



Real Estate Council of Ontario

DISCIPLINE DECISION

**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 -

VESNA KOLENC

This matter was heard on November 6, 2019 at Toronto, Ontario. The parties have submitted an Agreed Statement of Facts and Penalty and Waiver of Hearing. This Panel accepts the Agreed Statement of Facts and therefore orders as follows:

DATE OF DECISION: November 6, 2019

FINDINGS: In violation of Sections 3, 4, 17 and 39 of the *REBBA 2002 Code of Ethics*

ORDER: Fine of \$22,500.00 payable to RECO on or before September 30, 2020.

Successful completion of the Real Estate Institute of Canada (REIC) "Ethics and Business Practice" course and "Legal Issues in Real Estate" course and provide RECO with confirmation of successful completion on or before June 30, 2020.

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. Vesna Kolenc ("Kolenc") is, and was at all relevant times, a salesperson registered to trade under the Act, employed by Brokerage A.

I. 1-A Street

2. On December 12, 2015, Seller A and Seller B, (collectively the “Sellers”) listed the residential property located at 1-A Street, City A (“Property”) for Sale with Brokerage A and Kolenc as its representative, for \$1,298,000.00 (“Listing Agreement”). The Listing Agreement provided that in consideration for listing the Property for sale, Brokerage A would be entitled to 5% of the sale price of the Property.
3. On or about December 19, 2015, the Property was listed onto the multiple listing service (“MLS Listing”).
4. On December 19, 2015, various appointments were made for consumers to view the Property (“Showings”). Among the showings was a showing made by Representative A, a salesperson employed by Brokerage B, to show his clients, Buyer A and Buyer B, (“1st Buyers”) the Property that same day.

II. Offers & Sale

5. On December 20, 2015, the 1st Buyers, through Representative A, made an offer to purchase the Property for \$1,311,000.00 (“1st Buyer’s Offer”).
6. Also, on December 20, 2015, Buyer C, (“2nd Buyer”), who was represented by Brokerage A, through Kolenc, made an offer to purchase the Property for \$1,280,000.00 (“2nd Buyer’s Offer”), which was not presented. Brokerage A was therefore in a multiple representation situation with respect to the 2nd Buyer’s Offer, representing both the Sellers and the 2nd Buyer; at no time, however, were the 1st Buyers made aware that in addition to representing the Sellers, Brokerage A, through Kolenc, was also representing the 2nd Buyer.
7. Kolenc indicated she witnessed the second 2nd Buyers signature despite not doing so.
8. With there being a second offer, the 2nd Buyer’s Offer was improved to \$1,318,000.00, making it \$7,000.00 more than the 1st Buyer’s Offer.
9. The offers were then presented to the Sellers separately: first to Seller B and then Seller A. On December 20, 2015, an agreement was reached wherein the Property would be sold to the 2nd Buyer for \$1,318,000.00 (“Agreement”).

III. Deposit & Transfer

10. Seller A later contacted the 2nd Buyer to have the Agreement assigned to him. He also provided the Deposit. Approximately two weeks prior to the completion date Seller B learned that the 2nd Buyer had transferred her interest in the Property to Seller A, and on September 14, 2016, the Property was transferred to Seller A.

SUMMARY OF AGREEMENTS

It is agreed that Kolenc breached the Code of Ethics (“Code”) when she:

- A. Indicated she witnessed the 2nd Buyer sign the 2nd Buyer’s Offer when she did not, contrary to section 39 of the Code.
- B. Failed to disclose to Representative A and Seller B in writing, at the earliest practicable opportunity, and before any offer was made for the Property, that Brokerage A was representing both the Sellers and the 2nd Buyer, contrary to sections 3, 17, and 39 of the Code. Kolenc claims she advised them orally.
- C. Acted on the sale of the Property to the 2nd Buyer when she reasonably should have suspected that the true purchaser of the Property was not to have been Buyer C, contrary to sections 3, 4, and / or 39 of the Code.

It is agreed that Kolenc 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 interest

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

Nature of relationship

17. If a registrant represents or provides services to more than one buyer or seller in respect of the same trade in real estate, the registrant shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all buyers and sellers

involved in that trade of the nature of the registrant's relationship to each buyer and seller.

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

VESNA KOLENC, the Respondent, be ordered to pay a penalty of \$22,500.00 on or before September 30, 2020.

In addition to the above penalty, the Respondent must enrol in, and successfully complete, the following online courses, provided by the Real Estate Institute of Canada on or before June 30, 2020:

- a) REIC 2600 - Ethics in Business Practice
- b) REIC 2280 - Legal Issues in Real Estate

By initials below, I, VESNA KOLENC, 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, VESNA KOLENC, acknowledge that I exercised 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 Panel of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 3, 4, 17 and 39 of the *REBBA 2002* Code of Ethics. The Panel 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. VESNA KOLENC is Ordered a Fine of \$22,500.00 payable to RECO on or before September 30, 2020.
2. VESNA KOLENC is Ordered to successfully complete the Real Estate Institute of Canada (REIC) “REIC 2600: Ethics in Business Practice” course and “REIC 2280: Legal Issues in Real Estate” course and provide RECO with confirmation of successful completion on or before June 30, 2020.

[Released: December 4, 2019]