



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 -

BEVERLEY SIRRS (aka BEV SIRRS)

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 and 38 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$4,000.00 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

It is agreed as follows:

1. Beverley Sirrs (“Sirrs”) is registered as a salesperson under the Real Estate and Business Brokers Act, 2002. At all relevant times, Sirrs was employed by Brokerage A.
2. Representative A is and was, at all relevant times, employed by Brokerage B.
3. Representative B is and was, at all relevant times, registered as a salesperson under the Act and employed by Brokerage C.
4. Seller A and Seller B (“Sellers”) were the owners of a residential property located at 1-A Street, City A (“Property”) and were represented by Sirrs and Brokerage A.
5. Buyer A and Buyer B (“Buyers”) were the purchasers of the Property and were represented by Representative B and Brokerage C.
6. Individual A is a consumer who was interested in purchasing the Property and was represented by Representative A and Brokerage B.
7. On or about April 5, 2018, Sirrs, representing the Sellers, listed the Property for sale on the MLS® for \$460,000.00.

First APS

8. On or about April 16, 2018, Sirrs, representing the Sellers, and Representative B, representing the Buyers, negotiated a conditional agreement to purchase the Property (“First APS”). The closing date was June 15, 2018.
9. The First APS was conditional on the Buyers selling their existing home (“Sale Condition”). The Buyers had until May 15, 2018 to either waive or provide notice of fulfilment of the Sale Condition.
10. In the event that the Sellers received another acceptable offer prior to May 15, 2018, the Buyers would have 48 hours to either waive, or provide notice of fulfilment of, the Sale Condition.

Subsequent Offer

11. On April 26, 2018, Representative A representing Individual A submitted an offer to purchase the Property for \$460,000.00. This offer was irrevocable by the Buyer until 12:00 p.m. on April 28, 2018 (“Irrevocable Time”).
12. On April 27, 2018 at 1:50 p.m., Sirrs submitted a counter-offer (“Counter”) for consideration by the Sellers. The Counter removed a home inspection condition and was irrevocable by the Sellers until the Irrevocable Time.
13. Through inadvertence, the Counter did not include any clauses whereby the Sellers would be able to rescind *i.e.* back out of an agreement with Individual A should the Buyers waive or provide notice of fulfilment of the Sale Condition (“Escape Clause”).
14. After receiving the Counter, Representative A contacted Sirrs and informed her that Individual A would not accept the Counter unless the Sellers reduced the price by \$5,000.00. Sirrs thereafter contacted the Sellers and left a message for them.

Second APS

15. On April 27, 2018, at approximately 3:00 p.m., and before Sirrs could respond to Representative A, the Buyers submitted a notice of fulfilment of condition for the “Sale Condition”.
16. Sirrs thereafter, at approximately 4:00 p.m., notified Representative A that the First APS had become a firm agreement.
17. At 6:08 p.m., Individual A, having knowledge that the First APS had become a firm agreement but still wanting to try to purchase the Property, decided to accept the Counter, resulting in two simultaneous unconditional agreements to purchase the Property.
18. The First APS successfully closed without any issues.
19. Sirrs acknowledged that failing to include an Escape Clause in the Counter was a regrettable, unfortunate and unintentional error, and used her best efforts, in the circumstances, to try to rectify the error.

SUMMARY OF AGREEMENTS

It is agreed that SIRRS failed to comply with the Code of Ethics (“Code”) as follows:

18. Failed to include an Escape Clause in the Counter, resulting in two simultaneous unconditional agreements to purchase the Property and the Sellers having no option to rescind the Second APS, contrary to sections 3, 4 and 38, with respect to error only, of the Code.

It is agreed that SIRRS failed to comply with the following sections of the Code:

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.

Error, misrepresentation, fraud, etc. (*with respect to error only*)

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.

AGREED PENALTY

BEVERLEY SIRRS aka BEV SIRRS, the Respondent, be ordered to pay a penalty of \$4,000.00 not later than 180 days from the date of the Decision of the Discipline Committee.

By initials below, I, BEVERLEY SIRRS aka BEV SIRRS, 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, BEVERLEY SIRRS aka BEV SIRRS, 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, BEVERLEY SIRRS aka BEV SIRRS, 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 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. BEVERLEY SIRRS aka BEV SIRRS is Ordered a Fine of \$4,000.00 payable to RECO not later than 180 days from the date of the Decision of the Discipline Committee.

[Released: January 7, 2020]