



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 -

ALEXANDER MCCREA WOLFE (trade name ALEX WOLFE)

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, 6(1), 21(1) and 38 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$15,000.00 payable to RECO on or before March 31, 2021.

Successful completion of “REIC 2280 Legal Issues in Real Estate” and provide RECO with confirmation of successful completion on or before March 31, 2021.

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. Alexander Wolfe (“Wolfe”) is registered as a salesperson under the Real Estate and Business Brokers Act, 2002, S.O. 2002, C.30, Sched C (“Act”). Wolfe is, and was at all relevant times, employed, as defined under the Act, by Brokerage A.
2. Representative A is registered as a salesperson under the Act. Representative A was, at all relevant times, also employed (as defined under the Act) by Brokerage A.
3. Brokerage A is registered as a Brokerage under the Act.

I. 1ST LISTING & ENVIRONMENTAL INSPECTION REPORT

4. On or about May 20, 2015, Seller A, (“1st Seller”) and Seller B (collectively the “Sellers”) listed for sale the residential property located at 1-A Street, City A (“Property”) for sale with Brokerage A, and through Representative A (“1st Listing”). The Property was subsequently listed for sale onto the Multiple Listing Service (“1st MLS”), and described as:
 - i. Having only 3 bedrooms; and
 - ii. “[...] Note: 1950’s bungalow so does have some asbestos present.”

a. ENVIRONMENTAL INSPECTION REPORT

5. On or about June 29, 2015, an Environmental Inspection Report was completed on the Property (“Environmental Inspection”). The Environmental Inspection looked for environmental concerns in the Property, and observations included:
 - i. “The white material on the supply ducting in the basement is an asbestos heat shield insulation”; and
 - ii. “A strong mould odour was noted in the cold room of the basement. Efflorescence on the walls shows moisture movement through foundation. [...] Moulds were located on the wood shelves and on the painted walls”.
6. A sample of wall materials taken tested positive for asbestos, and the Environmental Inspection went on to provide that if “any walls are removed for renovation they would have to be done by a licensed professional company.”

II. 2ND LISTING

7. On or about September 23, 2015, the Sellers again listed the Property for sale with Brokerage A, through Representative A (“2nd Listing”). The 2nd Listing also described the Property as:
 - i. Having only 3 bedrooms; and
 - ii. “Note: 1950’s bungalow so does have some asbestos present as do all homes built in this era. Report on file.”

III. 3RD LISTING & 1ST SALE

8. On or about May 1, 2016, the Sellers again listed the Property for sale with Brokerage A, through Representative A (“3rd Listing”). Again, the Property was listed for sale onto the Multiple Listing Service (“3rd MLS”). This time, however, the 3rd MLS was silent on the Property having asbestos but did say that it was “a perfect candidate for open concept renovation”.
9. The 3rd Listing was silent on the Environmental Inspection Report being on file, although the previous Listings remained available.

10. On or about May 11, 2016, Company A agreed to purchase the Property (“1st Agreement”). The 1st Agreement was conditional on the Property being inspected.

11. Company A was represented on the purchase by Wolfe.

a. INSPECTION

12. On or about May 16, 2016, the Property was inspected by Individual A of Company B .

13. The Company B Inspection did not look at determining the presence of mould, fungi and other indoor air quality contaminants, but did note the following:

Insulation: “Insulation recommended at: Entire Basement” as “[t]here is very little if any insulation throughout the basement.”

Asbestos: “The air ducts appear to have had asbestos fibres on them. Remedial work appears to have been done.” It then went on to suggest inquiries about whether “[i]s there a receipt available? How was the air cleaned afterwards?”

b. AMENDMENT

14. On or about May 18, 2016, and because of the issues identified in the Company B Inspection, an ‘Amendment’ to the Agreement was executed, deleting the inspection provision and reducing the purchase price of the Property.

IV. SUBSEQUENT SALE

a. RENOVATION & LISTING

15. After taking possession of the Property, Company A obtained several permits and proceeded to renovate the Property. The work included installing new decks and removing an interior wall.

16. On or about October 4, 2016, Company A listed the Property for sale with Brokerage A, and through Wolfe. The Property was again listed for sale onto the Multiple Listing Service (“4th MLS”). The 4th MLS indicated that the Property had:

- i. Fully finished & reno’d basement w/ new insulation;
- ii. 4 bedrooms, the 4th being in the basement; and
- iii. 2 new exterior decks measuring 6’ x 16’ and 26’ x 12’.

17. The 4th MLS also noted how “ESA certificate and building permits were obtained”.

18. As it turned out, however, not only could the 4th Bedroom not legally be considered a bedroom, Company A had not obtained all the necessary building permits. For example, Company A had not obtained a permit for the building of the larger of the two decks, nor did it obtain a permit to remove any walls.

b. PURCHASE

19. On or about November 5, 2016, Buyer A (“Complainant”) entered into a Buyer Representation Agreement with Brokerage A (“BRA”), and Wolfe as its representative.

20. On or about November 6, 2016, Company A agreed to sell the Property to the Complainant (“2nd Agreement”). Wolfe represented both Company A and the Complainant in the Sale of the Property, and so was representing both their interests. As such, Wolfe

was to equally protect the interests of both Company A and the Complainant, and so owed a duty of full disclosure to the Complainant.

21. The 2nd Agreement was conditional on inspection (“2nd Inspection Clause”).
22. On or about November 9, 2016, the Complainant had the Property inspected by Company C (“Company C Inspection”). Both Company A and Wolfe were in attendance during the Company C Inspection, a non-invasive inspection limited to the physical evidence that was visually accessible at the time of the inspection. The Company C Inspection did not cover code compliance issues, nor include environmental testing for mould or other indoor air quality contaminants.
23. The Company C Inspection noted how it was “not possible to determine prior or future ground water penetration problems in the basement / crawlspace areas,” and went on to advise the Complainant that:
 - i. While there was no visual evidence of active water penetration through the foundation walls, that she check with Company A immediately to determine if they were aware of any prior basement or foundation leakage, accumulation, or dampness before signing the final offer to purchase; and
 - ii. advised the Complainant that she should “ask the property owner if they were aware of any defects that would not normally be detected by a visual inspection.
24. The Complainant discussed the Company C Inspection with Wolfe. An Amendment was prepared and was submitted to Company A who agreed to the amendment and the Inspection condition was waived. The transaction closed on December 9, 2016.

c. PROPERTY ANALYSIS

25. On or about March 27, 2017, the Complainant had an ‘Air Quality Assessment’ completed on the Property, which noted how, among other things:
 - i. There were building description inconsistencies with the 4th MLS;
 - ii. There was “Moisture seepage into the basement and high indoor humidity causing amplification of indoor mould spore counts and causing odour;”
 - iii. A review of the building permit(s) did not reveal a demolition permit for the removal of a wall, or engineering required for the build-up beam;
 - iv. A window in what was described as the 4th Bedroom in the 4th MLS Listing was not compliant with Ont. Code. 9.7.1.2;
 - v. “the main basement TV area appears to be old framing and insulation from 1970s;”
 - vi. After removing drywall and insulation, an active water leak was found into the home at the foundation and floor union; and
 - vii. The carpet was noticeably wet. Fungal staining was noted on the recently installed carpet, pad, and tack down strip.

SUMMARY OF AGREEMENTS

It is agreed Wolfe failed to comply with the Code as follows:

- A. Failed to take reasonable steps to determine material facts relating to both the acquisition and disposition of the Property and, at the earliest practicable opportunity, disclosing the material facts to his clients, contrary to 4, 5, 6(1), 21(1) and 38 of the Code;
- B. In advertising the Property, Wolfe made various representations when he reasonably ought to have known they were inaccurate, contrary to 5, 6(1), 21(1) and 38 of the Code.

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.

Providing opinions, etc.

- 6. (1) A registrant shall demonstrate reasonable knowledge, skill, judgment and competence in providing opinions, advice or information to any person in respect of a trade in real estate.

Material facts

- 21. (1) A broker or salesperson who has a client in respect of the acquisition or disposition of a particular interest in real estate shall take reasonable steps to determine the material facts relating to the acquisition or disposition and, at the earliest practicable opportunity, shall disclose the material facts to the client.

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

ALEXANDER MCCREA WOLFE (trade name ALEX WOLFE), the Respondent, be ordered to pay a penalty of \$15,000.00 on or before March 31, 2021.

In addition to the above penalty, Respondent must enroll in REIC 2280, Legal Issues in Real Estate, and provide proof of successful completion of the course on or before March 31, 2021.

By initials below, I, ALEXANDER MCCREA WOLFE (trade name ALEX WOLFE), 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, ALEXANDER MCCREA WOLFE (trade name ALEX WOLFE), 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, ALEXANDER MCCREA WOLFE (trade name ALEX WOLFE), 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 4, 5, 6(1), 21(1) 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. ALEXANDER MCCREA WOLFE (trade name ALEX WOLFE) is Ordered a Fine of \$15,000.00 payable to RECO on or before March 31, 2021.
2. ALEXANDER MCCREA WOLFE (trade name ALEX WOLFE) is Ordered to successfully complete REIC's Legal Issues in Real Estate on or before March 31, 2021.

[Released: May 4, 2020]