



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 -

MONICA THAPAR

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:

Monica Thapar, Registrant
Paminder Hayer, Counsel for Registrant

For the Real Estate Council of Ontario:

Chantel Marler, Paralegal
Dipak Parmar, Paralegal

Heard in Toronto:

March 20, 21 and 22, 2017

FINDINGS:

In violation of Sections 2 (1), 3, 5, 25 (1), 38, and 39 of the Code of Ethics.

ORDER:

Counsel for the Registrar, *REBBA 2002* to deliver written submissions to the Panel and to the Respondent on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.

The Respondent shall deliver to the Panel and to Counsel for the Registrar, *REBBA 2002* its written submissions on penalty and costs in response to Counsel for the Registrar, *REBBA 2002*'s submissions within 15 days of the date on which Counsel for the Registrar, *REBBA 2002*'s submissions on penalty and costs are delivered to the Respondent.

Counsel for the Registrar, *REBBA 2002* shall deliver to the Panel and to the Respondent its reply to the written submission on penalty and costs of the Respondent within 5 days of the date on which the Respondent's submissions on penalty and costs are delivered to Counsel for the Registrar,

REBBA 2002.

Any inquiries relating to the delivery of the above-mentioned documents should be directed to the Manager, Discipline & Appeals Hearings

COSTS AND EXPENSES: N/A

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This Hearing took place on March 20, 21, and 22, 2017. RECO's case was presented by two paralegals acting as prosecutor: Ms. Chantel Marler and Mr. Dipak Parmar. The Registrant, Monica Thapar ("Ms. Thapar"), was also present and she was represented by her counsel, Paminder Hayer. The Panel was comprised of Mr. William Taplay, Ms. Myra Bongard, and Mr. Justin Cooper. Douglas Cunningham was present as independent legal counsel to the Panel.

ALLEGATIONS BY THE REGISTRAR, REBBA 2002

In its Allegation Statement the Registrar, REBBA 2002 alleged that Ms. Thapar had acted unprofessionally when she:

1. Failed to disclose the existence and details of the terms of her Commission Reduction Agreement to the Complainant and all other buyers or their representative who had submitted written offers on the Property, at the earliest practicable opportunity, thereby breaching sections 2(1) with respect to section 25(1) of the Code of Ethics.
2. Failed to treat every person she dealt with in the course of a trade in real estate fairly, honestly and with integrity by failing to disclose that she had a Commission Reduction Agreement with her Seller, thereby breaching section 3 of the Code of Ethics.
3. Failed to provide conscientious and competent service to her client and customers when she failed to advise other sales representatives who presented their offer of the existence of a Commission Reduction Agreement and its terms, thereby breaching section 5 of the Code of Ethics.

4. Failed to amend the Listing Agreement at the earliest practicable opportunity to reflect the Commission Reduction Agreement, have it signed on behalf of the brokerage and submit it to the seller for signature, thereby breaching section 13 of the Code of Ethics.
5. Failed to use her best effort to prevent error, misrepresentation, fraud or any unethical practice in respect to a trade in real estate when she did not disclose the Commission Reduction Agreement terms to all sales representatives who submitted their offers, thereby breaching section 38 of the Code of Ethics.
6. Engage in an act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming when she failed to inform all agents who had submitted a written offer on the Property of the Commission Reduction Agreement that she had with her Seller client, thereby breaching section 39 of the Code of Ethics.

The Registrar, REBBA 2002 has therefore alleged that Ms. Thapar breached the following Sections of the Code of Ethics:

2(1) – Brokers and Salespersons - A broker or salesperson shall not do or omit to do anything that causes the brokerage that employs the broker or salesperson to contravene this Regulation.

With Reference to:

25(1) – Agreements Relating to Commission - If a brokerage has a seller as a client and an agreement between the brokerage and the seller contains terms that relate to a commission or other remuneration and that may affect whether an offer to buy is accepted, the brokerage shall disclose the existence of and the details of those terms to any person who makes a written offer to buy, at the earliest practicable opportunity and before any offer is accepted.

3 – Fairness, Honesty, etc. - A registrant shall treat every person the registrant deals with in the course of a trade in real estate fairly, honestly and with integrity.

5 – Conscientious and Competent Service, etc. - 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.

13 – Seller Representation Agreement - If a brokerage enters into a seller representation agreement with a seller and the agreement is not in writing, the brokerage shall, at the earliest practicable opportunity and before any buyer makes an offer, reduce the agreement to writing, have it signed on behalf of the brokerage and submit it to the seller for signature.

38 – Error, Misrepresentation, Fraud, etc. - 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.

39 – Unprofessional Conduct, etc. - 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.

EVIDENCE OF THE PARTIES

1. Allegation Statement
2. Amended Allegation Statement
3. Notice of Hearing
4. RECO Book of Documents
5. RECO Supplemental Book of Documents
6. RECO Further Disclosures
7. Registrant Book of Document

WITNESSES FOR THE REGISTRAR, REBBA 2002

1. Representative A
2. Representative E
3. Complainant
4. Representative B

WITNESSES FOR THE RESPONDENT

1. Representative D
2. Representative C
3. Individual C
4. Monica Thapar

OPENING STATEMENT BY THE REGISTRAR, REBBA 2002

The prosecutor advised that the hearing would centre on allegations relating to the reduction in a 6% commission payable under a listing agreement with 3.5% being payable on the listing side of the transaction and 2.5% going to the buyer's agent, and issues whether notice of the commission reduction had been given and properly documented by Ms. Thapar.

The Panel was advised that the complainant, an agent who worked for the same brokerage as Ms. Thapar, was not told about a commission reduction agreement ("CRA") between Ms. Thapar and the Seller of the Property until *after* a deal with a particular buyer had been concluded.

The prosecutor submitted that evidence from another agent who was working with Ms. Thapar at the time would show that she was instructed by the registrant to lower the commission payable in the transaction to ensure that the offer from a particular buyer would be accepted by the Seller.

OPENING STATEMENT BY COUNSEL FOR MS. THAPAR

Counsel for Ms. Thapar stated that the hearing would show that the allegations against Ms. Thapar were false and that other offers for the Property, including that provided by the complainant had been declined by the Seller. Further, the evidence would show that a CRA was in place after the first round of offers (which round did not result in a sale of the Property). Ms. Thapar submitted that the complainant had been influenced by other persons to lodge her complaint with RECO and that the Panel should dismiss the allegations.

WITNESS FOR THE REGISTRAR, REBBA 2002

Representative A

Representative A identified herself as an employee of Brokerage A since January 2017. She had met Ms. Thapar through their husband, who were friend. Representative A was employed with Brokerage B in February 2013. In April, 2013, Representative A was registered as an Office Assistant until late June 2013, when she became a salesperson with Ms. Thapar's sales team ("Thapar Team") in a satellite office at Brokerage B.

Representative A testified that she presented an offer for the Property during the afternoon of July 31, 2013, although she could not recall where the offer originated, but she assumed that it had been e-mailed to the satellite office. Referring to Exhibit #4, Tab 5(A), which contained the offer, Representative A explained that it was from Buyer A Buyer A as the Buyer directed to Seller A. That copy of the offer bore a fax line from "Pharmacy A" at the top of pages in the offer indicating that some of the pages had been faxed at 2:06 p.m. on July 31, 2013, while certain other pages had been faxed at 2:54 p.m. the same day.

The price in that copy of the offer (Exhibit #4 Tab 5(A)) had been increased in handwriting to \$525,000.00 (from \$520,000.00) with a deposit payable of \$15,000.00. The proposed closing date was August 20, 2013 and the offer was irrevocable until 8:00 p.m. July 31, 2013. According to Representative A, the Buyer A offer was presented during the afternoon of July 31, 2013 to the Seller along with one other offer.

When asked about the purchase price increase in the Buyer A offer, as well as alterations to the proposed deposit, Representative A could not remember how or when those changes had come about. Referring to the signing page in the offer, Representative A confirmed that it was her signature next to the signatures of the Buyer and the Seller. She advised that the time of Confirmation of Acceptance of the Buyer A offer was 7:54 p.m. on July 31, 2013. With respect to the Confirmation of Co-operation and Representation section in the offer, she explained the document and identified the signatures thereon, including the witness, and the date of execution.

Representative A added that the Buyer A offer was one of two offers presented at approximately 2:30 p.m. on July 31, 2013. She conceded that she was not exactly sure when the presentation of the two offers took place. However, Representative A testified that when she visited the Seller to present the two offers, she understood beforehand that the Buyer A offer would be accepted over the other offer she was also presenting.

Representative A stated that she could not remember who had provided other offers for the Property or how many offers in total were ultimately presented on July 31, 2013.

Concerning Exhibit #4 Tab 5(A), the Buyer A offer, and why that offer was not accepted when it was first presented to the Seller, Representative A advised that the Seller objected to the commission payable in the Listing Agreement.

According to the witness, the Seller was concerned about losing too much money if she were to accept the Buyer A offer. Representative A left the offer presentation and called Ms. Thapar using her cell phone. Nothing had been signed at this point by the Seller. Ms. Thapar told Representative A that she would contact the Seller herself.

When asked about the copy of the Buyer A offer that appears to have come in parts from Pharmacy A at 2:06 p.m. and 2:54 p.m. on July 31, 2013, Representative A indicated that she did not know who had sent that copy of the offer from the Pharmacy.

Representative A said that after her call with Ms. Thapar, she returned to the satellite office and waited for further instructions. She confirmed that, by late afternoon, she was looking to Ms. Thapar for instructions.

Reference was made to Exhibit #5, Tab 5, pp. 12 and 13, which were copies of certain text messages received from the head office at Brokerage B. It was noted that the first texts were received at 2:21 p.m. July 31, 2013, with the last three texts being received at 3:07 p.m. These texts were messages confirming that various offers for the Property had been received and/or that offers were being registered.

Representative A was asked to confirm that the times and dates of these messages coincided with the faxed Buyer A offer that she had been asked about previously. With respect to the faxed copy of the Buyer A offer, which was sent just after 2:00 p.m. on July 31, 2013, Representative A did not know whether Buyer A had sent that offer on her own. The evidence indicated that 5 pages of the Buyer A offer were sent just after 2:00 p.m. with 3 additional pages being sent close to 3:00 p.m.

Representative A confirmed that documents presented at the hearing, including an email from head office to Ms. Thapar (Exhibit #6), showed that a copy of the Buyer A offer was sent to Ms. Thapar at 6:16 p.m. on July 31, 2013.

It was noted that an emailed copy of Buyer A offer had a stated price of \$520,000.00 and a deposit of \$50,000.00 payable upon acceptance, while the earlier faxed copy of that offer had a handwritten price of \$525,000.00 with a \$15,000.00 deposit being payable. Both of Buyer A's offers were irrevocable until July 31, 2013.

Referring to Exhibit #6 p. 10, Representative A confirmed it was an email from head office to her. She explained that the Confirmation of Co-operation and Representation attached thereto confirmed that Brokerage B was providing Customer Service to the Buyer A in the proposed transaction.

Representative A also referred to Schedule A to the same offer between Buyer A and the Seller and noted that the Condition for Financing and the Condition for a Home Inspection had been crossed out and initialled by Buyer A. Also, the Seller only had an obligation to provide a Survey of the Property if there was one available.

Representative A described Exhibit 6, p. 14, and confirmed that it was an email from head office to Ms. Thapar at 2:07 p.m. on July 31, 2013; she identified a second email from Ms. Thapar to her at 7:16 p.m. on July 31, 2013. The witness explained that pages 15, 16 and 17 of Exhibit 6, which were part of an offer, showed initials belonging to Buyer A.

With respect to Exhibit 6, p. 19, the witness confirmed that it was offer between Buyer A, as Buyer, to the Seller for \$520,000.00 providing for a deposit of \$50,000.00, with a Completion Date of August 20, 2013 and an Irrevocable Date of 8:00 p.m. July 31, 2013. The initials throughout the offer on pages 19, 20, 21, 22, 24 and 25 appeared to be those of Buyer A.

When Representative A was asked why she had signed the Buyer A offer as a witness if she had not seen the Buyer actually sign the offer, she said she could not recall why she had done so.

Representative A stated that she visited the Seller's house a second time on July 31, 2013, but she could not recall precisely when she did so. She surmised that she may have returned just

before the Seller accepted the Buyer A offer. Based on her understanding, Ms. Thapar had spoken to the Seller prior to Representative A attending at the Property a second time on July 31, 2013.

However, a fax cover sheet verified that a copy of the Buyer A offer was sent to Representative A at 7:34 p.m. on July 31, 2013. Once again, by that time in the evening, Ms. Thapar had already spoken with the Seller regarding the offer. Representative A recalled doing the calculations with the Seller to confirm the advantage that would flow to the Seller from a commission reduction. The witness could not recall the time as which the price in the Buyer A offer had actually been changed from \$520,000.00 to \$525,000.00.

Documentation at the hearing (Exhibit #4, Tab 5(A)) showed that the Buyer A offer had been accepted by the Seller at 7:54 p.m.

At this point, the prosecutor referred to Exhibit #4, Tab 11(B), which Representative A advised was an agreement to reduce the commission payable on a transaction for the Property. That document read as follows:

July 24th 2013-07-31

Sale of 1-A Street

**This is to confirm that on this deal of 1-A Street, if we bring the buyer as well, the total commission will be reduced to 6% -- \$6000. Sincerely,
[signed by Representative A]**

Because of the two different dates on this agreement (July 24, and July 31, 2013), the witness clarified that she had drafted the agreement on July 31, 2013 but, on the instruction of Ms. Thapar, she had backdated the document to July 24, 2013. She also stated that Ms. Thapar provided the language for the agreement.

Representative A advised that she was not aware of the Seller ever having been provided with a copy of this agreement. She also confirmed that the only person who had signed the agreement was her (Representative A).

Representative A recalled having two offers for the Property in the morning or early afternoon of July 31, 2013. She also recalled taking two offers to the Seller's house for her second visit but

she was unaware of a third offer. Representative A was adamant that she was only asked to bring the offers to the Seller to get signatures. It was Ms. Thapar who instructed her to take the offers to the Seller.

Referring to Exhibit #4 Tab 6, Representative A confirmed that it was an offer between Buyer B, as buyer, and Seller A, as seller. The purchase price was \$525,000.00 with a deposit of \$25,000.00. On its face, it appeared that this offer had been signed and faxed to Brokerage B on July 29, 2013 from Brokerage C. After reviewing this offer, Representative A could not remember if it had ever been presented to the Seller.

The witness was asked to review Exhibit #4, Tab 7, which contained an offer submitted by a salesperson, Representative B, who was also employed with Brokerage B. That offer indicated it had been sent to Monica Thapar on August 1, 2013. The proposed buyer was Buyer C, the purchase price was \$520,000.00, with a deposit of \$10,000.00 being payable upon acceptance. The Irrevocable Date was 11:00 p.m., July 31, 2013. The offer indicated it had been signed on July 30, 2013. Representative A testified that she did not know if this offer had ever been presented to the Seller.

The next document reviewed by Representative A was Exhibit #4, Tab 2(B), an offer from Buyers D as buyers, and Seller A as the seller. The purchase price was \$530,000.00 with a deposit of \$10,000.00. The Irrevocable Date was 11:00 p.m. on July 31, 2013.

The offer indicated it had been signed on July 31, 2013. Representative A testified that she could not read the signatures on this offer. On page 8 of the offer, the Confirmation of Cooperation and Representation form confirmed multiple representation with respect to this offer because the buyer's agent and the Seller were represented by the same brokerage, that is, Brokerage B.

Exhibit #5, Tab 5, p. 13, was discussed, that document being record of text messages to members of the Thapar Team at Brokerage B. Representative A confirmed the 3:12 p.m. (July 31, 2013) time on the texts in question, which indicated that the Complainant (of Brokerage B) was registering an offer on the Property.

When asked whether she recalled submitting the Buyer D offer (provided by the Complainant) to the Seller, Representative A stated that she was not sure.

The Complainant was also the complainant to RECO. Concerning whether any CRA relating to the Property was disclosed to any other salespersons or agents, Representative A advised that she was not sure that had been done; she confirmed that another Thapar Team member, Representative C, usually helped with the listing side of transactions but that he was away on holidays at the end of July 2013.

Finally, Exhibit #4 Tab 9 was identified as the MLS Listing for the Property and Representative A stated that it did not make any mention of a collateral agreement or CRA in place.

Representative A also added that she did not find it “suspicious” that all of the offers for the Property were in the range of \$520,000.00 to \$530,000.00.

Cross-Examination of Representative A by Ms. Hayer

Representative A advised that no set time had been established on July 31, 2013 for the presentation of offers for the Property. According to various emails, the first presentation of offers was about 2:30 p.m. Concerning the address of 2B Street, City A, Representative A confirmed it was the residence of the Seller’s daughter, and the place where the offers were presented.

Representative A stated that during the first presentation of offers the Seller said she believed she would be losing money if she accepted one of the offers. Representative A could not recall the actual prices being discussed during the first presentation of offers.

With respect to various text messages from head office at Brokerage B notifying an agent of faxes, emails, offers, bookings, etc., Representative A indicated that an agent reading a text has no way of ascertaining from the text itself the identity of the person submitting the offer. She confirmed, however, that all offers would be received by the head office and then forwarded to Ms. Thapar. Representative A did not have any information on when communications or documents received by the head office would be made available to members of the Thapar Team at a satellite office.

Concerning the Buyer A offer, Representative A advised that the offer came from Ms. Thapar and that Buyer A and Ms. Thapar had their own communications. Representative A did not take instructions from Buyer A; she (Representative A) always looked to and received instructions from Ms. Thapar.

When asked how the Seller had been acquired as a client, Representative A could not remember, but she indicated that the normal procedure would be that Ms. Thapar would have first contact with potential clients.

Exhibit #4 Tab 5(A) was confirmed by Representative A as the accepted Offer of Purchase and Sale between Buyer A and the Seller. However, prior to acceptance, the Seller had made changes to this offer which had been accepted by the Buyer and the changes had been duly initialed.

The offer at Exhibit #4 Tab 5(D) was identified as having come from the Buyer D (who were represented by the Complainant). The purchase price therein was \$530,000.00 with a deposit of \$10,000.00, irrevocable at 11:00 p.m. on July 31, 2013. Representative A stated that the Buyer D offer was conditional on the provision by the Seller of a survey of the Property. The Panel notes that the actual provision stated that the "Seller agrees to supply the Buyer with a copy of an existing survey of the property within Five (5) days of acceptance of this offer".

Concerning the Buyer A offer, Representative A confirmed that the Seller had agreed in Schedule "A" to supply a survey, but only if one was available. Upon acceptance of that obligation by the Seller, the Buyer A offer became a firm deal.

Referring to Exhibit #4 Tab 6, p. 6, Representative A confirmed that it was Schedule "A" to an offer from Buyer B, as buyer. She noted that there were three conditions in the Schedule which included providing a survey within five (5) days after acceptance, a financing condition for ten (10) banking days, and a home inspection open for five (5) banking days after acceptance of the offer.

Representative A testified that, in her experience, a condition remaining open for ten (10) banking days was quite lengthy, but that five (5) banking days seemed more conventional.

After referring to Exhibit #4 Tab 5(A), the Buyer A offer, Representative A agreed that the wording of that offer indicated to her that it was an unconditional offer.

An offer from Buyer C to the Seller was also put before Representative A and she confirmed that it contained a number of conditions, including a financing condition for five (5) banking days, a home inspection condition for five (5) banking days, and a requirement that the Seller provide a survey within five (5) days of acceptance of the offer. The Buyer C offer was characterized as a conditional offer and it had been provided by Representative B, another salesperson at Brokerage B.

Representative A confirmed that the text messages in Exhibit #5, Tab 5, pp. 12-13, received at 3:12 p.m. on July 31, 2013 were sent from head office at Brokerage B and that they confirmed, among other things, that the Complainant was going to register an offer for the Property.

The witness stated that the first presentation of offers to the Seller took place around 2:30 p.m. but that she (Representative A) had no discussion with the Seller about transaction details without the involvement of Ms. Thapar.

With respect to the Buyer A offer at Exhibit #4, Tab 5(A), Representative A confirmed that part of that offer was from a fax marked 2:06 p.m. and another part from a fax at 2:54 p.m.

Representative A was not certain whether she presented two or three different offers during her two visits with the Seller on July 31, 2013. However, she confirmed her presentation of the offer from Buyer A twice on July 31, 2013. Representative A advised that she believes she learned that the Buyer D offer was being provided by the Complainant during a phone call with Ms. Thapar.

However, Representative A cannot actually recall presenting the Buyer D offer to the Seller. On cross-examination, Representative A confirmed the evidence she had already given. After the first presentation of offers, she left the Seller and immediately phoned Ms. Thapar, who advised that she (Thapar) would contact the Seller.

The witness, however, conceded that it was possible that she had already presented offers for review by the Seller before she learned that the Complainant was registering an offer (for Buyer D).

Representative A stated that she did not recall any comments by the Seller about conditions in the various offers that were presented to her; she only recalled the Seller objecting to the commission payable.

After the initial presentation of offers to the Seller, Representative A returned to the satellite office where she became aware from Ms. Thapar of another offer for the Property. Nevertheless, Representative A could not remember presenting any other offer to the Seller. When asked if she received instructions from Ms. Thapar *not* to present any other offers, Representative A responded that she could not recall but that she would have only acted on Ms. Thapar's instructions.

When referred to Exhibit #4 Tab 11(B), the witness stated it was an agreement to reduce the commission payable by the Seller to 6% less \$6,000.00. The reduced commission would be payable upon the sale of the Property if Brokerage B also represented the buyer in the transaction. Representative A confirmed that she did not provide a copy of this document to the Seller.

When asked to explain why there were two dates on the agreement, Representative A asserted that it was a mistake on her part that it bore two dates. She also advised that, while this agreement was drafted on July 31, 2013, Ms. Thapar had asked her to back date the document to July 24, 2013, the benefit of doing so being that it would suggest that a CRA was in place before any offer on the Property had been submitted. Representative A also stated that the Seller of the Property never indicated to her that there was a prior agreement concerning any commission reduction.

When asked whether she continued to work with Ms. Thapar, Representative A advised that, as of March 7, 2014, it was their mutual decision not to sign a new contract for her to continue to be part of the Thapar Team.

Re-Examination of Representative A by the Prosecutor

When referred to Exhibit #5 Tab 5, p. 12, Representative A explained that these were text messages from head office notifying the Thapar Team that an offer had been faxed to them at 2:20 p.m.

The witness again confirmed that she had first met the Seller the day of the offer presentation, and that she only took the offer to the Seller to get signatures; however, an issue about the commission payable was raised by the Seller and nothing was concluded at that time.

Representative A indicated that when the commission issue was subsequently resolved, the Buyer A offer was accepted. She reiterated that she did not do anything with the Seller unless and until she first checked with Ms. Thapar and she received instructions.

Concerning the issue of any benefit to Ms. Thapar by having a collateral agreement or CRA with the Seller, Representative A stated that if the commission on the transaction got reduced, it would just be more money in the Seller's pocket and less money for Ms. Thapar, with the buyer getting the Property.

Questions from the Panel for Representative A

The Panel asked Representative A if she was present when changes to the Buyer A offer were made and initialed, but she said she could not remember. She stated that changes could have been initialed in her absence. Noting from the accepted Buyer A offer that Representative A had apparently witnessed the signatures of both the Buyer and the Seller, the witness herself was not sure if she had done so. However, she stated that she met the Buyer once and the Seller once at Brokerage B.

RECO Witness- Representative E

Representative E was an agent with Brokerage C at the time he submitted an offer on the Property at 5:39 p.m. on July 29, 2013 for \$525,000.00. The offer was presented for his client. The proposed completion was September 30, 2013 with an irrevocable date of 9:00 p.m. on July 31, 2013. The witness advised that the offer had been signed and witnessed by him on July 29, 2013, and then faxed to Brokerage B as verified by the fax confirmation line on the offer.

When referred to Exhibit #4 Tab #12, an email between the witness and RECO, Representative E confirmed that the listing agent of the Property, that is, Ms. Thapar, never advised him of the existence of any collateral agreement. In fact, Representative E confirmed that he was not aware of any such agreement relating to the Property, he never received any sign-back from the

Seller, and he was never contacted to ask whether his client was willing to improve the offer he had submitted.

In fact, Representative E could not confirm whether his client's offer was ever presented to the Seller of the Property. The first time Representative E became aware of any collateral agreement (or CRA) was when he was contacted by RECO. Although Representative E initially suggested that he did not know there were multiple offers on the Property, he advised that, at some point, Ms. Thapar told him on the telephone that there were three (3) offers on the Property. Ms. Thapar, however, never advised Representative E that she had submitted an offer from her own buyer.

Cross-Examination of Representative E by Ms. Hayer

Representative E confirmed that he knew there were multiple offers on the Property but he did not have his own client revise the offer he had submitted. His client was not willing to revise the offer by increasing the purchase price or remove conditions therein. He also stated that Ms. Thapar never requested him to ascertain whether his client would improve the offer he had submitted.

Re-Examination of Buyer B by the Prosecutor

On re-examination, Representative E stated that Ms. Thapar only told him that there were a "few" offers on the Property.

Questions from the Panel to Buyer B

Representative E confirmed that his offer was faxed to Brokerage B on July 29, 2013 and that it was irrevocable until late evening on July 31, 2013.

RECO Witness – Complainant

The Complainant testified that she had been a realtor for over six years and was currently with the Team A but that she had previously been employed by Brokerage B.

When referred to Exhibit #4 Tab #2, she confirmed that it was her written complaint to RECO concerning Ms. Thapar. She advised that she called Ms. Thapar on July 31, 2013 about events arising from the sale of the Property and was told by Ms. Thapar to take her issues up with

RECO or, alternatively, call the Broker of Record for Brokerage B. The Complainant testified that she contacted the Broker of Record on August 9, 2013 as well as on August 31, 2013.

On July 31, 2013, The Complainant was showing another home to her clients, Buyer D, when they asked about the Property and whether they could see it. After making inquiries with Brokerage B, she was initially told that the Property was not being shown that day and that there was already one offer registered on it.

Buyer D decided to make an offer for the Property. However, the Complainant could not get in contact with Ms. Thapar so she called the front desk at Brokerage B at 3:15 p.m. to advise that she wanted to register an offer on the Property. She was told that Ms. Thapar was at appointments all day.

Interested in submitting an offer, Buyer D came to the Complainant's office shortly before 4:00 p.m. on July 31, 2013 and signed their offer. The offer was for \$530,000.00, with a \$10,000.00 deposit. The Complainant stated that all conditions in the offer were removed. She advised that the front desk at Brokerage B advised her that offers were being presented for the Property at around 4:00 p.m. The Complainant testified that she spoke with Ms. Thapar's assistant, around 4:15 p.m. and she was told to fax the offer (from Buyer D) to Brokerage B.

The Complainant stated that she spoke with Ms. Thapar at approximately 4:40 p.m. on July 31, 2013. During their call, the Complainant was told that there were four offers on the Property, including one from a buyer being represented by Ms. Thapar.

The Complainant was also told by Ms. Thapar that two of the offers were conditional and that one offer contained similar terms to those in the offer from the Buyer D. The Complainant testified that they discussed having the deposit cheque from Buyer D certified with the Complainant commenting that she did not believe certification was material to a transaction. Further, according to the Complainant, Ms. Thapar asked her if Buyer D was willing to increase the offer on the Property, with the Complainant responding in the negative.

The Complainant stated that, after her phone call with Ms. Thapar, she called Buyer D and asked if they would be prepared to increase their offer; they declined to do so.

The Complainant's clients indicated that they would certainly certify their deposit cheque that evening or first thing the following morning if the Seller was interested in accepting their offer. She called Ms. Thapar back around 5:00 p.m., at which time the latter advised her that the offer from Thapar's buyer (i.e. Buyer A) was slightly less than the offer from Buyer D but that the offer in question provided for a certified deposit cheque.

The Complainant's evidence, based on the timeline she had prepared at Exhibit #4, Tab 3(A) was that Buyer D could have a certified cheque available by the following morning, with Ms. Thapar responding "okay okay we'll let you know".

The Complainant called Ms. Thapar at 7:10 p.m. for a status update but was unable to reach Thapar. She testified that, according to her record, she had no missed calls from Ms. Thapar while she, by contrast, attempted to contact Thapar on several occasions.

The Complainant called Ms. Thapar again at 8:30 p.m. but was still not able to reach her. Shortly thereafter, she sent Ms. Thapar a text message requesting a status update on her clients' offer.

The Complainant received a text message from Ms. Thapar advising her that the Seller had accepted the offer from Thapar's buyer. In fact, Ms. Thapar wrote:

Hi Complainant—sorry I was having an issue with one of my closings today. Anyways the sellers [sic] went with another offer from our office. Though it was lower than yours, as you know we had a collateral with seller [sic]. I know you said your buyer did not want to go higher. Sorry..."

The Complainant testified that it was upon receiving that text message during the evening of July 31, 2013 that she first learned from Ms. Thapar that a collateral (commission) agreement was in place.

The Complainant called her clients to relay that information and they were very upset. She eventually found out the details of the successful transaction relating to the Buyer A offer when it was posted on August 6, 2013.

Cross-Examination of The Complainant by Ms. Hayer

On cross-examination, the Complainant confirmed that she had prepared her complaint letter to RECO and a timeline concerning the events relating to the Property.

The Complainant stated that when she first contacted the front desk at Brokerage B at 3:30 p.m. on July 31, 2013 she did not have a signed offer from Buyer D. However, Buyer D had met her before 4:00 p.m. and she faxed it to Brokerage B shortly thereafter. Ms. Thapar called The Complainant at approximately 4:40 p.m. to advise her of multiple offers on the Property and she asked the Complainant if her clients would improve their offer.

The Complainant confirmed, as in examination-in-chief, that her clients were not prepared to go any higher on price. The Complainant and Ms. Thapar also discussed the importance of a certified cheque.

Immediately after their phone call, the witness called Buyer D to confirm that they were not prepared to improve their offer, which information was relayed to Ms. Thapar in another call. The Complainant stated that there was no indication from Ms. Thapar that there was a collateral agreement (i.e. CRA) in place with the Seller; Thapar made no mention of any such agreement to the Complainant.

The Complainant confirmed on cross-examination that she never discussed reducing her own commission with Buyer D, but she reiterated that she was not aware of any CRA between Ms. Thapar and the Seller. She added that, had she known about such an agreement, she might have offered to cut her own commission in the circumstances, thus producing a better offer from the Buyer D.

According to the Complainant, during their first call at 4:40 p.m., Ms. Thapar told her that *she* was in the midst of presenting all four offers to the Seller. The witness confirmed that she was not aware that Ms. Thapar was not even in town that afternoon.

The Complainant stated that she subsequently spoke with the Broker of Record for Brokerage B, about the conduct of Ms. Thapar after she learned the details of the transaction involving Buyer A's offer. He asked the Complainant not to file a complaint with RECO because it would make the brokerage look bad; according to the witness, the Broker of Record invited her to visit

Brokerage B to discuss the matter. She subsequently met Ms. Thapar at Brokerage B in October 2013 but nothing was resolved.

No questions were posed by way of re-examination of the Complainant.

Panel Questions to The Complainant

In response to questions from the Panel, The Complainant stated that she understood that offers on the Property were being presented shortly after 4:00 p.m. on July 31, 2013. In response to a question about the Confirmation of Acceptance time of 7:59 p.m. on a particular document, which did not match other times listed on an offer for the Property, or faxes that had been sent and received, the Complainant was unable to provide a clear or complete answer.

RECO Witness – Representative B

Representative B advised that he was a real estate agent with Brokerage D. but at the time of his client's offer to purchase the Property he was an agent at Brokerage B.

He confirmed that Exhibit #4, Tab 7, p. 2 was an offer he had submitted on the Property for his client, Buyer C, for \$520,000.00 with a \$10,000.00 deposit. The irrevocable date was 11:00 p.m. on July 31, 2013 with a completion date of September 27, 2013. Representative B stated that his client had signed the offer on July 30, 2013, and he faxed the offer to Ms. Thapar that same day.

When he did hear from Ms. Thapar, the witness faxed the offer a second time on August 1, 2013 because he did not know whether his offer had been presented to the Seller and because he assumed that the Property was still available.

The witness identified Exhibit #4 Tab 13 as a letter from Compliance Officer A to him as well as his response to RECO confirming that he had not been informed about any collateral agreement (or CRA) for the Property. Representative B added that the first time that he became aware of any collateral agreement between Brokerage B and the Seller was when he received that information from RECO.

Cross-Examination of Representative B by Ms. Hayer

Representative B testified that he had notified Ms. Thapar of his client's offer on the Property but that he never heard from Ms. Thapar. He stated that he was not aware of any other offers on the Property nor was he aware of any collateral agreement with the Seller.

Upon being referred to Exhibit #4 Tab 7, the offer which he had prepared for Buyer C and the Seller, he confirmed the proposed purchase price was \$520,000.00 with a deposit of \$10,000.00, and other details. With respect to Schedule A in the offer, Representative B confirmed his client's offer contained certain conditions relating financing, the condition of the Property, and provision of a survey.

No questions on re-examination were posed.

Panel questions posed to Representative B

When asked to explain certain dates on the available offer in the record from his client, Representative B reiterated that he faxed the first copy of the offer to Brokerage B on July 30, 2013 and when he did not hear anything further, he refaxed the offer on August 1, 2013, believing that the Property still remained unsold.

The hearing was thereafter adjourned until March 21, 2017. The hearing resumed on that date.

WITNESS FOR THE REGISTRANT

Representative D

Representative D stated that, since June 2013, she had been employed with Brokerage B as Ms. Thapar's assistant. In doing so, she serviced listings and performed some administrative work. She stated that she met Representative A when they were both members of the Thapar team and that she had taken over Representative A's position when the latter became a licensed salesperson at the brokerage.

Referring to Exhibit #4 Tab 5(D), Representative D confirmed that it was an offer between Buyer D as Buyers and the Seller of the Property. The offer provided for a purchase price of \$530,000.00 and a \$10,000.00 deposit, and was irrevocable to 11:00 p.m. on July 31, 2013, with a completion date of August 30, 2013.

Representative D explained that this offer was faxed to Brokerage B on July 31, 2013 at approximately 4:10 p.m. She had talked to the Complainant about this offer and had advised her to fax it to the brokerage.

Representative D called Ms. Thapar, who was out of the office dealing with appointments when the offer arrived, and was instructed to give the offer to Representative A. Representative A received a copy of the Buyer D offer from Representative D when she returned to Brokerage B after the initial presentation of offers.

She also stated that, in transactions, Ms. Thapar does not deal with any of the paperwork. In this case, however, Representative D was not knowledgeable about Representative A's schedule. Further, on July 31, 2013, Ms. Thapar had not been in the office the entire day.

With respect to Exhibit #4 Tab 5(A), the witness explained it was an offer for the Property from Buyer A and the Seller. Referring to p. 5 in the offer, Representative D identified the Buyer's signature as well as the Seller's signature and stated that Representative A was listed as the witness to those signatures.

She also stated that Representative A had typed the offer because Representative A was the realtor acting for Ms. Buyer A. Nevertheless, the witness was not sure who at Brokerage B had initial contact with Ms. Buyer A, while advising that Ms. Thapar does not usually deal directly with buyers, only sellers.

Finally, Representative D stated that realtors at Brokerage B were ordinarily paid according to the Trade Record for any particular transaction. She advised that Representative A ordinarily had a buyer's agency agreement with her buyer-clients. She also believes that Representative A got some of the commission on the transaction for the Property as the buyer's agent.

Cross-Examination of Representative D by the Prosecutor

Exhibit #4 Tab 5(D) on its face indicated that the Buyer D offer had been faxed to the Thapar Team at approximately 3:20 p.m. [The Panel, however, notes that the Complainant herself indicated that the signed offer from the Buyer D had not been sent to Brokerage B until shortly after 4:00 p.m. on July 31, 2013].

When she was referred to Exhibit #5, Tab 5, p. 13, Representative D stated that the record of a text message at 3:12 p.m., which indicated that the Complainant was registering an offer, may have simply referred to the Complainant's intention to do so rather than any offer that had actually been received by Brokerage B.

Representative D disagreed that the 3:12 p.m. text entry concerning an offer coincided with the actual receipt of a signed offer from the Complainant at 3:20 p.m.

The witness confirmed that she had received a phone call from the Complainant during the afternoon of July 31, 2013 indicating that she was going to send an offer to Brokerage B.

Exhibit #4 Tab 5(A) was produced by the prosecutor, that document being a copy of the Buyer A offer. The fax line at the top of the document indicated that it had been faxed from Pharmacy A to Brokerage B; however, there were two different fax times, depending on the pages being reviewed in the offer. Representative D testified that she did not know anything about the Pharmacy A.

When asked if she was aware of any collateral agreement (or CRA) for the Property, Representative D replied in the negative.

After being referred to Exhibit #4 Tab 11, that document was described as a letter from Brokerage B to Compliance Supervisor A at RECO supplying additional information that had been requested.

Exhibit #5 Tab 7 was confirmed by Representative D as the paperwork associated with the sale of the Property, including the Deal Sheet and other record. After confirming that these documents were the complete record for the transaction, Representative D agreed that they did not include any collateral agreement.

Concerning Exhibit #4 Tab 5(A), which Representative D confirmed was the Buyer A offer for the Property. It was observed that the offer was dated July 30, 2013 but that all signatures as well as the fax confirmation date were July 31, 2013. Representative D stated that she did not know who had faxed the Buyer A offer to Brokerage B on July 31, 2013.

With respect to Representative A's presentation of offers and attendance at Brokerage B's office on July 31, 2013, Representative D understood that Representative A presented offers to the Seller around 2:30 p.m., then returned to the office about 3:00 p.m. to 3:30 p.m. after which Representative A was advised that there was a "third offer" to present to the Sellers. The "third offer" was that was being provided by the Complainant. Representative D did not know how many offers were ultimately presented to the Seller for the Property.

Concerning Exhibit #5, Tab 7, p. 24, it was an email dated August 6, 2013 from Individual A (Team Administrator) to Individual B at head office for Brokerage B. The email advised that Representative A was to receive her full 10% of the 2.5% commission on the buyer's side and that \$6,000.00 was to be deducted from Ms. Thapar's 90% share of the commission on the buyer's side.

Once again, Representative D advised that she was not aware of any collateral agreement relating to the purchase and sale of the Property.

Re-Examination of Representative D by Ms. Hayer

Representative D stated that she did not know whether Representative C, a salesperson with the Thapar Team, met with the Seller of the Property. Concerning Exhibit #5, Tab 5, p. 13, which were three text messages to Ms. Thapar, Representative C and Representative A advising that the Complainant would be registering an offer for the Property, Representative D confirmed that the timing of those texts was 3:12 p.m. on July 31, 2013.

It was the witness' understanding that the texts were an indication that an offer was going to be submitted rather than confirmation of the actual receipt of an offer from the Complainant.

With respect to Exhibit #4 Tab 5(D), which was a copy of the Buyer D offer, Representative D confirmed that the fax line on the document indicated a delivery time of 3:20 p.m. on July 31, 2013. However, when she was asked whether daylight savings time could have come into play, whether she had ever adjusted the time on the fax machine, and whether the actual time of the receipt of the offer could have been 4:20 p.m., Representative D simply advised that it was possible that the faxed offer was received at 4:20 p.m.

Concerning Exhibit #4 Tab 5(A), the Buyer A Offer, and the fax confirmation at the top of the page, the witness was asked again if she was familiar with Pharmacy A. She replied no and stated that she had never been there either.

Witness called by the Registrant – Representative C

Representative C identified himself as a real estate agent working for Brokerage B as a member of the Thapar Team from in or about 2008. He ordinarily spent about 75% of his time dealing with listings, mostly for seniors, although Ms. Thapar handled all listing inquiries.

The witness testified that both he and Ms. Thapar usually spoke with potential sellers but that he did all the paperwork and he handled any offers.

Representative C reiterated that Ms. Thapar did not complete any paperwork in transactions and that he was entirely responsible for “papering” the deals.

Once he had finished dealing with any paperwork, Representative C would ordinarily forward copies of same to Representative D, who would review her check list to make sure that everything had been obtained for Brokerage B’s record. If anything was missing, head office would usually catch it.

When referred to Exhibit #4 Tab 5(A), the Buyer A Offer, the witness advised that he was not familiar with Pharmacy A.

Representative C advised that he was familiar with the Complainant through a previous working relationship and that had no hard feelings against her as a result of her complaint to RECO.

Representative C testified that he has not been involved in many real estate transactions where the Thapar Team had represented both the buyer and seller in a transaction. He stated that he did not have a great deal of experience dealing with collateral agreements as a member of the Thapar Team.

Cross-Examination of Representative C by the Prosecutor

On cross-examination, Representative C was simply asked where he was during the events underlying the purchase and sale of the Property in late July 2013. After he indicated that he was “out of the country” during that period, no further questions were asked.

Witness called by the Registrant– Individual C

Individual C identified herself as the daughter of the Seller. She indicated that her mother was currently suffering from dementia, but that she (Individual C) had been very involved in the sale of her mother’s home. In fact, she had first made contact on behalf of her mother with Ms. Thapar and, thereafter, she had been present at every meeting relating to the sale of the Property.

Individual C confirmed her mother’s signature on the Buyer A offer.

She advised that she recalled the first meeting with Ms. Thapar, at which time the Seller signed a listing agreement with Ms. Thapar. When asked about the commission payable, the witness said that Ms. Thapar had told them that she rarely reduced the commission below 6% but that the rate was nevertheless negotiable.

She recalled the presentation of offers on July 31, 2013, which took place at her house rather than the Property. However, Individual C testified that she believed “Representative D” from Brokerage B (rather than Representative A) presented various offers to the Seller. The witness also stated that she believed the presentation took place at 3:30 p.m. on July 31, 2013, but she conceded that she was not sure about the time, and she was not clear how many offers were presented.

When asked about the presentation of offers, Individual C said that she believed and she and her mother discarded any offers that contained conditions. When she was asked why the Buyer A offer was not accepted during the initial offer presentation, no answer was provided.

After the offer presentation, Individual C received a call from Ms. Thapar to discuss concerns regarding the commission that would be payable in any transaction. The witness testified that, during that telephone conversation, Ms. Thapar agreed to reduce the commission on the sale of the Property.

Individual C conceded that her recollection and the sequence of events concerning the sale of the Property, including the offers that were received and reviewed, were spotty. However, Individual C testified that she did not recall any conversation about commission issues when offers were initially presented to her and her mother.

Individual C also stated that she initially believed that her mother was going to have to pay a 12% commission on the sale of the Property and that she subsequently requested a reduction in commission because of an informal offer for the Property had been received from a neighbour. She confirmed that when Representative A came to her house to deal with offers a second time, the Buyer A offer was accepted by her mother. By that time, Ms. Thapar had agreed to reduce the commission payable on a successful transaction.

Cross-Examination of Individual C by the Prosecutor

When presented with the Buyer A offer, Individual C advised that it was the offer that her mother had accepted, based on *her* advice.

She stated that she believed that five offers had been presented to her and her mother but that they had discarded all offers containing conditions. She stated that the time of 7:59 p.m. on July 31, 2013 in the Confirmation of Acceptance for the Buyer A Offer was correct.

Further, Individual C stated that the realtor initially came to her home at approximately 3:30 p.m. but the copy of the Buyer A offer that was signed by her mother around 7:30 p.m. was signed at the real estate office of Ms. Thapar.

Individual C says that commission issues were eventually raised by her and the Seller before the Buyer A offer was signed. After the initial presentation of offers, the realtor from Brokerage B who was at her house telephoned Ms. Thapar but Individual C stated that she did not know what they discussed during that call. After dinner, when the realtor returned to her house, a deal was concluded and subsequently signed by her mother.

When she was referred to Exhibit #4 Tab 11(B) (i.e. the CRA that Representative A testified she had drafted and allegedly backdated on instructions from Ms. Thapar), Individual C said that she had not seen that agreement. However, she advised the Panel that, at some point, she had

been given a note that was similar in terms of the commission reduction. [The Panel notes that no such note was produced by anyone at the hearing.]

When referred to the offer from Buyer B's client, as well as that from Representative B's client, the witness did not recognize either offer or the names on the offers. She advised that the names of potential buyers were never read to her by the realtor from Brokerage B; instead, only the proposed purchase prices were mentioned.

When Individual C was referred to Exhibit #4 Tab 2(B), the Buyer D offer, she said she could not remember that offer, nor did she recall that the offer was for \$5,000.00 more than the Buyer A offer subsequently accepted by her mother.

With respect to the phone call between Representative A and Ms. Thapar after the initial presentation of offers, Individual C stated that she *assumed* that the two were talking about reducing the commission, but Individual C claimed that she never spoke with Ms. Thapar directly.

Re-Examination of Individual C by Ms. Hayer

Concerning offers for the Property, Individual C asserted that, in late July 2013, she was focusing on the amounts in the offers. Both she and her mother did not want many conditions in an offer because the Property was a 60-year old home.

When referred to the Buyer D offer and the offers from Representative E and Representative B for their respective clients, Individual C could not identify or recall any of these offers.

Upon reviewing the listing agreement, Individual C confirmed the stated commission rate of 6% in that document. Individual C also stated that, when she and her mother attended at the offices of Brokerage B at 8:00 p.m. during the evening on July 31, 2013, they had already accepted the Buyer A offer "over the phone" and that the office visit was simply to sign the paperwork.

While acknowledging that the Buyer D offer was for \$530,000.00, Individual C said that she could only recall that, after the commission reduction being provided by Ms. Thapar was taken into account, the Buyer A offer was more beneficial to them by \$1,000.00.

When asked again whether she ever spoken on the telephone with Ms. Thapar, Individual C advised that she *must have* spoken with Thapar about the “12% commission issue”.

Panel questions posed to Individual C

Individual C told the Panel that the details in offers for the Property were relayed to her and the Seller verbally. When asked to explain when the Buyer A offer was increased to \$525,000.00 from \$520,000.00, as indicated by copies in the record, Individual C stated that no change occurred during discussions about the Property on July 31, 2013 because, based on her recollection, the Buyer A offer was always for the stated price of \$525,000.00.

Testimony of Ms. Thapar

Ms. Thapar advised that she was head of the Thapar Team at Brokerage B. She testified that she does not remember meeting the Seller of the Property and that no request was ever made before July 31, 2013 to reduce the commission under the listing agreement. The registrant stated that she was with her daughter on July 31, 2013 and that she had sent Representative A to present offers to the Seller.

Ms. Thapar maintained that the nature of her practice is such that she *only* works with sellers and that she does not do any paperwork. In this case, it was Representative A who contacted the clients and she did all necessary paperwork for the transaction.

However, Ms. Thapar acknowledged that the trade documents showed that Representative A was to receive 10% of the commission owing on the buyer side of the transaction if she successfully completed a transaction, with Ms. Thapar receiving the remaining 90% of the commission on the buyer’s side.

According to Ms. Thapar, after the initial presentation of offers for the Property, which involved the Buyer A offer, and offers from the clients of Representative E and Representative B, Representative A called her and raised the issue of a reduction in commission for the Seller.

The registrant claimed that she spoke directly with the Seller (as well as her daughter, Individual C) and the Seller advised that she had decided to work with the Buyer A offer. Ms. Thapar

testified that she told the Seller that it was not her practice to reduce commissions on transactions, but that she ultimately agreed to reduce the commission in the listing agreement. The registrant also stated that, after the initial offer presentation, the offers provided by Representative E and Representative B were “dead” because they had been rejected by the Seller because they contained conditions.

Subsequently, Ms. Thapar was told by Individual A at Brokerage B that another offer, the Buyer D offer, had been received by Brokerage B.

Ms. Thapar testified that, by this time, there was already a CRA in place with the Seller. She asserted that she told Representative A that she had an obligation to present the Buyer D offer received by Brokerage B and that she should present that offer to the Seller, along with the Buyer A offer (for the second time).

Ms. Thapar claimed that she spoke with the Complainant on the telephone and that the Complainant went through the details in the Buyer D offer.

The registrant stated that she told the Complainant that she had negotiated a CRA with the Seller and that, given that fact, she wanted to know if the Buyer D would be prepared to increase the purchase price in their offer.

The Complainant answered in the negative. Concerning a certified deposit cheque from the Buyer D, Ms. Thapar stated that she simply had a general discussion with the Complainant on that issue. She added that, in her experience, a seller can never be assured of obtaining a certified deposit cheque from a would-be buyer.

Ms. Thapar advised that she first became registered as a salesperson in October 2002 and that the transaction involving the Property was the *first* time she had negotiated a CRA with a client. She told the Panel that, on average, she does 130 closings per year in her real estate practice. Concerning Exhibit #4, Tab 11(B), which was the written CRA that Representative A testified Ms. Thapar had asked her to draft and to backdate, Ms. Thapar, contradicting the evidence given by Representative A, asserted that she never instructed Representative A to prepare that document but, rather, it was the Seller who had asked Representative A for it.

After providing such testimony, Ms. Thapar advised the Panel that she (Thapar) had told Representative A that the commission reduction in the transaction should be 1%.

Ms. Thapar denied ever asking Representative A to prepare and backdate any CRA and, further, she did not understand where the \$6,000.00 figure came from. The registrant stated that there would have been no purpose in backdating the written CRA (prepared by Representative A) to July 24, 2013.

Ms. Thapar stated that there was no discussion with the Seller relating to commission reduction prior to July 31, 2013.

She also claimed that Representative A was the person to whom the listing was *assigned* after the listing agreement had been executed by the Seller. The registrant also said that it was Representative A who was handling matters relating to the Buyer A offer and that Representative A had overseen the acceptance of that offer. In that role, Representative A would have likely met Buyer A, possibly shown her the Property, and prepared any offer to be presented to the Seller.

When presented with the suggestion that the commission payable by the Seller was reduced simply to make the Buyer A Offer appear more attractive, Ms. Thapar rejected that suggestion and advised that the sequence of events was quite different.

Upon being referred to Exhibit #5 Tab 7 (the Deal Sheet), the registrant confirmed that Representative A was getting paid 10% of the commission on the buyer's side while she (Thapar) was getting 90% of that commission (less the \$6,000.00 reduction granted to the Seller).

Ms. Thapar could not remember when Representative A had joined the Thapar Team. She explained that her Team was a "very open concept" with everyone knowing what is going on within the Team.

Ms. Thapar advised that the initial offer presentation to the Seller took place before 4:00 p.m. on July 31, 2013. When asked about the sequence of events, she stated that there had been three offers for the Property, that Representative A left her a voice message stating that the Seller

had requested a commission reduction, and that she (Thapar) had called the Seller to discuss that issue.

Ms. Thapar testified that she then called the office and told Representative A that she and the Seller had agreed to a commission reduction. Ms. Thapar then learned that another offer had come into Brokerage B.

When referred to Exhibit #4 Tab 5(A) (the Buyer A offer), Ms. Thapar confirmed that it was eventually accepted by the Seller and that the offer had no conditions. After identifying Exhibit #4 Tab 6 (the Xu offer), the registrant advised that it contained several conditions, as did the Buyer C offer at Exhibit #4, Tab 7, which had been provided by Representative B.

Ms. Thapar asserted that when she spoke on the phone with Representative A following the initial offer presentation, it was clear that the Seller did not want any conditional offers and that the Seller wanted to discuss commission-related issues before proceeding.

Ms. Thapar testified that she would have given the Seller a reduction in commission even if another realtor had provided an offer from a buyer-client and it had been accepted by the Seller. The registrant said that she would have been willing to do this because she had committed herself to providing a commission reduction to the Seller.

Ms. Thapar stated that after she spoke to the Seller, she called Representative A to advise her of the commission reduction she had negotiated as well as the Seller's "verbal acceptance" of the Buyer A offer. Subsequent to that happening, the Thapar Team was advised by Representative D that another offer had come in, the Buyer D offer from the Complainant.

Ms. Thapar instructed Representative A to present both offers, the Buyer A offer and the Buyer D offer, to the Seller.

Ms. Thapar maintained that any offers containing conditions were effectively "dead" offers by late in the afternoon on July 31, 2013 because the Seller had such offers. When asked to advise when an offer could ordinarily be considered to be "dead", Ms. Thapar replied that an offer is "dead" when the irrevocable date has passed or the offer has been rejected by a seller.

When asked to describe her phone conversation with the Complainant late in the afternoon on July 31, 2013, Ms. Thapar stated that she told the Complainant that the Seller had already

verbally accepted an offer. Ms. Thapar testified that she and the Complainant discussed the commission reduction being given to the Seller.

However, when Ms. Thapar asked the Complainant whether her clients were willing to improve their offer, the Complainant advised that the Buyer D would not do so. The Complainant indicated to Thapar that her clients were willing to certify funds if the Buyer D offer was accepted during normal banking hours, failing which a certified deposit cheque could be provided the following morning (August 1, 2013).

When asked whether Representative A dealt with offers at the Seller's home or at the Brokerage B office, Ms. Thapar stated that she did not know, nor was she aware of any further conversations between the Seller and Representative A.

Ms. Thapar was unable to provide an explanation for the time lag between the alleged verbal acceptance of the Buyer A offer in mid-afternoon on July 31, 2013 and its actual written acceptance in the early evening.

Concerning the level of experience of Representative A in late July 2013, Ms. Thapar said that Representative A would have been properly trained by that point and that she would have been expected to know everything she had to do in a transaction.

Cross-Examination of Ms. Thapar by the Prosecutor

Upon being referred to Exhibit #5 Tab 7 (Deal Sheet) and asked how information about the transaction was collected by Representative D, Ms. Thapar advised that each agent would provide a package of documents to Representative D and she would put the Deal Sheet together. In this case, Ms. Thapar confirmed that she and Representative C received payment on the listing side of the transaction. The Deal Sheet indicated that 90% of the commission payable on the listing side went to Ms. Thapar, with the remaining 10% going to Representative C.

The Deal Sheet also indicated that 90% of the commission attributed to the buyer, minus a \$6,000.00 commission reduction, was allocated to Ms. Thapar, with the remaining 10% being

paid to Representative A. The registrant stated that the modest commission payable to Representative A was typical within the Thapar Team at Brokerage B.

The registrant stated that three offers were presented by Representative A during the first round of offers given to the Seller, at which time the Seller *verbally* agreed to accept the Buyer A offer because it was a firm offer. According to Ms. Thapar, after that *verbal* acceptance was obtained, the commission reduction issue was discussed and negotiated between Thapar and the Seller.

With respect to the MLS Listing for the Property, Ms. Thapar agreed that there was no reference therein to the existence of any collateral agreement or to a presentation date for offers.

When asked whether there was an opportunity for other would-be buyers to improve their offers after the initial presentation of offers (which presentation did not include the offer from Buyer D), Ms. Thapar stated that she did not know.

Nevertheless, the registrant testified that the Seller had verbally accepted the Buyer A offer and that, after doing so, she had a discussion with the Seller about a reduction in commission on the transaction.

When asked how an offer could be accepted *verbally*, Ms. Thaper replied such an acceptance was a normal procedure in real estate transactions. She stated that one could indeed have a *verbally* accepted offer but that it need to be signed to “make it legal”.

Concerning Exhibit #4 Tab 6 (the Representative E offer), and the Buyer C offer (from Representative B), which had irrevocable times respectively of 9:00 p.m. and 11:00 p.m., the registrant asserted that it was Representative A’s responsibility to contact other agents about the re-presentation of offers in a second round with the Seller.

But Ms. Thapar also emphasized that the Buyer A offer was the only offer that the Seller wanted to work with after the initial presentation of offers and that the Seller had, in fact, accepted the Buyer A offer verbally.

However, after the Buyer D offer was sent to Brokerage B by the Complainant, Ms. Thapar told Representative A that she had an obligation to present it to the Seller *because* the Buyer A offer had not been accepted in writing by the Seller.

Ms. Thapar reiterated that she did not present any offers to the Seller and therefore she did not speak with any other agents to advise them that the Seller had accepted the Buyer A offer or that the Seller considered their offers to be “dead” even though on their own written terms they were still open for acceptance by the Seller.

Ms. Thapar maintained that Representative A knew the details of the other offers for the Property and that she (Representative A) knew that the other offers had been rejected by the Seller.

When asked about an emailed copy of Buyer A offer sent at 7:34 p.m. that still bore the price of \$520,000.00 (instead of the \$525,000.00 price that the Seller subsequently accepted), Ms. Thapar claimed that she was not involved in the transaction or the process of presenting any offers.

However, the registrant maintained that, despite her non-involvement, she knew that when the Buyer A offer was accepted in writing by the Seller at 7:59 p.m. (for the price of \$525,000.00) that a CRA was already in place because she had negotiated it with the Seller directly.

Once again, Ms. Thapar asserted that she told the Complainant about the CRA when she spoke to her on the phone late in the afternoon on July 31, 2013. The registrant also stated that Buyer B and Representative B were not told about the existence of a CRA because the offers they had submitted for their respective clients were “dead” given that the Seller had rejected them.

Ms. Thapar confirmed that she knew how a CRA worked. Consistent with her evidence in chief, the registrant advised that since she had given her word to the Seller to reduce the commission in a transaction, she would have likely given the same reduction to the Seller *regardless* of whether another agent was bringing a buyer to the transaction.

But when it was pointed out by the Prosecutor that the Buyer D offer would have been the *best offer* if the CRA applied to all agents bringing offers to the Seller, Ms. Thapar became agitated at the question and then she changed her testimony.

Ms. Thapar stated that, given the Buyer D offer (which was for \$530,000.00), she probably would *not* have given the Seller a commission reduction on the transaction if the Seller had been interested in accepting the Buyer D offer.

Re-Examination of Ms. Thapar by Ms. Hayer

Upon being referred to Exhibit #4 Tab 5(D) (the Buyer D offer), and asked whether Buyer A would have been interested in increasing the purchase price in her offer if the Seller had been interested in the Buyer D offer, there was no clear response from Ms. Thapar. She stated that it was the Seller's choice as to which offer or offers she wanted to consider.

Despite her previous testimony that she was not involved in the presentation of any offers, or the signing and witnessing of documents for the transaction, Ms. Thapar testified that the Seller would have been contacted by Brokerage B (e.g. Representative A or Representative D) in order to coordinate a time that was convenient for all parties.

Ms. Thapar also stated that the Seller was never obligated to re-consider or deal with an offer that she had previously rejected and that would have included the Buyer B offer and the Buyer C offers. She reiterated that, in her view, it was Representative A's responsibility to deal with all of the offers presented to the Seller, including advise any other agents that their offers had not been accepted.

When referred to Exhibit #6, pp. 9-10, which was an email sent at 6:16 p.m. on July 31, 2013 stating that the purchase price in the Buyer A offer was still \$520,000.00, Ms. Thapar claimed that, as a matter of practice, she did not always review emails sent to her, including those she forwarded to other persons.

She also advised that, with respect to the Buyer A offer at \$520,000.00, it was possible that the head office at Brokerage B simply sent an earlier copy of the offer by mistake.

Panel questions to Ms. Thapar

When asked how the Buyer A offer got changed from \$520,000.00 to \$525,000.00, with additional changes in the deposit to be paid, Ms. Thapar stated that she did not know.

She emphasized that, in her view, Representative A was representing the Buyer (Buyer A).

The registrant also stated that there was no request by the Seller prior to July 31, 2013 for any reduction in the commission payable and that her phone conversation and agreement with the Seller to reduce the commission occurred at or about 4:00 p.m. on July 31, 2013.

Ms. Thapar also testified that she had discussions with the Complainant about the reduction of commission granted to the Seller.

In fact, the registrant asserted that it was an “odd situation” in that the Seller wanted to accept the Buyer A offer and there was a 1% reduction in commission. Ms. Thapar maintained that, during her phone call with the Complainant, she told her about the CRA in place and that she (the Complainant) had the option of getting the Buyer D to increase their offer if they wanted to do so but the Complainant the Complainant advised that the Buyer D would not be willing to do so.

Reiterating to the Panel that the Seller had already *verbally* accepted the Buyer A offer after the initial presentation of offers, Ms. Thapar conceded that the details relating to any CRA were not established until close to 4:00 p.m.

Ms. Thapar confirmed that she was the “team leader” at Brokerage B and that members of her team held regular meetings, they attended course, and they were given educational updates about the legal requirements to be met in real estate transactions.

When the Panel asked the registrant why, if the Seller had already *verbally* accepted the Buyer A offer upon the initial presentation of offers, she (Thapar) agreed to a reduction in commission on the transaction, the registrant stated that the Seller made it clear that she wanted to discuss the issue of commission before she was willing to accept the Buyer A offer in writing.

Prosecutor's questions to Ms. Thapar arising from the Panel's questions

In referring to Exhibit #6, it was noted that the Buyer A offer that was emailed at 7:34 p.m. on July 31, 2013 was for the purchase price of \$520,000.00. When asked to comment on why that was the case, Ms. Thapar advised that she was not dealing with the buyer of the Property. She also emphasized that her intentions during the entire transaction involving the Seller were good and not fraudulent.

Questions by Ms. Hayer to Ms. Thapar arising from the Panel's questions

When asked whether it may have been a "mistake" by the head office at Brokerage B in emailing an *earlier* version of the Buyer A offer (for the price of \$520,000.00 instead of the accepted price of \$525,000.00) after 6:00 p.m. on July 31, 2013, Ms. Thapar responded in the affirmative.

Once again, the registrant emphasized that she had no involvement in getting Buyer A to increase the price in her offer from \$520,000.00 to \$525,000.00.

Whereupon the hearing was adjourned until March 22, 2013. On that date, the hearing resumed with the parties providing their respective submissions on findings.

Submissions on Findings made by the Prosecutor

The prosecutor submitted that the evidence had established on a balance of probabilities that a CRA was in place before the Buyer A offer on the Property was actually accepted by the Seller. Also, it was clear that Representative A, who had been sent to the Property on July 31, 2013 to present offers to the Seller, contacted and sought instructions from Ms. Thapar after the commission issue had been raised by the Seller but before a second presentation of offers took place with the Seller.

At the second presentation, the offer from the Complainant and a revised offer from Buyer A were presented to the Seller.

The prosecutor emphasized that the Complainant's testimony was clear: she had *not* been told of any CRA before the offer from the Buyer D was presented to the Seller or before the Seller accepted the revised Buyer A offer shortly before 8:00 p.m. on July 31, 2013.

As for other agents who had submitted offers for the Property, the Panel was reminded that Buyer B did not know of the existence of any CRA until RECO contacted him long after the Complainant had lodged a complaint against Ms. Thapar.

Further, no request was ever made to Buyer B during the afternoon and early evening on July 31, 2013 to see whether, in the face of any CRA, his client wanted to submit an improved offer for the Property before the Seller made any decision on the offers presented to her.

The evidence of the Complainant was that when she spoke with Ms. Thapar on her cell phone a considerable time before Seller accepted the Buyer A offer in writing, the registrant actually told her that she was in the “middle of presenting offers” to the Seller.

Nothing was said about any CRA to the Complainant. The Complainant also learned from Ms. Thapar that four (4) offers for the Property had been received and presented to the Seller.

Concerning the offer submitted by Representative B, who also worked at the same brokerage as Ms. Thapar, he had confirmed that he was never told by the registrant or anyone else that a CRA was in place before the Seller accepted the Buyer A offer.

Representative B, like Buyer B, first learned of the CRA when he was contacted by RECO long after the Property had been sold.

Other witnesses, such as Representative D, had been instructed by Ms. Thapar to ensure that the offer from the Complainant’s clients was presented to the Seller.

According to the prosecutor, after the first presentation to the Seller of available offers, which was made by Representative A, the Seller (and her daughter) questioned the commission payable on a successful transaction and asked for a reduction.

The Seller was ultimately given a commitment by Ms. Thapar directly that the commission would be reduced if the successful buyer was also represented by the listing brokerage, that is, Brokerage B.

It was also submitted by the prosecutor that Ms. Thapar had effectively admitted at the hearing that she did not understand how a CRA worked.

The prosecutor emphasized that Ms. Thapar was the head of the team at Brokerage B that not only had the listing for the Property but to which it had brought the successful buyer.

As such, Ms. Thapar should have ensured that the CRA was reduced to writing and that a copy of it was filed with the brokerage; that was necessary because the CRA is an agreement that is binding on the brokerage.

Equally important, Brokerage B, through Ms. Thapar, had an obligation to disclose the existence and details of a CRA to all other registrants providing offers for the Property, with such disclosure being made before any offer was accepted by the Seller.

In this case, the evidence established that there was no written CRA in the trade record of the brokerage. Likewise, no amendments had been made to the representation (i.e. listing) agreement between Brokerage B and the Seller to reflect the change in commission arrangements.

The prosecutor finished submissions by asserting that Ms. Thapar had failed to disclose the CRA to other salespersons and by citing the sections in the Code of Ethics that RECO claimed the registrant had breached in the circumstances of this case.

Submissions on Findings by the Registrant, Monica Thapar

Counsel for Ms. Thapar asserted that the prosecution had failed to prove its case. She stated that Representative A at Brokerage B was the salesperson working with offers for the Property and presenting them to the Seller on July 31, 2013.

Further, Representative A had received compensation from the transaction, as confirmed by the trade sheet. Although Representative A had testified that she did not know how the Buyer A offer came about (and that she had simply been asked by Ms. Thapar to present it to the Seller), counsel emphasized that Representative A was responsible for the transaction and how it unfolded on July 31, 2013.

In short, it was submitted that Ms. Thapar had relied on Representative A, a member of the Thapar Team at Brokerage B, to carry out the transaction resulting in the Buyer A offer being accepted by the Seller.

It was noted that when Representative A testified she could not recall how many offers were presented to the Seller. Even the Seller's daughter, Individual C, thought (incorrectly) that five offers had been presented to her mother.

Counsel stated that the prosecution had spent too much time at the hearing on when the first offer presentation took place on July 31, 2013. According to Representative A, the first presentation occurred close to 2:30 p.m. that day. Further, the offer from the Buyer D was received after the first presentation had been completed.

It was argued that the prosecution had not proven that the CRA had been entered into after the offer from the Complainant's buyers had been received. It was emphasized that Ms. Thapar called the Seller directly and they reached an agreement that there would be a reduction in commission. Representative A subsequently had a phone call with Ms. Thapar who confirmed to her that a CRA had been negotiated with the Seller.

It was also submitted that the CRA issue had been decided close to the time of the first presentation of offers and that, as a result, it was incumbent upon *Representative A* to disclose to any other salesperson submitting an offer to the Seller the existence of the CRA.

Once again, counsel for Ms. Thapar emphasized that it was Representative A (and not the registrant) who was handling the transaction.

With respect to the conditional offers submitted by Buyer B and Representative B, Ms. Hayer submitted that they could be considered to be "dead offers" after the initial offer presentation because of their summary rejection by the Seller. As such, there was no need on Ms. Thapar's part to make any disclosure about any CRA to those salespersons.

Counsel for Ms. Thapar stated that the registrant's evidence at the hearing had been clear: Ms. Thapar returned the Complainant's phone call and told her that a CRA was already in place.

Ms. Thapar also recommended that the Complainant get her clients (the Buyer D) to improve their offer but that the Complainant told Ms. Thapar they were not willing to do so.

It was also emphasized that since Representative A was in charge of the transaction, she was the person responsible for making any disclosure to the Complainant about the CRA and for following up with the Complainant, something which Representative A had failed to do.

So far as the various offers were concerned, counsel for Ms. Thapar asserted that there was “verbal acceptance” of the Buyer A at the second presentation of offers to the Seller, at which time the Buyer D offer was also shown to the Seller. The paperwork to confirm the transaction was executed by the Seller shortly thereafter (close to 8:00 p.m.) at the satellite office of Brokerage B.

As to why no copy of any CRA was in the trade file of Brokerage B, counsel suggested that it had been Representative A’s responsibility to forward all relevant documentation in the transaction to the brokerage.

She emphasized that it was Ms. Thapar’s practice not to do any paperwork in real estate transactions and that any agents working in her team were responsible for ensuring that all relevant paperwork was drafted/completed and that trade documents were put in the files at Brokerage B.

It was submitted that Ms. Thapar’s role in the sale of the Property had been minimal, that Representative A was principally responsible for the transaction, and that Ms. Thapar did not provide any instructions to anyone by the time the second presentation of offers took place late in the afternoon on July 31, 2013. Nor did Ms. Thapar have any dealings with the Buyer A offer presented by Representative A.

However, counsel for Ms. Thapar conceded that Ms. Thapar had provided instructions to Representative A relating to the CRA and that she (Thapar) had spoken directly to the Complainant. Still, it was argued that there are no evidence that Ms. Thapar had called the Seller a second time after the CRA had been negotiated.

The Panel was also told that Ms. Thapar would have reduced the commission payable upon a successful transaction regardless of who the buyer was and that her evidence in that regard demonstrated her honesty.

Although Ms. Thapar's position was that Representative A was responsible for ensuring that the transaction proceeded properly and that all required paperwork was drafted, executed, and filed with Brokerage B, in part because Representative A was being compensated for the transaction, counsel outlined the compensation payable to Ms. Thapar and Representative A on the buyer's side of the transaction.

The Deal Sheet presented at the hearing confirmed that the 2.5% commission payable on the buyer's side (i.e. the selling side) would have been \$13,125.00 under the strict terms of the listing agreement. However, because of the CRA with the Seller, that part of the commission was reduced by \$6,000.00. The Panel was told that the entire reduction of \$6,000.00 was applied to the selling side of the commission, such that the commission payable was reduced from \$13,125.00 to \$7,125.00.

Counsel for Ms. Thapar, and documents presented at the hearing, indicated that of the \$7,125.00 payable on the selling side of the deal, 90% of it (\$6,425.00) was actually paid to Ms. Thapar, with the remaining 10% (\$712.50) going to Representative A.

It was argued that Ms. Thapar had no motive to commit a wrongful act (e.g. keep the existence of a CRA secret from other agents presenting offers) for an additional \$6400.00 in commission in circumstances where Ms. Thapar may make \$3 million per year in her real estate practice. Because Representative A (rather than Ms. Thapar) had presented the offers to the Sellers, she (and not Thapar) was obliged to meet all applicable rules under the Code of Ethics, and to complete all transaction-related requirements, and the registrant was relying on Representative A to do so.

It was submitted that the prosecution had failed to show how Ms. Thapar could be responsible for anything that had happened during or after the second presentation of offers to the Seller. Further, if one agent assists another in a transaction (e.g. Representative A assisting Ms. Thapar), each registrant must be held responsible for his or her own actions and that it would be

unfair to hold the person being assisted responsible for what the other agent may have done or failed to do.

Finally, counsel for Ms. Thapar emphasized that the registrant was never responsible for disclosing the CRA to anyone because Representative A was running the transaction on July 31, 2013.

Nevertheless, it was submitted that the evidence established that Ms. Thapar had, in fact, disclosed the existence of the CRA to the Complainant during their phone call late in the afternoon on July 31, 2013.

Finally, counsel emphasized that it was well known at Brokerage B that Ms. Thapar did not complete “administrative tasks” relating to transactions but that members of her team did all the required paperwork and necessary filings.

Representative A should have known the rules relating to CRAs and she should have abided by them. In short, Ms. Thapar could not be blamed for Representative A’s oversights.

Reply Submissions by the Prosecutor

In reply, the Prosecutor stated that Ms. Thapar knew there were four (4) offers being presented to the Seller. It was therefore a multiple offer situation. Ms. Thapar and Representative A worked for the same brokerage.

Contrary to the assertions of Ms. Thapar that Representative A was responsible for the transaction, including any necessary disclosures, the fact was that Ms. Thapar was the listing salesperson, not Representative A.

Representative A never spoke to the three other agents who had submitted offers on the Property. In fact, Representative A only spoke to Ms. Thapar during the transaction and for the express purpose of relaying information to her and obtaining instructions on what to do. Also, once the CRA had been negotiated (by Ms. Thapar), the onus was on Ms. Thapar to ensure that all other agents were advised of the existence of the CRA and its terms.

The prosecutor noted that four hours elapsed between the first presentation of certain offers and the time the Seller actually signed documents close to 8:00 p.m. on July 31, 2013 to finalize a deal based on the Buyer A offer. The issue of any alleged “verbal acceptance” of an offer by the Seller was irrelevant.

It was submitted that all offers in addition to the Buyer A offer remained alive until their respective irrevocable time and dates. As a result, each of the agents presenting those offers should have been notified of the existence and terms of any CRA that had been negotiated with the Seller by Ms. Thapar.

According to the prosecutor, the evidence was clear: Representative A had been instructed from the outset to attend at the Property to get the Buyer A offer accepted and signed. When the issue of a commission reduction was raised by the Seller, Representative A again acted on instructions from Ms. Thapar.

Also, it was Ms. Thapar who liaised directly with the Seller and who negotiated the terms of the CRA and who then provided direction to Representative A. The fact that Ms. Thapar did not prepare any trade documents or check her own emails was not a proper way to run a sales team at a brokerage. That method of practising real estate did not insulate Ms. Thapar from liability for unethical acts and omissions.

The prosecutor noted that the last email from Brokerage B forwarding a copy of the Buyer A offer from Head Office was sent at 7:24 p.m. on July 31, 2013. That version of the offer still showed a purchase price of \$520,000.00. However, by the time the paperwork was signed by the Seller close to 8:00 p.m., the price on the offer was \$525,000.00.

In the final analysis, the prosecutor submitted that Ms. Thapar was not in a position to blame Representative A for deficiencies or omissions in the transaction, or unfairness to other agents and their clients, because Ms. Thapar, as team leader, was “running the show”.

Findings and Decision of the Panel

The Panel carefully considered the testimony of the witnesses at the hearing as well as the documentary evidence and has concluded the following:

Representative A, who was part of the Monica Thapar Team, was a salesperson on July 31, 2013 with approximately three weeks' experience. She was instructed by Ms. Thapar to present offers to the Seller for the sale of the Property. Representative A contacted and sought instructions from Ms. Thapar when the Seller, after the initial presentation of offers (which did not include the Buyer D offer), raised concerns about the real estate commission payable in a transaction.

Because of the vague recollection of events by various witnesses, it was not absolutely clear how many offers were presented to the Seller on July 31, 2013 during each offer presentation. Nor was it not clear as to the precise times relating to the presentation of offers. Further, no one could adequately explain how and when the purchase price on the Buyer A offer went from \$520,000.00 to \$525,000.00 on July 31, 2013.

A number of things, however, were clear on a balance of probabilities:

- (1) The Buyer D offer was received after the initial presentation of offers;
- (2) Ms. Thapar negotiated a reduction in commission on the transaction directly with the Seller;
- (3) Ms. Thapar provided Representative A with instructions during the presentation of the offers, and issues relating to the reduction in commission;
- (4) no CRA was ever reduced to writing and made available to other agents who submitted offers to the Seller; and
- (5) the Buyer A offer was not accepted by the Seller until she executed the Buyer A offer to confirm her acceptance of same (for a price of \$525,000.00) shortly before 8:00 p.m. on July 31, 2013.

The Panel has determined, based on testimony at the hearing, and on the absence of confirming documentation (including emails, texts, etc.), that other agents were *not* told about the CRA negotiated between the Seller and Ms. Thapar.

The Panel does not accept Ms. Thapar's evidence that when she spoke on the phone with the Complainant late in the afternoon on July 31, 2013 that she (Thapar) told the Complainant there was a CRA in place.

It was not Representative A's responsibility to reduce the CRA to writing; that fell on Ms. Thapar because she and she alone had negotiated the agreement with the Seller after the first presentation of offers.

Also, Ms Thapar was the listing salesperson who had overseen the execution of the listing agreement.

There was never anything preventing Ms. Thapar from advising the Complainant *in writing* of the existence of the alleged CRA (which itself had not been committed to writing) and the specific terms therein.

That could have easily been done by Ms. Thapar by fax, email, or even in a text message to the Complainant immediately after Ms. Thapar learned of the Buyer D offer. At that time, according to Ms. Thapar herself, there was no binding agreement between the Seller based on the Buyer A offer.

For Ms. Thapar to submit that there had been *verbal acceptance* of the Buyer A offer during the afternoon of July 31, 2013 does not absolve her of her obligation to properly advise other agents with offers of the existence of a CRA and the details of such an agreement.

Given that there were at least four offers for the Property, this was a multiple offer situation. Further, given the number of offers coming from Brokerage B agents, it was also a potential dual representation situation on many fronts.

The best way for Ms. Thapar to have protected herself, and for her to have been fair to all persons concerned, whether other agents, the Seller, or prospective buyers, would have been to have provided written notice to them of the existence of the CRA and its terms immediately after it had been negotiated with the Seller.

The issue of proper and timely notice of any CRA in this case was also crucial because the CRA itself was unusual, it purported to reduce the commission on the buyer's side (i.e. the selling commission) payable upon a successful transaction. That feature was confirmed in the trade documents prepared after the transaction for the Buyer A offer had been concluded close to 8:00 p.m. on July 31, 2013.

According to the Deal Sheet, there was no reduction in the commission payable on the listing side of the transaction. The \$6,000.00 reduction in commission was applied to the buyer's side (i.e. selling side) of the transaction.

The Panel found the Complainant to be a straight-forward, credible, and convincing witness. The Panel accepts her testimony that she only became aware of the existence of the CRA after the Buyer A offer had been accepted by the Seller and a transaction had been concluded.

The delay in providing that information to the Complainant resulted in unfairness not only to Buyer D but also to the Seller.

The Panel is also mindful of the evidence given by Ms. Thapar, only for her to retract her own testimony subsequently during the hearing. Ms. Thapar clearly stated that she would have given a reduction in commission to any buyer, regardless of the agent representing the buyer, if the Seller was interested in accepting the buyer's offer.

Since the Buyer D offer was clearly more attractive than the Buyer A offer in terms of its price (\$530,000.00 vs. \$525,000.00), if the commission reduction had been applied to the Buyer D offer it still would have been more attractive than the Buyer A offer. When this was pointed out to Ms. Thapar on cross-examination, she resiled from her previous evidence about her willingness to apply a commission reduction to offers received from buyers other than Buyer A.

There is no indication that the Seller was ever advised by Ms. Thapar that she would be far better off accepting the Buyer D offer at \$530,000.00 with the same commission reduction being offered.

Ms. Thapar maintained during the hearing that she was not representing Buyer A in the transaction and that she was not involved in the offers drafted for or presented by Buyer A.

If that had indeed been the case, the question arises why the commission reduction was not applied to other offers from other agents at Brokerage B, where the transaction would also have also resulted in a "double-ended" transaction for the brokerage.

The Panel notes that the Buyer D offer was being provided by an agent (the Complainant) who was at the same brokerage as Ms. Thapar. Furthermore, Representative B was also a salesperson at Brokerage B.

The fact is that Buyer B and Representative B only became aware of the existence of the CRA in place with the Seller after they received correspondence from RECO during the investigation of the Complainant's complaint.

Ms. Thapar, the listing agent, had an obligation to ensure that the CRA was reduced to writing as soon as was reasonably practicable and that its existence and the details contained therein were disclosed to all agents who were representing persons submitting offers for the Property. That information should have been provided to them prior to the acceptance of the Buyer A offer by the Seller.

Ms. Thapar also had an obligation to ensure that a copy of any CRA was reduced to writing and filed with her brokerage, Brokerage B as soon as was reasonably practicable. As the leader of the Thapar Team, the listing salesperson, and a person providing Representative A with instructions, and the negotiator of a CRA with the Seller (even though the commission reduction was being borne on the side of the transaction), Ms. Thapar was not in a position to shift those responsibilities onto Representative A.

The Panel notes that there was no CRA or collateral agreement put into the trade record at Brokerage B.

With respect to the CRA (Exhibit #4, Tab 11(B)) that Representative A claims she had drafted and back-dated to July 24, 2013 at the direction of Ms. Thapar, the registrant disavowed that she had been involved with that document or that she had given instructions to back-date it. If one accepts that evidence, then one is left with a situation where there was no written confirmation anywhere of any CRA or collateral agreement.

Further, no amendments to the listing agreement were ever made to reduce the commission payable on a transaction from the stated six per cent (6%) to six percent *less* \$6,000.00.

The Panel has determined that the evidence clearly showed that Representative A had been instructed by Ms. Thapar from the outset to attend at the Property to get the Buyer A offer accepted by the Seller.

Ms. Thapar was the driving force behind getting that particular offer accepted. The trade documents reveal a clear motive for Ms. Thapar to do so: she was going to receive 90% of the commission payable on the listing side of the transaction, as well as 90% of the commission payable on the buyer's (or selling) side of a transaction upon the acceptance of the Buyer A offer.

Those same material facts gave Ms. Thapar an incentive *not* to disclose the existence of any CRA or collateral agreement to the Complainant, who was bringing a \$530,000.00 offer for the Property on behalf of Buyer D.

As it turned out, and based on the convincing testimony of the Complainant and the absence of supporting documentation in favour of Ms. Thapar, the registrant failed to advise the Complainant or any other agent of the existence of the CRA, such that it simply encouraged the Seller to accept the Buyer A offer for the Property.

The Panel accepts the Complainant's evidence without hesitation or reservation that she first learned of the existence of a collateral agreement (or CRA) *well after* the Seller had accepted the Buyer A offer at \$525,000.00.

With the unwritten \$6,000.00 commission reduction being provided, the \$525,000.00 Buyer A offer just managed to "edge out" the \$530,000.00 Buyer D offer by \$1,000.00.

However, once again, the question as to why the \$6,000.00 commission reduction was not offered for any other offer being submitted through Brokerage B (i.e. on a double-ended transaction) was never explained by Ms. Thapar and she provided conflicting testimony on its availability to other agents at that brokerage.

The Panel notes that, on the listing side of the transaction, the full 3.5% commission was paid upon the successful transaction involving the Seller and the \$525,000.00 Buyer A offer, with 90% (\$15,710.00) going to Ms. Thapar and 10% (\$1,745.00) being paid to Representative C.

On the buyer's (or selling) side of the transaction, Ms. Thapar – who asserted that she had no responsibility or involvement with Buyer A, was to receive 90% of that part of the commission, with Representative A receiving the remaining ten per cent (10%).

As it turned out, the \$6,000.00 commission reduction given to the Seller was deducted from the buyer's side of the transaction. The total commission earned by Ms. Thapar on the transaction therefore appears to have been \$22,135.00 even with the \$6,000.00 reduction in commission going to the Seller.

However, if the \$6,000.00 reduction in commission had been provided to any other agent working at Brokerage B who was bringing a potential buyer to the Seller, and full notice of the CRA had been given to such agents, the resulting transaction, and the benefit to the Seller, may have been very different.

Ms. Thapar was the listing agent, she maintained direct contact with the Seller, she negotiated the terms of the CRA with the Seller, and she provided instructions to Representative A. The Panel accepts Ms. Thapar's evidence that it was her usual practice not to do any of the "paperwork" in transactions, and that she did not prepare or file any trade documents or, at times, check her own emails even before forwarding them to other persons.

However, that is not a professional way of operating a sales team at a brokerage. In this instance, the undocumented activities of Ms. Thapar herself, in providing instructions to Representative A, in negotiating with the Seller and reaching an agreement on a commission reduction, and then failing to properly advise the Complainant and other agents in writing of the existence and details of any CRA, came home to roost.

Ms. Thapar's practice of *not* doing the proper paperwork put her in breach of several sections in RECO's Code of Ethics and it resulted in unfairness to the Seller, the Complainant and other agents, and their would-be buyer clients.

Submitting to the Panel that she was not the person responsible for doing the paperwork within the context of her own sales team does not insulate Ms. Thapar from responsibility under the Code of Ethics.

As a result of the evidence from the hearing and the findings of the Panel, the Panel has concluded that Ms. Thapar breached sections 2(1), 3, 5, 25(1), 38 and 39 of the Code of Ethics in the circumstances of this case.

The Panel has not found that a breach of section 13 of the Code took place; there was a written listing agreement in place with the Seller and the prosecution did not present any clear evidence or make any convincing submissions about the issue of amendments to the listing agreement and the application of section 13.

Ms. Thapar was the listing salesperson who was entitled to the bulk of the commission on the listing and buyer's side of the transaction. She stood to benefit from a double-ended transaction, even with a reduction in commission for the Seller, because she was to earn the bulk of any commission on the buyer's end of the transaction.

The registrant's breach of subsection 2(1) is tied to subsection 25(1). The Panel has found, on a balance of probabilities, that the registrant failed to disclose to the Complainant and two other agents the existence and details of the CRA that she had negotiated directly with the Seller.

The easiest and most practical way for Ms. Thapar to have done that would have been to send a fax, email, or text message to such agents. By failing to do so, she not only breached subsection 25(1), but she also caused Brokerage B to contravene the Code of Ethics, as outlined in subsection 2(1).

The non-disclosure of the CRA to other agents was compounded by Ms. Thapar's failure to reduce the CRA to writing at the earliest practical opportunity and have it signed by the Seller and on behalf of the brokerage, as required by section 15 of the Code of Ethics, a section not cited in the Allegation Statement.

Ms. Thapar's practice of not doing any of the paperwork in transactions appears to have caused her problems in this case.

If Ms. Thapar had complied with section 15 of the Code, it would have made it easier for her to relay the terms of the CRA to other agents simply by sending them a copy of a written and

signed CRA. Doing so would have, in turn, discharged the registrant's duties under other sections of the Code, including section 25(1).

The registrant's failure to disclose the terms of the CRA she had negotiated directly with the Seller resulted in a breach of sections 3 and 5 of the Code of Ethics. It caused the Seller, other agents, and would-be buyers of the Property to be treated unfairly and it reflected a failure on Ms. Thapar's part to demonstrate reasonable knowledge, skill, judgment, and competence in providing real estate services.

The net result of Ms. Thapar's acts and omissions in the circumstances of this case was that she did not use her best efforts to prevent unethical conduct, as required by section 38 of the Code.

Further, the Panel find that Ms. Thapar's conduct in the circumstances can be reasonably regarded as unprofessional or unbecoming a registrant, contrary to section 39 of the Code of Ethics.

If the precise terms of the CRA had been disclosed to all agents registering offers on the Property, as well as to the Seller herself (who was under the initial belief that she was responsible for paying a 12 per cent commission in selling her home), the outcome in the transaction might very well have been different.

The non-disclosure of the CRA by Ms. Thapar unfairly favoured her own financial interests at the expense of other persons dealing with the Property.

PENALTY

Counsel for the Registrar, *REBBA 2002* to deliver written submissions to the Panel and to the Respondent on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.

The Respondent shall deliver to the Panel and to Counsel for the Registrar, *REBBA 2002* its written submissions on penalty and costs in response to Counsel for the Registrar, *REBBA 2002*'s submissions within 15 days of the date on which Counsel for the Registrar, *REBBA 2002*'s submissions on penalty and costs are delivered to the Respondent.

Counsel for the Registrar, *REBBA 2002* shall deliver to the Panel and to the Respondent its reply to the written submission on penalty and costs of the Respondent within 5 days of the date on which the Respondent's submissions on penalty and costs are delivered to Counsel for the Registrar, *REBBA 2002*.

[Released: December 7, 2017]



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:

REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

- AND -

MONICA THAPAR

DISCIPLINE DECISION AND REASONS FOR DECISION

The Panel held a teleconference on March 8, 2018 to discuss the written submissions by all Parties with respect to Penalty and Costs. The Panel decided as follows:

ORDER: Fine of \$15,000.00 payable to RECO within 6 months of sending this decision.

Successful completion of the classroom course "REIC 2600: Ethics and Business Practice" provided by the Real Estate Institute of Canada.

Provide RECO with confirmation of the successful completion of the course within 6 months of sending this decision

WRITTEN REASONS:

REASONS FOR DECISION
PENALTY AND COSTS

INTRODUCTION

The Panel met by teleconference on March 8, 2018 at 2:00 p.m. to review the written submissions of the parties on the issues of penalty. Submissions on penalty were received from both parties to this proceeding.

The Panel confirms that neither party made any submissions with respect to costs.

PANEL DECISION ON PENALTY

In the Findings of the Panel as outlined in its Discipline Decision and Reasons for the Decision, released December 17, 2017, the Panel carefully considered the testimony of the witnesses at the Hearing, including significant documentary evidence.

After doing so, the Panel concluded that Monica Thapar (“Ms. Thapar”) had breached Sections 2, 3, 5, 25(1), 38 and 39 of the Code of Ethics (the “Code”). These breaches were found to have involved matters of non-disclosure, and problems relating to competence and professionalism in the real estate transaction under review.

The Panel found Ms. Thapar, who benefited from her own misconduct, to be the sole directing hand and mind of the identified breaches, and that such misconduct also involved Ms. Thapar placing her Brokerage unwittingly in a position of violating Section 25(1) of the Code.

After taking into consideration Ms. Thapar’s evidence and comportment at the Hearing, especially her repeated statements that she does not do any of the paperwork involved in transactions and that she delegates the legwork to members of her Team at the brokerage, the Panel is of the view that Ms. Thapar did not appreciate the inequity, the unfairness, or the gravity of her conduct.

Further, rather than accepting responsibility for the impact of her misconduct, Ms. Thapar sought to obfuscate events and shift responsibility onto others. The Panel agrees with and adopts for these Reasons the observations made in the Registrar’s submission on penalty.

In the submission from the Registrar, it was emphasized that Ms. Thapar failed to notify the Complainant as well as two other Registrants of a Collateral Commission (Reduction) Agreement (“CRA”) with the seller (“Seller”) of the subject property even though she had numerous opportunities to do so.

The alleged CRA was partly reduced to writing in a vaguely worded document, apparently signed by the Sellers on or about July 23, 2013 or, alternatively, July 31, 2013. That written document only provided that the total commission payable would be reduced by \$6,000.00. It was admitted by a salesperson working in the Thapar Team at the brokerage that the document (which bore two different dates) had been “backdated” by her to July 23, 2013 at the request of Ms. Thapar. Also, the Seller’s daughter who testified at the hearing, maintained that neither she nor her mother were ever given a copy of any written CRA. Finally, the terms of the alleged CRA did not make sense given the chronology of the transaction and the dealings which the Thapar Team had had with other realtors whose clients were interested in the property.

Ms. Thapar treated the Complainant and two other Registrants, and by extension their respective clients, unfairly by:

1. failing to inform them of the CRA, written or otherwise, which resulted in them not being put on an even playing field and them not being able to turn their mind to whether an improved offer, in light of the existence of a CRA, should be submitted to the Seller;
2. not giving other registrants and their clients the opportunity to make inquiries as to the nature and terms of the alleged CRA in a timely manner; and
3. ignoring text messages and calls from the Complainant on July 31, 2013 after the Complainant had submitted an offer to purchase the property on behalf of her clients.

Ms. Thapar asserted at the hearing that she entered into the CRA after the Sellers had accepted the offer to purchase from Ms. Thapar’s own buyer clients on July 31, 2013, and thus she did not have an obligation to contact the other registrants whose clients were interested in the property and inform them about the CRA. Ms. Thapar also asserted, inaccurately, that the offers from the clients of other Registrants were, at the material time, null and void. The Panel

has concluded that Ms. Thapar could have easily notified the other Registrants of the existence of a CRA and, if necessary, the terms of such an agreement, via fax, email or text message.

The Panel found that Ms. Thapar was the driving force behind the Seller's decision to accept the offer to purchase from buyer clients of the same brokerage as Ms. Thapar. The trade documents reveal a clear motive for Ms. Thapar to do so because she was to receive 90% of the commission payable on the selling side of the subject transaction if the offer to purchase from her buyer clients were accepted by the Seller.

The Panel also thoroughly reviewed and took into consideration other cases which counsel for the Registrar noted as similar in nature to Ms. Thapar's case or, alternatively, which outlined the applicable principles to be applied in determining penalty after a hearing. The cases are as follows:

- Registrar and Suzette Thompson (May 31, 2012)
- Registrar and Julianna Baranyai (April 30, 2012)
- Registrar and Ken Priestman (June 27, 2013)
- Registrar and Zakra Shaker-Shariat-Panahi (January 14, 2015)
- Registrar and Gnanavarathan Nagulendran

The Panel has considered all of the above cases and the guidance they provide for this case on the issue of an appropriate penalty.

The Panel has unanimously reached its decision on the issue of penalty in this case. In the Panel's view, the principles of specific deterrence and general deterrence are particularly important given the misconduct of Ms. Thapar and her rejection at the hearing of any responsibility for what had transpired in the transaction relating to the property.

It was no answer to RECO's allegations for Ms. Thapar to claim that she was not the person who did the paperwork on transactions. At all material times, she was a team leader at the brokerage where she worked. Yet, by her own admission, she was not used to dealing with dual agency situations or CRAs.

In this case, both issues overlapped in a transaction where there was robust interest in the property from a number of other would-be purchasers. Ms. Thapar's own evidence at the

hearing revealed that, despite her claims that she was pre-occupied with personal matters on July 31, 2013 when a deal was concluded for the Seller with a buyer from the same brokerage, Ms. Thapar was in constant communication with salespersons and assistants from her office as well as the Seller directly.

The Panel has concluded that Ms. Thapar's conduct is deserving of a sanction that reflects its gravity and is proportional in nature, such that it would send an appropriate message of specific deterrence.

Further, the objective of general deterrence must also be reflected in the penalty to send a message to other registrants of the importance of clearly reducing the terms of any commission rebate or reductions to writing at the earliest possibility opportunity, of disclosing the existence of any CRA to other registrants in a timely manner, and ensuring that there is a level playing field in offers being presented to a seller such that the seller's best interests are also served.

Where there is a potential situation involving dual agency, along with the existence of a CRA, problems and unfairness can easily arise, as happened in this case. If Ms. Thapar had been more cognizant and attentive to those problems, a complaint to RECO and the hearing could have been avoided.

Finally, given Ms. Thapar's long-standing practice of not doing the paperwork associated with transactions, a task which in itself provides registrants with knowledge and understanding of the relevant steps in real estate transactions and Ms. Thapar's evidence during the hearing that she is not very knowledgeable about dual agency situations or CRAs, such deficiencies are highly suggestive of the need for educational coursework on her part.

PENALTY

For the reasons stated above, the Panel has decided that Ms. Thapar shall pay a fine in the amount of \$15,000.00 to RECO within six months of this decision being released to the parties.

Also, the Panel has agreed that Ms. Thapar would truly benefit from further education and training and thus it directs that she shall attend and successfully complete the REIC: Ethics and Business Practice course. Specifically, Ms. Thapar must supply RECO with proof of attendance

as well as successful completion of the course within six months of this decision being released to the parties.

COSTS

As submissions for costs were not made by either party, the Panel directs that each party shall be responsible for its own costs in connection with this matter.

[Released: April 6, 2018]