



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 -

GINA MONA ROMAN

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, 5, 38 and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$3,000.00 payable to RECO on or before July 8, 2020.

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. Gina Roman, ("Roman") is registered as a salesperson under the Real Estate and Business Brokers Act, 2002. Roman is employed at the Brokerage A.

2. Representative A, a witness and participant in certain subject events, was at all relevant times registered as a salesperson with Brokerage B. Representative A is currently registered as a broker with Brokerage B.
3. Representative B, a witness and participant in certain subject events, was at all relevant times registered as a salesperson with Brokerage C.
4. Seller A and Seller B owned a home located at 1-A Street, City A (“the Property”). On or about February 27, 2017, the Sellers entered into a Listing Agreement for the Property with Brokerage A, with Roman acting as the listing sales representative. The Property was offered for sale on the Multiple Listing Service (“MLS”) at a price of \$759,900.00.
5. On or about February 28, 2017, at approximately 11:06 a.m., Buyer A, (“the First Buyer”), through Representative B as the buyer salesperson, prepared and submitted an offer to purchase the Property. The First Buyer offered a purchase price of \$870,000.00 with a deposit of \$40,000.00. The offer was irrevocable on February 28, 2017 by 10:00 p.m.
6. On or about February 28, 2017, at approximately 9:06 p.m., Buyer B (“the Second Buyer”), through Representative A as the buyer salesperson, prepared and submitted an offer to purchase the Property. The Second Buyer offered a purchase price of \$890,000.00 with a deposit of \$45,000.00 (the “Second Offer”). The Second Offer was irrevocable on February 28, 2017 by 9:59 p.m.
7. On or about February 28, 2017, at approximately 10:19 p.m., the First Buyer, through Representative B as the buyer salesperson, prepared and submitted an improved offer to purchase the Property. The First Buyer offered a purchase price of \$892,512.00 with a deposit of \$40,000. The offer was irrevocable on February 28, 2017 by 11:30 p.m.
8. On or about February 28, 2017, at approximately 11:20 p.m., the Sellers accepted the First Buyer’s offer the same day, creating an ‘Agreement of Purchase and Sale’ (“the APS #1”).
9. On or about March 1, 2017, the First Buyers, by way of Representative B, informed Roman they were no longer interested in purchasing the Property and therefore would not be dropping off a deposit cheque as per APS #1. Roman was under the belief that a mutual release would be forthcoming from Representative B which did not occur.

10. On or about March 1, 2017, Roman contacted Representative A to see if there was any interest from the Second Buyer to purchase the Property. On the same day, at approximately 3:00 p.m., Representative A and the Second Buyer met Roman at the offices of Brokerage A.
11. At the March 1, 2017 meeting, at approximately 3:30 p.m., the Second Buyer accepted the Second Offer, creating an 'Agreement of Purchase and Sale'. ("the APS #2"). The Second Buyer also delivered their deposit of \$45,000.00. Roman did not insert any clause into APS #2 stating that APS #2 was conditional upon APS #1 being terminated. In effect, Roman had now allowed the Sellers to sell the Property to two different parties: the First Buyers and the Second Buyer.
12. On or about March 1, 2017, at approximately 4:24 p.m., Roman updated the MLS to state the Property was sold to the Second Buyer.
13. On or about March 1, 2017, at approximately 8:49 p.m., the First Buyer delivered their deposit of \$40,000.00 as per the APS #1.
14. On or about March 2, 2017, at approximately 8:00 a.m., Roman learned that the First Buyer had delivered their deposit as per APS #1.
15. A dispute ensued over the validity of APS #1 and APS #2.
16. On or about March 2, 2017, at approximately 6:33 p.m., Roman prepared a mutual release and sent it to Representative B. The mutual release was irrevocable on March 2, 2017 by 9:30 p.m.
17. On or about March 8, 2017, Roman prepared a mutual release and sent it to Representative A. The mutual release was irrevocable on March 8, 2017 by 11:59 p.m.
18. On or about March 8, 2017, at approximately 11:00 p.m., the Second Buyer signed the mutual release.
19. On or about March 9, 2017, at approximately 6:45 p.m., Representative B sent Roman a mutual release. On the same day, the Sellers signed the mutual release.

20. Roman reached out to both Representative B and Representative A to see if their respective buyer clients were still interested in purchasing the Property. Neither buyer clients were interested.

21. On or about September 6, 2017, the Second Buyer filed a complaint with The Real Estate Council of Ontario concerning the sale of the Property and the conduct of Roman.

SUMMARY OF AGREEMENTS

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

1. In violation of s. 3 of the Code of Ethics, Roman failed to treat every person involved in the trade fairly, honestly and with integrity by:
 - A. Allowing, acquiescing in, or failing to counsel against the Seller's acceptance of the Second Buyer's offer on the Property without ensuring that APS #2 was conditional on APS #1 not proceeding;
 - B. Failing to be forthright with Representative A and/or the Second Buyer regarding the status of APS #1.
2. In violation of s. 4 of the Code of Ethics, Roman failed to promote and protect the best interests of his client by:
 - A. Allowing, acquiescing in, or failing to counsel against the Seller's acceptance of the Second Buyer's offer on the Property without ensuring that APS #2 was conditional on APS #1 not proceeding, thereby exposing the Seller to potential liability.
3. In violation of s. 5 of the Code of Ethics, Roman failed to provide conscientious service to his client and failed to demonstrate reasonable knowledge, skill, judgment and competence in providing those services by:
 - A. Allowing, acquiescing in, or failing to counsel against the Seller's acceptance of the Second Buyer's offer on the Property without ensuring that APS #2 was conditional on APS #1 not proceeding, thereby exposing the Seller to potential liability.

4. In violation of s. 38 of the Code of Ethics, Roman failed to use her best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in real estate by:
 - A. Allowing, acquiescing in, or failing to counsel against the Seller's acceptance of the Second Buyer's offer on the Property without ensuring that APS #2 was conditional on APS #1 not proceeding.
 - B. Failing to be forthright with Representative A and/or the Second Buyer regarding the status of APS #1.

5. In violation of s. 39 of the Code of Ethics, Roman engaged in acts and omissions that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a registrant by:
 - A. Allowing, acquiescing in, or failing to counsel against the Seller's acceptance of the Second Buyer's offer on the Property without ensuring that APS #2 was conditional on APS #1 not proceeding.
 - B. Failing to be forthright with Representative A and/or the Second Buyer regarding the status of APS #1.

It is agreed that Roman 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.

Best interests

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

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

GINA MONA ROMAN, the Respondent, be ordered to pay a penalty of \$3,000.00 on or before July 8, 2020.

By initials below, I, GINA MONA ROMAN, 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, GINA MONA ROMAN, 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, GINA MONA ROMAN, 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, 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. GINA MONA ROMAN is Ordered a Fine of \$3,000.00 payable to RECO on or before July 8, 2020.

[Released: November 7, 2019]