



Real Estate Council of Ontario

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**IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE  
*REAL ESTATE AND BUSINESS BROKERS ACT, 2002, S.O. 2002, c. 30, Sch. C***

**BETWEEN:**

**REAL ESTATE COUNCIL OF ONTARIO**

**- AND -**

**MICHAEL ROSS ROTH also known as MIKE ROTH**

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**DISCIPLINE DECISION AND REASONS FOR DECISION**

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Subject to Rule 4.02 of the Discipline and Appeals Committee Rules of Practice (*REBBA 2002*), I, the Chair of the Discipline Committee (*REBBA 2002*) have reviewed and considered the Agreed Statement of Facts and Penalty together with the Waiver of Hearing submitted by the Parties to this proceeding and provide the following Order:

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**FINDINGS:** In violation of Section 3 and 5 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$10,000.00 payable to RECO on or before May 16, 2019.

**WRITTEN REASONS:**

**REASONS FOR DECISION**

**INTRODUCTION**

This matter proceeded on the basis of an Agreed Statement of Facts and Penalty and Waiver of Hearing, pursuant to Rule 4.02 of the Rules of Practice (*REBBA 2002*).

The Agreed Statement of Facts and Penalty read:

**AGREED STATEMENT OF FACTS AND PENALTY**

It is agreed as follows:

1. Michael Ross Roth also known as Mike Roth ("Roth") is employed by Brokerage A, a brokerage registered under the Act.

2. On or about October 19, 2016, the Seller met with Roth to obtain his and Brokerage A's services to sell her property located at 1-A Street, City A ("Property"). A Listing Agreement was drafted, which all parties executed.
3. When entering the Listing Agreement, Roth included a clause that states the following with respect to commission payable: *"In consideration of the Listing Brokerage listing the Property, the Seller agrees to pay the Listing Brokerage a commission of 4.5% of the sale price of the Property or 3% if Mike sells himself or 2% if Individual A buys"*.
4. Following listing the Property, there were approximately 4 viewing of the Property.
5. On or about October 22, 2016, Roth presented two offers to the Seller and her two sons. The first offer ("First Offer") was for a purchase price of \$1,250,000.00 which was made by a co-operating brokerage. The second offer ("Second Offer") was from Roth's buyer client with a purchase price of \$1,499,000.00.
6. Following the offer presentation, the Seller agreed to accept the Second Offer on October 22, 2016.
7. The Property closed on or about February 6, 2017. The Seller attended her Lawyer's office to sign the applicable paper work and the commission payable was forwarded to Brokerage A.
8. On or about February 16, 2017, approximately 10 days after closing, the Seller questioned the amount of commission that was payable as the number seemed high. After review of the paperwork, it was noted that 4.5% of the purchase price was forwarded to Brokerage A.
9. Following this discovery, the Seller contacted Roth on February 16, 2017, to discuss this matter. Roth advised that there was no error and that he was entitled to the full commission charged to the Seller.
10. Roth did not direct the brokerage to pay any monies owing to the Seller at that time.
11. On or about February 27, 2017, the Seller attended Brokerage A to discuss the matter with Roth.
12. On or about March 1, 2017, Individual B, on behalf of the Seller, sent a demand letter to Roth/Brokerage A for full repayment of commission owing within 10 business days.
13. The Seller hired a paralegal and commenced a Small Claims Court action. The claim was for \$25,438.05 plus legal costs.
14. After receiving the Plaintiff's Claim, Roth instructed Brokerage A to pay the commissions owing to the Seller.
15. On or about June 27, 2017, the Seller received a cheque from Brokerage A in the amount of \$25,438.05, the total amount of commission that was owing under the Listing Agreement.

## SUMMARY OF AGREEMENTS

It is agreed:

1. Roth failed to voluntarily honour his commission reduction as stated in the Listing Agreement, contrary to sections 3 and 5 of the Code of Ethics, Ontario Regulation 580/05.

### AGREED PENALTY

MICHAEL ROSS ROTH also known as MIKE ROTH, the Respondent, be ordered to pay a penalty of \$10,000.00 on or before May 16, 2019.

By initials below, I, MICHAEL ROSS ROTH also known as MIKE ROTH, acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions.

*[Respondent's Initials]*

By initials below, I, MICHAEL ROSS ROTH also known as MIKE ROTH, agree, understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter.

*[Respondent's Initials]*

By initials below, I, MICHAEL ROSS ROTH also known as MIKE ROTH, acknowledge that I exercised my right to be represented by Counsel or agent in this matter.

*[Respondent's Initials]*

By signature below, the Parties agree, acknowledge, understand and consent to the final settlement of this matter by way of this Agreed Statement of Facts and Penalty.

[The Agreed Statement was duly signed by the Parties.]

### **DECISION OF THE CHAIR**

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 3 and 5 of the *REBBA 2002* Code of Ethics. The Chair of the Discipline Committee (*REBBA 2002*) is also in agreement with the joint submission of the Parties as to penalty and accordingly makes the following order:

1. MICHAEL ROSS ROTH also known as MIKE ROTH is Ordered a Fine of \$10,000.00 payable to RECO on or before May 16, 2019.

*[Released: December 6, 2018]*