



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 -

HARJIT SINGH SAINI (a.k.a HARJIT SAINI)

DISCIPLINE DECISION AND REASONS FOR DECISION

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

FINDINGS: In violation of Sections 2(1), 3, 5, 17 and 38 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$15,000.00 payable to RECO on or before December 31, 2018.

Successful completion of the Real Estate Institute of Canada (REIC) "REIC 2600: Ethics and Business Practice" course and provide RECO with confirmation of successful completion on or before December 31, 2018.

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

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

The Agreed Statement of Facts and Penalty read:

AGREED STATEMENT OF FACTS AND PENALTY

1. Mr. Harjit Singh Saini a.k.a. Harjit Saini is and was at all relevant times registered as a Broker employed within the meaning of the Act by Brokerage A (“Listing Brokerage”).
2. On March 1, 2016, Mr. Saini on behalf of the Brokerage made a written seller representation agreement, styled a Listing Agreement (“Listing Agreement”), with the seller (“Seller”) of a property known as 1-A Street, City A (“Property”). The Seller was also registered under the Act with the Listing Brokerage at all relevant times. The Listing Agreement provided for total commission to the Listing Brokerage of 3.5% of the sale price of the Property, out of which total commission an amount equal to 2.5% of the sale price of the Property was to be paid to any cooperating Brokerage.
3. On March 1, 2016, Mr. Saini listed the Property for sale (“Listing”). The list price was \$589,000.00. Originally on the Listing, Mr. Saini indicated that offers would be withheld until “Monday March 6th 2016 [SIC, meaning March 7, 2016] at 6:00 p.m.” (“Published Offer Presentation Date”).
4. On or about March 3, 2017, Mr. Saini was informed by another registrant representing a potential buyer who the said potential buyer wanted to make an offer for the Property on March 3, and not wait to the published offer presentation date.
5. Also, on or about March 3, 2016, the Complainant”) who at all relevant times was registered under the Act, informed Mr. Saini that he, the Complainant, had an offer from his client (“Potential Buyer”) to the buy the Property.
6. Mr. Saini informed the Complainant that offers would be presented that evening on March 3, 2016.
7. Before the offer presentation on March 3, 2016, Mr. Saini informed the Complainant that there were two other offers for the Property in addition to the Complainant’s offer, or in the alternative, three offers including the Complainant’s offer. By the time of the offer presentation on March 3, 2017, there were at five competing offers for the Property, two of the offerors had just seen the Property several hours before the offer presentation. Mr. Saini, on behalf of the Listing Brokerage, did not update the Complainant in writing as to the correct number of offers by the offer presentation on the evening of March 3, 2016, contrary to Section 2(1) in respect of Section 26(1) of the Code of Ethics, and contrary to Section 3 of the Code of Ethics.
8. Registrant A was at all relevant times registered under the Act and employed within the meaning of the Act by the Listing Brokerage. One of the competing offers for the

Property presented on March 3, 2016, was presented by Registrant A on behalf of the Listing Brokerage, representing their buyer-clients (“Buyers”). On March 3, 2016, this Offer was accepted by the Seller and became an Agreement of Purchase and Sale (“APS”). Confirmation of Acceptance of the APS by the Seller was indicated to be at 8:45 p.m. on March 3, 2016. The APS was for \$600,000.00, conditional on the Buyers obtaining a satisfactory mortgage, with a completion date of April 28, 2016.

9. At all relevant times, Mr. Saini and Registrant A worked together as a team. Registrant A signed the Buyer Representation Agreement that was made with the Buyers on behalf of the Listing Brokerage and dated March 3, 2016. Mr. Saini explained in his response to RECO in respect to this complaint that the Buyers offer was “*our own offer*” and that to avoid confusion “*I asked my Partner [Registrant A] to represent our...buyer in the offer presentation.*” Both Mr. Saini and Registrant A were represented on the Confirmation of Cooperation and Representation form in respect of the APS as representing the Listing Brokerage on behalf of both parties to the transaction. Registrant A was named on the Listing Brokerage’s trade record sheet as both listing and cooperating representative.
10. No Commission was paid by the Seller to the Listing Brokerage, notwithstanding the original terms of Listing Agreement. Mr. Saini states that he advised all buyers’ agents of this fact but did not do so in writing.
11. Mr. Saini on behalf of the Listing Brokerage:
 - a) Did not at the earliest practicable time disclose to the Complainant that he and the Listing Brokerage were representing the Buyer, contrary to Sections 3, 5 and 17 of the Code of Ethics and Section 38 of the Code in respect of the obligation to use best efforts to prevent error or misrepresentation. Further, he did not disclose in writing that he and the Listing Brokerage were representing the Buyers, contrary to Section 2(1) in respect of Section 17 of the Code of Ethics.
 - b) Did not disclose at any relevant time to the Complainant that the Listing Brokerage had an agreement with the Seller with respect to commission that could affect whether an offer to buy was accepted, contrary to Section 2(1) in respect of Section 25(1) of the Code of Ethics, and Section 38 of the Code of Ethics in respect of the obligation to use best efforts to prevent error or misrepresentation.
 - c) Did not reduce the agreement with respect to commission that could affect whether an offer to buy was accepted, which in the circumstances was an amendment to the

Listing Agreement, to writing contrary to Section 2(1) in respect of Section 11(1)(b)(i) of the Code of Ethics.

12. The Listing for the Property requested that prospective Buyers submit a copy of the Ontario Real Estate Association Form 801, used to meet the requirement in Section 35.1 of the Act and Section 19.1 of Regulation 579/05 to the Act to make a record of all offers received instead of keeping copies of the offers themselves. In respect of the Potential Buyer's Offer, the Complainant may not have submitted such a form as requested. However, the Brokerage as represented by Mr. Saini, and Mr. Saini acting on its behalf, continued to have an obligation to complete those aspects of the required record that were reasonably within his knowledge and he didn't do so. Furthermore, Mr. Saini on behalf of the Brokerage did not fully complete the required record in any case for three other offers for the Property respectively, including not recording the times that such offers were received and also, given Mr. Saini's response to RECO that all such offers were presented, not recording the Seller's response to each offer; i.e. accepted, signed/back or expired/decline. This was contrary to Section 5 of the Code of Ethics.

It is agreed that SAINI has breached the following sections of the Code of Ethics:

Brokers and salespersons

2. (1) 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. O. Reg. 580/05, s. 2(1).

Fairness, honesty, etc.

3. A registrant shall treat every person the registrant deals with in the course of a trade in real estate fairly, honestly and with integrity. O. Reg. 580/05, s. 3.

Conscientious and competent service, etc.

5. A registrant shall provide conscientious service to the registrant's clients and customers and shall demonstrate reasonable knowledge, skill, judgment and competence in providing those services. O. Reg. 580/05, s. 5.

Nature of relationship

17. If a registrant represents or provides services to more than one buyer or seller in respect of the same trade in real estate, the registrant shall, in writing, at the earliest practicable

opportunity and before any offer is made, inform all buyers and sellers involved in that trade of the nature of the registrant's relationship to each buyer and seller. O. Reg. 580/05, s. 17.

Error, misrepresentation, fraud, etc.

38. A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in real estate. O. Reg. 580/05, s. 38.

AGREED PENALTY

HARJIT SINGH SAINI (a.k.a. HARJIT SAINI), the Respondent, be ordered to pay a penalty of \$15,000.00 on or before December 31, 2018.

In addition to the above penalty, the Respondent must enrol in the "Ethics and Business Practice Course" provided by the Real Estate Institute of Canada (REIC), and provide proof of successful completion of the course on or before December 31, 2018.

By initials below, I, HARJIT SINGH SAINI (a.k.a. HARJIT SAINI), 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, HARJIT SINGH SAINI (a.k.a. HARJIT SAINI), 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, HARJIT SINGH SAINI (a.k.a. HARJIT SAINI), acknowledge that I was aware of my right to be represented by Counsel or agent in this matter.

[Respondent's Initials]

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

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

DECISION OF THE CHAIR

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 2(1), 3, 5, 17 and 38 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. HARJIT SINGH SAINI (a.k.a. HARJIT SAINI) is Ordered a Fine of \$15,000.00 payable to RECO on or before December 31, 2018.
2. HARJIT SINGH SAINI (a.k.a. HARJIT SAINI) is Ordered to successfully complete the Real Estate Institute of Canada (REIC) “REIC 2600: Ethics and Business Practice” course and provide RECO with confirmation of successful completion on or before December 31, 2018.

[Released: February 22, 2019]