



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 -

MIMI KHUU

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 4, 5, 27(1)(a) and 38 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$4,000.00 payable to RECO on or before December 1, 2020.

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. At all material times, Khuu was employed at Brokerage A.

2. Seller A (“Complainant”) was the seller of a residential property located at the municipal address of 1-A Street, City A (the “Property A”) and the buyer of the residential property located at the municipal address of 2-B Street, City A (the “Property B”).
3. Brokerage A represented the Complainant, with Khuu acting as their representative for the sale of the Property A and the Complainant’s purchase of Property B.

i. PROPERTY A

4. In or about May 2016, the Complainant entered into an MLS Listing Agreement (the “First MLS Listing”) with Brokerage A for the purpose of listing the Property A. The First MLS Listing was not listed on the MLS and the house was not vacated by a tenant.
5. On or about October 16, 2016, Complainant entered into the Second MLS Listing Agreement (the “Second MLS Listing”) with Brokerage A for the purpose of listing the Property A.
6. On or about November 8, 2016. Brokerage A and Brokerage B (Brokerage B) entered into a Confirmation of Co-operation and Representation Agreement (the “Property A CCR”).
7. The Property A CCR stated that the listing brokerage, Brokerage A, will pay the Co-operating Brokerage, Brokerage B, 2.25% in commission plus HST.
8. On or about November 8, 2016, the Agreement of Purchase and Sale (the “APS”) was executed with Khuu acting as the Complainant’s representative. The subject sale of the Property A closed on or about March 9, 2017.

i. PROPERTY B

9. On or about November 28, 2016, the Complainant entered into an Agreement of Purchase and Sale (the “Property B APS”) for the Property B Property, with Khuu acting as the Complainant’s representative.
10. The Property B Property purchase price was \$1,195,000.
11. The Complainant and Buyer A were the buyers (the “Buyers”) and Seller A and Seller B were the Sellers (the “Sellers”).

12. November 28, 2016. Brokerage A and Brokerage C. (the “Brokerage C”) entered into Confirmation of Co-operation and Representation Agreement (the “Property B CCR”).
13. The Property B CCR stated that Brokerage C, the listing brokerage would pay Brokerage A, the co-operating brokerage 2.5% commission.
14. The APS was scheduled to be completed on or about March 28, 2017. The completion date was amended on three occasions as follows:
- a) From March 28, 2017 to March 9, 2017 – this amendment was agreed to by the Complainant and the Sellers on or about December 10, 2016;
 - b) From March 28, 2017 to January 13, 2017 – this amendment was agreed by the Complainant and the Sellers on or about December 13, 2016; and
 - c) From January 13, 2017 to March 9, 2017 – this amendment was made by Khuu and selling representative via email communication without the signature and authority of the Complainant and Sellers.
15. The Sellers rejected and did not waive their claim to a breach of contract as the Property B Property did not close on January 13, 2017, as scheduled.
16. On or about February 16, 2017, through their lawyer, the Sellers agreed to close on March 9, 2017, on the following conditions:
- a) A signed amendment amending the closing date to March 9, 2017.
 - b) A per diem charge of \$70 per day from January 13, 2017 until March 9, 2017 for the cost of delay, and
 - c) The Sellers were responsible for the property tax up until January 13, 2017 only.
17. On or about March 8, 2016, the Property B APS closed with the above stated conditions leading to the following additional expenses for the Complainant:
- a) Per diem cost of \$3,850; and
 - b) Two (2) months of property tax expenses.

18. Such further and other particulars that may be disclosed by or on behalf of Khuu at or in anticipation of a hearing of this matter.

SUMMARY OF ALLEGATIONS

It is alleged that Khuu failed to comply with the Code of Ethics as follows:

19. Knew or ought to have known that her failure to obtain the Complainant's written consent for an amended closing date would result in financial consequences suffered by the Complainant. Khuu's failure to obtain the Complainant's written consent was contrary to sections 4, 5 and 27(1)(a) of the Code.
20. Failed to use her best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in real estate when she failed to obtain consent from Complainant and Seller regarding a Property B Property closing date amendment, contrary to 38 of the Code of Ethics

It is agreed that Khuu failed to comply with the following sections of the Code of Ethics:

Best interests

4. A registrant shall promote and protect the best interests of the registrant's clients.

Conscientious and competent service

5. A registrant shall provide conscientious service to the registrant's clients and customers and shall demonstrate reasonable knowledge, skill, judgement and competence in providing those services.

Written and legible agreements

27. (1) A registrant who represents a client in respect of a trade in real estate shall use the registrant's best efforts to ensure that,
- (a) any agreement that deals with the conveyance of an interest in real estate is in writing.

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.

AGREED PENALTY

MIMI KHUU, the Respondent, be ordered to pay a penalty of \$4,000.00 on or before December 1, 2020.

By initials below, I, MIMI KHUU, 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, MIMI KHUU, 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, MIMI KHUU, 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 4, 5, 27(1)(a) 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. MIMI KHUU is Ordered a Fine of \$4,000.00 payable to RECO on or before December 1, 2020.

[Released: April 1, 2020]