



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:

REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

- AND -

KOON WAH YIP

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:

No one

For the Real Estate Council of Ontario:

Timothy Snell, counsel
Marjorie Miller, articling student

Heard in Toronto on:

February 17, 2017

FINDINGS:

In violation of Sections 3, 4, 5 and 37(1) of the Code of Ethics.

Not in violation of Section 24(1)(4)

ORDER:

Counsel for the Registrar, *REBBA 2002* to deliver written submissions to the Panel and to the Respondent on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.

The Respondent shall deliver to the Panel and to Counsel for the Registrar, *REBBA 2002* its written submissions on penalty and costs in response to Counsel for the Registrar, *REBBA 2002*'s submissions within 15 days of the date on which Counsel for the Registrar, *REBBA 2002*'s submissions on penalty and costs are delivered to the Respondent.

Counsel for the Registrar, *REBBA 2002* shall deliver to

the Panel and to the Respondent its reply to the written submission on penalty and costs of the Respondent within 5 days of the date on which the Respondent's submissions on penalty and costs are delivered to Counsel for the Registrar, *REBBA 2002*.

Any inquiries relating to the delivery of the above-mentioned documents should be directed to the Hearings Coordinator.

COSTS AND EXPENSES: If appropriate, submissions to be made on costs and expenses with submissions on penalty.

REASONS FOR DECISION

INTRODUCTION

This Hearing was held on February 17, 2017 in the presence of the Respondent, Koon Wah Yip (the "Respondent" and/or "Mr. Yip"); Timothy Snell, counsel for the Real Estate Council of Ontario; Marjorie Miller, articling student for the Real Estate Council of Ontario; and Nicolette Holovaci, independent legal counsel to the Discipline Panel.

ALLEGATIONS BY THE REGISTRAR, REBBA 2002

The original Allegation Statement was replaced with an Amended Allegation Statement. The Amended Allegation Statement was dated August 25, 2016 and was marked as Exhibit 1A at the Hearing. The Registrar also submitted a Supplementary Allegation Statement, which was marked as Exhibit 1B at the Hearing. According to the Amended Allegation Statement, it was "to refer this matter to the Discipline Committee, based on the allegations set out herein and replacing the Allegation Statement of August 15, 2016, in its entirety."

In its Amended Allegation Statement the Registrar, *REBBA 2002* alleged that Mr. Yip acted unprofessionally when he:

1. Did not at any relevant time cause the Listing to be updated to indicate that offers would be entertained before April 7, 2016 at 6:00 p.m., after that became the

situation, contrary to Section 3, 4, 5 and 37(1) of the Code of Ethics.
(Paragraph 7 of the Amended Allegation Statement)

2. Did not inform Registrant A (another agent) of the existence of the April 4 Offer at any relevant time, contrary to Sections 3, 4, 5 of the Code of Ethics.
(Paragraph 8 of the Amended Allegation Statement).
3. Failed to obtain written instructions to withhold the review of offers until April 7, 2016 at 6:00 p.m., and therefore is alleged to be obliged including by s. 24 (1) of the Code, to present all offers at the earliest practicable opportunity in the absence of written instructions to the contrary under s. 24 (4) of the Code, all contrary to Sections 3, 5 and 24 (1) of the Code. (Paragraph 9 of the Amended Allegation Statement)

The Registrar, *REBBA 2002* has therefore alleged that Mr. Yip breached the following Sections of the Code of Ethics:

3 - Fairness, Honesty, Etc. - A registrant shall treat every person the registrant deals with in the course of a trade in real estate fairly, honestly and with integrity.

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

5 - Conscientious and Competent Service, Etc. - 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.

24(1) – Conveying Offers - A registrant shall convey any written offer received by the registrant to the registrant's client at the earliest practicable opportunity.

24(4) – Conveying Offers - Are subject to any written directions given by a client.

37(1) – Inaccurate Representations - A registrant shall not knowingly make an inaccurate representation in respect of a trade in real estate.

EXHIBITS

- 1a. Allegation Statement and Amended Allegation
- 1b. Supplementary Allegation Statement
2. Revised Notice of Hearing (subject to proof)
3. Book of Documents (subject to proof)
4. Supplemental Book of Documents (subject to proof)

WITNESSES FOR THE REGISTRAR, REBBA 2002

1. Registrant A
2. Compliance Officer

WITNESSES FOR THE RESPONDENT

1. Koon Wah Yip

SUBMISSIONS FOR THE REGISTRAR, REBBA 2002

The Registrar, in his submissions, suggested that Mr. Yip breached the Code of Ethics by:

- a) failing to receive written instructions to withhold offers;
 - b) by selling without notice before the time within which offers were to be received;
- and
- c) by failing to change the MLS Listing when instructions regarding offers changed.

CODE OF ETHICS

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

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

Having carefully considered the testimony of the witnesses at the Hearing, and the documentary evidence, the Panel has arrived at the following conclusions:

3 - Fairness, Honesty, Etc. - The Panel has found Mr. Yip in violation of Section 3, as he did not inform Registrant A (another agent) of a pre-emptive offer before the Offering date. Registrant A testified that he took his client to show her the Property on April 4, 2016 and, as she was interested, he took her to view the property a second time with her mother. He said that his client was interested in the property, particularly, because she wanted a property with a main floor washroom for her mother who had mobility issues. Registrant A also testified that he made inquiries about the property including calls to the City A about allowed uses. He stated that he took his client and her mother for the second viewing on April 5, 2016. He testified that he went to prepare an offer and in so doing contacted Mr. Yip who told him the property had been sold. None of this evidence was disputed.

It is also noted that Mr. Yip testified in his own defence and he admitted that he did not have written instructions to take offers before the offer date, that he did not change the MLS Listing Information to reflect that offers were being reviewed before the Offer date,

and that he did not advise Registrant A or any other registrants that he had received the pre-emptive offer before it was accepted.

The Panel finds that all of this evidence establishes that Mr. Yip did not treat every person he dealt with fairly, honestly, and with integrity contrary to s.3 of the Code of Ethics.

It is not disputed that Mr. Yip failed to change the Offering date on the MLS system and it therefore continued to indicate that offers would be reviewed by April 7, 2016, despite the fact that the Property was in fact, sold on April 5, 2016.

4 - Best Interests – The Panel has found based on the evidence referred to above that Mr. Yip was in violation of Section 4, as he failed to make all registrant's aware of a pre-emptive Offer before the offering date of April 7, 2016, and neglected to change the MLS Listing to reflect the fact that the Seller would entertain pre-emptive offers. By not informing all other registrants, the Seller was not made aware of or able to entertain other potential competing offers and this was not in the seller's best interest.

5 - Conscientious and Competent Service, Etc. - The Panel has found again based on the evidence discussed above that Mr. Yip is in violation of Section 5, as he did not provide conscientious and competent service to his client by failing to notify all registrants who had shown the property or expressed interest, that there was a registered offer on the property before the offering date, and that the Seller was entertaining pre-emptive Offers.

Mr. Yip, in his evidence given in his own defence, admitted that he had never seen Form 244, "Sellers Direction re: Property/Offer". Mr. Yip mentioned that he did not have a clear understanding of the necessary forms and procedures that he neglected to follow, as he was new to Canada and to the Real Estate Business.

24(1) – Conveying Offers - The Panel did not find Mr. Yip was in violation of Section 24 (1) as there was no evidence to suggest that he did not convey the registered written offer to his client at his earliest opportunity.

24(4) – Conveying Offers – This subsection modifies s. 24 (1) in that it provides an exception to the requirements under s. 24 (1) if there are any written directions by the client. This was not the case here and, as such, this section does not apply. The Panel did not find Mr. Yip in Violation of Section 24 (4) as he did not have any written documentation from the seller and in any event, there is no issue that he conveyed the written offer to his client at the earliest practicable opportunity despite the fact that Mr. Yip posted on the MLS system that the seller was reviewing offers on April 7, 2016.

37(1) - Inaccurate Representations – Based on the evidence discussed above, the Panel found Mr. Yip in violation of Section 37 (1) as he did not make Registrant A and all other registrant's aware of a Pre-Emptive Offer before the offering date on April 7, 2016, and neglected to change the MLS Listing to reflect the fact that the Seller would entertain pre-emptive offers, despite the Brokers Comments on MLS. This is knowingly making an inaccurate representation in respect of a trade in real estate.

The Panel wishes to refer to the RECO Registrars Bulletin of February 21, 2017, issued after this Hearing. That Bulletin dealt with pre-emptive offers and the necessity of obtaining written instructions from clients.

The Panel would have come to its conclusions with or without assistance from this Bulletin but the Bulletin does refer to situations where there is a change to the clients' directions regarding offers and it points out that changes should also be reduced to writing and agents are expected to notify, in writing, anyone who has expressed an interest in the property of the change in the offer process. The Bulletin goes on to say that an expression of interest includes parties that have booked viewing appointments, have viewed the property or have informed the brokerage or listing representative that they would be submitting an offer on the property.

The Panel also notes that there is a previous decision of the Discipline Committee that dealt with similar facts. In Registrar under the Real Estate and Business Brokers Act, 2002 and Mark Campbell (Date of Decision – November 13, 2012) the Discipline Committee dealt with a situation where there was a hold on offers, and an expression of interest made by registrants. A pre-emptive bid was accepted prior to the offer date without notice to the parties who had expressed an interest in the property. Though the case proceeded on an Agreed Statement of Facts, it was agreed that in these circumstances, Campbell had not acted in the best interest of the sellers, he failed to provide conscientious service to his clients and customers, he made an inaccurate representation with respect to a trade and he acted unprofessionally and he was found to be in violation of s. 3, 5, 37 and 38 of the Code.

PENALTY

Counsel for the Registrar, *REBBA 2002* to deliver written submissions to the Panel and to the Respondent on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.

The Respondent shall deliver to the Panel and to Counsel for the Registrar, *REBBA 2002* its written submissions on penalty and costs in response to Counsel for the Registrar, *REBBA 2002's* submissions within 15 days of the date on which Counsel for the Registrar, *REBBA 2002's* submissions on penalty and costs are delivered to the Respondent.

Counsel for the Registrar, *REBBA 2002* shall deliver to the Panel and to the Respondent its reply to the written submission on penalty and costs of the Respondent within five (5) days of the date on which the Respondent's submissions on penalty and costs are delivered to Counsel for the Registrar, *REBBA 2002*.

If appropriate, submissions to be made on costs and expenses with submissions on penalty.

Any inquiries relating to the delivery of the above-mentioned documents should be directed to the Manager, Discipline and Appeals Hearings.

The Panel shall deliver its decision on penalty and costs after considering the written submissions of the parties.

[Released: March 3, 2017]



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:

REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

- AND -

KOON WAH YIP

DISCIPLINE DECISION AND REASONS FOR DECISION

The Panel held a teleconference on May 17, 2017 to discuss the written submissions by all Parties with respect to Penalty and Costs. The Panel decided as follows:

ORDER:

Fine of \$3,000.00 payable to RECO within 24 months of sending this decision.

Provide RECO with confirmation of enrollment in the Real Estate as a Professional Career course within one month of the sending this decision.

Successful completion of the Pre-Registration classroom courses provided by the Ontario Real Estate Association in the following order:

Real Estate as a Professional Career
Land, Structures and Real Estate Trading
The Real Estate Transaction – General
The Residential Real Estate Transaction
The Commercial Real Estate Transaction
Real Property Law

Provide RECO with confirmation of the successful completion of all courses within 24 months of sending this decision.

REASONS FOR DECISION

PENALTY & COSTS

INTRODUCTION

The Panel met by teleconference on May 17, 2017 at 3:00 p.m., to review written submissions on penalty. Submissions were received from RECO's counsel and Mr. Koon Wah Yip ("Mr. Yip") as follows:

Submissions of the Registrar on Penalty and Costs dated March 8, 2017; and Submissions of Mr. Yip in response to the Registrar's submissions by way of handwritten notes of March 28, 2017.

Panel's Decision on Penalty

In making its determinations, the Panel took into account the principles and factors set out in *Registrar and Suzette Thompson* (May 31, 2012), and also considered the *Decision Registrar and Mark Campbell* (November 15, 2012). The Panel has been mindful of the factors set out in the *Suzette Thompson Decision* in making its determinations on penalty in this case:

1. The nature and gravity of the breaches of the Code of Ethics;

The Panel found that Mr. Yip's actions and omissions were inherently serious and aggravating, as Mr. Yip failed in his Fundamental professional duty.

In particular, Mr. Yip's plan was to hold off Offers, in order to encourage interest in the property. Yet, no attempt was made to make other registrants aware of an offer when one was registered, contrary to the Sellers, and the Complainant's best interest. Likewise, the MLS listing was not updated to reflect the fact the Seller would entertain pre-emptive offers, making all other Registrants aware of the change of offering dates. Thus, not all potential Buyers had a chance to compete in the marketplace, because they did not have timely and relevant information.

2. The role of the offending member in the breaches.

The Panel found that the breaches were solely and directly the result of Mr. Yip's decisions, actions and omissions. Mr. Yip's actions and omissions were out of ignorance, and it was made clear from the evidence that Mr. Yip was totally unaware of the rules that govern the profession, including the obligation to get the seller's written instructions to withhold offers.

3. Whether the offending member suffered or gained as a result of the breaches.

It was found that Mr. Yip did not stand to personally gain from dealing with the pre-emptive offer, over any other potential competing offer.

4. The impact of the breaches on the Complainant or others.

The Panel found the impact on the potential buyer, was that there was not a fair offering process that she could rely on, or one that's perceived to be fair by all consumers. The registrant, , was put in the position of having to explain to, that the information on the MLS system that was published by Mr. Yip was false and inaccurate.

5. The need for there to be specific deterrence to protect the public.

The Panel found that there is a need for specific deterrence in this case. The sanction must be more than just the cost of doing business, or an outcome that the Respondent is not willing to continue to engage in unethical conduct and behaviour.

In his own testimony, Mr. Yip claimed to be new to this profession, although he has been registered since 2012. He also mentioned that he was unable to seek advice from anybody, but added that he had not sought out the advice of his broker of Record.

6. The need for there to be general deterrence to protect the public.

The MLS rules and the Code of Ethics are very clear; that all information published on all listings by Registrants must be accurate and up to date. This includes how to deal with pre-emptive offers and how they are to be handled so that there is no unfairness to any person or party.

7. The need to maintain the public's confidence in the integrity of the profession.

Public confidence and the integrity of the profession is an issue here. The Complainant's confidence and the Respondent's lack of professionalism led them to complain. The issue of the Respondent claiming "no harm, no foul" cannot provide any confidence.

8. The degree to which the breaches are regarded as being outside the range of acceptable conduct.

Mr. Yip did not set out to intentionally harm anyone. However, his actions and omissions reflect ignorance and neglect. Mr. Yip never at any time corrected the MLS listing with respect to withholding offers, and failed to notify any registrants of any pre-emptive offers. Also, as mentioned before, Mr. Yip failed to get the sellers' written instructions.

9. The range of sanction in similar cases.

The panel reviewed and considered several other cases. The 2012 RECO Discipline case of Mark Campbell is on point. Administrative tribunals are not bound by precedent, as are Courts. However, it's a principle of fairness that there should be some consistency as between similar fact cases. Campbell proceeded on the basis of an Agreed Statement of Fact and Penalty for which the respondent in that case could have gotten credit. Despite that, the respondent in Campbell was ordered to pay a \$10,000.00 fine within two months of the decision and take the RECO Real Estate

Property law Course offered by the Ontario Real Estate Association (“OREA”) within three months. That said, Campbell features significant aggravating facts not part of the present case. First, the unsuccessful potential buyer’s representative actually registered an offer. To be absolutely clear, this is not to blame the Complainants in the present case in any way at all and is not to suggest in any way they could or should have done anything differently. But, the fact in Campbell takes the conduct in that case, from the perspective of sanction to a different level than Mr. Yip’s failure to follow up on an expression of interest in the property; namely, a first showing that, until it happened, no one could know where it would lead and which led in the event to a second showing. Second, the accepted evidence in Campbell was that the unsuccessful potential buyers would realistically have competed with the successful offer. The opposite situation pertains in the present case. Again, that is not to be held against the Complainant in any way, and for the reasons in the present case. Again, that is not being held against the Complainants in any way and, for the reasons stated above, it is not a mitigating fact. It is just the way things happened to turn out. But likewise, this does not aggravate the situation as it was found to do in Campbell. Finally, in Campbell the successful buyer was the respondent’s client in the multiple representation and the respondent in Campbell, therefore, directly benefitted from favouring one offer over another. It was a clear case of a conflict between his material interests and his duties to his client and others. That aggravating fact is absent from this case.

The *Real Estate and Business Brokers Act, 2002* (REBBA 2002) and associated regulations are designed to protect the public, clients, customers, and registrants.

The Panel has reached this decision unanimously and has concluded that the penalties are appropriate given the evidence presented, the findings, which the Panel made after a hearing on the merits, and the submissions of counsel.

The Panel, therefore, makes the following order:

SANCTION SOUGHT

Having regard to the Panel’s findings and in the totality of all the evidence, including given orally at the hearing, RECO submits that Mr. Yip should be ordered to take and

successfully complete the entire RECO Pre-registration course program and provide RECO with confirmation of successful completion of same, that being the following courses offered by OREA, in the following order:

- a) Real Estate as a Professional Career;
- b) Land, Structures and Real Estate Trading;
- c) The Real Estate Transaction – General + the Residential Real Estate Transaction;
- d) The Commercial Real Estate Transaction; and
- e) Real Property Law.

In view of the heavy time commitment this entails and that a third party education provider is involved, we submit that Mr. Yip should be given 24 months from the date of release of the decision of the Panel for penalty to successfully complete the education requirement and provide RECO with written confirmation of same. However, we further submit that Mr. Yip should be ordered to provide RECO with confirmation that he is enrolled and registered in Real Estate as a Professional Career, i.e. his first course, within one month of the date of release of the decision of the Panel for penalty. **The panel orders that all courses have to specifically be classroom courses.**

In addition to the above, and in view of the financial commitment of the requested education requirement, we submit that Mr. Yip should be fined \$3,000.00, and will be given 24 months from the date of this decision to pay.

[Released: June 19, 2017]