



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 -

JAMES D. MCCARVELL (a.k.a. JIM MCCARVELL)

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, 7 and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$7,500.00 payable to RECO on or before July 13, 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

1. Jim McCarvell (aka James McCarvell), (“McCarvell”) is registered as a salesperson under the Real Estate and Business Brokers Act, 2002. At the relevant time, McCarvell was employed with Brokerage A, a brokerage registered under the Act.

2. In or about October 2018 Representative A, a broker with Brokerage B, had a property 1-A Street, City A (the "Property") listed on the multiple listing service ("MLS listing") for sale. The MLS listing included a photograph of the Property.
3. The owner of the Property was Seller A. It was Seller A that had the Property listed on the MLS through Representative A of Brokerage B.
4. After the listed Property was extent, Seller A received an email from McCarvell. The email included a picture of Seller A's property that was for sale by Representative A of Brokerage B. The picture appears to be a cut and paste from the MLS listing of the Property. Included in the email, aside from a prominent picture of Seller A's listed Property, are the following:
 - a. Top 1 percent in the world Brokerage A;
 - b. Jim McCarvell Phone number, email address.
5. The text of the email included the following sentences,
 - a. Keep us in mind for future projects;
 - b. Call any time for a third party point of view;
 - c. We are well known for exceptional marketing;
 - d. Not a challenge to active contracts;
 - e. We compete for new projects.
6. Also included in the email was a "start" icon. If utilized by the user, in this case aimed at only Seller A, it links to the web site of McCarvell.
7. At no time did Representative A, or anyone at Brokerage B, give McCarvell permission for their client, Seller A, to be solicited for business during an active listing for the Property.

SUMMARY OF AGREEMENTS

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

1. McCarvell solicited a client of Brokerage B under circumstances wherein McCarvell knew that Seller A was under an active listing agreement with Brokerage B.
2. McCarvell solicited Seller A with marketing materials that were the same (the picture of the Property) as the Brokerage B listing materials, knowing the Property was under an active listing with Brokerage B.

3. As a result, McCarvell is in breach of sections 3, 7, and 39 of the Code of Ethics.

It is agreed that MCCARVELL 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.

Dealings with other registrants

7. (1) A registrant who knows or ought to know that a person is a client of another registrant shall communicate information to the person for the purpose of a trade in real estate only through the other registrant, unless the other registrant has consented in writing.

(2) If a broker or salesperson knows or ought to know that a buyer or seller is a party to an agreement in connection with a trade in real estate with a brokerage other than the brokerage that employs the broker or salesperson, the broker or salesperson shall not induce the buyer or seller to break the agreement.

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

JAMES D. MCCARVELL (a.k.a. JIM MCCARVELL), the Respondent, be ordered to pay a penalty of \$7,500.00 on or before July 13, 2020.

By initials below, I, **JAMES D. MCCARVELL (a.k.a. JIM MCCARVELL)**, 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, **JAMES D. MCCARVELL (a.k.a. JIM MCCARVELL)**, 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, **JAMES D. MCCARVELL (a.k.a. JIM MCCARVELL)**, 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, 7 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. **JAMES D. MCCARVELL (a.k.a. JIM MCCARVELL)** is Ordered a Fine of \$7,500.00 payable to RECO on or before July 13, 2020.

[Released: November 6, 2019]