



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 -**

**EMILY A. GILLAN**

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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 Sections 4, 8(1) and/or 21(1) of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$5,000.00 payable to RECO not later than 180 days after the date of the Decision of the Discipline Committee on this matter.

**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. Emily Gillan ("Gillan") is registered as a salesperson under the Real Estate and Business Brokers Act, 2002. Gillan is employed at Brokerage A.

2. In or around early 2012, Buyer A (the “Complainant”) and his spouse were looking to purchase a property in the Province A area. The Complainant sought the services of Gillan, on behalf of Brokerage A, to represent his interests in locating and purchasing a suitable property. He had used her services in acquiring real estate in the past. The Complainant was interested in purchasing a freehold townhouse.
3. Representative A is a real estate salesperson who, at the time in question, was employed by Brokerage B. Brokerage B, with Representative A acting as the listing representative, was listing a freehold townhouse property for sale at 1-A Street, City A (the “Property”).
4. The Complainant was interested in making an offer to purchase the Property. A positive feature of the Property for the Complainant was that it appeared to back directly onto park lands. The MLS listing for the Property stated, “No rear neighbours!” and “backs onto lush green belt”.
5. On March 21, 2012, the Complainant made an offer to purchase the Property. The seller signed back an offer on March 22, 2012 and an Agreement of Purchase and Sale was reached March 23, 2012. During negotiations, the Complainant inquired of Gillan about the status of the lands behind the Property which appeared to be greenbelt.
6. Gillan checked the MLS listing, which noted that the Property backed onto greenbelt. Gillan also made inquiries of Representative A about the land abutting the rear of the Property, and asked Representative A to check with the seller about the status of the land. In response, Representative A provided a subdivision map from a website that the seller had in her possession.
7. The map was a builder’s drawing which showed the residential area in which the Property was situated. The word “Park” appears in the area near the rear of the Property. The map was neither an official plan of subdivision nor was it an accurate source of zoning. In her email to Gillan providing the map, Representative A noted, with respect to the land behind the Property, “I did check and please find attached a subdivision plan and behind it is zoned for a park.”
8. Gillan forwarded this email and the map to the Complainant. The Complainant was thus of the belief that the land behind the Property was a park.

9. The transaction closed on June 15, 2012.
10. Several years later, the Complainant was surprised and upset when he was notified of the potential for residential development on the land directly behind the Property.
11. The land abutting the rear of the Property was neither a park nor protected from development, but rather the zoning designation of greenbelt was changed to medium density residential by the City prior to the time the Complainant entered into the Agreement of Purchase and Sale.

#### SUMMARY OF AGREEMENTS

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

12. Gillan failed to contact the City to determine the status of the land directly behind the Property, and/or failed to advise the Complainant to obtain an opinion from another person with expertise in zoning matters, contrary to sections 21(1) and/or 8(1) of the Code of Ethics.
13. Gillan forwarded to the Complainant the email and map supplied by the listing representative purporting to make representations about zoning without verifying if the information was accurate, and/or without advising the Complainant to obtain an opinion from another person with expertise in zoning matters, contrary to sections 4, 8(1), and/or 21(1) of the Code of Ethics.

It is agreed that Gillan 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.

##### 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.

## 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.

## AGREED PENALTY

EMILY A. GILLAN, the Respondent, be ordered to pay a penalty of \$5,000.00 not later than 180 days not later than 180 days after the date of the Decision of the Discipline Committee on this matter.

By initials below, I, EMILY A. GILLAN, 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, EMILY A. GILLAN, 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, EMILY A. GILLAN, 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, 8(1), and/or

21(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. EMILY A. GILLAN is Ordered a Fine of \$5,000.00 payable to RECO not later than 180 days after the date of the Decision of the Discipline Committee on this matter.

*[Released: April 27, 2020]*