



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 -

LINDSAY DIANA CATHERINE MUSCLOW

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 and 8 (1) of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$5,000.00 payable to RECO on or before December 31, 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

1. Lindsay Musclow (“Musclow”) is employed by Brokerage A.

2. Seller A (the “Complainant”) was the seller of waterfront properties on Lake A in Township A.
3. At the time she decided to sell the properties, the Complainant owned three parcels of land on the lake. She had inherited the parcels from her mother. The legal descriptions of the three parcels were as follows:
 - a) Parcel A;
 - b) Parcel B; and
 - c) Parcel C
4. However, the Complainant believed that the three parcels were actually four parcels of land on the lake. In the 1990’s, the Complainant’s mother had obtained a severance of one of the parcels, dividing it into two parcels, and making for a total of four parcels on the lake. At the time, the legal descriptions of the four parcels were as follows:
 - a) Parcel A;
 - b) Parcel B;
 - c) Parcel C; and
 - d) Parcel D.
5. The severance that the Complainant’s mother obtained had divided one parcel into Parcels A and B. Parcels A and B abutted each other, and each parcel had frontage on the water. Parcel A was larger and had a house on it.
6. Parcel C was an island in the middle of Lake A, accessible only by water.
7. Parcel D was located across the lake from Parcels A and B, and as such, was separate from all the other parcels. Parcel D had no road access; it was only accessible by water.
8. After the parcels were inherited by the Complainant, Parcel A and Parcel B were reflected as one single parcel in the Land Titles system.
9. In or around the spring of 2018, the Complainant contacted Musclow to retain her services to list certain parcels for sale.
10. The Complainant told Musclow that she wished to sell two parcels and keep two parcels. She advised that she wished to sell the house and the island (which would have been

Parcels A and C), and she wanted to keep the parcel beside the house and the parcel across the water (which would have been Parcels B and D). Parcel B would maintain her driving access to a parcel on the water, where one could then boat across the lake to Parcel D.

11. When Musclow searched for the Complainant's properties on Geowarehouse, Parcels A and B appeared as one single parcel. Accordingly, only three separate parcels on the lake were shown to be owned by the Complainant at that time.
12. Prior to entering a listing agreement with the Complainant, Musclow did not recommend or advise the Complainant to consult with third party professionals such as a real estate lawyer and a land surveyor to determine and/or clarify the location and the legal descriptions of the parcels to be offered for sale and those that were not to be offered for sale.
13. Musclow, on behalf of her brokerage, entered into a listing agreement with the Complainant. The listing agreement stated the property address to be 1-A Lake Road, but no legal description was included. The MLS listing stated the address and also stated the legal description. This legal description used in the MLS listing contained Parcel B which the Complainant did not intend to sell.
14. An agreement of purchase and sale was entered between the Complainant and a buyer for parcels A, B, and C. The purchase price was \$310,000.00.
15. After acceptance of the agreement of purchase and sale, the Complainant realized that the legal description of the property in the agreement contained Parcel B, which she had intended to retain.
16. The Complainant advised Musclow that she believed the agreement of purchase and sale wrongly included Parcel B. Musclow contacted a real estate lawyer, who after researching the history of the parcels, advised Musclow of the existence of the severance creating parcels A and B.
17. As the agreement of purchase and sale contained a parcel of land that she wished to retain, the Complainant chose not to complete the transaction. Subsequently, to cover her costs associated with terminating the agreement of purchase and sale, the

Complainant parcelized Parcel B, and ultimately sold all four parcels to the same buyer for an increased price of \$325,000.00.

SUMMARY OF AGREEMENTS

It is agreed that Musclow failed to comply with the Code of Ethics as follows:

18. After the Complainant advised Musclow that she wished to retain a particular parcel of property, and when Musclow did not see that parcel reflected in the Geowarehouse system, Musclow did not take reasonable steps which could have avoided confusion and error regarding the identification and description of parcels that the Complainant intended to sell and retain, when prior to entering the listing agreement, she:

- a) failed to advise the Complainant to seek the services of third party professionals such as a real estate lawyer and a land surveyor to verify the locations and the legal descriptions of the parcels;

contrary to sections 4, 5 and 8(1) of the Code of Ethics.

It is agreed that Musclow 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, 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.

Services from others

8. (1) A registrant shall advise a client or customer to obtain services from another person if the registrant is not able to provide the services with reasonable knowledge, skill, judgment and competence or is not authorized by law to provide the services.

AGREED PENALTY

LINDSAY DIANA CATHERINE MUSCLOW, the Respondent, be ordered to pay a penalty of \$5,000.00 on or before December 31, 2020.

By initials below, I, LINDSAY DIANA CATHERINE MUSCLOW, 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, LINDSAY DIANA CATHERINE MUSCLOW, 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, LINDSAY DIANA CATHERINE MUSCLOW, 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 and 8 (1) 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. LINDSAY DIANA CATHERINE MUSCLOW is Ordered a Fine of \$5,000.00 payable to RECO on or before December 31, 2020.

[Released: May 21, 2020]