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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 -**

**ANDY KA LEUNG CHAN (registered as ANDY CHAN)**

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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 3, 4, 5, 38 and 39 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$ 20,000.00 payable to RECO on or before December 31, 2021.

Successful completion of the RECO “MCE: Compliance and Ethics in Real Estate, Parts 1 and 2” course and provide RECO with confirmation of successful completion not later than 180 days after the date of the Decision of the Discipline Committee on this matter.

**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. Chan is the Broker of Record of Brokerage A. At all relevant times Chan was employed by Brokerage B.
2. Representative A is registered as a Salesperson under the Act, employed by Brokerage C. Between January 13, 2017 and March 29, 2018, Representative A was not registered to trade in real estate.

### **I. Property Search**

3. Individual A (“Complainant”) was looking to purchase a residential property and contacted Individual B to that end. At all relevant times Individual B was licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, and employed by Company A – a mortgage brokerage owned by Chan.
4. The Complainant was then introduced by Individual B to Chan and eventually Representative A. Chan and Representative A were working as a team.
5. On or about February 13, 2017, the Complainant entered a ‘Buyer Representation Agreement’ with Brokerage B, and Chan as its representative, for the purpose of locating a residential property in the Greater City A Area (“BRA”).
6. Although not registered as a salesperson under Act between January 13, 2017 and March 29, 2018, Representative A, in the absence of Chan, proceeded to show the Complainant several properties.

### **II. 1-A Street**

7. The Sellers listed for sale the residential property located at 1-A Street, City A (“Property”) through Brokerage D.
8. Representative A showed the Property to the Complainant. After advising her, Representative A prepared an offer for the Complainant to purchase the Property (“Offer”) and instructed her on the signing and initialing of same.
9. On or about February 23, 2017, the Sellers agreed to sell the Property to the Complainant for \$900,000.00 (“Agreement”). The Agreement was conditional for three (3) business days on the Complainant securing financing (“Financing Condition”) and called for the Complainant to deposit \$50,000.00 with Brokerage D (“Deposit”).

10. On or about February 28, 2017, and after making the Deposit, the Complainant emailed Representative A a 'Notice of Fulfillment of Conditions' waiving the Financing Condition ("Waiver").
11. Chan did not advise the Complainant about the implication of signing a Waiver, or any other advice for that matter.
12. The Complainant subsequently failed to obtain satisfactory financing and the deal did not close. The Complainant has not been returned her \$50,000.00 deposit and the Sellers commenced an action against the Complainant.

### **SUMMARY OF AGREEMENTS**

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

- A. Chan failed to adequately advise the Complainant on her purchase of the Property in a situation where he reasonably ought to have known that the Property was not suitable, contrary to sections 4, 5, 38 of the Code of Ethics.
- B. Chan permitted for the Complainant to be advised that she had been approved for a satisfactory mortgage when Chan reasonably ought to have known this was not the case, contrary to sections 3, 4, 38 of the Code of Ethics.
- C. Failed to advise the Complainant about the associated ramifications of the Waiver with respect to the Financing Condition, contrary to sections 4, 5, and 38 of the Code of Ethics.
- D. Facilitated, or otherwise permitted for, an unregistered person to trade in real estate, contrary to sections 39 of the Code of Ethics.

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

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.

Best interests

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

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.

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**

ANDY KA LEUNG CHAN (registered as ANDY CHAN), the Respondent, be ordered to pay a penalty of \$20,000.00 on or before December 31, 2021.

In addition to the above penalty, the Respondent must enrol in both MCE: Compliance and Ethics in Real Estate, Parts 1 and 2, and provide proof of successful completion of the course not later than 180 days after the date of the Decision of the Discipline Committee on this matter.

By initials below, I, ANDY KA LEUNG CHAN (registered as ANDY CHAN), 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, ANDY KA LEUNG CHAN (registered as ANDY CHAN), 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, ANDY KA LEUNG CHAN (registered as ANDY CHAN), 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 3, 4, 5, 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. ANDY KA LEUNG CHAN (registered as ANDY CHAN) is Ordered a Fine of \$20,000.00 payable to RECO on or before December 31, 2021.
2. ANDY KA LEUNG CHAN (registered as ANDY CHAN) is Ordered to successfully complete the "MCE: Compliance and Ethics in Real Estate, Parts 1 and 2" course and provide RECO with confirmation of successful completion not later than 180 days after the date of the Decision of the Discipline Committee on this matter.

*[Released: March 1, 2021]*