

**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 -

SHANI KERNERMAN

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, 5, 17, 23 and 38 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$6,000.00 payable to RECO on or before December 31, 2019.

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. Shani Kernerman (“Kernerman”) is registered as a salesperson under the Real Estate and Business Brokers Act, 2002. Kernerman is and at all relevant times was by Brokerage A.
2. Seller A was the owner of 1-A Street, City A (the “Property”).
3. In or about September 2017 Seller A entered into a listing agreement with Brokerage A to list the Property for sale. Kernerman was the salesperson acting on Seller A’s behalf.
4. On October 3, 2017, an agreement of purchase and sale (“APS”) was entered into with Buyer A as purchaser and Seller A. However, rather than have Seller A sign the APS, Kernerman used an electronic signature of Seller A. At no time did Seller A give written permission to have the APS entered into by way of electronic signature. The electronic signature on the APS was not affixed by Seller A, who did not have a copy of the APS (in any form) when it was being entered into.
5. The Confirmation of Cooperation and Representation (the “CCR”) purports to show Seller A signed it on October 4, 2017. However, at no time did she sign the document nor give permission to Kernerman (or anybody else) to sign on her behalf (electronically or otherwise). Further, or in the alternative, it purports to be signed by Seller A on October 4, 2017, one day after the APS thereby rendering the “confirmation” of cooperation and representation meaningless.
6. Kernerman acted for both Seller A and the purchaser on the transaction, but Kernerman failed to put into writing prior to the APS that he was double ending the transaction.
7. The transaction did close pursuant to the terms of the APS.

SUMMARY OF AGREEMENTS

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

8. Acted for both Seller A and the purchaser, Buyer A, on the transaction. At no time prior to the APS being entered into did Kernerman put in writing to Seller A that he was acting on both sides of the transaction, contrary to section 17 of the Code of Ethics.
9. By using electronic signatures without the written consent of his client Seller A, Kernerman was in breach of sections 3, 5, 23, and 38 of the Code of Ethics.
10. By not showing and therefore not having Seller A enter into a Confirmation of Cooperation and Representation in a timely manner, Kernerman failed to reduce to writing

who he and his brokerage, Brokerage A, were acting for on the transaction and therefore in breach of sections 3, 5, and 38 of the Code of Ethics.

11. Furthermore, Kernerman affixed Seller A's electronic signature to the Confirmation of Co-Operation and Representation and therefore in breach of sections 3, 5, and 38 of the Code of Ethics.

It is agreed that Kernerman failed to comply with 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. O. Reg. 580/05, s. 3.

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. O. Reg. 580/05, s. 5.

Nature of relationship

17. If a registrant represents or provides services to more than one buyer or seller in respect of the same trade in real estate, the registrant shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all buyers and sellers involved in that trade of the nature of the registrant's relationship to each buyer and seller. O. Reg. 580/05, s. 17.

Steps taken by registrant

23. A registrant shall inform a client of all significant steps that the registrant takes in the course of representing the client. O. Reg. 580/05, s. 23.

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. O. Reg. 580/05, s. 38.

AGREED PENALTY

SHANI KERNERMAN, the Respondent, be ordered to pay a penalty of \$6,000.00 on or before December 31, 2019.

By initials below, I, SHANI KERNERMAN, 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, SHANI KERNERMAN, 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, SHANI KERNERMAN, 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, 5, 17, 23 and 38 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. SHANI KERNERMAN is Ordered a Fine of \$6,000.00 payable to RECO on or before December 31, 2019.

[Released: May 23, 2019]