



Real Estate Council of Ontario

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**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 -**

**KENNETH BRUCE MACKAY (registered as BRUCE MACKAY)**

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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 4, 5 and 21(1) of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$6,000.00 payable to RECO not later than 180 days after the date of the Decision of the Discipline Committee on this matter.

**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. Kenneth Bruce MacKay, registered as Bruce MacKay (“MacKay”), is registered as a salesperson under the *Real Estate and Business Brokers Act, 2002*.
2. MacKay is and was, at all relevant times, employed by Brokerage A.
3. The complainant to RECO and her husband (collectively, the “Complainants”) sought the services of MacKay, on behalf of his brokerage, to represent them in purchasing a new home as well as selling the home they resided in.
4. This matter concerns the purchase of their new home.
5. The Complainants were interested in purchasing a building lot or a home which could be torn down or significantly rebuilt to suit their needs and preferences. This was made known to MacKay. It was agreed that the suitability of a property for this purpose was a primary feature of any property they would purchase.
6. In late March 2018, the Complainants became interested a home for sale at 1-A Street, City A (the “Property”).
7. The Property backed onto Creek A.
8. The Complainants drove past the Property on Friday March 30.
9. The Complainant sent a text message to MacKay stating,

“So [my husband is] worried why it looks like nobody is tearing down on that side of the street, but they can on the other side. We’re trying to look into it but if you can as well, that would be great.”
10. MacKay responded that he would talk to the listing agent who lived nearby and who may have some insight. The complainant thanked him and noted that “otherwise zoning looks like it’s an RL3 for 35% coverage”, referring to her impression of the zoning and the size of dwelling that could be erected on the Property.
11. The Complainants and MacKay together saw the Property at a scheduled viewing the following day. Offer presentations were scheduled to occur that evening.

12. The Complainants elected to make an offer. Multiple other offers were made to purchase the Property.
13. The Complainants were the successful purchasers. Their offer was originally conditional upon the Complainants obtaining satisfactory financing and conducting a home inspection, but these conditions were removed during the offer process.
14. Before the transaction closed, the Complainants learned of impediments to their ability to rebuild or significantly expand the size of the home due to Creek A at the rear, including the Property's zoning and location within a designated Conservation Municipality A floodplain, adding further permitting requirements and restrictions from Conservation Municipality A on the ability to rebuild and/or expand the existing building.
15. The Complainants requested a mutual release from the sale, but it was not granted by the vendors.
16. The Complainants subsequently relisted and sold the Property as it was not suitable for their intended purpose.

### SUMMARY OF AGREEMENTS

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

1. MacKay did not take reasonable steps to determine the material facts and appropriately advise the Complainants about issues which could impact their ability to rebuild and/or expand the home, contrary to sections 4, 5, and 21(1) of the Code of Ethics.

**It is agreed that MacKay failed to comply with the following sections of the Code of Ethics:**

Best interests

4. A registrant shall promote and protect the best interests of the registrant's client.

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.

Material facts

21. (1) A broker or salesperson who has a client in respect of the acquisition or disposition of a particular interest in real estate shall take reasonable steps to determine the material facts relating to the acquisition or disposition and, at the earliest practicable opportunity, shall disclose the material facts to the client.

AGREED PENALTY

KENNETH BRUCE MACKAY (registered as BRUCE MACKAY), the Respondent, be ordered to pay a penalty of \$6,000.00 not later than 180 days after the date of the Decision of the Discipline Committee on this matter.

By initials below, I, KENNETH BRUCE MACKAY (registered as BRUCE MACKAY), 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, KENNETH BRUCE MACKAY (registered as BRUCE MACKAY), 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, KENNETH BRUCE MACKAY (registered as BRUCE MACKAY), 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 4, 5, and 21(1) 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. KENNETH BRUCE MACKAY (registered as BRUCE MACKAY) is Ordered to Pay a Fine of \$6,000.00 payable to RECO not later than 180 days from the date of the Decision of the Discipline Committee.

*[Released: February 11, 2021]*