



Real Estate Council of Ontario

DISCIPLINE DECISION

**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:

REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

- AND -

TAMMY LYN LOEMAN (also known as TAMMY LOEMAN)

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 Recommended 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, 21 and 38 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$10,000.00 payable to RECO within 180 days of sending this decision.

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. Tammy Loeman ("Loeman") is registered as a broker under the Act. At all relevant times, Loeman was employed as a broker with the Brokerage.

2. The Brokerage, through Loeman, was the listing brokerage of 1-A Street, City A (the "Property"). The seller of the Property was the Seller. The listing agreement was signed on September 29, 2011.
3. The asking price for the Property was \$149,555.00. The Multiple Listing Service® ("MLS") listing information, as authored by Loeman, contained the following "realtor remarks":

"Super easy to show! Fabulous home used as 2 family ... Great opportunity to own your own rental property or live-in one unit and let the other one pay your mortgage! Both units show well, high ceilings, laminate floors, some vinyl windows, fenced yard, parking."
4. Loeman also marketed the property on the web sites Kijiji and Facebook, indicating "fabulous family home with income rental" and referenced the above realtor remarks in those advertisements.
5. On October 11, 2011, an agreement of purchase and sale (the "APS") was entered into between the Seller, as seller, and the Buyer, as buyer, for the Property. The purchase price was \$143,000.00.
6. Loeman acted in a multiple representation capacity on the transaction. The Confirmation of Co-operation and Representation indicated, among other things, that the listing brokerage (Brokerage) had a duty of full disclosure to both the Seller and the Buyer, including a duty to disclose all factual information about the Property known to the Brokerage and Loeman.
7. At no time prior to the signing of the APS by the Buyer, nor any time prior to closing did Loeman inform the Buyer that the Property was not zoned for multi-residential use. Notwithstanding references in the marketing materials that indicated that the Property was being used as two units, the local zoning only permitted single family dwellings.
8. The Buyer was purchasing as an investor (owning his principal residence already) and his sole intention was to rent out the units. The Buyer states that had he known that one of the units was illegal he would not have made the purchase, or, alternatively, would not have paid to purchase the price agreed to in the APS. The fact that one unit was not legally permitted to be rented meant that the future revenue stream would be lower than anticipated and that, also, the resale of the Property may be diminished as a result of the misrepresentation regarding the use to which the Property could be put.
9. Loeman had duties and obligations to the Buyer, as a client, to determine and disclose all material facts relating to the Property and this she failed to do. Furthermore, Loeman advertised the Property indicating that it was being used as two rental units and was marketing the Property on that basis. However, Loeman either deliberately or negligently represented the Property as having two units, when in fact the zoning did not allow two units as a lawful use.

SUMMARY OF AGREEMENTS

It is agreed that Loeman acted unprofessionally as follows:

1. Contrary to section 4 of the Code of Ethics, Loeman failed to promote and protect the best interests of her client the Buyer by failing to be aware of zoning matters affecting the Property or by failing to impart information to her buyer client regarding zoning restrictions, or both. This failure to promote the best interests meant a significant attribute of the Property (lawful multiple residential use) that the Buyer thought he was purchasing was, in fact, an illegal use of the Property.
2. Contrary to section 5 of the Code of Ethics, Lowman failed to provide conscientious service to her client the Buyer and failed to demonstrate reasonable knowledge, skill, judgment and competence in providing services by failing to properly determine the legal uses of the Property and indeed marketed the Property on a basis that was illegal. The failure to properly review and issue as fundamental to the transaction as the applicable zoning by-laws constitutes a clear failure to provide conscientious service to Loeman's client and was a clear failure to demonstrate reasonable knowledge, skill, judgment and competence in providing services.
3. Contrary to s.21(1) of the Code of Ethics, Loeman failed to take reasonable steps to determine material facts relating to the acquisition of the Property for her client the Buyer and therefore did not disclose material facts to her client the Buyer. Specifically, Loeman did not inform Cunningham of the material fact that the Property was not zoned multiple residential and therefore the use of the Property as multiple residential is not lawful.
4. Contrary to s.38 of the Code of Ethics, Loeman failed to use her best efforts to prevent error in a trade in real estate; specifically, Loeman did not use her best efforts to avoid a substantial error regarding zoning that affected the permissible uses of the Property. Indeed, it was Loeman's lack of effort in determining whether the use advertised by her was a legal use that leads directly to significant and harmful error.

It is agreed that Loeman breached the following sections of the Code of Ethics:

BEST INTEREST

4. A registrant shall promoted 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.

MATERIAL FACTS

21. 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 disclosed the material facts to the client.

ERROR, MISREPRESENTATION, FRAUD

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

TAMMY LOEMAN, the Respondent, be ordered to pay a penalty of \$10,000.00 not later than 180 days after the date of the Decision of the Discipline Committee on this matter.

By initials below, I, TAMMY LOEMAN, 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, TAMMY LOEMAN, 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, TAMMY LOEMAN, 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, 21, 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. Tammy Lyn Loeman (also known as Tammy Loeman) is Ordered a Fine of \$10,000.00 payable to RECO within 180 days of sending this decision.

[Released: May 26, 2014]