



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 -**

**SIMONE BIXBY**

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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 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$5,000.00 payable to RECO on or before April 5, 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**

1. Simone Bixby (“Bixby”) is a registered salesperson, employed with in Brokerage A and was so registered during the events in question.

2. On or about July 6, 2016, a listing agreement was entered into between Brokerage A and Seller A and Seller B (the "Sellers"), who were the owners of a property located at 1-A Street, City A. Bixby was the listing salesperson acting on behalf of Brokerage A.
3. On or about July 25, 2016, the Sellers accepted an offer from Buyer A. Buyer A was represented in the transaction by her daughter, Representative A, who is a salesperson employed with Brokerage B. This offer (the "First Offer") was conditional on financing and obtaining a satisfactory home inspection.
4. On or about July 27, 2016, the Sellers accepted another offer for their property, from Buyer B. Buyer B was represented by Bixby in this transaction. As would be required, this offer (the "Back-up Offer") was conditional on the conditions contained in the First Offer not being waived. The Sellers instructed Bixby not to inform Representative A about the Back-up offer, as it was not a competing offer.
5. Buyer B was represented by Bixby in the Back-up Offer, thus double-ending the transaction should it come to fruition. Bixby also had a commission advantage in respect of the Back-up Offer, wherein instead of the 4.5% total payable under the listing agreement, if the Back-up Offer came into force, the commission payable to Brokerage A would be only 3.5%.
6. Neither of the facts mentioned in paragraph 5 above, were disclosed to Representative A.
7. On or about August 4, 2016, Representative A sent an amendment to the First Offer (instead of a Waiver of Condition), removing the conditions, reducing her commission to zero and reducing the sale price from \$648,000.00 to \$635,400.00. This amendment was not accepted by the Sellers, and the First Offer expired.
8. On or about August 6, 2016, at 9:50 a.m., Bixby sent Representative A a mutual release for the First Offer. Representative A responded at 9:58 a.m. that her client would not sign the mutual release.
9. On August 6, 2016, on or about 11:50 a.m., Bixby advised that the Sellers had decided to go with another offer. Bixby did not mention that this was a Back-up Offer, or that it had been accepted shortly after Representative A's First Offer was accepted.

10. On or about 3:19 p.m. that same day, Representative A emailed the signed Mutual Release and a new offer from her client (the "Second Offer").
11. Bixby responded later that day, wherein she confirmed that the Sellers had decided to go with another offer (again, referring to the Back-up Offer).
12. It is RECO's position that Bixby failed to treat Representative A with honesty by failing to disclose that a Back-up Offer had been conditionally accepted, contemporaneous to that event occurring. It is RECO's position that this conduct is in violation of Section 3 of the Code of Ethics.
13. Further, by failing to disclose the fact that the Back-up Offer was a double-end for Bixby/Brokerage A and the fact of the commission reduction contained therein, Bixby failed to treat Representative A honestly and transparently in their dealings on this property. This conduct is a violation of Section 3 of the Code of Ethics.

It is agreed that Bixby breached the following Sections of the Code of Ethics:

Fairness, honesty, etc.

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

#### AGREED PENALTY

SIMONE BIXBY, the Respondent, be ordered to pay a penalty of \$5,000.00 on or before April 5, 2019.

By initials below, I, SIMONE BIXBY, 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, SIMONE BIXBY, 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, SIMONE BIXBY, 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 Section 3 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. SIMONE BIXBY is Ordered a Fine of \$5,000.00 payable to RECO on or before April 5, 2019.

*[Released: November 16, 2018]*