



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 -

DAVID LYLE NICHOLLS

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 3, 4, 37 and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$5,000.00 payable to RECO on or before August 8, 2017.

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. At all relevant times, David Lyle Nicholls (“Nicholls”) was registered as a broker under the Act.
2. At all relevant times, Nicholls was employed by Brokerage A.

3. On or about April 6, 2015, Brokerage A entered into a Listing Agreement, for the sale of a property municipally known as 1-A Street, Township A (the "Property").
4. The sellers of the Property were Seller A and Seller B.
5. Nicholls acted as Brokerage A's representative.
6. The Listing Agreement price was \$324,900.00.
7. On June 3, 2015, the Listing Agreement price was amended by an Amendment to the Listing Agreement document. The sale price was amended from \$324,900.00 to \$299,990.00.
8. The June 3, 2015 Amendment to the Listing Agreement document purports to have been signed and initialed by both Seller A and Seller B.
9. The signatures and initials on the June 3, 2015 Amendment to the Listing Agreement were not signed by Seller A and Seller B. Both Seller A and Seller B deny providing Nicholls their consent to amend the Listing Agreement price.
10. Both Seller A and Seller B deny providing Nicholls their consent to sign their signatures or initials on the Amendment to the Listing Agreement.
11. The Amendment to the Listing Agreement had no written notation that communicated that the signatures or initials of Seller A and Seller B were signed by Nicholls, on behalf of Seller A and Seller B. Accordingly, the document purported to be signed and initialed by Seller A and Seller B.
12. On or about June 22, 2015, Seller B contacted Nicholls and informed that he wanted to terminate the Listing Agreement.
13. On or about June 23, 2015, Seller B provided Nicholls with a Termination Agreement. The Termination Agreement was drafted and signed by Seller A and Seller B.
14. Nicholls signed the Termination Agreement on June 23, 2015.

SUMMARY OF AGREEMENTS

It is agreed

Nicholls failed to include a written notation that communicated the signatures and initials he signed on the Amendment to the Listing Agreement, were "per" Seller A's and Seller

B's instruction, and were not actually signed by Seller A and Seller B, thereby breaching Sections 3, 4, 37, and 39 of the Code of Ethics.

AGREED PENALTY

DAVID LYLE NICHOLLS, the Respondent, be ordered to pay a penalty of \$5,000.00 on or before August 8, 2017.

By initials below, I, DAVID LYLE NICHOLLS, 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, DAVID LYLE NICHOLLS, 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, DAVID LYLE NICHOLLS, 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 3, 4, 37 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. DAVID LYLE NICHOLLS is Ordered a Fine of \$5,000.00 payable to RECO on or before August 8, 2017.

[Released: February 22, 2017]