethics.
- d) When he prepared real estate documents in Consumer 1's name, but had Consumer 3 sign them on her behalf without her knowledge or authorization, thereby breaching sections 3, 4, 5, 37 (1), 38 and 39 of the Code of Ethics.
- e) When he prepared the January 17, 2015 ID form for Consumer 1, but used her driver's licence information of Consumer 3, thereby breaching sections 3, 4, 5, 37 (1), 38 and 39 of the Code of Ethics.

- f) When he submitted improperly executed real estate documents to Brokerage B, thereby breaching sections 3, 4, 5, 37 (1), 38 and 39 of the Code of Ethics.
- g) When he allowed the Buyers to enter into the January 17, 2015 APS, even though he did not have authorization from the title holders to sell the Property, thereby breaching sections 3, 4, 5, 37 (1), 38 and 39 of the Code of Ethics.
- h) When he misrepresented the purchase price of the Property in the January 17, 2015 APS in order for the Buyers to receive a higher mortgage than they would have been entitled to, thereby breaching sections 3, 4, 5, 37 (1), 38 and 39 of the Code of Ethics.
- i) When he entered into two commission advance agreements that were based on the improperly executed January 17, 2015 APS, thereby breaching sections 3, 4, 5, 37 (1), 38 and 39 of the Code of Ethics.

It is agreed that Mr. Cheng breached 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, 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.

Inaccurate Representations

37 (1) A registrant shall not knowingly make an inaccurate representation 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.

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

JOHNNY CHENG, the Respondent, be ordered to pay a penalty of \$18,000.00 not later than one (1) year after the Decision of the Discipline Committee on this matter.

In addition to the above penalty, Respondent must enroll in the Ethics and Business Practice Course provided by the Real Estate Institute of Canada (REIC), and provide proof of successful completion of the course not later than one (1) year after the Decision of the Discipline Committee on this matter.

By initials below, I, JOHNNY CHENG, 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, JOHNNY CHENG, 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, JOHNNY CHENG, 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, 37 (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. Johnny Cheng is Ordered a Fine of \$18,000.00 payable to RECO no later than one (1) year from sending this decision.
2. Johnny Cheng is Ordered to successfully complete the Real Estate Institute of Canada "REIC 2600: Ethics and Business Practice" course and provide RECO with confirmation of successful completion no later than one (1) year from sending this decision.

[Released: May 25, 2016]