IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO BY-LAW NO. 10 OF THE REAL ESTATE COUNCIL OF ONTARIO

JAMES OSMAR

Respondent

DATE OF DECISION:	**May 28, 2004**
FINDINGS:	**In violation of Rule 1(5), 20, 21, 42 & 46 of the RECO Code of Ethics**
PENALTY:	**Administrative penalty of $3500 payable to RECO within 30 days of sending this decision.**

REASONS FOR DECISION

This hearing took place on May 21, 2004 and proceeded by way of an Agreed Statement of Facts and Joint Submission as to Penalty ("Agreed Statement"), which was provided to the Discipline Committee ("Panel") by the prosecutor for RECO. The respondent James Osmar did not attend the hearing. The Agreed Statement read as follows:

AGREED STATEMENT OF FACTS AND PENALTY

1. Mr. James Osmar ("Osmar") is a member of the Real Estate Council of Ontario ("RECO") and registered as a salesperson under the *Real Estate Business and Brokers Act* R.S.O. 1990 c. R-4 ("*REBBA*").

2. Broker A is a member of RECO and registered as a broker under *REBBA*. At all relevant times, Osmar was employed at Centre City Realty.

3. On or about August 17, 2002, Seller A listed a residential property municipally known as 1 A Street as a Multi Family Dwelling on the Real Estate Board. The expiration date of the MLS listing was December 31, 2002. The listing was cancelled on or about October 29, 2002. On or about September 3, 2002, Osmar sent a solicitation letter to Seller A to list her property. Ms. Seller A's property was already listed on the Real Estate Board MLS system in September 2002. In his

interview report, Osmar states that it was the responsibility of one of his unregistered assistants to prevent the solicitation letter from being sent to Seller A.

4. In the "solicitation letter" addressed to Seller A, entitled You Deserve the Best Chance at Selling Your Property for the Highest Possible Price!, dated September 3, 2002 ("September 3, 2002, letter"), Osmar makes all kinds of assertions with no proof to support such statistics. For example, in a heading entitled, Consider my Track Record, Osmar states: "I will sell over 200 homes this year where industry average is approximately 6 homes sold per year. Further, 61.4% of the homes I sell are homes just like yours - homes that were for sale and did not sell." Osmar promotes his own program by making the promise that "outspending area Realtors and Real Estate Companies in City A to promote your property through my maximum exposure program will be just one powerful reason why you will get the highest possible price for your home." Yet, Osmar fails to provide facts or concrete evidence to support this claim.

5. On or about March 31, 2003, RECO appointed a researcher, RECO Researcher to investigate the matter. It was through RECO Researcher's investigation and interviews that additional documentation was obtained. RECO Researcher obtained the template of the letter that was sent to Seller A. In a subsequent revised template of this form letter, under the similar heading, Consider my Track Record, Osmar makes the allegation that he sold approximately 150 homes in 2002. However, he does not provide information to support this claim. RECO Researcher discovered that Osmar did not sell 200 homes in 2002. In actuality, Osmar has amended his September 3, 2002 form letter template to read "150 homes." Osmar asserts that he sold 146 homes in that period.

6. In a second heading, entitled Increased Leverage, in the September 3, 2002 letter, Osmar bases his success on statistics. In his letter, he states, "synchronized with the regular calls, you will also have mailed to you regular service reports covering everything from advertising to neighbourhood statistics." Osmar alludes to neighbourhood statistics but does not specify or elaborate what neighbourhood he is referring to and what the statistics are based on. Osmar fails to provide neighbourhood statistics.

7. In the September 3, 2002, letter, Osmar states that over 600 prospective buyers are currently on file in our Buyer Profile system. Osmar alleged that he has over 600 prospective buyers but he does not have that many signed up buyer contracts. Instead, Osmar provides a

copy of his database consisting of approximately 2435 names and numbers taken by cold calling and from ad calls.

8. In the September 3, 2002 letter, Osmar quotes statistics without citing sources. In the paragraph, entitled, YOU SEE…IT'S NOT ABOUT ME, IT'S ABOUT YOU, Osmar states that five years ago he read an astounding survey in a consumer trends magazine that stated 72% of today's buyers and sellers would not go back to the sales representatives they had worked with in the past. Osmar fails to reference source or provide bibliographic information when citing the consumer trends magazine. This statement is misleading as it refers to consumer trend, which is different than a real estate trend.

9. In the September 3, 2002 letter, Osmar quotes another statistic without providing its source. Under the heading, YOU DESERVE THE BEST CHANCE AT SELLING YOUR PROPERTY FOR THE HIGHEST POSSIBLE PRICE, Osmar states that in 2001, less than 62% of the homes that were listed eventually sold. Since you don't want this to happen to you when selling your home, can you really afford to go with anyone other than Canada's #1 Real Estate Advertiser?

10. In addition, Osmar promotes his firm as City A's leading realtor, based on the total number of homes sold by Broker A, and as Canada's Top/ #1 Real Estate Advertiser, an award received by Osmar from the Canadian Daily Newspaper Association. However, the award Osmar received was the Canadian Daily Newspaper Association Classified Award for Excellence for the best black and white re-sale home advertisement in Canada.

11. In the September 3, 2002 letter, Osmar invites the reader to call "The James Osmar Home Selling Team" right away. This is not a title or designation that is registered with RECO.

12. In the closing paragraph of the September 3, 2002, letter, Osmar states in a bold italicized font promising that when ordering a free copy of how to get your home sold for ***3% more 27% faster***, call the INFO CENTRE 24 hours a day at 672-4636. Osmar cites a statistic without any proof.

13. Osmar signs off September 3, 2002 letter with the conclusion that nobody sells more homes in City A. Osmar makes this assertion without providing any qualification or proof.

14. In a separate insert that was included in the Seller A's letter of complaint, entitled, *Discover how James Osmar can sell your home for 3% more…27% faster,* under heading #2, Maximum Exposure of Your

Property, Osmar also states that he is awarded Canada's #1 Real Estate Advertiser, you know you will receive a personalized maximum exposure marketing campaign designed to advertise your property with the most impact possible. James sells properties not only faster but for more money than the average Realtor. Osmar does not explain how he has derived this mathematical equation. Osmar is able to provide puffery, not proof.

15. With respect to the heading#3, The Buyer Profile System, Osmar states that his buyer department maintains a constant supply of buyers numbering over six hundred. NO OTHER REALTOR IN CITY A HAS IMPLEMENTED SUCH A PROGRAM!!! With this vast number of qualified buyers potentially ready to buy your property, James's average sale is 46 days from the time of listing. This is a faster selling time than all Realtors on the Real Estate Board. Osmar boasts that his method results in a faster selling time than all Realtors on the Real Estate Board. Osmar is unable to provide proof to support his claims.

16. With respect to heading #4, *James High Number of Sales is to your benefit,* Osmar continues to make bold assertions without providing proof to support his claims. Osmar states "he sold more properties in 2000 than all other Realtors on the Real Estate Board as based on M.L.S. statistics and on track to sell over 200 homes in 2001. All this in a market where the average Realtor sells less than seven properties each year. The fact is James sells more homes than every other Realtor in City A…bar none." Osmar fails to provide MLS documentation or further evidence to support his assertions.

17. In a similar document that was obtained through RECO Researcher's research, with a revised title, *Sell Your Homes Faster and for the Most Money with James Osmar Home Selling Team,"* under the same heading #4, *James High Number of Sales is to your benefit,* Osmar makes the bold statement that "having sold more properties in 2002 than most if not all Realtors on the Real Estate Board. He merely states that he sells approximately 150 homes in 2002. He fails to make the comparative analysis with statistics when comparing himself to the Realtors in Real Estate Board.

Accordingly:

Osmar acted in an unprofessional manner by:

Soliciting a property that was already actively listed on the MLS system

Representing himself in many claims as #1 advertiser when the award he received was the Canadian Daily Newspaper Association's Classified

Award for Excellence for the best black and white resale home advertisement in Canada

Failing to keep documentation to support unreported claims

Failing to practice with the Member's name as registered with Council

Failing to supervise staff to ensure tasks are performed accurately and appropriately

And thereby breached the following rules in the *Code of Ethics:*

Rule 1 – Ethical Behaviour-A Member shall:
(5) deal fairly, honestly and with integrity with the public, other members and third parties.

Rule 20- Name -A Member shall only practice using the Members name as registered with the Council.

Rule 21- Advertising- A Member shall ensure that all advertising and promotion by or on behalf of the Member, including for Properties and services, is not false, misleading or deceptive.

Rule 42- Competence -A Member shall render conscientious service with the knowledge, skill, judgment and competence, in conformity with this Code of Ethics and the standards which are reasonably expected of Member's. When the Member is unable to render such a service, either alone or with the aid of another Member, the Member shall decline to act.

Rule 46- Unprofessional Conduct -A Member shall not engage in an act or omission relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by Members or the public as disgraceful, dishonourable or unprofessional.

Joint Submissions by the parties as to penalty
A. James Osmar be Ordered to pay a Penalty of $3500.00 within 30 days of the decision of the Discipline Committee.

The undersigned consent that the matter of RECO and James Osmar be disposed of by way of this Agreed Statement of Facts and Joint Submission as to Penalty.

Accordingly, the Agreed Statement of Facts and Joint Submissions as to Penalty will be heard at RECO Chambers on a date chosen by the Real Estate Council of Ontario.

James Osmar acknowledges that he was advised prior to signing this document that he has a right to be represented by legal counsel or an agent in this matter.

[The Agreed Statement was duly signed by James Osmar and the Manager of Complaints, Compliance and Discipline on April 6, 2004.]

DECISION OF THE PANEL

Having reviewed the Agreed Statement and having heard the submissions of the prosecutor of RECO on behalf of the parties, the Panel has decided that the allegations and admissions in the Agreed Statement establish that the respondent James Osmar breached Rules 1(5), 20, 21, 42, and 46 in the circumstances.

The Panel is also in agreement with the Joint Submission of the parties as to penalty and accepts that submission. The Panel notes that it received a letter from James Osmar, which appears to have been faxed to RECO on April 23, 2004, in which Osmar requests that he be able to make two payments to RECO which total $3500, with one payment being made within thirty (30) days (of the Panel's decision) and the other being made within sixty (60) days (of the Panel's decision). By contrast, the Agreed Statement provides that the parties agreed that Osmar should be ordered to pay an administrative penalty of $3500 within thirty (30) days of the decision of the Panel.

The Panel has considered the letter from Osmar and the Agreed Statement and sees no reason to deviate from the general terms of the Agreed Statement. The $3500 administrative penalty in this case is not onerous, particularly for an agent who conducts the number of transactions (on an annual basis), which Osmar claims he conducts.

Accordingly, the following Order shall be issued:

1. Osmar shall pay an administrative penalty of $3500 to RECO within thirty (30) days of RECO sending this decision to him; and
2. There shall be no order of costs in this proceeding.