

**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 -**

**ASHFORD JAMES FRANK (a.k.a. ASHFORD FRANK)**

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**DISCIPLINE DECISION AND REASONS FOR DECISION**

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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:

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**FINDINGS:** In violation of Sections 5, 38 and 39 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$5,000.00 payable to RECO on or before October 28, 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. At the relevant times, Ashford Frank, ("Frank") was employed by the Brokerage A.

2. Seller A and Seller B (the “Sellers”) are the Sellers of a property located 1-A Street City A (“the Property”).
3. Representative A is registered as a salesperson to trade in real estate under the Act. At all relevant times, Representative A was employed by the Brokerage B. Representative A listed the Property for the Sellers.
4. Frank was acting as the buyer salesperson representing Buyer A and Buyer B (the “Buyers”) in the purchase of the Property.
5. On or about May 10, 2018, the Sellers and Buyers entered into an Agreement of Purchase and Sale (the “APS”). The APS was conditional upon the inspection of the Property by a home inspector no later than 6:00 p.m. on May 16, 2018.
6. On May 15, 2018, Frank booked an inspection appointment from 5:00 p.m. to 6:00 p.m.
7. On May 15, 2018 at approximately 5:00 p.m., Representative A arrived at the Property to see the Buyers and home inspector conducting the inspection. Frank was not present during the home inspection.
8. On May 16, 2018, Representative A called Frank for an explanation about not being in attendance at the home inspection.
9. On May 16, 2018, at approximately 8:20 p.m., a mutual release was accepted between the Sellers and Buyers.
10. On May 17, 2018, Representative A filed a complaint with the Real Estate Council of Ontario.
11. On June 26, 2018, Frank provided a response as follows:

“When the home inspector and my clients arrived at 5:00 p.m., I received a phone call that Representative A was not at the home. At this time, I was in City B tending to a last minute request from a business colleague... I spoke with the registered home inspector and explained the situation to him. He informed me that he was okay using the lockbox to gain access to the home.” [SIC]
12. Frank permitted his Buyer clients and home inspector unsupervised access to the Property while he was absent, thereby violating sections 5, 38 and 39 of the Code of Ethics.

## **SUMMARY OF AGREEMENTS**

### **It is agreed that Frank failed to comply with the Code of Ethics as follows:**

1. Frank did not conduct himself in a conscientious and competent manner, when he provided the lockbox code to the Inspector and Buyers to gain unsupervised access to the property, contrary to section 5 and 39 of the Code of Ethics.
2. Frank failed to prevent error, misrepresentation, fraud, or any unethical practice in respect of a trade in real estate when he did not make alternative arrangements with another registrant to ensure the Inspector, Buyers, and Sellers Property remained protected after providing the lockbox code to gain unsupervised access to the Property contrary to sections 38 and 39 of the Code of Ethics.

### **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.

### **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**

ASHFORD JAMES FRANK (a.k.a. ASHFORD FRANK), the Respondent, be ordered to pay a penalty of \$5,000.00 on or before October 28, 2019.

By initials below, I, ASHFORD JAMES FRANK (a.k.a. ASHFORD FRANK), 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, ASHFORD JAMES FRANK (a.k.a. ASHFORD FRANK), 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, ASHFORD JAMES FRANK (a.k.a. ASHFORD FRANK), acknowledge that I exercised my right to be represented by Counsel 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 5, 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. ASHFORD JAMES FRANK (a.k.a. ASHFORD FRANK) is Ordered a Fine of \$5,000.00 payable to RECO on or before October 28, 2019.

*[Released: April 18, 2019]*