



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 -

XINTONG CHEN also known as ERIC CHEN

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 3, 38 and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$5,000.00 payable to RECO on or before November 28, 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. At all relevant times, Chen was employed with Brokerage A, a brokerage registered under the Act.
2. Individual A is a supervisor of building inspections in the City A.

3. Seller A is the seller of a property municipally located at 1-A Street, City A ("Property"). Seller A is married to Chen.
4. Buyer A is the buyer of the Property.
5. On May 25, 2017, Chen listed the Property on behalf of Seller A for \$1,099,000.00. The listing was set to expire on November 25, 2017.
6. On May 25, 2017, the Multiple Listing Service identified the following:
"Finished walkout basement with 3 ensuite bedrooms."
7. On or about May 29, 2017, the City of City A's Building Division Department received a complaint with respect to the Property's basement.
8. On or about May 30, 2017, an enforcement building inspector spoke with Chen to arrange for a site inspection to take place at the Property on June 1, 2017. Chen called the enforcement building inspector and rescheduled the site inspection to June 6, 2017.
9. On or about May 31, 2017, an Agreement of Purchase and Sale was prepared. The details of the offer are as follows:

i) Buyer:	Buyer A
ii) Seller:	Seller A
iii) Purchase Price:	\$1,305,000.00
iv) Irrevocability:	11:59 p.m., May 31, 2017
v) Completion date:	6:00 p.m., July 25, 2017
vi) Confirmation of Acceptance:	11:13 p.m., May 31, 2017
10. On or about June 6, 2017, Chen indicated to the building inspector that there was only one bathroom in the basement and that the other bathrooms as depicted on the floor plan were never constructed. The site inspection was conducted on the Property confirming the single basement bathroom.
11. On or about June 14, 2017, an order to comply was issued in regards to the observed plumbing alterations on the Property.
12. On or about July 18, 2017, a building permit was issued for the required plumbing alterations for the one bathroom and the order was recorded as rectified.
13. On or about July 19, 2017, the Property was inspected by the building inspector and found to be in compliance with the approved building permit.

14. On or about July 20, 2017, the building permit was signed off as complete.
15. On or about August 11, 2017, City A received information that the Property was being advertised for rent with three ensuite bathrooms. Buyer A indicated to the building inspector that the three ensuite bathrooms existed at the time of purchase.
16. On or about September 15, 2017, Individual A filed a complaint with RECO indicating that Chen purposefully concealed the existence of two bathrooms in the basement of the Property.
17. On or about October 13, 2017, Chen provided a response to RECO:

“I feel strongly sorry for what has happened and sincerely regret what I have done when personal interest involved in this process. I was under huge pressure to close this transaction... The seller bought another property and closing date was 3 days after.” [SIC]

It is agreed that Chen acted unprofessionally in that he:

1. Failed to treat every person he dealt with in the course of the trade fairly and honestly, when he physically concealed the existence of two bathrooms in an effort to mislead the bylaws inspector; in violation of section 3 of the Code of Ethics (“Code”).
2. He created an error or misrepresentation in respect of a trade in real estate when he actively concealed the existence of two bathrooms to an inspector; in violation of section 38 of the Code.
3. Engaged in an act or omission that, having regard to all the circumstances, would reasonably be regarded unprofessional or unbecoming a registrant, when he concealed two ensuite bathrooms in advance of an inspection, in order for the Property to close, which he knew was false and misleading. This conduct is in violation of section 39 of the Code.

Fairness, honesty, etc.

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

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.

Unprofessional conduct, etc.

39. A registrant shall not, in the course of trading in real estate, engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a registrant.

AGREED PENALTY

XINTONG CHEN also known as ERIC CHEN, the Respondent, be ordered to pay a penalty of \$5,000.00 on or before November 28, 2019.

By initials below, I, XINTONG CHEN also known as ERIC CHEN, 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, XINTONG CHEN also known as ERIC CHEN, 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, XINTONG CHEN also known as ERIC CHEN, acknowledge that I exercised my right to be represented by Counsel 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, 38 and 39 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. XINTONG CHEN also known as ERIC CHEN is Ordered a Fine of \$5,000.00 payable to RECO on or before November 28, 2019.

[Released: January 8, 2019]